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**Health Insurance (Pathology) Amendment**

**Act (No. 2) 1991**

**No. 193 of 1991**

**An Act to amend certain provisions of the *Health Insurance***

***Act 1973* relating to pathology services**

[*Assented to 11 December 1991*]

The Parliament of Australia enacts:

**Short title etc.**

**1.(1)** This Act may be cited as the *Health Insurance (Pathology) Amendment Act (No. 2) 1991.*

**(2)** In this Act, **"Principal Act"** means the *Health Insurance Act 1973*1.

**Commencement**

**2.(1)** Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

**(2)** Subsection 4(2) commences on 1 February 1992.

**Interpretation**

**3.** Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

" **'medical entrepreneur'** means a person who:

(a) employs a practitioner to render medical services; or

(b) is in a position to exercise control over a practitioner rendering medical services; or

(c) leases, or otherwise makes available, to a practitioner premises at which the practitioner renders medical services; or

(d) receives or obtains any property, benefit or advantage from the rendering of a medical service by a practitioner;".

**Medicare benefits in relation to pathology services**

**4.(1)** Section 16A of the Principal Act is amended by inserting after subsection (5) the following subsection:

"(5A) A medicare benefit is not payable in respect of a pathology service that has been rendered by or on behalf of an approved pathology practitioner if the request for the service was made to the approved pathology practitioner by the treating practitioner, or by another approved pathology practitioner (in this subsection called the **'requesting practitioner'**)to whom the treating practitioner made the request, because of:

(a) any consideration given, or promise made, by the first-mentioned approved pathology practitioner or the proprietor, or a proprietor, of the laboratory in which the service was rendered to:

(i) the treating practitioner; or

(ii) the requesting practitioner; or

(iii) an employee of the treating practitioner or requesting practitioner; or

(iv) a medical entrepreneur;

(b) any agreement, arrangement or understanding between the approved pathology practitioner or the proprietor, or a proprietor, of the laboratory in which the service was rendered; and

(i) the treating practitioner; or

(ii) the requesting practitioner; or

(iii) an employee of the treating practitioner or requesting practitioner; or

(iv) a medical entrepreneur.".

**(2)** Section 16A of the Principal Act is amended:

**(a)** by inserting after subsection (5) the following subsection:

"(5AA) A medicare benefit is not payable in respect of a pathology service that has been rendered in relation to a person by or on behalf of an approved pathology practitioner (in this subsection called the **'rendering pathologist'**)pursuant to a request made to the rendering pathologist by:

(a) the treating practitioner; or

(b) another approved pathology practitioner (in this subsection called the **'referring pathologist'**)to whom the treating practitioner has made a request for that service;

unless the pathology specimen required for the rendering of the service:

(c) was collected from the person by:

(i) the person himself or herself; or

(ii) the treating practitioner; or

(iii) an employee of the treating practitioner on behalf of the treating practitioner; or

(d) was collected from the person by the rendering pathologist, the referring pathologist, or an employee of an approved pathology authority that is the proprietor (or a proprietor) of the laboratory in which the service is to be rendered, at:

(i) the place where the person was residing; or

(ii) a licensed collection centre (within the meaning of Part IIA); or

(iii) a recognised hospital; or

(iv) a private hospital, or a day hospital facility, in which the person is an in-patient; or

(v) a nursing home, or other institution, in which the person is a patient; or

(e) was collected from the person by:

(i) a member of the staff of a hospital, or a day hospital facility, in which the person is an in-patient; or

(ii) a member of the staff of a nursing home, or other institution, in which the person is a patient.";

**(b)** by omitting from subsection (8) "subsection (3)" and substituting "subsections (3) and (5AA)".

**Interpretation**

**5.** Section 23DA of the Principal Act is amended by inserting in subsection (1) the following definitions:

" **'licence'** means a licence granted under section 23DNE;

**'licence fee'** means the fee payable in respect of the grant of a licence under the *Health Insurance (Pathology) (Licence Fee) Act 1991*;

**'licensed collection centre'** means a specimen collection centre in respect of which a licence is in force;

**'specimen collection centre'** means a place set up by an approved pathology authority to collect pathology specimens from persons in relation to whom pathology services are to be rendered;

**temporary collection centre'** means a specimen collection centre that is not intended to be operated by an approved pathology authority as a licensed collection centre after 31 January 1994;".

**6.** After Division 4 of Part IIA of the Principal Act the following Division is inserted:

"***Division 4A—Specimen collection centres***

**Interpretation**

"23DNAA. In this Division, unless the contrary intention appears:

**'approved pathology authority'** does not include an approved pathology authority that is:

(a) a State or Territory; or

(b) a public authority within the meaning of section 23DF.

