

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

HEALTH LEGISLATION (PRIVATE HEALTH INSURANCE REFORM)  
AMENDMENT BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government and  
the Australian Democrats)

(Circulated by the authority of the Minister for Human  
Services and Health, the Hon Dr Carmen Lawrence, MP)





**HEALTH LEGISLATION (PRIVATE HEALTH INSURANCE REFORM)  
AMENDMENT BILL 1994**

**OUTLINE**

These amendments have been prepared in response to suggestions raised in the course of the hearing of the Senate Standing Committee on Community Affairs, Legislation Committee.

2. The main amendments to the Bill relating to the National Health Act 1953 are:

- (a) ensure that hospital insured persons also maintain insurance cover for medical services rendered in hospital;
- (b) clarify the maximum time frames in which hospitals and organisations must lodge Hospital Casemix Protocol;
- (c) extend hospital purchaser-provider agreements to include contracts between hospitals and medical practitioners, with the 75% Medicare benefit being assigned to the organisation;
- (d) require hospitals and doctors to inform patients of any out-of-pocket expenses and where patient's so request, for organisations to assist hospitals and doctors in providing such information;
- (e) exempt hospitals, doctors and organisations from stamp duty that would otherwise be payable in relation to hospital purchaser-provider agreements, medical purchaser-provider agreements and practitioner agreements;
- (f) remove any legal impediment to hospitals disclosing information to organisations for audit purposes and validation of claims information;
- (g) provide for the Minister to publish a statement in the Gazette about the operation of a Private Patient Hospital Charter informing consumers what they can expect from organisations, hospitals and medical practitioners;
- (h) require the Private Health Insurance Administration Council to distribute copies of the Private Patient Hospital Charter to organisations and to make copies of the Charter available to members of the public;
- (i) require the Private Health Insurance Complaints Commission and organisations to make copies of the Private Patient Hospital Charter available at their offices;
- (j) provide that organisations cannot refuse to enter into a hospital purchaser-provider agreement solely by reason of the number of beds in the hospital, the range of hospital treatment provided or the ownership of the hospital;

- (k) to clarify the matter of the current 25% 'gap' benefit for in-hospital medical services being payable for all such services regardless of the existence of a medical purchaser-provider agreement;
  - (l) provide for the Minister to determine the levels of benefits payable for treatment in those hospitals which do not enter into a hospital purchaser-provider agreement; and
  - (m) allow organisations, a State or Territory Government of NH&MRC to seek a determination from the Minister that benefits referred to in (l) above not be payable where the standard of care in the hospital or day hospital facility is unacceptable.
3. Other amendments relating to the National Health Act 1953 are of a consequential nature only.
4. The amendment to the Health Insurance Act 1973 caters for the situation where the payment by an organisation to a medical practitioner under a medical purchaser-provider agreement is not determined on a fee-for-service basis.

**FINANCIAL IMPACT STATEMENT**

5. The amendments are cost-neutral to the Commonwealth.

HEALTH LEGISLATION (PRIVATE HEALTH INSURANCE  
REFORM) AMENDMENT BILL 1994

NOTES ON AMENDMENTS

Amendment (1)

This amendment omits the previously proposed subclause 2(2) of the Bill to provide that Section 4 and Schedule 1 commence on 1 April 1995 or the date of Royal Assent whichever last occurs. This amendment recognises the possibility the 1 April 1995 deadline may not be achieved.

Amendment (2)

This amendment omits "1 July 1995" in subclause 2(3) and substitutes "1 September 1995". The purpose of this amendment is to allow private hospitals more lead time for entering into hospital purchaser-provider agreements and arranging for the submission of the Hospital Casemix Protocol.

Amendment (3)

This amendment adds, at the end of the heading "SCHEDULE 1", the words "OR ROYAL ASSENT, WHICHEVER IS THE LATER". This amendment is as a consequence of Amendment (1).

Amendment (4)

This amendment inserts a new definition "practitioner agreement" for the purposes of new section 73BDAA.

Amendment (5)

This amendment to proposed subsection 4(1AA) of the National Health Act 1953 (the Act) is a consequence of Amendment (6).

