NOTES ON CLAUSES

HEALTH INSURANCE AMENDMENT BILL 1978

Details of the Bill

Title: The Bill is to amend the Health Insurance Act 1973 and for other purposes (vide note on clause 13).

Clause 1 Fixes the citation and identifies the Health Insurance Act 1973 as the Principal Act.

Clause 2 Provides for the commencement of the Bill.

Clause 3 Amends section 3 of the Principal Act, which is an interpretative provision, by -

(a) Excluding consuls, consular staff and their families from the definition of "Australian resident", in addition to diplomats, diplomatic staff and their families, as presently excluded. (These exclusions are limited to persons who are not either Australian citizens, as at present, or residents for health insurance levy purposes).

(b) Omitting the part of the definition of "net operating costs" which relates to the internal Territories, in consequence of the amendment made by clause 10.

(c) Inserting a definition of "privately insured person" which provides that the term means a person deemed to be a "privately insured person" for the purposes of the Principal Act by virtue of the sub-section 3(7) of the Principal Act, as qualified by the new sub-section 3(8) of the Principal Act, or a person so deemed in respect of a period of virtue of the new section 5A (inserted by clause 4).

(d) Inserts a new sub-section 3(8) which takes into account the operation by registered organizations of optional deductibles tables. The purpose of the new sub-section is to specify when a person who contributes to both the standard (basic) medical and hospital tables, including an optional deductibles table, is to be deemed to be a privately insured person (and, thus, exempt from the health insurance levy and disentitled to Medibank benefits). This will be at the expiration of any waiting period in relation to the person imposed by the rules of the organization to which the person contributes.

Clause 4

I serts a new section 5A, the effect of which is to enable people, in certain circumstances, to be deemed to be privately insured persons, by virtue of a declaration of the Minister for Health, in order to exempt them from the health insurance levy and to make them ineligible for Medibank benefits during a given period.
Sub-section 5A(1) provides for the making of an application by a person for a declaration to be made by the Minister under the section.
Sub-section 5A(2) provides that the Minister may require an applicant to furnish further information in relation to his application.
Sub-section 5A(3) provides that. where an applicant satisfies the Minister that the applicant and his dependants (if any) are adequately covered against medical, hospital or nursing home expenses, or have an entitlement to the provision of adequate medical, hospital or nursing home care, the Minister shall declare that the person is a "declared person" in respect of a period specified in the declaration. Although the Minister may be satisfied that a person will be adequately covered in respect of a period, the Minister may make a declaration in respect of only part of that period so that the circumstances may be re-examined when that declared period expires. Adequate coverage and entitlement do not include eligibility for Medibank medical and hospital benefits under the Principal Act;

Sub-section 5A(4) provides that a "declared person" (and any dependants) shall be deemed to be, or to have been a privately insured person in respect of any "prescribed period" included in the period specified in the declaration, thus exempting the person from payment of the health insurance levy and making the person ineligible for Medibank benefits.
("Prescribed period" is defined in new sub-section 5A(8), for the purposes of the section, as meaning any period during which a declared person is outside Australia, or, in the case of a person who is not a permanent resident of Australia, any period during which the person is in Australia. However, a "prescribed period" does not include a period during which a person, being an officer of the Australian Public Service, or an officer of a State public service subject to similar conditions of overseas service, is employed outside Australia or is outside Australia in the course of his duties. It also does not include a period during which a person is employed as locally engaged staff outside Australia who is entitled to the provision of health care or reimbursement of expenses for such care).

Sub-section 5A(5) provides for the revocation by the Minister of a declaration under this section where he is satisfied by virtue of further information or changed circumstances that a declaration should not have been made or where it should have been made in respect of a period other than that specified in the declaration.
The sub-section also provides for the making of a new declaration in respect of a revised period.
Sub-section 5A(6) provides that a revoked declaration under new sub-section 5A(5) shall be deemed never to have been made.
Sub-section 5A(7) provides that a declared person shall notify the Minister of any change in his circumstances as previously made known to the Minister (Penalty: $200).
Sub-section 5A(8) defines certain terms for the purposes of the section (The term "prescribed period" is explained in the note on new sub-section 5A(4) above. The remaining definition are self-explanatory).