**Determination of maximum number of licensed collection centres that may be operated by approved pathology authorities**

"23DNB.(1) The Minister must, on or before each 1 February, determine in writing the maximum number of licensed collection centres that each person that is on that day an approved pathology authority may operate at any time during the year beginning on that day.

"(2) A determination made on or before 1 February 1992 in respect of an approved pathology authority that operated specimen collection centres immediately before this section commenced must also determine:

(a) the maximum number of licensed collection centres (being a number less than the number determined under subsection (1)) that the authority will be authorised to operate at any time during the year beginning on 1 February 1993; and

(b) the maximum number of licensed collection centres (being a number less than the number determined under paragraph (a)) that the authority will be authorised to operate at any time during the year beginning on 1 February 1994.

"(3) A determination made on or before 1 February 1993 in respect of an approved pathology authority that operated specimen collection centres immediately before this section commenced must also determine the maximum number of licensed collection centres (being a number less than the number determined under subsection (1) and not more than the number determined under paragraph (2)(b)) that the authority will be authorised to operate at any time during the year beginning 1 February 1994.

"(4) Where a person is approved as an approved pathology authority, the Minister must determine in writing the maximum number of licensed collection centres that the person may operate at any time during the period beginning on the day of the approval and ending at the end of the 31 January next following.

"(5) When performing a duty under this section, the Minister must comply with any relevant principles in force under subsection (6).

"(6) The Minister must determine in writing the principles with which the Minister must comply in performing duties under this section.

"(7) A determination under subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901.*

**Circumstances where maximum number of licensed collection centres in respect of approved pathology authority is taken to be varied**

"23DNC.(1) If:

(a) an approved pathology authority is operating the maximum number of licensed collection centres (other than temporary collection centres) that, apart from this section, the authority may operate (in this section called the **'notional maximum number of centres for the authority'**);and

(b) the approved pathology authority:

(i) makes an application under subsection 23DND(1) for the grant of a licence in respect of a specimen collection centre operated or to be operated otherwise than as a temporary collection centre by the authority; and

(ii) at the same time asks the Minister in writing, giving reasons for the request, to make a determination under this subsection; and

(c) the Minister is satisfied, having regard to the principles determined under subsection (5), that, because of special circumstances, the determination should be made;

the Minister must determine in writing that, because of the circumstances specified in the determination, the approved pathology authority should, if a licence is granted in respect of the collection centre, be allowed to operate the collection centre in addition to the collection centres already operated by the authority.

"(2) If the Minister decides not to make a determination under subsection (1), the Minister must inform the approved pathology authority in writing of the decision.

"(3) A determination under subsection (1) ceases to have effect:

(a) if a licence is not granted in respect of the specimen collection centre to which the determination relates; or

(b) if the licence granted in respect of the collection centre is revoked or cancelled.

"(4) While a determination made under subsection (1) at the request of an approved pathology authority has effect, the maximum number of licensed collection centres (other than temporary collection centres) that the approved pathology authority may operate is, for the purposes of paragraph 23DND(4)(a), taken to be the notional maximum number of centres for the authority increased by one.

"(5) The Minister must determine in writing principles for the purposes of paragraph (1)(c).

"(6) A determination under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.".

**Application for grant of licence**

"23DND.(1) An approved pathology authority may apply in writing to the Minister for the grant of a licence in respect of a specimen collection centre operated or to be operated by the authority.

"(2) If the application is made before 1 February 1993 by an approved pathology authority that operated specimen collection centres immediately before this section commenced, the application must state whether or not the specimen collection centre is a temporary collection centre.

"(3) The approved pathology authority must:

(a) give to the Minister any information (whether oral or in writing in a form specified by the Minister) asked by the Minister; and

(b) allow the Minister to see and copy any document asked by the Minister;

that is reasonably necessary to enable the Minister to decide whether or not to approve the grant of the licence.

"(4) If the specimen collection centre is not a temporary collection centre, the Minister may approve the grant of the licence only if:

(a) the grant of the licence will not result in the number of licensed collection centres (other than temporary collection centres) operated by the authority being greater than the maximum number of licensed collection centres (other than temporary collection centres) that may be operated by the authority at that time.

