





Australian Government
Department of Health and Ageing

CHANGES TO **LAWS** RELATING TO **PATHOLOGY** AND **DIAGNOSTIC IMAGING**



Changes to pathology and diagnostic imaging laws came into effect on **1 March 2008**.

Because the changes carry **penalties of up to five years imprisonment** for anyone breaking these laws, this brochure briefly sets out how the changes apply and who they apply to.



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“ANTI-INDUCEMENT” LAWS IN PATHOLOGY AND DIAGNOSTIC IMAGING

AM I AFFECTED? IF SO, WHAT DO I NEED TO DO?

Changes to the laws prohibiting inappropriate commercial relationships between requesters and providers of pathology and diagnostic imaging services came into effect on 1 March 2008. New Regulations to support these laws [referred to in this guide as the ‘Market Value Regulations’] have recently been made.

This guide explains how these laws affect both requesters and providers of pathology and diagnostic imaging services.

Caution

This guide is not a substitute for legal advice. You should check with a lawyer if you have any doubts about the legality of a proposed commercial arrangement.

Inducements and similar arrangements may also be illegal under State and Territory laws relating to medical practice. If such arrangements are anti-competitive, they may also breach the Trade Practices Act and related State and Territory legislation.



WHY ARE THESE LAWS IMPORTANT?

Part of a healthcare practitioner’s responsibility to his or her patient is to recommend other healthcare providers – including pathology and diagnostic imaging providers – based on the patient’s clinical needs and best interests. Allowing this recommendation to be influenced by commercial arrangements between the practitioner and the provider may be illegal and/or unethical. It can also compromise patient outcomes and lead to over servicing.

The majority of healthcare practitioners do the right thing. For the minority who do not, this conduct can have serious consequences including a substantial fine (under a civil penalty provision) or, in some cases, imprisonment for up to five years (under a criminal offence provision). Breaches can also be referred to the Medicare Participation Review Committee, which has the power to exclude practitioners and companies from the Medicare system.

Both individuals and companies can be liable for breaches of the anti-inducement laws. Where a company is liable, executive officers who knew about the breach, and failed to take reasonable steps to prevent it, can also be personally liable.

WHO IS AFFECTED?

It is very important to understand that the laws affect anyone who can request or provide a Medicare-eligible pathology or diagnostic imaging service. Requesters include general practitioners, medical specialists, dental practitioners, podiatrists, physiotherapists, osteopaths, and chiropractors.

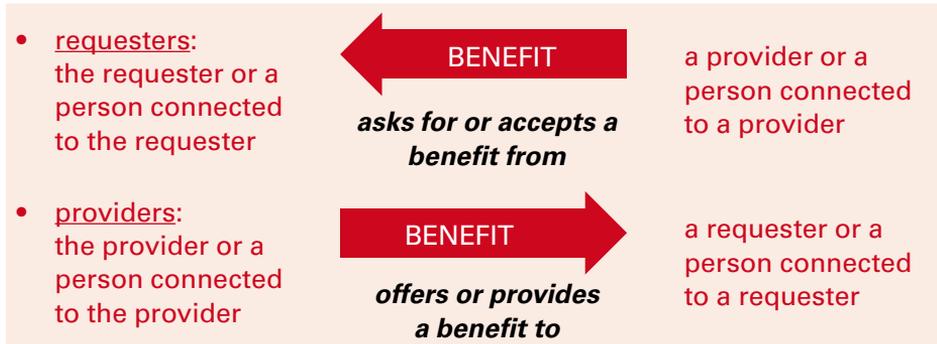
In some circumstances the laws also apply to arrangements involving people who are “connected” to a requester or provider, such as:

- a relative of the requester or provider;
- a company of which the requester or provider is a director, secretary or senior officer;
- a company which is a related company of a corporate requester or provider;
- a beneficiary under a trust where the requester or provider is the trustee;
- the trustee of a trust where the requester or provider is a beneficiary;
- a business partner of the requester or provider, or of a relative of a requester or provider;
- a person whose relative is in a business partnership with a requester or provider;
- a person or company who employs or engages the requester or provider; or
- an employee of or contractor to the requester or provider.

For medical practitioners who practise at a medical centre, the medical centre operator is connected to each such practitioner. This is the case regardless of the business structure of the particular medical centre.

