

1985

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION AMENDMENT

BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Health)

HEALTH LEGISLATION AMENDMENT BILL 1985
GENERAL OUTLINE

The purpose of the Bill is to:

- (i) Amend the Health Insurance Act 1973 to:
 - . provide for automatic annual reviews of fees in the Medicare Benefits Schedule (the medicare schedule) by an independent Tribunal constituted by a Deputy President of the Australian Conciliation and Arbitration Commission.
 - . delete from section 17 the provisions inserted by section 18 of the Health Legislation Amendment Act 1983. These provisions presently provide for the regulation of the rights of private practice exercisable by medical practitioners in public hospitals.
- (ii) Amend the National Health Act 1953 to:
 - . permit registered health benefits organisations to offer a greater range of benefits in their basic private table as follows;
 - . benefits to cover the gap between the medicare benefit available and the schedule fee in respect of a professional service rendered to an in-patient of a hospital or day hospital facility;
 - . single day hospital benefits;
 - . benefits for the provision of prostheses, as prescribed, to an in-patient of a hospital;
 - . front-end deductibles (ie. allowing contributors the option of paying lesser contributions in return for agreeing to meet the first specified amount of insured costs).
 - . support the community rating principle by requiring organisations who wish to engage in health insurance business to become registered under the Act and therefore be subject to the terms and conditions imposed by the Act;

- permit variations in the waiting periods imposed by health benefits organisations on their contributors.

FINANCIAL IMPACT STATEMENT

(1) The only identifiable costs associated with the annual reviews of fees are the relatively small costs associated with the setting up and administration of the Tribunal. Decisions of the Tribunal can be expected to add some costs to the Medicare Scheme but these cannot be quantified.

(2) There is no financial impact from the provision of the greater range of benefits in the basic private tables to be offered by registered health benefit organisations, however, associated measures to be implemented through the Medicare agreements with the States will result in additional expenditure of approximately \$16 million per annum to New South Wales for increased remuneration to Visiting Medical Officers and \$150 million to be spent over three years to upgrade the facilities and equipment in Australian teaching hospitals.

PART I - PRELIMINARYClause 1: Short Title

This clause identifies the amending Act as the Health Legislation Amendment Act 1985.

Clause 2: Commencement

This clause provides for the commencement of the various provisions of the Bill.

PART II - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973Clause 3: Principal Act

This clause identifies the Health Insurance Act 1973 as the Principal Act for the purposes of Part II of the Bill.

Clause 4: Interpretation

This clause omits sub-section 3(3A) of the Principal Act. It is consequential to the amendments made to section 17 of the Principal Act by clause 7.

Clause 5: Interpretation

This clause omits a reference to paragraph 17(1)(aa) in section 8 of the Principal Act and is consequential to the amendments of section 17 by clause 7.

Clause 6: Entitlement to medicare benefit

This clause provides for a machinery amendment of paragraph 10(2)(a) of the Principal Act and inserts a new sub-section 10(4A).

New sub-section 10(4A) provides that references in sub-section 10(3) of the Principal Act to professional services do not include professional services referred to in new paragraph (da) of the definition of basic private table, that is, professional services in respect of which medicare benefit is payable, rendered to in-patients of hospitals or day hospital facilities. Sub-section 10(3) of the Principal Act has the effect that medicare benefit is increased to the full level of the appropriate fee specified in the table of medical services, in respect of a professional service where the aggregate of "gap payments" in relation to professional services rendered to the relevant patient during the financial year has exceeded \$150.00. A "gap payment" is the difference payable by the patient between the amount of medicare benefit payable and the fee specified in the table of medical services in respect of a professional service. The effect of this is that the \$150 limit on gap expenditure will generally only apply to services rendered outside of hospitals or day hospital facilities.

Clause 7: Medicare benefits not payable in respect of certain medical expenses

This clause amends section 17 of the Principal Act by repealing paragraph 1(aa) and sub-sections (1A) to (8) (inclusive). The provisions to be repealed presently provide for the regulation of the rights of private practice exercisable by medical practitioners in public hospitals. This is achieved primarily through the present requirement in paragraph 17(1)(aa) for such practitioners to enter into approved agreements with the hospitals in question. These agreements in turn are required to conform with Ministerial guidelines formulated under paragraph 17(4)(c).

