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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

National Health Amendment Bill (No. 2) 1980

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health the
Honourable M.J.R. MacKellar)

OUTLINE

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

- A. enable persons in receipt of a sickness benefit under the Social Services Act 1947, other than those excluded by the income test in that Act, and their dependants to receive pensioner health fringe benefits;
- B. make changes to the Isolated Patients' Travel and Accommodation Assistance Scheme to:
 - . provide that the total patient contribution towards travel costs per visit to a specialist is \$20 regardless of whether the patient is accompanied by an approved escort or by an approved attendant;
 - . increase the maximum accommodation allowance from \$15 per night to \$20 per night;
 - . extend the period for lodging applications under the scheme;
- C. increase the level of the Domiciliary Nursing Care Benefit and regularise payment by fortnightly instalments;
- D. put beyond doubt the authority for limiting the range of pharmaceutical benefits that may be prescribed by participating dental practitioners and make two other machinery amendments in respect of the pharmaceutical benefits scheme.

Clause 1: Short Title etc.

By this clause the amending Act is cited as the National Health Amendment Act (No. 2) 1980. The clause also identifies the National Health Act 1953 as the "Principal Act".

Clause 2: Commencement

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

- . clauses 1 and 2, and 7, 8, 9, 10 and 15 which relate to the Domiciliary Nursing Care Scheme will operate retrospectively to 4 September 1980;
- . clause 3 which extends the definition of pensioner will come into operation on 1 November 1980;
- . clauses 4, 5, 6 and 14 which deal with the Isolated Patients' Travel and Accommodation Assistance Scheme will come into operation on 1 October 1980;
- . clauses 11, 12 and 13 which deal with the prescribing of pharmaceutical benefits will come into operation on a date to be proclaimed. The date will be proclaimed when the Ministerial determinations required by the amendments and consequential amendments to the Regulations have been finalised.

Clause 3: Interpretation

This clause amends the definition of "pensioner" in sub-section 4(1) of the Principal Act to include a person who is in receipt of a sickness benefit under the Social Services Act 1947, other than such a person excluded by the pensioner health benefits income test in section 83CA of that Act.

A consequential amendment is also made to sub-section 4(3), which is an interpretative provision relating to the definition of "dependant" in relation to a pensioner.

The purpose of these amendments is to implement the government's announcement that the following Commonwealth pensioner fringe benefits under this Act are to be available to sickness beneficiaries and their dependants:

- . drugs and medicinal preparations without charge under the Pharmaceutical Benefits Scheme;

- . a full range of hearing services including free hearing aids and hearing aid batteries from the National Acoustic Laboratories.

(In addition, under the conditions of registration of medical benefits organizations registered under the Act, bulk billing of fund medical benefits is only possible where the person assigning the benefit is a pensioner.)

Travel and Accommodation Allowances in Respect of Patients in Isolated Areas

The Isolated Patients' Travel and Accommodation Allowance Scheme provides for the payment by the Commonwealth of travel and accommodation allowances for persons who live in isolated areas and are required to travel more than 200 kilometres for specialist medical treatment.

Clause 4: Travel Allowance

This clause amends section 17 of the Principal Act to provide that a single contribution of \$20 towards the cost of travel is payable in respect of an approved patient receiving specialist medical treatment irrespective of whether the patient travels alone or is accompanied by an escort and/or an attendant. The Act at present requires a contribution of \$20 in respect of each person travelling.

Paragraph 4(1)(a) of the Bill omits sub-sections 17(1) and (2) and substitutes new sub-sections.

New sub-section 17(1) defines -

'prescribed amount' in relation to a prescribed journey to mean \$20 or such other amount as is prescribed by regulations. This amount is presently provided for in sub-section 17(6) and is the patient's contribution when an allowance is payable.

'prescribed journey' in relation to the rendering of a relevant professional service to an approved patient, to mean all relevant journeys, made in connection with the rendering of the professional service, regarded as one journey.

New sub-section 17(2) provides that, subject to other provisions in the Part, a travel allowance in accordance with sub-sections 17(3), (4) and (5) is payable in respect of a prescribed journey.

Paragraphs 4(1)(b), (c) and (d) of the Bill make the machinery amendments to sub-sections 17(3) and 17(4) necessary to ensure that, when calculating the amount of travel allowance payable,

there is only one patient contribution of \$20 in respect of a prescribed journey to receive specialist treatment.

Paragraph 4(1)(e) of the Bill omits sub-section 17(6) which is replaced by the definition of prescribed amount in the new sub-section 17(1).

Sub-clause 4(2) of the Bill provides that notwithstanding the amendments effected by sub-clause 4(1), sub-section 17(1) of the Principal Act will continue to apply to any journey made in connection with a professional service rendered before the commencement of the amended section.

Clause 5: Accommodation Allowance

This clause amends paragraph 18(2)(b) of the Principal Act to increase from \$15 to \$20 the maximum amount which is payable to an approved patient, escort or attendant as an accommodation allowance in respect of each night spent away from his place of residence.