Amendment (6)

This amendment to proposed section 5A of the Act is intended to clarify the position. The amendments provide that persons covered under a hospital product for some or all hospital treatment in a hospital, which has a hospital purchaser-provider agreement with the organisation, must also maintain cover for the relevant in-hospital medical services.

Amendment (7)

This amendment to proposed subsection 5B(2) omits "1 April 1995" and substitutes "the commencement of this section". The amendment merely recognises that that date may not be achieved.

Amendments (8) and (9)

These amendments to proposed section 73AB of the Act set a maximum time frame for the lodgement of Hospital Casemix Protocol to the Department of Human Services and Health and the Private Health Insurance Administration Council. This measure will remove any doubts about meeting deadlines.

Organisations will be required to submit such information within 1 week after the expiration of a period of 3 months from the date of discharge of patients from hospital.

The amendment to proposed subsection 73AB(3) clarifies that the Hospital Casemix Protocol must relate to individual patients.

Amendment (10)

This amendment inserts a provision in current section 73BA to clarify any reference to "medical practitioner". This definition mirrors that in subsection 5A(3) for the purposes of medical purchaser-provider agreements.

Amendments (11) to (15)

These amendments to proposed section 73BD of the Act:

- provide for the single account in respect of hospital services and related services to also include professional services rendered in hospital under a practitioner agreement for the purposes of proposed section 73BDAA;
- propose a new paragraph 73BD(2)(d) and amend proposed subsection 73BD(6) to require hospitals and day hospital facilities to inform eligible contributors prior to admission of any amounts that they may be liable to meet;
- propose a new paragraph 73BD(2)(e) requiring hospitals and day hospital facilities to provide assistance to organisations to verify specified information in relation to episodes of hospital treatment; and
- amend proposed subsection 73BD(5) to require hospitals and day hospital facilities to provide organisations with Hospital Casemix Protocol within 6 weeks following discharge of the patient.

Amendment (16)

This amendment provides for a new section 73BDAA of the Act. It provides for an extension of hospital purchaser-provider agreements to recognise the existence of "practitioner agreements" between hospitals and medical practitioners for the provision of medical services in hospital.

The amendment, in effect, mirrors the provisions relating to the operation of medical purchaser-provider agreements, including a requirement (subsection 73BDAA(2)) for organisations to accept an assignment of the 75% Medicare benefit in such cases.

Amendments (17) to (20)

The amendments to proposed section 73BDA require medical practitioners to inform eligible contributors of any amounts they are liable to pay any time before the professional service is rendered in hospital.

Amendment (21)

This amendment proposes the introduction of the following sections in the Act:

- . Section 73BDB - To exempt hospital purchaser-provider agreements, medical purchaser-provider agreements and "practitioner agreements" from stamp duty or other charges imposed under a law of the Commonwealth, a State or a Territory; and
- . Section 73BDC - To ensure that there is no conflict between the operation of the National Health Act 1953 and the Trade Practices Act 1974 relating to third line forcing (exclusive dealing).

Amendment (22)

This amendment proposes the introduction of the following sections in the Act:

- . Section 73F - Provides for the Minister to publish a statement in the Gazette relating to the introduction of a Private Patient Hospital Charter, which is designed to inform people of what they can expect from organisations, hospitals and doctors to enable them to establish the rights. It is proposed that the Charter will be a disallowable instrument; and
- . Section 73G - To remove any impediments under a law of the Commonwealth, a State or a Territory preventing the disclosure of information by hospitals relating to the provision of hospital treatment.

Amendment (23)

This amendment to existing section 82G of the Act imposes three new functions on the Private Health Insurance Administration Council requiring it to distribute copies of the Private Patient Hospital Charter to organisations and members of the public, as well as publicising the existence of such Charter in any brochures.

Amendment (24)

This amendment introduces paragraph (ca) to Schedule 1 of the Act to prevent organisations refusing to enter into hospital purchaser-provider agreements with hospitals or day hospital facilities on the grounds of the number of beds available; the range of hospital treatments provided; or the ownership of such premises.