Clause 8: Daily bed payments

This clause amends sub-section 33(1) of the Principal Act by substituting the term 'that includes part of an overnight stay' for the present expression 'of more than 8 hours'. The sub-section provides that Commonwealth daily bed payments are payable to the proprietors of eligible private hospitals for a period that includes an overnight stay.

Clause 9 : Medicare Schedule Fees Tribunal

This clause would insert a new Part VB into the Principal Act to provide for the establishment, functions and procedures of the Medicare Schedule Fees Tribunal.

PART VB - MEDICARE SCHEDULE FEES TRIBUNAL

New section 124B defines "Tribunal" as meaning the Medicare Schedule Fees Tribunal.

New Section 124C : Establishment of Medicare Schedule Fees Tribunal

New sub-sections 124C(1) and (2) provide for the establishment of a Medicare Schedule Fees Tribunal which shall be constituted by a Deputy President of the Australian Conciliation and Arbitration Commission appointed by the Governor-General.

New sub-section 124 (3) provides a term of appointment not exceeding 5 years but further provides for re-appointment.

New sub-section 124 C (4) provides for the manner in which the person constituting the Tribunal may resign.

New sub-section 124C (5) provides that the person constituting the Tribunal ceases to hold office if that person ceases to be a Deputy President of the Australian Conciliation and Arbitration Commission.

New sub-section 124C (6) provides that if the person constituting the tribunal is unavailable to hold, or continue, a review, that person may be temporarily replaced by another Deputy President of the Australian Conciliation and Arbitration Commission.

New sub-section 124C (7) requires a person appointed under the proposed sub-section 124C (6) continuing an inquiry to have regard to any record, or record of evidence, of proceedings before the Tribunal as previously constituted.

New Section 124D : Functions of Tribunal

New sub-section 124D (1) provides that, the Tribunal shall, not later than 30 June 1986, and at subsequent intervals of not more than one year, review the table of medical services and make recommendations giving effect to the changes that the tribunal considers should be made to that table.

New sub-section 124D (2) provides that a determination under the proposed sub-section 124D (1) may alter the amounts set out in the table of medical services.

New Section 124E : Determination of Tribunal

New sub-section 124E (1) provides that a determination of the Tribunal shall be in writing and shall be specified by the Tribunal to come into operation not earlier than 8 weeks (or such other period as is prescribed by regulations) after the making of the determination.

New sub-section 124E (2) provides that a determination of the Tribunal, when it comes into effect, varies the table of medical services as specified in the determination.

New Section 124F : Performance of Functions

New sub-section 124F (1) sets out the manner in which the Tribunal shall conduct its reviews.

New sub-section 124F (2) provides that the Tribunal shall have regard to the principles of wage determination established, and the National Wage Case decisions given, from time to time by the Australian Conciliation and Arbitration Commission.

New sub-section 124F (3) puts beyond doubt that the Tribunal can have regard to matters other than those specified in new sub-section 124F(2).

New sub-section 124F (4) provides that the Tribunal shall forthwith furnish to the Minister a copy of a determination made by the Tribunal, together with its reasons for the determination.

New sub-sections 124G (1) and (2) provide for a person or persons to be appointed to assist the Tribunal and provide for fees and allowances (if any) to be paid to such persons.

New Section 124H : Tabling and Disallowance

New sub-section 124H (1) provides that a copy of a determination is to be laid before each House of the Parliament within 15 sitting days after that determination has been received by the Minister.

New sub-section 124H (2) provides that if, within 15 sitting days of the tabling of a determination, either House of the Parliament passes a resolution disapproving of the determination, then -

- a) the determination shall not come into effect; or
- b) if the determination has come into operation, that determination will cease to have any force or effect from the day on which the resolution was passed.

Clause 10: Prohibition of certain medical insurance

This clause amends section 126 of the Principal Act which provides for the prohibition of certain medical insurance, by adding a new sub-section 5A.

New sub-section 5A provides that the prohibition of certain medical insurance does not apply in relation to insurance for benefits under the basic table whether or not modified by an election by a contributor for a front-end deductible. However, insurance in respect of medical costs incurred outside of hospitals will continue to be prohibited.