Clause 6: Late Applications

This clause repeals and replaces section 20 of the Principal Act which requires an application for approval by the Director-General of Health of a person living in an isolated area as an approved patient in relation to the rendering of specialist medical treatment to be made within 6 months from the date of referral.

New sub-section 20(1) repeats the provision of the repealed section but extends the period of 6 months during which such an application may be made to 12 months.

New sub-section 20(2) provides that where a late application is made the Director-General of Health may request that the applicant forward a statement explaining the reasons for the delay.

New sub-section 20(3) requires the Director-General of Health to consider the reasons for delay and if satisfied that there are extenuating circumstances direct that benefits may be paid, but if not so satisfied refuse to so direct.

Clause 14 provides a right of appeal to the Administrative Appeals Tribunal against a decision of the Director-General of Health not to make a direction under sub-section 20(3).

Domiciliary Nursing Care Benefit

Clause 7: Interpretation

This clause provides for the insertion of a new sub-section 58D(2) into the Principal Act. Section 58D is an interpretative

provision for the purposes of Part VB of the Act. That Part provides for the payment of a Commonwealth benefit with respect to domiciliary nursing care. The new sub-section 58D(2) provides that any care, given by an approved person before his approval takes effect, to a patient in relation to whom he is approved, shall be deemed not to be domiciliary nursing care. This is intended to put beyond doubt that there cannot be a payment of benefit for care provided before approval.

Clause 8: Payment of benefit

By this clause section 58G of the Principal Act is amended by an increase in the rate of domiciliary nursing care benefit from \$2 per day to \$42 per fortnight (that is, \$3 per day). Although the rate of benefit is currently expressed as a daily amount in the Act, and benefit entitlement is calculated on a daily basis, payments are actually made fortnightly. This is because this mode of payment makes for more efficient administration and is preferable also for the reason that the majority of beneficiaries are pensioners and payment by fortnightly cheques is a system easily understood by them. A further factor is that, termination of eligibility for the benefit being often due to the death of the person being cared for, the Department of Health is presently faced with the necessity to request a person, recently bereaved, to repay an overpayment of benefit which was made before advice of the death was received. The amount of the overpayment, on the average, is in respect of two to three days benefit, that is \$6 - \$9. Under the amended provisions, benefits will be payable for the full fortnight in which the death of the person being cared for occurs.

Clause 9: Fortnightly payment of benefits

While, as indicated in the notes on Clause 8, domiciliary nursing care benefits are currently paid fortnightly, the full administrative advantages of that mode of payment cannot be exploited in the absence of appropriate legislative provisions: it is necessary, at present, to calculate any necessary adjustments (for example, on the death of a patient) on a daily basis. Accordingly, this clause inserts into the Principal Act new section 58GA which lays down the principles under which the fortnightly payments arrangements are to be administered.

New sub-section 58GA(1) defines a number of terms used in the new section:

'benefit' is defined to mean a domiciliary nursing care benefit;

'fortnightly instalment' is defined to mean an instalment calculated on a fortnightly basis, that is an instalment of \$42;

'instalment' is defined to mean either a fortnightly instalment or a pro-rata instalment (as defined in this sub-section);

'pro-rata instalment' is defined to mean an instalment of benefit equal to \$3 for every day in a relevant fortnight, as defined in this sub-section, in which an approved person provided domiciliary nursing care for a patient in respect of whom the person is approved;

'relevant fortnight' is defined, in relation to a benefit pay-day, to mean the fortnight ending immediately before that benefit pay-day.

New sub-section 58GA(2) provides that, for the purposes of the definition of "pro-rata instalment", a person shall be deemed not to have provided domiciliary nursing care for a patient on a day if the person ceased to provide that care at some time during that day. The effect of this provision, for example, where a patient is admitted to hospital, is that the days of admission to, and discharge from, hospital will be counted as one day, in accordance with established government policy incorporated into other existing provisions of the health legislation.

New sub-section 58GA(3) provides that domiciliary nursing care benefits shall be payable in fortnightly instalments subject to the exceptions in new sub-sections 58GA(4), (5), (6) and (7). It also provides that the benefit is to be paid on such benefit pay-days as the Permanent Head of the Department of Health, by instrument in writing, directs. It is proposed that these benefit pay-days will coincide with those on which war-widow pensions and Commonwealth superannuation are currently paid.

New sub-section 58GA(4) provides that an approved person will not receive payment for any days in the relevant fortnight (as defined in new sub-section 58GA(1)) in which the person's approval takes effect (unless the date of effect is the first day of the fortnight). The first instalment received by a newly-approved person will, in all cases, be in respect of a full fortnight. (In compensation, a full fortnightly payment will be made for fortnights in which an approved person ceases to provide domiciliary nursing care, unless there is a very good reason for making a pro-rata payment).

New sub-section 58GA(5) provides that no instalment of benefit is payable to an approved person in respect of a patient if the approved person has not provided domiciliary nursing care for the patient on at least one day in the relevant fortnight.