Amendment (25)

This amendment omits the previously proposed paragraph (ea) of Schedule 1 of the Act and substitutes a provision to clarify the availability of the 25% 'gap' benefit for in-hospital medical services regardless of whether or not such services are rendered under a medical purchaser-provider agreement.

Amendments (26) to (28)

This amendment proposes the introduction of the following two paragraphs in Schedule 1 of the Act which require organisations:

- . Paragraph (hb) - To give to a hospital, day hospital facility or medical practitioner such information in their possession to enable eligible contributors to be informed of any amount that they are liable to pay in relation to hospital treatment or the rendering of a professional service; and
- . Paragraph (hc) - To make copies of the Private Patient Hospital Charter available to contributors on request; to display a notice at their premises about the availability of such Charter; and publicise the existence and availability of the Charter where appropriate.

Amendment (29)

This amendment inserts a new subsection 14(2) in the Health Insurance Act 1973 to overcome the impediment in the current subsection 14(1) about the need to ensure that Medicare benefits do not exceed the medical expenses incurred. This amendment is necessary to cover the situation where a payment to a medical practitioner under a medical purchaser-provider agreement is not determined on a fee-for-service basis.

Amendments (30) and (31)

Amendment (30) omits the previously proposed paragraph 20A(2A)(c) of the Health Insurance Act 1973 to extend the assignment of the 75% Medicare benefit to cover professional services rendered in hospital under a "practitioner agreement" between hospitals and medical practitioners for the purposes of new section 73BDAA of the Act. A definition of "medical practitioner" is also being inserted for clarification purposes by Amendment (31).



Amendment (32)

This amendment omits "1 July 1995" from the subheading immediately under the heading "SCHEDULE 2", and substitutes "1 September 1995". This amendment is as a consequence of Amendment (2).

Amendments (33) and (34)

These amendments relate to the proposed definition of "employee health benefits scheme" in subsection 67(4) of the Act and insert new paragraphs (f) and (g). They provide that health plans covered under agreements approved by the Australian Industrial Relations Commission are protected for a 'grandfather' period up to 1 July 1996.

Amendment (35)

This amendment to existing section 73BA of the Act provides that the Determination setting the level of 'default benefit' under proposed new paragraph (bga) in Schedule 1 of the Act shall be a disallowable instrument under the Acts Interpretation Act 1901.

Amendment (36)

This amendment is as a consequence of the introduction of section 73BDAA of the Act.

Amendment (37)

This amendment introduces new provisions relating to the provision of 'default' benefits for the purposes of subparagraph (bf)(ii) as follows:

- . Section 73E - Definitional section
- . Section 73EA - This provision allows an organisation, a State or Territory Government or the National Health and Medical Research Council to apply to the Minister for a determination that the standard of hospital treatment provided by a non-contracted hospital or day hospital facility is unacceptable.

Where the Minister is satisfied that the standard care is unacceptable, the Minister may issue a determination that the 'default' benefit need not be payable. Copies of any such determination must be given to each organisation and published in the Gazette.

Where the Minister decides not to make a determination, the organisation and hospital or day hospital facility must be notified accordingly.

- . Section 73EB - This section requires the Minister to issue guidelines for the purposes of determining whether the standard of care is unacceptable. The guidelines constitute a disallowable instrument for the purposes of the Acts Interpretation Act 1901.
- . Section 73EC - This provision clarifies the effect of any determination made by the Minister pursuant to section 73E.
- . Section 73ED - This provision allows the relevant hospital or day hospital facility which is the subject of a determination under section 73E to apply to the Minister to revoke the determination.

If the Minister is satisfied that the grounds for issuing the determination no longer exist, the Minister must revoke the determination and inform the hospital or day hospital facility accordingly.

Before revoking the determination, the Minister is first required to inform organisations and publish a notice in the gazette of his/her decision.

- . Section 73EE - This provision clarifies the effect date of revocation of a determination, not being a period of less than 12 months from the date on which the determination was made.

#### Amendment (38)

This amendment to proposed paragraph 82G(ba) of the Act provides for the Minister to determine the kind of Hospital Casemix Protocol information that organisations may submit to the Private Health Insurance Administration Council.