Clause 11: Schedule 2

This clause amends Schedule 2 to the Principal Act by omitting paragraph 6. Schedule 2 provides for the Heads of Agreement with the States for the provision of hospital and other health services, pursuant to section 23F. Paragraph 6 is required for the purposes of paragraph 17(1)(aa). This is consequential to the amendments made by clause 7 to section 17 of the Principal Act.

PART III - AMENDMENTS OF THE NATIONAL HEALTH ACT

Clause 12:

This clause identifies the National Health Act 1953 as the Principal Act for the purposes of Part III.

Clause 13: Interpretation

This clause amends section 4 of the Principal Act by firstly inserting, in the definition of 'basic private table' new paragraphs (da), (db), (dc) and (dd). The purpose of these new paragraphs is to allow registered organisations to offer gap insurance in respect of professional services rendered to in-patients of a hospital or day hospital facility, the day hospital benefit, and benefits for prostheses implants, in their basic private tables.

New paragraph (da) provides that a benefit is payable under the basic table equal to the difference between the fee specified in the table (medicare schedule), or the medical expenses that are incurred if less than that fee, in respect of a professional service rendered to an in-patient of a hospital or day hospital facility, and the medicare benefit payable for that service;

New paragraph (db) provides that a day hospital benefit equal to an amount as determined by the Minister (which will depend on the professional attention provided), or the charge made by the hospital if less than that amount, is payable under the basic table where a person occupies a bed in a hospital for the purpose of receiving professional attention for a period that does not include an overnight stay.

New paragraph (dc) provides that a day hospital benefit equal to an amount as determined by the Minister (which will depend on the professional attention provided), or the charge made by the day hospital facility if less than that amount, is payable under the basic table where a person occupies a bed in a day hospital facility for the purpose of receiving professional attention for a period that does not include an overnight stay.

New paragraph (dd) provides that a benefit is payable under the basic table equal to an amount as determined by the Minister or the charge made for the prosthesis if less than that amount, in respect of a prosthesis or class of prostheses, as determined by the Minister, provided to an in-patient of a hospital.

Secondly, the clause amends section 4 of the Principal Act by inserting definitions of the terms 'day hospital facility' and 'in-patient' (in relation to a day hospital facility).

The term 'day hospital facility' is defined to mean premises registered as a hospital under a law of a State or Territory excluding premises coming within the definition of 'hospital' in sub-section 3(1) of the Health Insurance Act 1973, (which applies to the Principal Act by virtue of sub-section 4(1A)), or premises prescribed by regulation for the purpose of the definition.

The term 'in-patient' in relation to a day hospital facility is defined to mean a person who occupies a bed in a day hospital facility for the purpose of receiving "professional attention" as defined in the Health Insurance Act 1973.

Thirdly, the clause amends section 4 by inserting new sub-sections (1B) and (1BA).

New sub-section (1B) provides that where a person is an in-patient of a hospital or a day hospital facility for a part of a day, the person shall, for the purposes of the definition of 'basic private table' in sub-section 4(1), be taken to have been an in-patient for the whole day.

New sub-section (1BA) provides that a Territory, for the purposes of paragraph (da) in relation to gap insurance, be deemed to form part of the State of N.S.W.

Clause 14 : Tabling, disallowance etc., of determinations made for the purposes of definition of "basic private table" in sub-section 4(1)

This clause amends the Principal Act by inserting a new section 5. This section provides for the publication, tabling and disallowance of determinations by the Minister for the purpose of the definition of 'basic private table' in sub-section 4(1) of the Principal Act as amended by clause 13 of this Bill.

New sub-section 5(1) provides for the notification in the Gazette of the fact that a determination has been made and the place or places where copies of the determination can be obtained.

New sub-section 5(2) provides that such a determination may make provision for a matter for the purposes of the definition of "basic private table", by applying, adopting or incorporating (with or without modification) a provision of any other Act, regulation or other determination, or any matter contained in any other instrument in force at the time when the determination takes effect.

New sub-section 5(3) provides that section 48 (other than paragraphs (1)(a), 49 and 50), of the Acts Interpretation Act 1901, applies to such determinations as if they were regulations. Section 48 provides for the tabling and disallowance of regulations by the Parliament.