Clause 5

Amends section 10 of the Principal Act by reducing the level of medical benefits payable in respect of a professional service from 85% to 75% of the schedule fee and increasing the maximum gap between the schedule fee and the medical benefit payable from $5 to $10 for each schedule service. (However, the existing level of benefits are to continue to apply in relation to eligible pensioners until negotiations with the A.M.A. and the Australian Optometrical Association are finalised).

Clause 6

Amends section 19 of the Principal Act by adding new sub-section 19(5) which prohibits, unless the Minister otherwise directs, the payment of a medical benefit in respect of a health screening service, i.e. a professional service that is not reasonably required for the management of the medical condition of a patient. It will remedy the present situation in which substantial payments of medical benefits are being made by Medibank and the private health insurance funds for the unnecessary health screening of people who are apparently well, e.g. for recreation or sporting purpose. (N.B. Cabinet approved, in Cabinet Decision No. 4683 of 23 February 1978 that, in principle, and subject to the views of the Administrative Review Council as tothe most appropriate form of appeals procedure to be established, provision

be made in this amendment for appeals to be referred to the Medical Benefits Advisory Committee for decision or to a Court if constitutionally necessary. It is understood - formal advice not yet having been received - that the Administrative Review Council, having examined the proposed sub-section 19(5), has advised the Attorney-General that, for the purposes of this legislation, the Council does not recommend an appeal process. However, it is further understood that the Council has directed its Research Director to contact the Department of Health in due course concerning the review of section 19 and other sections of the Health Insurance Act with regard to possible appeal procedures).

Clause 7

Amends section 20 of the Principal Act to abolish direct billing except in respect of eligible pensioners and their dependants.
Sub-clause (a) omits sub paragraph 3(b)(ii) which provided for the acceptance by a medical practitioner of assignment of a benefit plus a payment of an amount (the gap) in full settlement of the medical expenses.
Sub-clause (b) amends sub-section 3AA so as to restrict bulk billing to professional services provided to elible pensioners and dependants of eligible pensioners.

Clause 8

Provides for an amendment to section 21 of the Principal Act. Under the existing section 21, a medical benefit is payable where medical expenses are incurred in respect of a medical service rendered outside Australia by a "prescribed person" as defined in the section. This definition is amended to exclude a person to whom the following new provisions apply.
New sub-section 21(3A) empowers the Minister, where he is satisfied that a person is not acceptable as a "prescribed person", because of his lack of training or proper medical or surgical facilities, or for any other reason, to declare, by notice in the Gazette, that the person is not acceptable as a "prescribed person". The effect of such a declaration will be that medical benefits will not be payable in respect of services rendered by the person referred to in the declaration (such as Mr Brych of the Cook Islands).
New sub-section 21(3B) provides that a notice under new sub-section 21(3A) shall take effect on a date, specified in the notice, which shall not be earlier than one month after the date of publication of the notice in the Gazette.

New sub-section 21(3C) and (3D) provide that a person to whom a notice under new sub-section 21(3A) refers who has been approved by the Health Insurance Commission as a "prescribed person" shall cease to be such when the notice comes into effect, and that any other person whom the Minister has declared unacceptable shall not be eligible to be so approved by the Commission.

Clause 9

Sub-clause (1) amends section 23A of the Principal Act by substituting a new para. 23A(2)(d) limiting the circumstances in which an optometrist may bulk bill to professional services rendered to eligible pensioners or to a dependant of an eligible pensioner. This is a consequential amendment to Clause 7.

