

Approved Collection Centre Rents (Pathology Rents)



Background

In 2008 the Government changed the regulations controlling the number of pathology collection centres (Approved Collection Centres - ACC) that a pathology network could operate.

As a result of this change, more collection centres were created and many General Practices now have co-located pathology collection centres. These collection centres belong to pathology providers (Approved Pathology Authorities- APA) who rent the space from the Practice. The co-location of collection centres and practices is a patient benefit due to both convenience of access and improved safety as necessary tests are not delayed or omitted.

Medicare payments were frozen for more than five years under successive Australian Governments during which time Practice running costs continued to rise. The ability to continue to run a private practice and subsidise fees to allow a “no payment at time of consult” (commonly referred to as bulk-billing) has been supported by rental income generated by practices. Many practices are now only able to provide these subsidies as a result of these ACC rents.

The relationship between the General Practices and the pathology providers is set down in a Department of Health (DoH) publication known as *The Red Book*. The aim of *The Red Book* is to set the parameters and arrangements and to ensure that there is no inducement involved in General Practices providing the space to APAs for Collection Centres. *The Red Book* was last revised in February 2018.

The pathology companies cannot pay the GP surgeries directly for pathology referrals. A possible source of inducement is via the amount of rent paid for the ACC space. *The Red Book* states that the rental must be set on a market basis – a price set by a willing seller and a willing buyer. Many GPs use a tender process to determine the rent for the ACC. The space is offered for tender on the basis that no volume of pathology testing is expected or demanded by the parties to the agreement. The bidding corporations must devise their own formula to value the expected return on investment before offering a rental.

However, *The Red Book* also states that if a rent is more than 20% above the market norm (outlier rent) for an ACC site, then that is evidence of collusion. There is provision for a valuer to determine whether the price is reasonable, but a valuer is only able to determine if the rent is high or otherwise in comparison to other rents in the area. They cannot determine the validity of a commercial rent which is based on expected returns to the renter. This test, therefore, is in direct contradiction to a rent that has been set by tender or negotiation under the “willing seller, willing buyer” principle.

In Australia the pathology sector is dominated by two companies Sonic and IPN, which have in excess of 75% of the Australian APA market.

In 2016, the pathology companies via their representative peak body, Pathology Australia, persuaded the Commonwealth Government to agree to control legislate the control of ACC rents, interfering with the marketplace. The Government subsequently abandoned this policy but announced in the 2017 Budget that it would be enforcing compliance with the requirements of *The Red Book*. In 2018 following the revision of *The Red Book* the DoH has embarked on a campaign to ensure compliance.

There is anecdotal evidence that the large pathology companies are using their market dominance and the “20% above market rental” clause along with current compliance activity from the DoH to push rents down. This will force Practices to either become unviable (close), or to cut costs (staff salaries/staffing) or increase revenue (patients’ fees).

The Australian GP Alliance considers that *The Red Book* should be to be rewritten so that the “20% above market rate” test is removed and the principle of willing seller and willing buyer becomes the main test.

A possible approach would be to make the tendering processes for determining ACC rents by General Practice owners compulsory to provide transparency of the process. This would also ensure that General Practices that are owned by subsidiaries of pathology companies treat the parent pathology company at arm’s length, helping to alleviate collusion between them.

If the true intent of *The Red Book* is to protect Medicare rather than control rents, then the logical first step in any outlier rent investigation is to examine whether evidence of collusion exists. If a high rent represents market rent plus a financial inducement, then the pathology provider would expect a return on this investment in the form of an observable increase in the value of Medicare rebates for pathology tests ordered by the Practice.

If there is no change in the value of pathology requests, and patients remain free to choose where they have their pathology tests taken, then no collusion exists, and we can safely conclude that no inducement has been paid. Irrespective, the current regulations require the Practice to re-negotiate a lower rent, with the value of the subsequent rental agreement then set by the Government. That Practices innocent of collusion will be financially punished and denied natural justice reveals the determination to reduce rents embodied within *The Red Book*.

Policy

To avoid these highly undesirable outcomes, the Australian General Practice Alliance considers that an immediate suspension of *The Red Book* compliance program is necessary while *The Red Book* is again reviewed to ensure that its purpose is to avoid inducements and collusion rather than to control ACC rents.

To underpin these changes, AGPA proposes a change in the definition of market rent for co-located pathology centres to:

“Market rent is the rent that is agreed upon by a willing seller (practice owner) and a willing buyer (pathology provider) in the absence of collusion”

This would mean that compliance action would be triggered by:

- (i) A sustained change in the cost to Medicare of pathology referrals made by referrers at the Practice, that is not explainable by clinical need; OR
- (ii) Patients not being free to choose the pathology provider of their choice; OR
- (iii) Individual GPs within the Practice not being free to recommend their preferred pathology provider to patients.

Unlike the formula for outlier rents contained in current *The Red Book*, this definition is precise, actionable and will reduce collusion rather than unfairly reducing market rents. It will also ensure that pathology providers that are engaging in collusion will be clearly identified and, rather than being rewarded with rent decreases, will be prosecuted for Medicare fraud.

For further information contact AGPA Secretariat: agpa@commercemgt.com.au or phone 02 6290 1505.

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