New sub-section 5(4) provides that such determinations are not statutory rules within the meaning of the Statutory Rules Publication Act 1903.

New sub-section 5(5) provides that for the purposes of section 5 of the Evidence Act 1905, a determination shall be deemed to be an order made by the Minister. Section 5 of the Evidence Act deals with the proof of such orders in Court.

Clause 15 : Health insurance business to be carried
on only by registered organizations

This clause inserts a new section 67 into the Principal Act. Its purpose is to provide that "health insurance business" is to be conducted only by organizations registered under the Principal Act.

New sub-section 67(1) provides that a person other than a registered organization shall not carry on health insurance business.

New sub-section 67(2) provides that a person who contravenes sub-section (1) is, in respect of each day of contravention, guilty of an offence punishable by a fine not exceeding \$20 000 for a body corporate, or \$2 000 for a natural person.

New sub-section 67(3) provides that a person shall not be taken to have contravened sub-section (1) if that person is merely discharging liabilities in respect of health insurance assumed before the commencement of this section.

New sub-section 67(4) defines, for the purposes of the section, the terms 'accident and sickness insurance business', 'ancillary health benefit', 'health insurance business', 'hospital', 'hospital treatment', 'insurance', 'liability insurance business', 'motor vehicle insurance business', 'relevant health services' and 'workers' compensation insurance business':

The fundamental definition is that of 'health insurance business'. It is defined as the business of undertaking liability, by way of insurance, in relation to fees or charges for the provision in Australia of hospital treatment or an ancillary health benefit (as defined in the sub-section) or in relation to an occurrence in Australia connected with hospital treatment or an ancillary health benefit. The definition specifically excludes, however accident and sickness insurance business, liability insurance business, and business of a kind prescribed for these purposes.

Clause 16: Application by organisation for registration as health benefit organization

This clause amends section 68 of the Principal Act by inserting new sub-sections 2(A), (2B) and (2C) and effects certain consequential amendments. The purpose of the new provisions is to exclude from the operation of paragraph 68(2)(c) of the Principal Act, profit making organizations who become registered following the prohibition on 'health insurance business' being conducted by unregistered organizations. The purpose of paragraph 68(2)(c) is to prevent the distribution of surpluses of health benefit funds.

New sub-section (2A) provides that paragraph 68(2)(c) does not apply to a profit-making organization which applies for registration under the Principal Act within six months, or such further period as the Minister allows.

New sub-sections (2B) and (2C) provide for the modifications to the provisions of the Principal Act in relation to a profit making organization to which new sub-section (2A) applies, by regulation.

Clause 17: Reinsurance Account in health benefits fund.

This clause amends section 73BB of the Principal Act. Section 73BB requires a registered health benefits organization, as a condition of its registration to establish and maintain a Reinsurance Account in each health benefits fund conducted by it. An organization is permitted to debit to the Reinsurance Account the amounts of any benefits paid to a contributor in accordance with a basic table in respect of a 'patient day' where in a period of 12 months the number of patient days in respect of that contributor has exceeded the prescribed number. A patient day is presently a day on which a contributor or contributor's dependant is provided with hospital treatment.

The clause will amend section 73BB so that the reinsurance provisions can accommodate some or all of the extended forms of benefit to be made available under the amended definition of "basic table". The clause substitutes new sub-section 73BB(2), amends existing sub-sections 73BB(4) and (8), and inserts new sub-section 73BB(9).

New sub-section 73BB(2) is substantially similar to existing sub-section 73BB(2) but no longer refers to hospital benefits and hospital treatment. Instead a "patient day" is expressed to relate to a day, where benefits have been paid or are payable in accordance with a basic table (whether or not modified by an election referred to in new paragraph (ba) of the Schedule to the Principal Act), in respect of the provision of treatment, a service, or another matter.

Sub-section 73BB(4) is amended so that a present reference to basic table will be to a basic table whether or not modified by an election referred to in new paragraph (ba) of the Principal Act.

Sub-section 73BB(8) is amended to refer to the provision of "matters", being matters covered in amended definition of basic table, instead of to 'hospital treatment'.