Clause 10

Sub-clause (1) provides for the repeal of section 32 of the Principal Act and the substitution of two new sections - 32 and 32A.
The present section 32 makes provision for payments to recognized hospitals in the Australian Capital Territory and in the Northern Territory. The new sections set out in the clause make provision only in relation to the Australian Capital Territory.
The new sections provide for conditions and procedures, under which Commonwealth payments will be authorised in respect of the net operating costs of recognized hospitals in the Australian Capital Territory, that will be more comparable with those under the hospital cost-sharing agreements between the Commonwealth and the States.
(With regard to the Northern Territory, a Bill has recently been introduced into the House of Representatives providing for self-government of that Territory from 1 July 1978 and it is therefore not proposed to have amendments made in relation to it at this time).
New section 32
Sub-section (1) provides for the Minister to approve hospitals in the Australian Capital Territory as recognized hospitals and to approve a body (the Capital Territory Health Commission is proposed) as the prescribed hospital authority in relation to those recognized hospitals.
Sub-sections (2)-(7) provide for the submission to the Minister by a prescribed hospital authority, in respect of recognized hospitals in the Territory, of budgets and information relating to those budgets and for the approval and variation of those budgets by the Minister.

New Section 32A provides for payments to be made to a prescribed hospital authority in respect of recognized hospitals in the Australian Capital Territory based on budgets approved under new section 32.

Sub-section (1) defines certain terms for the purpose of the section.

Sub-section (2) specifies the amount payable by the Commonwealth to a prescribed hospital authority to be 50% of the estimated net operating costs of the recognized hospitals in the Australian Capital Territory as approved by the Minister in respect of a period, up to a maximum amount of 50% of the actual net operating costs incurred by those hospitals in respect of that period.

Sub-section (3) provides that the Minister may approve a payment further to that payable under new sub-section 32A(2), with the proviso that the aggregate amount payable under sub-sections 32A(2) and (3) does not exceed 50% of the actual net operating costs of recognized hospitals.

Sub-section (4) provides that the Minister may determine conditions of payment of amounts under the Section, having reagrd to the kinds of terms and conditions specified in the Heads of Agreement set out in Schedule 2 of the Health Insurance Act, with which Agreements between the States and the Commonwealth must be substantially in accord, and also having regard to those Agreements.

Sub-section (5) preserves the operation of Section 133A of the National Health Act 1953 which provides for the payment towards the maintenance of a public hospital in a Territory of such sums as are agreed upon between the Treasurer and the Minister. The effect of the Sub-section is to put hospitals in the Australian Capital Territory on a similar footing to such hospitals in the States.

Sub Clause 7(2) Formal amendments

Clause 11 — Provides for the repeal of Section 44 of the Principal Act which requires the Minister to consult with the Hospitals and Health Services Commission in relation to the making of Health Program Grants. This amendment is consequential on the Government's decision to abolish the Commission.

Clause 12 — Corrects a minor error in the Principal Act.

Clause 13

Makes provision for the rectification of an anomaly resulting from the joint opinion of the Attorney-General and the Solicitor-General of May 1976 that the hospital cost-sharing agreements entered into by the Commonwealth and the States were invalid. Section 17 and repealed Section 18 of the Principal Act prohibited the payment of medical benefits in the circumstances specified in the Section. They contain references to 'recognized hospitals', the meaning of which is derived from the hospital cost-sharing agreements entered into between the Commonwealth and the States under Section 30 of the Act.

Sub-Clause (1) contains interpretative provisions.

Sub-Clause (2) deems that Section 17 and repealed Section 18 of the Principal Act had effect (subject to sub-clause 3) during the period 1 July 1975 to September 1976, that is, the period of purported operation of the agreements entered into before 1 October 1976 between the Commonwealth and the States.

Sub-Clause (3) enables the relevant sections to operate (and a medical benefit becomes payable) in respect of an account rendered, before the introduction of the legislation for a professional service rendered during the relevant period.

Sub-Clause (4) provides that the effect of the Clause does not extend to the validation of a purported agreement that was invalid when made.