

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HEALTH INSURANCE AMENDMENT BILL (No. 2) 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health, Housing
and Community Services, the Honourable Brian Howe, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE
OF REPRESENTATIVES TO THE BILL AS INTRODUCED



HEALTH INSURANCE AMENDMENT BILL (No. 2) 1991

OUTLINE

This Bill proposes amendments to the Health Insurance Act 1973 which will ensure that medicare benefits payments are only paid where a medical practitioner provides a medical service within that practitioner's State of registration. The Bill amends the Health Insurance Act 1973 to ensure that medicare benefits are not payable for services rendered by disqualified medical practitioners.

The Bill also enables the Minister to direct a medical practitioner to notify a patient, in writing, where such medical practitioner intends to provide a medical service for which a medicare benefit is not payable.

It is also proposed in the Bill to amend the Health Insurance Act 1973 to require a medical practitioner, who has been found by a Medical Services Committee of Inquiry to have rendered excessive services on two or more occasions to appear before a Medicare Participation Review Committee. The Bill also introduces a penalty where a medical practitioner has been found, by a Medical Services Committee of Inquiry, to have rendered excessive services. The penalty will equate to the value of the medicare benefit payments in respect of those services found to have been rendered excessively.

The Bill also proposes to make technical amendments to the Health Insurance Act 1973 to enable the Health Insurance (1990-91 General Medical Services Table) Regulations to be restructured under more logical and appropriate headings. These amendments are in accordance with the recommendations of the Australian National Audit Office in their Efficiency Audit Report No. 26 of December 1989 on the Administration of the Medicare Benefits Schedule.

Other minor amendments of a technical nature are also included in the Bill.

FINANCIAL IMPACT STATEMENT

The proposed amendments to the functions of the Medical Services Committees of Inquiry and the new licensing requirement for medical practitioners set out in the Health Insurance Act 1973 are expected to result in savings of \$4.5 million and \$1.35 million respectively for the financial year 1991-92.

The proposed amendments to the Health Insurance Act 1973 contained in Clause 5 relating to the new licensing requirement for medical practitioners are expected to achieve immediate savings.

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NOTES ON CLAUSES

Clause 1 : Short Title

This clause cites the Act as the Health Insurance Amendment Act (No. 2) 1991 and identifies the Health Insurance Act 1973 as the Principal Act.

Clause 2 : Commencement

This clause provides that the Act will commence upon Royal Assent, with the exception of sections 3 and 4 which will commence on 1 December 1991.

Clause 3 : Interpretation

This clause omits the words "Part 1" from section 5 of the Principal Act as the retention of these words restricts the restructuring of the Schedule (the Table of General Medical Services) and would have impeded the implementation of the recommendations 32, 33, 34, and 35 of the Australian National Audit Report on the Administration of the Medicare Benefits Schedule.

Clause 4 : Medicare benefit in respect of 2 or more operations

This clause omits the words "Division 2 of Part 10" from section 15 of the Principal Act as the retention of these words restricts the restructuring of the Schedule.

Clause 5: Medicare benefit not payable for services by disqualified practitioners

This clause amends Section 19B of the Principal Act which provides that medicare benefits are not payable in respect of services rendered by disqualified practitioners. Under the new arrangements proposed in clauses 7 and 8 of the Bill a medical practitioner is referred to a Medicare Participation Review Committee (MPRC) after a second or subsequent penalty for excessive servicing has been imposed on the medical practitioner. The MPRC may determine that the medical practitioner should be partially or totally disqualified.

The effect of the amendment is to ensure that professional services provided by a practitioner who has been partially or totally disqualified will not attract medicare benefits partially or totally.

Clause 6 : Medicare benefit not payable where medical practitioner not authorised to render service

This clause introduces three new sections into the Principal Act which enable the Minister to direct a medical practitioner to provide a written notice to a patient that a medical service which the medical practitioner intends to provide will not attract a medicare benefit. The new sections restrict the payment of medicare benefits to those services or to those circumstances permissible under the terms of the medical practitioner's registration in each State or Territory.