New sub-section 73BB(9) provides that Section 73BB does not have application to benefits belonging to a class of benefits prescribed for the purposes of the sub-section. Registered organizations will therefore not be permitted to debit to a Reinsurance Account the amounts of any payments of benefits belonging to a prescribed class.

Clause 18 : Directions by Minister to
registered organization

This clause amends section 73BE of the Principal Act by the insertion of new sub-section (5) to enable the Minister to vary the scope and level of benefits available to contributors in lieu of those available under the basic table, for the purposes of such scheme as front-end deductibles as provided at clause 27.

Clause 19 : Exemption of benefits
from basic table

This clause amends section 73F of the Principal Act to give effect to certain amendments consequential to those made by clauses 13 and 22 which provide additional benefits in the basic table.

Clause 20 : Determination of certain hospital
benefits by Secretary or Minister

This clause amends section 73G of the Principal Act so that a reference to a basic table in sub-section 73G(1) becomes a reference to a basic table whether or not modified by an election of the kind referred to in new paragraph (ba) of the Schedule to the Principal Act (i.e. election to take a front-end deductible.)

Clause 21 : Applications for review by Tribunal

This clause amends section 105AB of the Principal Act by inserting a new provision to provide for an application to be made to the Administrative Appeals Tribunal for the review of a decision by the Minister under paragraph 68(2A)(c) inserted by clause 16.

Clause 22 : Schedule

This clause amends the Schedule to the Principal Act in respect of several matters relating to the conduct of registered organizations. The Schedule sets out conditions of registration to which the registration of an organization is deemed, through the operation of section 73BA of the Principal Act, to be subject. The amendments to the Schedule relate principally to "front-end deductibles" and variations in waiting periods.

Sub-clause (1) inserts into the Schedule new paragraphs (ba), (bb) and (bc) and amends existing paragraphs (b), (d), (f), (g), (j), (k), (l), (m), (o), and (p).

New paragraph (ba) will permit a registered organization to offer lesser benefits than those specified in the normal basic table where a contributor to the health benefits fund elects to accept the lower benefits in return for contributions to the basic table by that contributor to be consequently modified in accordance with the terms of the election. This will allow registered organizations to offer front-end deductible schemes where the contributor in exchange for lower contributions accepts responsibility for the payment of the first specified amount of treatment costs himself.

New paragraph (bb) will require a registered organization to permit a contributor to revoke an election made under new paragraph (ba) to accept lower benefits in return for lower contributions. However, where such a revocation is made, the organization will, subject to new paragraph (bc), be permitted to impose a waiting period to apply before the election (whether made to the organization or to another organization) ceases to have effect. This will prevent contributors opting out of a front-end deductible scheme in favour of full basic table benefits, for elective surgery for example, without meeting an appropriate waiting period.

New paragraph (bc) limits the waiting periods which the rules of a registered organization can impose before benefits become payable following the revocation of an election referred to in new paragraph (ba). The waiting periods are;

- . 12 months in relation to benefits for hospital treatment or a service relating to a pre-existing ailment of the kind determined by the Minister for the purposes of paragraph (k) of the Schedule.
- . 9 months in relation to benefits for hospital treatment or a service related to an obstetric condition;
- . 2 months in relation to benefits in respect of any other treatment or service.

The amendments made to the Schedule by paragraphs 22(1)(a), (c) to (k) and (n) to (o) are consequential to the amendments made by paragraph 22(1)(b) and clause 13 which provides for new benefits in the basic private table.

The amendment made to the Schedule by paragraph 22(1)(m) will reduce the waiting period for pre-existing ailments in respect of persons who wish to contribute to a basic table or supplementary hospital table, from 24 months to 12 months.

Sub-clause 22 (2) provides for a 3 month moratorium on waiting periods imposed by registered organizations, otherwise than for pre-existing ailments as determined by the Minister, or for obstetric conditions. This is achieved by subjecting the Schedule to the Principal Act for 3 months from the commencement of the provision, to new paragraph (ha) which modifies the rules in relation to waiting periods.

Sub-clause 22 (3) is a transitional provision having the effect that the conditions of registration in the Schedule as amended by the proposed Act have effect in relation to all registrations of organizations made before or after the commencement of the proposed Act.

