

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health,
the Honourable Neal Blewett).

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OUTLINE

The purpose of this Bill is to make amendments to the National Health Act 1953 to -

- (1) ensure the effective continuation of established policies and practices in Commonwealth control of nursing home fees;
- (2) abolish the patient declaration of entitlement to free or concessional pharmaceutical benefits under the Pharmaceutical Benefits Scheme;
- (3) introduce a simpler arrangement by which a person's entitlement to free or concessional pharmaceutical benefits may be made known to the pharmaceutical chemist; and
- (4) make a minor machinery change to the delegation power relating to the provision of Commonwealth domiciliary nursing care benefit.

Clause 1: Short Title

The amending Act would be cited as the National Health Amendment Act 1983 and references in it to the Principal Act would be to the National Health Act 1953.

Clause 2: Commencement

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

Clause 3: Approval of nursing home

This clause would make a number of amendments to section 40AA of the Principal Act to give the Minister power to formulate principles to which the exercise of the Permanent Head's power under paragraph 40AA(6)(c) to determine nursing home fees would be subject.

Paragraph 3(a) would amend sub-paragraph 40AA(6)(c)(i) to make the Permanent Head's power under that sub-paragraph subject to any such principles;

Paragraph 3(b) would substitute a new sub-section 40AA(7) and insert new sub-sections 40AA(7A), (7B), (7C), (7D), (7E) and (7F) into the Principal Act.

New sub-section 40AA(7) would give the Minister the power to formulate principles.

New sub-section 40AA(7A) would provide that such principles may specify certain matters that are, or are not, to be taken into account in the determination of nursing home fees under sub-paragraph 40AA(6)(c)(i) of the Principal Act.

New sub-section 40AA(7B) would provide that, in formulating any such principles, the Minister shall have regard to the need to ensure that nursing homes are efficiently and economically operated, the need to ensure that the cost of nursing home care to nursing home patients is not excessive or unreasonable, and any other matters which the Minister considers to be relevant.

New sub-section 40AA(7C) would provide for the formulating of such principles to be subject to sections 48, 49, 49A and 50 of the Acts Interpretation Act 1901 as if the principles were regulations. This would mean that they

would be required to be gazetted and laid before each House of Parliament in the same way as regulations are, and would also be subject to disallowance by either House.

New sub-sections 40AA(7D) and (7E) would provide that sub-sections 5(3) to 5(3C) (inclusive) of the Statutory Rules Publication Act 1903 apply to principles formulated under proposed sub-section 40AA(7) as if they were statutory rules for the purposes of the former Act. These sub-sections deal with the manner of notification and publication of statutory rules.

New sub-section 40AA(7F) would provide that section 5 of the Evidence Act 1905 applies to principles formulated under sub-section (7) in the same way that that section applies to an order made by the Minister. Section 5 of that Act deals with the proof of such orders in Court.

Clause 4: Application by proprietor of nursing home for alteration of conditions

This clause would amend section 40AE of the Principal Act by inserting a new sub-section (3A). This sub-section would provide that where the Minister is reviewing, under sub-section 40AE(3), a decision of the Permanent Head made under sub-section 40AE(1), and that decision relates to the fees applicable to a nursing home, he shall apply any principle that was in force under section 40AA of the Principal Act at the time the decision was made, unless he is satisfied that the application of that principle is, in the circumstances, inappropriate.

Clause 5: Revocation of approval of approved person

This clause would amend section 58J of the Principal Act by repealing sub-section 58J(2). This sub-section presently provides that the power of the Permanent Head under sub-section 58J(1) (to revoke the approval of an approved person in respect of the provision of domiciliary nursing care to a patient) shall not be delegated except to a medical practitioner employed in a Department of State. The effect of this amendment would be to make the above power subject to delegation in the same way in which other powers of the Permanent Head are subject to delegation.

Clause 6: Concessional benefit prescriptions and pensioner benefit prescriptions

This clause would repeal section 84AA which provides for the pharmaceutical benefits declaration and would substitute a new section 84AA which would provide a new procedure whereby a person's entitlement to free or concessional pharmaceutical benefits is made known to the pharmaceutical chemist.

New sub-section 84AA(1) would provide that a prescription for a pharmaceutical benefit written by a medical practitioner or by a dental practitioner participating in the Pharmaceutical Benefits Scheme shall not be taken to be a prescription in respect of a concessional beneficiary, or a pensioner, or one of their dependants, unless the prescription form contains certain prescribed information as to that person's entitlement.

New sub-section 84AA(2) would provide that a prescription communicated to an approved pharmaceutical chemist in urgency situations shall not be taken to be a prescription in respect of a concessional beneficiary, or a pensioner, or one of their dependants, unless, before the supply of the pharmaceutical benefit, certain prescribed information as to the person's entitlement is also communicated to the pharmaceutical chemist.

Clause 7: Approvals to be subject to conditions

This clause would amend paragraph 92A(1)(ca) and sub-section 92A(4), to require that where a prescription has been communicated to a chemist in an urgency situation and that prescription is later reduced to writing, as is required by the regulations, the chemist shall mark the prescription with any information relating to the status of the patient that has been communicated to him.

Clause 8: Payment for supply of benefits

This clause would amend sub-section 99(2A) to make a drafting correction.

Clause 9: Offences

This clause would amend section 103 of the Principal Act by omitting sub-section (4A) and substituting new offence provisions more appropriate to the new procedure for providing information about a person's status as a concessional beneficiary or a pensioner.

New sub-section 103(4A) would make it an offence for a person, in complying with regulations made under sub-section 84AA(1), to include, or cause or permit to be included on a prescription, any information about the status of the person to whom the prescription relates, that is to his knowledge, false or misleading.

New sub-section 103(4B) would make it an offence for a person, in complying with regulations made under sub-section 84AA(2) in relation to a prescription communicated to a pharmaceutical chemist in an urgency situation, to communicate to the chemist any information about the status of the person to whom the prescription relates, that is to his knowledge, false or misleading.

Clause 10: Application of certain amendments

The purpose of this clause is to provide that the new arrangements for the supply of pharmaceutical benefits to pensioners and concessional beneficiaries, are to apply in respect of every supply of a pharmaceutical benefit, on or after the date on which the new arrangements came into operation, even though the prescription may have been written before that date.