WHAT IS PROHIBITED?

In basic terms, the laws apply to:



Benefits can include cash, property, goods and services. A benefit passing, or potentially passing, between a requester/connected person and a provider/ connected person, may be prohibited under a civil penalty provision (see page 15 for a discussion of the criminal offence provisions) if the benefit is **either**:

- reasonably likely to induce a requester (any requester, not just the particular individual involved) to request pathology or diagnostic imaging services from a provider; **or**
- related to the business of rendering pathology services or diagnostic imaging services.

However, there are some exceptions (called “permitted benefits”), and these are discussed below.

Caution

“Permitted benefits” are permitted for the purposes of these laws only.

The fact that an arrangement is treated as “permitted” under these laws does not necessarily mean the arrangement complies with other laws or ethical standards applicable to the healthcare profession(s) involved.



THE LAWS DO NOT INTERFERE WITH NORMAL BUSINESS PRACTICES THAT DO NOT INFLUENCE REQUESTS

The Minister for Health and Ageing has approved a list of normal business practices that are unlikely to influence pathology or diagnostic imaging requests. An item that is listed in one of the boxes below is a “permitted benefit” and does not breach the laws provided that:

- the listed “benefit” is not related to the number, kind or value of pathology or diagnostic imaging requests made by a requester to a particular provider; and
- taken with benefits of the same kind, it does not exceed the number that would usually be needed by the beneficiary (who is, or is connected to, a requester).

This list of items will be updated from time to time – you can check the current *Health Insurance (Permitted benefits – pathology services) Determination 2008* and the *Health Insurance (Permitted benefits – diagnostic imaging services) Determination 2008* at www.comlaw.gov.au



Pathology

Under the laws:

- a pathology provider or connected person can offer or provide the following benefits to a beneficiary (who is, or is connected to, a requester); and
- a beneficiary can ask for, or accept, the following benefits from a pathology provider or connected person:
 - aids for requesting pathology or viewing results, if they can only be used for purposes connected with pathology e.g. requesting software
 - an arrangement under which the provider stations pathology staff (an approved pathology practitioner or his or her delegate) or equipment at the beneficiary's premises for the sole purpose of providing preliminary analysis or advice in relation to specimens collected during procedures performed at the premises by fine needle aspiration, bone marrow aspiration, trephine or frozen section examination
 - an arrangement under which the provider stations pathology staff at the beneficiary's premises, where those premises are a hospital, to collect pathology specimens from hospital inpatients
 - an arrangement under which the provider stations pathology equipment at the beneficiary's premises, where those premises are a hospital, for use in the rendering of services relating to pathology to hospital inpatients
 - educational material about pathology (including for patients)
 - appropriate educational sessions on pathology for the beneficiary, not including travel or accommodation costs, attendance at an entertainment or sporting event, or excessive hospitality
 - reasonable, infrequent gifts or hospitality linked to a significant occasion (and not to pathology requests) and not capable of conversion to cash e.g. flowers given because of the death of a family member of the requester, a bottle of wine at Christmas
 - pathology request forms, telephone results pads, stock request pads and promotional items with no resale value for the beneficiary and which are clearly identified as coming from the relevant pathology provider

- a refrigerator used only for (and necessary for storage of) pathology specimens, specimen transport containers and specimen pick up receptacles, in each case which are labelled as the property of the provider
- the following items used for the collection of pathology specimens for testing by an accredited pathology laboratory:

Needle barrel holders	Vacutainer or equivalent tubes for collection
Syringes (5 ml or larger)	21 or 23 gauge needles
Individual alcohol wipes	Spreaders for blood files
Small test tube rack	Spray fixative
Cervix spatulas	Cyto brush
Direct to vial kits	Slides and slide carriers or holders
Formalin or other fixative	Appropriate containers & media for specimens
Punch biopsy instruments	Microbiological or virology swabs & transport media
Urine containers	Faeces containers
Paediatric urine collection kits	Chlamydia specific collection & transport receptacles
Blood culture bottles	Petri dishes
Timed urine collection containers	Specimen biohazard bags & rubber bands
Faecal fat collection containers	Glucose drinks for a glucose tolerance test
Disposable vaginal speculums	Tuberculosis specific collection receptacles

