



# Changes to legislation relating to pathology and diagnostic imaging

The purpose of this brochure is to alert you to new laws and to help you work out whether you need to make any changes to your business.

## Who might be affected?

- Anyone who can provide or request a Medicare funded pathology or diagnostic imaging service might be affected.
- Anyone who has a relevant connection to such a provider or a requester, including relatives, bodies corporate, trusts, partnerships and employees may also be affected.

## What is prohibited?

- It will be unlawful to ask for, accept, offer or provide a benefit, or make a threat that is reasonably likely to induce a requester to make pathology or diagnostic imaging requests, or is related to the business of providing pathology or diagnostic imaging services.
- It will be a criminal offence to ask for, accept, offer, or provide a benefit, or make a threat that is intended to induce requests to a particular provider.
- It will be unlawful to ask for, accept, offer or provide a benefit, or make a threat, either directly (i.e. by the requester or the provider) or indirectly (i.e. through another person).
- It will also be unlawful to station staff or equipment at a requester's premises for the purpose of providing pathology or diagnostic imaging services.

## Property, goods and services

- It will be unlawful to make or accept payments for property, goods or services that are substantially different from their market value. Regulations prescribing a method of calculating the market value will be subject to further consideration and consultation.
- The market value of leases has been raised as a concern. It is currently unlawful for providers to pay rents for premises that have been inflated because of their proximity or convenience to any source of requests.

## What are the penalties for those not complying with the provisions?

- If you breach the provisions, you could potentially be subject to a range of penalties, depending on the kind of breach, including:
  - civil penalties
  - criminal offences
  - referral to a Medicare Participation Review Committee (MPRC), possibly resulting in loss of access to Medicare.

## When will the changes take effect?

- The changes take effect from 1 March 2008.
- The prohibitions will apply to contracts, leases or other commercial arrangements that exist on 1 March 2008, even if the arrangements were entered into before that date.

## To what extent will stakeholders be consulted about the changes?

- The Department of Health and Ageing will work closely with the relevant stakeholder groups to ensure that details of the new arrangements, which are still being developed, are tailored appropriately and do not produce any unintended consequences.
- The Department will provide further details to anyone who might be affected before the changes take effect.

## Where can those who might be affected obtain additional information?

- Further information and updates about the changes can be found at [www.health.gov.au/legislativeamendments](http://www.health.gov.au/legislativeamendments) or by phoning 132 150\*.
- Anyone who is unsure how the changes will affect them should seek legal advice.

\* Call charges apply

## What arrangements between requesters and providers are covered by the provisions?

### It is NOT OK to:

- provide or accept payments or other benefits that are in any way related to requests for pathology or diagnostic imaging services made by the requester—for example, the payment or other benefit cannot be related to the business that the requester brings to the provider
- make threats—for example, it is unlawful for an employer to threaten to fire an employee or contractor who does not refer patients to a particular provider
- channel non-permitted benefits or make threats through a third party
- station staff or equipment at a requester's premises for the purpose of providing pathology or diagnostic imaging services—for example, a pathology provider cannot station a nurse at a requester's premises to collect specimens, a diagnostic imaging provider cannot station ultrasound equipment at a requester's premises.

It is OK to:	PROVIDED that:
■ share the profits of a pathology or diagnostic imaging business—for example, a requester may own shares in a publicly listed company or a practice	■ the dividend is in proportion to the beneficiary's interest in the business
■ accept or pay remuneration, including salary, wages, commission, allowances—for example, a requester's spouse can work for a provider	■ the remuneration is not substantially different from the usual remuneration paid to people engaged in similar employment
■ make or accept payments for property, goods or services—for example, a provider may sell to, or purchase property from, a requester	■ the amount paid is not substantially different from the market value of the property, goods or services
■ make or accept payments for shared property, goods or services—for example, a requester and a provider may share rented premises and other costs such as receptionists, cleaners, utilities	<ul style="list-style-type: none"> <li>■ the amount paid is proportionate to the person's share of the cost of the property, goods or services</li> <li>■ shared staff and/or equipment are not used to provide pathology or diagnostic imaging services</li> </ul>
■ provide or accept property, goods or services—for example, payments-in-kind	■ the benefit exchanged is not substantially different from the market value of the property, goods or services
■ provide or accept other benefits—for example, pathology consumables	■ they are included in a Ministerial Determination of permitted benefits (currently being developed).

## Differences between the criminal offences and civil penalties

Criminal offences:	Civil penalties:
■ the standard of proof is 'beyond reasonable doubt'	■ the standard of proof is 'on the balance of probabilities'
■ criminal record, up to five years imprisonment and/or financial penalty	■ financial penalty only
■ penalty of up to \$33 000 for an individual	■ penalty of up to \$66 000 for an individual
■ penalty of up to \$165 000 for corporations.	■ penalty of up to \$660 000 for corporations.