New sub-section 58GA(6) provides that (subject to new sub-section 58GA(7), which provides for pro-rata payments) where an approved person ceased to provide care for a patient, his last payment of benefit was a fortnightly instalment and

he recommences to provide care for the patient on any day other than the first day of a relevant fortnight, no benefit is payable in respect of the fortnight in which he recommences to provide care. This is consistent with the policy expressed in the Bill that the benefit will generally be paid in fortnightly units (that is, in units of \$42). As new sub-section (6) is subject to new sub-section (7), the Permanent Head may, for example, in cases of hardship, direct that pro-rata benefit be payable in the abovementioned circumstances. Following the making of the direction benefit would be immediately reinstated on the return of the patient to the caring person's home.

New sub-section 58GA(7) provides that, where an approved person has provided care for part only of a relevant fortnight, the Permanent Head of the Department of Health may direct, by instrument in writing, that a pro-rata instalment (that is, at the rate of \$3 a day) is payable to the approved person.

The main purpose of this provision is to enable the Permanent Head to direct that pro-rata benefit be payable in cases where it is believed that the otherwise strict fortnightly instalment arrangement is being abused. This might be, for instance, in circumstances where there are numerous breaks in the continuous care of a patient without any apparent good reason. Another purpose of the provision is, as indicated with respect to new sub-section 58GA(6), where it is considered to be inequitable to enforce the fortnightly instalment arrangements in a particular case. This provision contrasts with the present situation wherein the Department is obliged to make adjustments on a daily basis in all circumstances (for example, on the death of a patient).

The new sub-section (7), whilst serving to discourage abuse of the fortnightly instalment arrangement, also allows flexibility in recognizing real needs in deserving cases.

New sub-section 58GA(8) provides that a direction under new sub-section (7) (concerning pro-rata payments of benefit) may be given retrospectively. This is necessary to enable rectification of a case of abuse discovered some time after it has occurred.

New sub-section 58GA(9) provides that where a fortnightly instalment of benefit has been paid to an approved person, and a direction has been given under new sub-section 58GA(7) that a pro-rata instalment is payable instead, the amount of over-payment may be deducted from an instalment payable on a subsequent benefit pay-day.

Clause 10: Revocation of approval

Sub-section 58J(1) of the Act provides that where the Permanent Head is satisfied that an approved person has ceased to provide domiciliary nursing care for a patient, he shall

revoke the approval of that person in relation to that patient. This clause inserts new sub-section 58J(1A) into the Principal Act in order to put beyond doubt that the Permanent Head is not required to exercise his power under sub-section 58J(1) of the Principal Act in relation to an approved person where he is satisfied that the approved person will recommence within a reasonable period to provide domiciliary nursing care for the patient concerned.

Pharmaceutical Benefits

Clause 11: Determinations

This clause amends section 85A(2)(a) of the Principal Act by adding the words "either for all purposes or for a particular purpose" to the Minister's authority to determine the maximum quantity or number of units of a pharmaceutical benefit that may be prescribed in a single prescription.

The amendment puts beyond doubt the Minister's power to determine a maximum quantity that may be prescribed generally and where necessary, a different maximum quantity that may be prescribed for the treatment of a particular condition. Quantities of a drug or medicinal preparation needed to treat some conditions differ from those needed for the treatment of other conditions.

Clause 12: Prescribing of Pharmaceutical Benefits

This clause amends section 88 of the Principal Act by inserting a new sub-section 88(1A) relating specifically to participating dental practitioners. Consequentially it removes the reference to participating dental practitioners in sub-section 88(1).

The new sub-section 88(1A) puts beyond doubt the power of the Minister to limit the range of pharmaceutical benefits that may be prescribed by a participating dental practitioner. The sub-section provides for the publication in the Gazette of determinations by the Minister of pharmaceutical benefits that may be prescribed by participating dental practitioners. (A participating dental practitioner is a dental practitioner who has been approved by the Director-General of Health to participate in prescribing benefits under the pharmaceutical benefits scheme).

Clause 13: Restrictions on Prescribing

This clause inserts a provision to authorise regulations that restrict the prescribing of a particular pharmaceutical benefit to the circumstances prescribed in relation to that benefit. The provision replaces sub-section 88(8) repealed by clause 12 of the Bill.

Clause 14: Administrative Appeals Tribunal

This clause inserts a new sub-section 105AAA(2) to provide a right of appeal against a refusal by the Director-General of Health to make a direction under sub-section 20(3) that sub-section 20(1) does not apply to a late application for benefits under the Isolated Patients' Travel and Accommodation Assistance Scheme.

Clause 15: Application of domiciliary nursing care provisions

This clause provides that the amendments made by Clauses 8 and 9 do not apply in relation to any domiciliary nursing care provided on a day before 4 September 1980. The purpose of this provision is to ensure that the current provisions will apply to such care where the approved person concerned was approved with effect from a date before that date.