Appropriate containers and media for urine, sputum & other body fluid cytology and cytology samples collected directly from tissues by cytology of fine needle aspiration

Centrifuges if they are labelled as the property of the provider and necessary to ensure that specimens are not damaged

Diagnostic imaging

Under the laws:

- a diagnostic imaging provider or connected person can offer or provide the following benefits to a beneficiary (who is, or is connected to, a requester); and
- a beneficiary can ask for, or accept, the following benefits from a diagnostic imaging provider or connected person:
 - aids for requesting diagnostic imaging or reading film or images, provided they can be used for requesting/reading diagnostic imaging from any provider and either: (a) can only be used for purposes connected with diagnostic imaging; or (b) have more than one use, but include special features that assist with requesting diagnostic imaging or reading film or images
 - an arrangement under which the provider stations staff or diagnostic imaging equipment at the beneficiary's premises if the premises are a hospital, or are more than 30 km by road from a radiology facility supervised by a radiologist, or the staff or equipment are stationed at the premises for the sole purpose of enabling diagnostic imaging to be rendered during a surgical procedure performed at the premises
 - free or discounted diagnostic imaging services provided to a requester, or a patient who is connected to a requester (e.g. a requester's spouse)
 - educational material about diagnostic imaging (including for patients)
 - appropriate educational sessions on diagnostic imaging for the beneficiary, not including travel or accommodation costs, attendance at an entertainment or sporting event, or excessive hospitality
 - reasonable, infrequent gifts or hospitality linked to a significant occasion (and not to diagnostic imaging requests) and not capable of conversion to cash e.g. flowers given because of the death of a family member of the requester, a bottle of wine at Christmas
 - diagnostic imaging request forms and promotional items with no resale value for the beneficiary and which are clearly identified as coming from the relevant diagnostic imaging provider

SOME COMMERCIAL ARRANGEMENTS ARE PERMITTED UNDER STRICT RULES

The laws permit a limited range of benefits to be exchanged between requesters/connected persons and providers/ connected persons, **but only if** the benefit:

- is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the requester; **and**
- does not consist of the provision of staff or equipment at the premises of the beneficiary – whether full time, part time, or on a visiting basis - for the purpose of providing pathology or diagnostic imaging services; **and**
- is listed below; **and**
- satisfies **all** of the relevant requirements set out below.

The following list of “permitted benefits” sets out examples of arrangements that take place between requesters and providers. However, these arrangements may also take place between persons “connected to” requesters and providers and as outlined later in this guide, requesters and providers can be held liable as a result of the actions of such persons.

① LEASES TO PROVIDERS

Example:

A provider may pay rent to a requester (or someone other than the requester) if:

- the rent is not substantially different from the market value of the rent for the premises; **and**
- the rent is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester; **and**
- if the provider is a pathology provider, the provider either establishes an approved collection centre or an accredited pathology laboratory in the premises within 60 days of entering the arrangement, or renders professional services in the premises, and does not use or occupy the premises for any other purpose.

These rules apply to any payment for the use or occupation of premises, including rent or a licence fee. However, these rules **do not apply** in the situation where the requester and provider are sharing the lease of premises – see the arrangement described at 6 in this regard.

“Market value” does not have a special meaning under these laws, but instead has its ordinary common law meaning. The Market Value Regulations relate to all property, goods or services. In a leasing context, this means the rent that a willing tenant would (at the relevant time) have had to have paid a willing, but not anxious, landlord to secure the lease over the premises. The market value of property, goods or services correspondingly means the price that a willing buyer would (at the relevant time) have had to have paid a willing, but not anxious, seller to acquire the property, goods or services. In determining market value, it may be that some value could be attributed to the convenience of the location. In essence, market value assumes an arms-length transaction with each party acting knowledgeably, prudently and without compulsion.

“Not substantially different” from the market value means not more than 20% variance from the market value. Remember, however, that **as well as** being within 20% of the market value, the benefit must not be related to the number, kind or value of pathology or diagnostic imaging requests made by the relevant requester.

Caution

Where the rental being paid is not substantially different from market value, if the rental is linked to the number kind or value of requests made by the requester, the rental is not permitted.



