HEALTH LEGISLATION AMENDMENT BILL 1985

Date Introduced: 15 May 1985
House: House of Representatives
Presented by: Hon. Neal Blewett, M.P., Minister for Health

Short Digest of Bill

Purpose

The Bill introduces amendments to the National Health Act 1953 and the Health Insurance Act 1973 aimed at settling the dispute between the Government and the medical profession which has become evident since the introduction of Medicare in 1984. A number of administrative changes to Medicare and the health insurance system are also introduced.

Background

The successful 1946 referendum gave the Commonwealth power to make laws in respect to a wide range of welfare areas, including hospital benefits and medical services, though the hospital and medical power is not to be used to authorise any form of civil conscription. In response to the transfer of these areas to the Commonwealth, NSW doctors established in 1947, the first private insurance scheme, the Medical Benefits Fund, which operated on a fee for service basis.

A national plan for voluntary health insurance was introduced for hospitals in 1952 and for medical benefits in 1953. Under this plan the Commonwealth contributed to charges for public hospital beds, which were means tested, with private insurance offering cover for the remainder of the charge. Medical benefits operated in a similar manner, and there was no restriction on the fees that could be charged. However, a table of recommended fees was introduced in 1969 following consultation between the Government and the Australian Medical Association (AMA). This table, called the 'Common Fee' was the predecessor to the 'Scheduled Fee'.

A major change to health insurance occurred on 1 July 1975 when Medibank was introduced following agreement between the Commonwealth and the States. Medibank provided universal insurance for service in public hospitals and
covered 85% of the scheduled fee for medical benefits, which could be bulk billed. Private insurance organisations could also offer cover for the gap between the universal 85% coverage and the scheduled fee (gap insurance), and for private cover for both patients in private hospitals and private patients in public hospitals.

Although a proposed 2.5% levy on individual's taxable income was rejected by the Senate when proposed in 1975, such a levy was introduced, following a change of Government, in October 1976. The years 1978 to 1983 saw four changes in the national health insurance scheme, there being a gradual dismantling of the Medibank system and a return to voluntary, private health insurance.

A new, universal health insurance scheme, Medicare, was introduced on 1 February 1984, following the election of a Labor government in 1983. The major features of the scheme were free public hospital cover, cover to 85% of the scheduled fee (to a maximum individual cost of $150 p.a., after which 100% of the scheduled fee was covered) and a 1% levy on individual's taxable income above a threshold level. Private health insurance continues to cover treatment in private hospitals, treatment as a private patient in public hospitals and for 'extra' services, such as dentistry and chiropractic services. No gap insurance is allowed.

Before looking at other provisions of the Medicare scheme which have been responsible for much of the recent dispute between the Government and the medical profession, it is relevant to examine the position of practitioners in public hospitals, particularly in NSW. All States, except Queensland, employ full-time, salaried specialists, the terms of employment being the relevant State's responsibility. In NSW, as in most States, salaried specialists are allowed to practise on a private basis during working hours while still receiving full salary. Visiting medical officers also practise in NSW public hospitals, either solely on private patients or also on public patients. In the latter case the medical practitioner is paid either on a sessional (time) or fee-for-service basis, sessional payment being dominant.

The recent dispute between the Government and medical profession arose following amendments to section 17 of the Health Insurance Act 1973 by the Health Legislation Amendment Act 1983 (the enabling legislation for the Medicare system). Section 17 deals with situations where medical benefits are not payable, and under the 1983 amendments benefits were not payable where the practitioner is exercising rights of private practice in public hospitals unless the practitioner has entered into an approved
agreement and is acting in accordance with that agreement. Although an approved agreement is made between the hospital and practitioner concerned, the Commonwealth and States have agreed to guidelines that effectively determine the terms of any approved agreement.

The section 17 guidelines were introduced to control expenditure on diagnostic services. The initial guidelines restricted charges to the scheduled fee or below; allowed hospitals to raise accounts as agents of practitioners and directed that such revenue be paid to a hospital fund from which facility charges could be deducted and, most contentiously, restricted the additional earnings of salaried specialists and the income of visiting specialists. Due to protests from the medical profession, the initial guidelines were not introduced and a more flexible arrangement was gazetted on 29 February 1984. Though still retaining the term that charges are to be set at or below the scheduled fee, the new guidelines allowed greater freedom for the States and hospitals to negotiate on the earnings of salaried and visiting practitioners. The guidelines were also eased in a number of other areas to permit more freedom to practitioners.