#### Amendment (39)

This amendment introduces a new section 82G(2) which provides that a determination under paragraph 82G(ba) will constitute a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

#### Amendments (40) and (41)

These amendments to proposed subsection 82ZQ(1), which arise by virtue of the introduction of section 73BDAA of the Act, include practitioner agreements as part of the definition of "private health insurance arrangements" for the purposes of investigations by the Complaints Commission.

Amendments (42) and (43)

These amendments to proposed section 82ZRC in relation to the functions of the Private Health Insurance Complaints Commissioner provide for:

- . provision in paragraph 82ZRC(d) requiring recommendations about regulatory practices to be made to the Minister;
- . New Paragraph 82ZRC(da) - To make copies of the Private Patients' Hospital Charter available to members of the public at every office to which the public has access; and
- . New Paragraph 82ZRC(db) - To publicise, where appropriate, the existence and availability of the Private Patients' Hospital Charter in any brochures or other documents available to the public.

Amendment (44)

This amendment proposes a new section 82ZSBA of the Act to provide:

- . subject to the agreement of the complainant, for the Complaints Commissioner to refer to the Trade Practices Commission complaints that it believes could be dealt with more effectively or conveniently by that authority;
- . for the Trade Practices Commission to determine whether or not to conduct an investigation into the complaint and to inform the Complaints Commissioner within 30 working days:
  - of the conduct of an investigation and findings of any such investigation; or
  - if no investigation is made, its reasons for not proceeding with such investigation.

Amendment (45)

This amendment inserts a new subsection 105AB(4B) in the Act to include determinations by the Minister under sections 73E and 73ED as being subject to review by the Administrative Appeals Tribunal.

Amendment (46)

This amendment inserts two new conditions of registration (bea) and (beb) in Schedule 1 of the Act to require that organisations must include the provision of benefits in all applicable benefits arrangements for hospital treatment related to palliative, rehabilitation and psychiatric care.

Amendment (47)

This amendment to proposed new subparagraphs (bf)(i) and (ii) of Schedule 1 of the Act is designed to ensure that the relevant benefits relate to particular treatments. For example, a hospital may have a hospital purchaser-provider agreement with an organisation for other treatments.

Amendment (48)

This amendment amends proposed paragraph (bg) of Schedule 1 of the Act to remove any conflict between the level of the 'default' benefits and the restriction contained in existing paragraph (d) of the said Schedule which provides that benefits must not exceed the fees or charges.

The amendment also proposed two new paragraphs (bga) and (bgb) in Schedule 1 of the Act, which relate to the determination of a 'default' benefit for the purposes of paragraph (bf)(ii) of Schedule 1. New paragraph (bga) provides that such benefit to be paid by organisations must equal the level or levels of benefits as determined by the Minister. New paragraph (bgb) allows the Minister to determine different levels of such benefits, even for the same kind of episode of hospital treatment.

Amendment 49

This amendment removes proposed paragraph (bh) of Schedule 2 of the Bill which sunsets the default benefit as determined by the Minister.

Amendment 50

This amendment to proposed paragraph (bi) of Schedule 1 of the Act is of a consequential nature only to ensure that Amendment (45) has no application to recognised hospitals (until 1 July 1996).

Amendment (51)

This amendment is consequential only and relates to the proposed amendments in Schedule 2 of the Bill which remove the need for organisations to conduct a separate health benefits fund in each State.

Amendment (52)

This amendment to Schedule 3 of the Bill repeals proposed paragraph 67(4)(f) referred to in Amendments (33) and (34). This amendment means that employee health benefits schemes conducted as part of approved enterprise agreements will not be permitted to operate from 1 July 1996.

Amendment (53)

This amendment is a saving provision only. This means, in effect, that the definition of "employee health benefits scheme" will revert back to the wording that applied before Amendments (33) and (34).

Amendment (54)

This amendment to proposed paragraph 73BD(1)(b) replaces the word "episodic" with the word "episodes of". This amendment is merely to provide for consistency in the wording throughout the Bill.