(b) the approved pathology authority is the owner, lessee or sublessee of the premises (in this subsection called the 'Premises') occupied, or to be occupied, by the specimen collection centre; and

(c) the Premises are not used, or intended to be used, at the same time as a surgery by a medical practitioner; and

(d) there is on the Premises the necessary equipment for the collection and preparation of specimens for pathology procedures; and

(e) the staff at the specimen collection centre:

(i) are persons employed by the authority; and

(ii) include persons properly trained in procedures for the collection and preparation of pathology specimens;

"(5) If the specimen collection centre is a temporary collection centre, the Minister may approve the grant of the licence only if:

(a) the grant of the licence will not result in the number of approved licensed collection centres operated by the approved authority as temporary collection centres being greater than the maximum number of licensed collection centres that may be operated as temporary collection centres by the authority at that time; and

(b) the centre has been continuously operated by the authority, on the premises occupied by the centre, for a period beginning before 1 July 1991; and

(c) where the licence, if granted, would be for a period commencing on 1 February 1993—the centre has continuously been a licensed collection centre operated as a temporary collection centre since 1 February 1992; and

(d) the conditions specified in paragraphs (4)(b), (c), (d) or (e) are complied with.

"(6) The Minister may refuse to approve the grant of the licence in respect of the specimen collection centre if a licence previously granted to the approved pathology authority (whether in respect of the specimen collection centre or another specimen collection centre) was revoked.

"(7) The Minister must inform the approved pathology authority in writing of his or her decision to approve or not to approve the grant of the licence.

**Grant of licence**

"23DNE.(1) If:

(a) the Minister approves the grant of a licence in respect of a specimen collection centre; and

(b) the approved pathology authority pays the licence fee;

the Minister must grant a licence authorising the authority to operate the specimen collection centre.

"(2) If the specimen collection centre is a temporary collection centre, the licence must specify that fact.

"(3) A licence:

(a) comes into force on the day specified in the licence; and

(b) remains in force for the period specified in the licence.

"(4) A licence may not specify as the period for which the licence remains in force a period that ends on or after 1 February next following the day on which the licence comes into force.

"(5) A licence in respect of a temporary collection centre may not specify a day other than 1 February as the day on which it comes into force.

**Identification number**

"23DNF.(1) When the Minister issues a licence in respect of a specimen collection centre, the Minister must allocate to the centre a number by which the centre may be identified.

"(2) The licence must specify that identification number.

"(3) Any document issued by or on behalf of the approved pathology authority operating a licensed specimen collection centre and relating to:

(a) the collection of a specimen at the centre; or

(b) the sending of the specimen to an accredited pathology laboratory;

must specify the identification number.

**Revocation of licence**

"23DNG.(1) The Minister may revoke a licence if the Minister is satisfied that:

(a) a condition referred to in paragraph 23DND(4)(b), (c), (d) or (e); or

(b) subsection 23DNF(3) or section 23DNK;

has not been complied with.

"(2) If the Minister decides to revoke a licence, the Minister must give written notice of the revocation to the approved pathology authority holding the licence, specifying the day (not being a day earlier than the day on which the notice is given to the authority) from which the revocation has effect.

**Cancellation of licence**

"23DNH.(1) The approved pathology authority operating a licensed collection centre may, at any time, ask the Minister in writing to cancel the licence granted in respect of the centre.

"(2) When the Minister is asked to do so, the Minister must cancel the licence.

**Partial refund of licence fee on cancellation of certain licences**

"23DNI.(1) This section does not apply to a temporary collection centre.

"(2) If the licence granted in respect of a specimen collection centre is cancelled under section 23DNH, the approved pathology authority that held the licence is entitled to a partial refund of the licence fee.

"(3) The amount to be refunded to the approved pathology authority under subsection (2) is the amount calculated by using the formula:



where:

**'Licence days'** means the number of days for which the licence remained in force; and

**'Fee'** means the amount paid as licence fee in respect of the licence.

"(4) Payments under this section are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**Inspection of specimen collection centres**

"23DNJ.(1) A person authorised in writing by the Minister for the purposes of this section (in this section called an **'authorised person'**)may at any reasonable time:

(a) enter and inspect:

(i) the premises occupied or to be occupied by a specimen collection centre in respect of which an application for a licence has been made; or

(ii) the premises occupied by a licensed collection centre; and

(b) inspect, copy, or make copies of, any books, documents or records on the premises that relate to the operation or the intended operation of the centre.

"(2) The authorised person:

(a) must have the Minister's authorisation with him or her when entering the premises; and

(b) on request, must show the authorisation to any employee or representative of the approved pathology authority operating or intending to operate the specimen collection centre who is then on the premises.

"(3) Any person who hinders or prevents an authorised person from doing anything that he or she is authorised to do under subsection (1) is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 6 months.

**Notice that specimen collection centre is licensed**

"23DNK. The approved pathology authority operating a licensed collection centre must ensure that at all times there is on display in a prominent place at the centre a notice that lets the public know:

(a) that the centre is licensed under this Division; and

(b) if the centre is a temporary collection centre—that it is such a centre.