New subsection 19C(1) ensures that the arrangements under this clause do not have retrospective effect.

New subsection 19C(2) introduces the definition of a 'practitioners licence' to pick up for the purposes of the Principal Act the State or Territory licensing or registration of a medical practitioner.

New subsection 19C(3) provides that a medicare benefit is not payable where a medical practitioner provides a medical service outside the scope of that medical practitioner's State or Territory registration unless the Minister directs otherwise.

New subsection 19C(4) provides that a medicare benefit is not payable where a medical practitioner provides a medical service in circumstances (e.g. where the practitioner is restricted in location of practice) outside the scope of that medical practitioner's State or Territory registration unless the Minister directs otherwise.

New subsection 19C(5) provides that guidelines are to be made setting out when the Minister should direct medicare benefits be paid under subsections 19C(3) - (4) above.

New subsection 19C(6) provides that the guidelines are a disallowable instrument under the Acts Interpretation Act 1901.

New subsection 19C(7) provides that where the Minister, under the guidelines, refuses or denies a medicare benefit to a patient, notice of that decision must be provided to the person who made the claim for benefit.

New subsection 19CA(1) incorporates by reference the definition of 'decision' in the Administrative Appeals Tribunal Act 1975.

New subsections 19CA(2) - (3) provide that where the Minister has refused to pay medicare benefits under new subsections 19C(3) - (4) the person claiming the benefit may apply to the Minister to reconsider the decision, such application to be made within 28 days after the notification of refusal is received.

New subsection 19CA(4) requires the Minister, after reconsidering a decision, to affirm the decision to refuse to pay benefits or to make a decision to pay benefits.

New subsection 19CA(5) provides that where the Minister makes a decision under new subsection 19CA(4) the applicant must be provided with written notice setting out the decision, the reasons for the decision and the rights of the applicant to appeal to the Administrative Appeals Tribunal.

New subsections 19CA(6) - (7) require that within 28 days of the Minister making a decision under new subsection 19CA(4) the applicant must be notified of the Minister's decision, and if the notice does not include a statement of the applicant's appeal rights, such deficiency will not affect the validity of the Minister's decision.

New subsection 19CA(8) defines the persons who may apply to the Administrative Appeals Tribunal for review of a decision taken under new subsection 19CA(4).

New subsection 19CB(1) provides that the Minister may by instrument in writing issue a direction to a medical practitioner to the effect that before rendering a professional service outside that medical practitioner's State or Territory registration, the medical practitioner must advise the patient that a medicare benefit is not payable for such a service.

New subsection 19CB(2) provides that a direction under new subsection 19CB(1) shall not have retrospective effect.

New subsection 19CB(3) provides that the direction by the Minister under new subsection 19CB(1) will remain in force unless revoked or the medical practitioner is authorised under the State or Territory registration to render such a service.

New subsection 19CB(4) provides that where a medical practitioner, without reasonable excuse, fails to comply with the direction of the Minister under subsection 19CB(1) such medical practitioner will be guilty of an offence and upon conviction may be fined up to \$2000.

Clause 7 : Penalty

This clause introduces a new section 106AB into the Principal Act which provides for a penalty to be paid equal to the amount of medicare benefit paid or payable to a medical practitioner as determined by the Minister, following a Medical Services Committee of Inquiry recommendation, whose opinion is that the practitioner has initiated excessive pathology services or has rendered excessive services, that a medicare benefit cease to be payable or that a benefit paid for such services be payable by the practitioner to the Commonwealth .

New subsection 106AB(1) defines 'varied' in relation to a determination.

New subsection 106AB(2) provides that where a Medical Services Committee of Inquiry makes a report to the Minister indicating that excessive services have been provided and recommends that medicare benefits cease to be payable or medicare benefits be repaid by the medical practitioner and the Minister agrees with that recommendation, then the medical practitioner will be liable to pay a penalty equal to the amount of the medicare benefit for the excessive services.