If you are unsure as to whether the rent is compliant it may be wise to ask an independent valuer to assess the rental value such that it is compliant with these new laws.

② SELLING TO PROVIDERS

Example:

A provider may make a payment to a requester (or someone other than the requester) in exchange for property, goods or services if:

- the amount of the payment is not substantially different from the market value of the property, goods or services; **and**
- the amount of the payment is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester.

③ BUYING FROM PROVIDERS

Example:

A provider may provide property, goods or services to a requester if:

- the consideration given by the requester in exchange for the property, goods or services is not substantially different from the market value of the property, goods or services; **and**
- the property, goods or services provided by the provider (for example, their volume or value) are not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester; **and**
- the property, goods or services do not consist of the provision of staff or equipment at the premises of the requester – whether full time, part time, or on a visiting basis - for the purpose of providing pathology or diagnostic imaging services.

Remember “not substantially different” from the market value means not more than 20% variance from the market value.

4 DISTRIBUTION OF SHAREHOLDINGS AND DIVIDENDS

Example:

The profits or shares of a business that renders pathology or diagnostic imaging services may be distributed to a requester if:

- the amount of the benefit is in proportion to the requester's interest in the business; **and**
- the amount of the benefit is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester.

These rules apply to various dealings in shares including payment of dividends, rights issues and share buy-backs. For example, a requester who owns shares in a listed company which operates a pathology or diagnostic imaging business may receive dividends proportionate to his or her shareholding from time to time.

Caution

Requesters and persons connected to requesters should exercise caution (and, where uncertain, obtain independent legal advice) about any proposed arrangement involving a distribution of profits or shares where:



- they are offered the purchase of shares at a price which is substantially different to market value, or are offered dividends that are not proportional to their investment; or
- it is implied, proposed or expected that requesters who are, or are connected to, investors will switch their pathology or diagnostic imaging requests to a provider associated with the arrangement – for example where:
 - the business model for the arrangement will not be sustainable, or does not make commercial sense, if such switching does not occur;
 - requesters are unlikely to choose the relevant provider on the basis of their patients' clinical needs and best interests; or
 - the returns are linked to the number, kind or value of requests.

Features such as these may indicate that the benefit is not proportional to financial interest, may be substantially different from market value of the purchase price of the shares, and/or is related to the number, kind or value of requests for pathology or diagnostic imaging services made by the requester.

It is also worth remembering that any scheme or arrangement that substantially lessens competition (for example where only (or mainly) requesters and connected persons are able to become/remain participants) may be in breach of Pt IVA of the *Trade Practices Act 1975*. If there is any evidence of a scheme or arrangement that substantially lessened competition the scheme or arrangement could be referred to the Australian Competition and Consumer Commission regarding any potential breach of that Act.

Remember, if you have any doubts about the legality of a proposed commercial arrangement, please check with a lawyer.

5 EMPLOYMENT BY PROVIDERS

Example:

A provider may pay a requester remuneration as an employee or under a contract for services if:

- the remuneration is not substantially different to the usual remuneration paid to persons engaged in similar jobs / under similar contracts; **and**
- the remuneration is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester.

Remember that **as well as** not being substantially different from the usual remuneration, the remuneration paid must not be related to the number, kind or value of pathology requests made by the relevant requester.

6 PAYMENT FOR SHARED PROPERTY, GOODS OR SERVICES

Example:

A provider may make a payment for property, goods or services which are shared with a requester if:

- the payment is proportionate to the provider's share of the cost of the property, goods or services; **and**
- the payment is not related to the number, kind or value of requests for pathology or diagnostic imaging services made by the relevant requester; **and**
- if the provider is a pathology provider and the payment relates to shared use or occupation of premises, the provider either establishes an approved collection centre or an accredited pathology laboratory in the premises within 60 days of entering the arrangement, or renders professional services in the premises, and does not use or occupy the premises for any other purpose.

An example of such an arrangement is where a provider and a requester agree to split the cost of outgoings (e.g. power, telephone) for particular premises. If, say, the provider uses 10% of the electricity and pays for 10% of the electricity, the arrangement is permitted. If the provider uses 10% of the electricity and pays for 100%, the arrangement is prohibited.



ARE VALUATIONS REQUIRED?