Penalty: $100.

**Offence in relation to unlicensed specimen collection centres**

"23DNL.(1) A person who operates an unlicensed specimen collection centre must cause to be taken such steps as are reasonable in all the circumstances to ensure that, before a pathology specimen is collected at the centre from a person in relation to whom a pathology service is to be rendered:

(a) that person or, if that person is in the care of another person, that other person; and

(b) the approved pathology practitioner by or on behalf of whom the pathology service is to be rendered;

are informed that, if the approved pathology practitioner were to use the specimen in rendering a pathology service, a medicare benefit would not be payable in respect of the pathology service. Penalty: $2000.

"(2) Subsection (1) does not apply to an approved pathology authority that is:

(a) a State or Territory; or

(b) a public authority within the meaning of section 23DF.".

**Review of decisions**

**7.** Section 23DO of the Principal Act is amended:

**(a)** by inserting after subsection (2B) the following subsections:

"(2C) An approved pathology authority aggrieved by a decision of the Minister not to make a determination under subsection 23DNC(1) may, not later than 28 days after being informed of the decision of the Minister, apply to the Minister for a reconsideration of the decision.by the Minister.

"(2D) On receiving an application under subsection (2C), the Minister must reconsider his or her decision and may:

(a) affirm the decision; or

(b) make a determination under section 23DNC(1).

"(2E) Where an approved pathology authority who has applied for the grant of a licence under section 23DND(1) is informed that the Minister has decided not to approve the grant of the licence, the approved pathology authority may, not later than 28 days after receiving the information, apply to the Minister for a reconsideration of the decision by the Minister.

"(2F) On receiving an application under subsection (2E), the Minister must reconsider his or her decision and may:

(a) affirm the decision; or

(b) approve the grant of the licence to the approved pathology authority.

"(2G) Where an approved pathology authority is notified

under subsection 23DNG(2) of a decision of the Minister to revoke a licence held by the authority, the approved pathology authority may, not later than 28 days after receiving the notice, apply to the Minister for a reconsideration of the decision of the Minister.

"(2H) On receiving an application under subsection (2G), the Minister must reconsider his or her decision and may:

(a) affirm the decision; or

(b) cancel the revocation of the licence with effect from the day on which the revocation had effect.";

**(b)** by omitting from subsection (3) and paragraph (5)(c) "or (2B)" and substituting ", (2B), (2D), (2F) or (2H)".

**Bribery**

**8.** Section 129AA of the Principal Act is amended:

**(a)** by inserting in paragraph (1)(b) "or medical entrepreneur" after "practitioner";

**(b)** by inserting in subsection (1A) "or medical entrepreneur" after "practitioner";

**(c)** by omitting from subsection (4) "a fine not exceeding $10,000 or".

**Prohibited practices in relation to the rendering of pathology services**

**9.** Section 129AAA of the Principal Act is amended:

**(a)** by inserting in subsection (1) "or any other person" after "practitioner" (fourth occurring);

**(b)** by inserting in subsection (1) "or the other person" after "practitioner" (sixth occurring);

**(c)** by inserting in subsection (1) "or of the other person" after "practitioner" (last occurring);

**(d)** by inserting in subsection (2) "or medical entrepreneur" after "practitioner" (second occurring);

**(e)** by omitting from subsection (2) "2 practitioners" and substituting "parties to the arrangement";

**(f)** by inserting in subsection (2) "or any practitioner who has entered into any contract, agreement or arrangement with that medical entrepreneur (as the case may be)" after "practitioner" (last occurring);

**(g)** by inserting in subsection (3) "or at premises made available to the pathology practitioner by a medical entrepreneur" after "practitioner" (second occurring);

**(h)** by inserting in paragraph (4)(a) "or medical entrepreneur" after "practitioner" (second occurring);

**(i)** by omitting from subparagraph 4(a)(i) "2 practitioners" and inserting "parties to the agreement";

**(j)** by omitting from subparagraph (4)(a)(ii) "practitioner" (wherever occurring) and substituting "party";

**(k)** by inserting in subsection (4) "or any practitioner who has entered into any contract, agreement or arrangement with that medical entrepreneur (as the case may be)" after "practitioner" (last occurring);

**(l)** by omitting from subsection (8) "a fine not exceeding $10,000 or".

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**NOTE**

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; Nos. 59, 84, 95 and 164, 1989; Nos. 3, 106 and 141, 1990; Nos. 6, 57, 68, 70, 73, 84, 116, 141 and 175, 1991.

[*Minister's second reading speech made in—*

*House of Representatives on 7 November 1991*

*Senate on 13 November 1991*]