However, the medical profession continued to dispute the section 17 guidelines, arguing, amongst other things, that the guidelines should be open to appeal or review. As the profession announced industrial action, and in some areas, particularly NSW, action had already commenced the Government established an Inquiry into Rights of Private Practice in Public Hospitals. The Inquiry was chaired by Professor Penington and was comprised of representatives of the AMA and the Government. Further pressure from the profession and opposition parties led to the introduction of the Health Legislation Amendment Act 1984 which gave Parliament the power to review section 17 guidelines.

In establishing the Penington Inquiry the Government gave commitments to establish a joint working party with the AMA, which reported to the Inquiry in August 1984, and to implement, where relevant, the recommendations of the Inquiry. The final report of the Inquiry was released on 11 October 1984. The AMA accepted the Inquiry's recommendations, some of which are implemented in this Bill.

Further discussions took place before the present Bill was introduced. A plan to settle the dispute by the Federal President of the AMA, the Prime Minister and the Premier of NSW, was rejected by members of the AMA on 25 January 1985. By this time, splits were developing in the medical profession. Procedural specialists in NSW refused
to attend the meeting with the Prime Minister and the Premier of NSW. They called for private health insurance which could compete with Medicare, the deregulation of private hospitals and more private hospital beds.

On 2 April 1985 the Prime Minister, the Premier of NSW and the Health Minister made a further offer to the medical profession. The major aspects of this offer were:

- The repeal of section 17 and its guidelines.
- An extra $26m per year for visiting practitioners treating Medicare patients.
- The automatic classification of privately insured patients as private patients.

This package was put to AMA members on 22 April 1985. The results of the poll were released on 9 May 1985 and showed 75% in favour of ceasing industrial action.

However, an earlier meeting of procedural specialists in Sydney on 13 April 1985 had rejected the package and now sought a vote of no confidence in the Federal President. A meeting of AMA members was held in Canberra on 12 May 1985 and, though only approximately 1000 attended, the motion was defeated by 7232 to 1196, mainly on proxy votes.

On 15 May 1985 the Government announced that it would introduce legislation to implement parts of the package offered on 2 April 1985 and relevant parts of the Penington Inquiry's recommendations. Other items in the package, including the increase in funds for visiting medical practitioners, will be implemented through the States.

Outline

The Bill repeals the amendments to section 17 of the Health Insurance Act 1973 contained in the 1983 Medicare legislation and, as a consequence, the section 17 guidelines. Medical practitioners will no longer be required to sign approved agreements to be eligible for payment under the Medicare system.

In accordance with recommendations of the Penington Inquiry, a Medicare Schedule Fees Tribunal is introduced to review the table of Medicare benefits on a yearly basis. The Tribunal is to be constituted by a Deputy President of the Commonwealth Conciliation and Arbitration Commission.
Determinations of the Tribunal will be subject to Parliamentary scrutiny.

The Bill will also allow limited private gap insurance for the difference between the Medicare benefit and scheduled fee, but only for certain services performed in hospitals. As well private organisations will be able to include surgical implants and single day hospital benefits in their basic tables.

Other amendments contained in the Bill will require the registration of all bodies conducting health insurance and will enable the Minister to make directions to registered organisations with respect to benefits other than those payable in accordance with a basic table. Registered health insurance organisations will be prohibited from offering lower rates for specific groups, e.g. the young and generally healthy, while excluding higher risk groups from the lower rates. They will, however, be able to offer lower rates when the person insured chooses to carry a proportion of the risk themselves.

The waiting period before persons with pre-existing ailments are eligible for benefits has been reduced from 2 years to 1 year from joining the fund.

Main Provisions

The requirement for medical practitioners to sign approved agreements has been removed by clause 7 which amends section 17 of the National Health Act 1953.

Clause 9 inserts a new Part VB which details the functions, membership and procedure of the Medicare Schedule Fees Tribunal.

Changes to the health insurance system are contained in Part III of the Bill which amends the National Health Act 1953.

For a detailed explanation of the provisions of the Bill refer to the Explanatory Memorandum.

For further information, if required, contact:

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