The legislation does not require requesters or providers to obtain a valuation to establish the market value of the rent for premises, or the market value of property, goods or services.

An independent valuation from a suitably qualified valuer can be helpful in establishing market value so that both parties are better placed to understand whether a proposed arrangement complies with these laws. Remember, however, that **as well as** being within 20% of market value, the benefit must not be related to the number, kind or value of requests made by the relevant requester.

CRIMINAL OFFENCE PROVISIONS

In addition to the civil penalty provisions (punishable by a fine) discussed above, the laws include criminal offence provisions (punishable by imprisonment). Broadly speaking these are offences:

- **for any person:** the person (whether or not a provider) offers or provides a benefit to a second person (whether or not a requester) intending that the benefit will induce a requester to request pathology or diagnostic imaging services from a particular provider;
- **for requesters:** a requester or another person accepts a benefit where the intent behind the providing of the benefit is to induce the requester to request services from a particular provider and the requester knows this intent, or a requester or another person has asked for or accepted, a benefit and the requester intends that the benefit will result in his or her requests being directed to a particular provider; or
- **for providers:** a provider knows that another person has offered or provided a benefit to a second person (whether or not a requester) with the intention that the benefit will induce a requester to direct requests to the provider, **and** the benefit is not a “permitted benefit” within the meaning of the laws.

THREATS

The laws also prohibit the making of threats in certain circumstances, including where:

- a provider threatens a requester or a person connected to a requester, and the threat is **either**:
 - reasonably likely to induce a requester (any requester, not the particular individual involved) to request pathology or diagnostic imaging services from a provider; **or**
 - related to the business of rendering pathology services or diagnostic imaging services; **or**
- **any** person threatens a second person intending that the threat will induce a requester to request pathology or diagnostic imaging services from a particular provider.

A provider who engages in the conduct set out in the first dot point could be found to have contravened a civil penalty provision. A person who engages in the conduct set out in the second dot point could be found to have committed a criminal offence.

An example of a prohibited threat would be a provider who rents space from a requester threatening to stop paying rent if the requester does not increase his or her pathology or diagnostic imaging requests to the provider.

A requester who threatens to switch his or her pathology or diagnostic imaging requests to another provider unless a benefit is given is likely to breach one of the other provisions – for example, asking for a payment with the intention that if the payment is made, the requester will direct requests to a particular provider.

UNAUTHORISED CONDUCT BY INTERMEDIARIES

To prevent easy evasion of the new laws by channelling non-permitted benefits through third parties, under certain provisions requesters and providers may be held liable as a result of the actions of persons connected to them. This includes the actions of relatives, members of partnerships or those with some other close financial relationship.

Under other provisions, requesters and providers may be held liable as a result of the actions of “another person” who may or may not be connected to them.

There are provisions in the new laws to protect requesters and providers from being held liable as a result of the actions of others. These protections apply if a requester or provider becomes aware of prohibited practice and reports it to Medicare Australia within 30 days.

This ensures that no one can be held liable as a result of the actions of another person unless they were aware of, and failed to report those actions.

Medicare Australia has introduced a new reporting form related specifically to these provisions. The form is available on Medicare Australia's website at:

www.medicareaustralia.gov.au/about/files/1981-reporting-suspected-diagnostic-imaging-or-pathology-inducement-threats-or-prohibited-practice.pdf

Completed forms should be mailed to:

**Medicare Australia
PRD Compliance Program
PO Box 9822
Adelaide SA 5001
or faxed to: 08 8274 9538**

ENFORCEMENT

Medicare Australia is responsible for enforcing these laws. Medicare Australia's approach to compliance includes an appropriate mix of education, support, deterrence and enforcement.

Medicare Australia recognises that it can take time to understand new laws and obligations in order to implement the necessary changes. That is why Medicare Australia's compliance activities aim to encourage ongoing voluntary compliance with the new laws by helping individuals understand their obligations, making it as easy as possible to comply.

Where there is a risk of non-compliance Medicare Australia will look at appropriate interventions, such as targeted information or a visit from a compliance officer to provide further assistance.

It is important to note that deliberate or intentional abuse of the MBS and PBS will result in strict enforcement action under the offence provisions.

