

06/144

Ms Hilary Metcalf
Director, Pathology Section
Diagnostics and Technology Branch
Department of Health and Ageing
MDP 107, GPO Box 9848
CANBERRA ACT 2601

Dear Ms Metcalf

Thank for the opportunity for the Australian Medical Association to comment on the issues raised in the discussion papers pertaining to the proposed secondary legislation to support the *Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007*.

The AMA is unsure of the value of the amendments to the legislation as the provision of inducements was already illegal under the Act and has concern that further regulation will discourage smaller practices from co-locating with other providers and thus reduce patient access to pathology and diagnostic imaging services. This would simply benefit larger vertically integrated corporate providers.

Our submission in relation to the permitted benefits is attached. As arranged with your colleague Ms Kerriane Baker a further submission regarding the leasing and valuation arrangements will be provided to you by Friday 7 February 2008.

Yours sincerely

Warwick Hough
Senior Manager
General Practice, Legal Services and Workplace Policy Section
February 2007

AMA Submission Paper re Prohibited Pathology Practices

Part 1 Permitted Benefits

Specimen collection, equipment, consumables, sharps containers

The AMA is encouraged that the Department seems prepared to be reasonable with regard to what items or services will be considered permitted benefits. Nevertheless, it is worthwhile pointing out that if GPs were paid for pathology collections, as they once were, this particular issue would not be a problem. If GPs received an appropriate level of payment for specimen collection, then this would cover the costs of the necessary equipment, consumables, sharps containers and sharps disposal services. Thereby providing no base on which providers could offer an inducement to requesters.

The Department has indicated that a single bleeding chair or fridge that was used exclusively in relation to the collection or storing of pathology specimens would be a permitted benefit. The AMA supports the view that such equipment should indeed be a permitted benefit.

The AMA agrees that while the provider has no control over how the equipment is utilised once provided, the purpose for which equipment was provided should be taken at face value. In the AMA's view the limited, if any, benefits that could be derived by the utilisation of a bleeding chair for purposes other than specimen collection could not reasonably be construed as an inducement to refer. The AMA also suspects that the costs of monitoring such usage would be cost prohibitive to the Government and would far outweigh any perceived benefit that either providers or requesters may be able to achieve.

In addition, it should be clarified whether a requester, particularly relevant for large practices, would be breaching the regulations if they were to acquire an additional bleeding chair from another provider. The AMA would consider that if such a situation were to arise that no breach would have occurred as no inducement to refer to any one provider could be construed.

In the absence of a patient episode fee for practitioners collecting the sample the AMA is reassured that the Department is considering that goods used to collect a specimen or sample for pathology and goods which contribute to the safety of the patient and health professional, provided they are disposed of immediately after use, are being considered as a permitted benefit.

The AMA would be hesitant to provide or even for the Government to maintain an all-inclusive list of what goods constitute a permitted benefit. Constant improvements in medical technology and devices would make the maintenance of such a list a costly and onerous task. Rather, the Department should provide a generic definition of the goods that meet the criteria for a permitted benefit. For example a permitted good is that which contributes to the quality and identification of the specimen collected and the safety of patients, health professionals and handlers in the collection of, storage of, transport of and testing of the medical specimen.

Many goods provided to requesters for the purpose of specimen collection, such as needles, gloves, swabs, specimen containers are specified as for single use only or in the case of

goods such as sharps containers for a specific purpose only. The danger of over-regulating in this area is that patient services may be diminished if the compliance risks and costs for providers and requesters are considered too high.

Education

The AMA supports the criteria for free education events. However, as no other industry has placed an upper limit on expenditure per person on educational events, including Medicines Australia, we see no reason to take this step with pathology providers. The extent to which hospitality at educational events acts as an inducement is yet to be proven. Again the cost of monitoring such expenditure by the Government may outweigh the perceived benefits.

Marketing

The premise on which the proposed need for regulations pertaining to inducements is insulting in its suggestion that medical practitioners are so easily influenced. The medical profession prides itself on clinical independence and the provision of quality care to its patients. The suggestion therefore that requesters would refer to a provider for any reason other than that they trust the quality of the service provided is without basis.

With regard to setting a dollar value limit the AMA suggests that determining the dollar value of a promotional item is fraught with difficulty. For example, goods purchased and branded in bulk will have a lower unit price than if the good had been purchased individually and unbranded by the requester. In a modern economy, companies employ many different promotional strategies. The mix of advertising, sponsorship and purchase of corporate gifts etc is not an area that Governments should seek to regulate unless there is an obvious and widespread problem. The AMA believes that the test should be simple and focus on the outcome. If the outcome delivers a significant personal benefit solely to the practitioner then this would require further investigation.

Additional comments

If the purpose of this amendment to the legislation is to prevent inappropriate inducements resulting in over-referring or unfair market advantage for some providers then the legislation will not improve upon that which already existed.

Where over referring is potentially identified there are already mechanisms such as the Professional Services Review for dealing with practitioners who may be inappropriately referring patients for pathology testing. When identifying cases of potential over-referral the Government should bear in mind that increases in referrals may be due to reasons other than inappropriate ones. For example the recent analysis from the Australian Institute of Health and Welfare's (AIHW's) Australian General Practice Statistics and Classification Centre identifies that diabetes was one of the leading reasons for an increase in pathology testing, and that in addition to this, another likely reason was the practice of defensive medicine.

The AMA strongly believes that further regulatory control is unnecessary and ultimately more likely to create additional paperwork, with little or no public benefit.