New subsection 106AB(3) is a parallel subsection to new subsection 106AB(2) providing a similar penalty for a person who causes or permits a medical practitioner employed by the person or by a body corporate of which the person is an officer, to initiate excessive pathology services or to render excessive services.

Clause 8 : New Medicare Participation Review Committee referrals

This clause inserts a new section 124DA in the Principal Act under which a medical practitioner who has been found to have rendered excessive services on 2 or more occasions, and therefore liable to a penalty under new subsection 106AB(2) or (3), will be referred to a Medicare Participation Review Committee by the Minister within 28 days of the practitioner incurring the penalty. The new section also requires a copy of such a notice of referral to be provided to the medical practitioner who is the subject of the notice at the same time it is given to the Medicare Participation Review Committee.

Clause 9 : Chairperson to establish Medicare Participation Review Committee

This clause makes a consequential amendment to section 124E of the Principal Act, inserting a new subsection 124E(2A), by requiring a Chairperson who receives a notice from the Minister regarding a medical practitioner who has been found to have rendered excessive services on 2 or more occasions, to establish a Medicare Participation Review Committee.

Clause 10 : Membership of Committees

This clause makes a consequential amendment to section 124EA of the Principal Act providing for the membership of a Medicare Participation Review Committee established under the new subsection 124E(2A).

Clause 11 : Determination in relation to excessive servicing

This clause inserts in the Principal Act a new section 124FAA, a parallel section to existing section 124F for determinations in relation to the commission by a practitioner of a relevant offence, which sets out the different determinations which the Medicare Participation Review Committee is able to make after a referral has been made to the Committee under the new section 124DA.

New subsection 124FAA(1) defines 'employer practitioner'.

New subsection 124FAA(2) provides that the Committee, in making its determination, may decide either to take no action, counsel or reprimand the medical practitioner. Further, the Committee may disqualify the medical practitioner from:

- . provision of specified professional services; or
- . provision of professional services to a specified class of person; or
- . provision of professional services within a specified location; or
- . may fully disqualify the medical practitioner.

New subsections 124FAA(3) - (4) require that the Medicare Participation Review Committee must comply with the guidelines under Section 124H of the Principal Act when it makes its determination and that such determination be in writing.

New subsection 124FAA(5) provides that the Medicare Participation Review Committee, when disqualifying a medical practitioner, must specify the period of disqualification (not being a period exceeding five years).

Clause 12 : Guidelines relating to making a determination

This clause makes a consequential amendment to section 124H of the Principal Act to ensure that the guidelines under Section 124H apply to determinations of the Medicare Participation Review Committee under new section 124FAA.

Clause 13 : Procedure of hearings

This clause makes a consequential amendment to section 124J of the Principal Act to enable the creation of a new Medicare Participation Review Committee under new subsection 124E(2A) where it is not reasonably practical for the established Medicare Participation Review Committee to continue to operate, and enables the new Committee to take account of evidence given to the first Committee and its reasons for any decision, and releases the new Committee from the obligation to conduct a hearing where a hearing was held by the first Committee in relation to the person.

Clause 14 : Giving effect to determinations

This clause amends Section 124S of the Principal Act and puts in place a technical amendment which updates the current Act, requiring the Minister to publish particulars of Medicare Participation Review Committee determinations made under new subsection 124FAA(2), and under existing paragraphs 124F(2)(d),(e) and existing subparagraphs 124FC(1)(e)(iv),(v) of the Principal Act.

Clause 15 : Chairperson to abolish Committee

This clause makes a consequential amendment to section 124T of the Principal Act requiring the Chairperson to abolish a Medicare Participation Review Committee after the Committee has counselled or reprimanded a person pursuant to such a determination under new subsection 124FAA(2).