FURTHER INFORMATION

Further information about the changes is available on the Department's website www.health.gov.au/legislativeamendments or by emailing legislativeamendments@health.gov.au.

FREQUENTLY ASKED QUESTIONS

Q. MEDICAL PRACTICE HAS ADVERTISED SPACE FOR LEASE IN ITS BUILDING. THE MEDICAL PRACTICE HAS INDICATED THE OPENING HOURS OF THE PATHOLOGY OR DIAGNOSTIC IMAGING ROOMS IN THE BUILDING MUST MATCH THE OPENING HOURS OF THE MEDICAL PRACTICE. IS THIS ARRANGEMENT PERMITTED?

A. The laws are not intended to prevent competition between providers on the basis of the benefits they provide for patients. The laws prohibit providers from offering certain benefits to requesters but they do not prohibit a provider from offering convenience to patients.

Q. I AM A MEDICAL PRACTITIONER AND A PROVIDER HAS OFFERED TO SELL ME A 10% SHARE IN HIS PRACTICE. HE HAS INDICATED THAT I WILL RECEIVE DIVIDENDS IN PROPORTION TO THE SHARES THAT I HOLD IN THE PRACTICE. THE SHARES ARE WORTH \$10 EACH BUT I HAVE BEEN TOLD THAT I ONLY HAVE TO PAY \$1 FOR EACH SHARE. THE PROVIDER HAS ASSURED ME THAT I AM UNDER NO OBLIGATION TO REFER MY PATIENTS TO THE PRACTICE. IS THIS ARRANGEMENT PERMITTED?

A. This is not a permitted benefit. A requester may buy shares from a provider where the price paid to the provider is not substantially different to the market value of the shares. Here there is a 90% discount to the market value – well above the 20% permitted variation. Depending on the circumstances either civil or criminal penalties may apply.

As a general rule, caution should be exercised with any proposed arrangement which does not appear to make commercial sense if requests are not factored in.

Q. I AM A HEALTH CARE PRACTITIONER OTHER THAN A DOCTOR (E.G. A PODIATRIST, PHYSIOTHERAPIST OR OSTEOPATH) AND I REFER PATIENTS TO A RADIOLOGIST FOR X-RAYS. PATIENTS RECEIVE MEDICARE BENEFITS FOR THE X-RAYS THAT I REQUEST BUT THE SERVICES THAT I PROVIDE ARE NOT FUNDED UNDER MEDICARE. DO THE LAWS APPLY TO BUSINESS ARRANGEMENTS THAT I HAVE WITH THE RADIOLOGIST?

A. The laws apply to anyone who can request a Medicare-funded pathology or diagnostic imaging service and those that are connected to them, regardless of whether they provide services funded under Medicare.

Q. I AM A CHIROPRACTOR AND I HAVE BEEN APPROACHED BY A DIAGNOSTIC IMAGING PROVIDER TO LEASE PART OF MY BUILDING. HE INTENDS TO OPERATE AN ACCREDITED LOCATION SPECIFIC PRACTICE NUMBER (LSPN) AT THE PREMISES. I HAVE ALSO BEEN ASKED TO WORK FOR THE PROVIDER AS A RADIOGRAPHER AT THE LSPN, UNDER A CONTRACT FOR SERVICES, TAKING X-RAYS FOR PATIENTS THAT I REFER TO THE PRACTICE. AM I PERMITTED TO LEASE PART OF MY BUILDING TO THE PROVIDER AND ALSO WORK FOR THE PROVIDER FOR THE SERVICES THAT I REQUEST?

A. The rental aspects of this arrangement are permitted provided that the rent is not substantially different from market value and does not relate to the number, kind or value of your diagnostic imaging requests. For example, if the per square metre rent paid by the diagnostic imaging provider is no more than 20% above the per square metre rent you pay for the whole building, and does not vary according to your requests, the rent is likely to be compliant.

The remuneration is also permitted provided it is not substantially different from the usual rate for a radiographer's time and does not relate to the number, kind or value of your diagnostic imaging requests. The latter requirement means that you cannot be paid per x-ray examination, because this would mean that your remuneration will vary with the number of requests you make.

Q. I AM A PATHOLOGY PROVIDER AND A LARGE MEDICAL PRACTICE REFERS ALL ITS PATHOLOGY TESTING TO MY LABORATORY. ALL THE PATHOLOGY SPECIMENS ARE COLLECTED AT THE MEDICAL PRACTICE BUT I PROVIDE, FREE OF CHARGE, ALL OF THE ITEMS THAT THE PRACTICE NEEDS TO COLLECT AND STORE THE SPECIMENS. NURSES WHO WORK FOR ME ALSO PROVIDE NURSING SERVICES FOR THE MEDICAL PRACTICE. THESE SERVICES INCLUDE COLLECTING PATHOLOGY SPECIMENS ON BEHALF OF THE PRACTITIONERS. I PAY ALL THE COSTS ASSOCIATED WITH THE NURSES BECAUSE THE SPECIMENS THAT THE NURSES COLLECT ARE ALL SENT TO MY LABORATORY. IS THIS ARRANGEMENT PERMITTED?

A. Generally speaking, pathology providers can supply items that are necessary for the collection and storage of specimens free-of-charge to requesters (but you should check the detailed list of permitted items before proceeding).

However, the nursing arrangements are prohibited. The permitted benefits a provider can give a requester specifically exclude stationing staff at the premises of a requester.

(Your scenario differs from collection staff stationed at an approved collection centre leased from a requester by a pathology provider because with leased ACC space the collection staff work at the premises of the pathology provider (occupied by the provider under the lease) rather than premises of a requester.)

Q. I AM A PROVIDER AND I RENT PREMISES FROM A REQUESTER. MY LEASE IS DUE FOR RENEWAL AND THE REQUESTER HAS ASKED ME TO PAY SIGNIFICANTLY MORE THAN I AM CURRENTLY PAYING. IS A REQUESTER PERMITTED TO CHARGE RENT THAT IS SUBSTANTIALLY DIFFERENT TO THE CURRENT RATE?

A. The issue here is not whether the rent is substantially different from the current rate, but whether it is substantially different from the market value - noting that in any case the rent cannot relate to the number, kind or value of the requester's requests.

You should make some enquiries as to market rental in the local area. If the rent being proposed by the requester is more than 20% above the market value, or relates to the number, kind or value of the requester's requests, the requester is breaching the legislation by asking for the proposed rent.

Q. I AM A PROVIDER AND I HAVE EXISTING LEASES ON SEVERAL PREMISES WHICH I RENT FROM REQUESTERS. ONCE THE NEW REGULATIONS DEALING WITH MARKET VALUE COMMENCE, IT WILL TAKE ME SOME TIME TO ENSURE THAT WHAT I PAY FOR THOSE LEASES IS COMPLIANT (I.E. THAT WHAT I'M PAYING IS NOT 20% DIFFERENT TO MARKET VALUE). HOW MUCH TIME WILL I HAVE TO GO THROUGH THAT PROCESS?

A. Once the Regulations are in force, anyone who is a party to a lease between a provider and a requester (or a connected person as defined in the legislation) should closely review their arrangements to ensure compliance with the legislative requirements.

Leases that were entered into before these laws or the Regulations commenced are **not** exempted or protected. If you have leases under which the rent does not comply with the laws you should correct your leases as soon as possible so that you are no longer in breach.

Medicare Australia's approach will be to support providers to comply with the new Regulations and genuine attempts to resolve any potential issues would be considered in determining the appropriate response to possible non-compliance.

Q. I AM A PROVIDER IN THE PROCESS OF NEGOTIATING A NEW LEASE. SHOULD I BE CHECKING NOW TO MAKE SURE THAT THE NEW LEASE IS COMPLIANT WITH THE MARKET VALUE REGULATIONS?

A. Providers should ensure that any leases they commit to after the commencement of the Regulations are compliant with the requirement that lease payments do not relate to the number, kind or value of requests and are within 20% of market value.

Q. DO REQUESTERS AND PROVIDERS NEED TO OBTAIN THEIR OWN VALUATIONS?

A. The new legislation does not require requesters or providers to obtain their own valuations. However, an independent valuation from a suitably qualified valuer can be helpful in establishing market value so that both parties are better placed to understand whether a proposed arrangement complies with these laws. Remember, however, that **as well as** being within 20% of market value, the benefit must not be related to the number, kind or value of pathology requests made by the relevant requester.