Date Introduced: 28 March 1984
House: House of Representatives
Presented by: Hon. Neal Blewett, M.P. Minister for Health

Short Digest of Bill

Purpose
To amend s.17 of the Health Insurance Act 1973.

Background
This legislation follows amendments made to s.17 of the Health Insurance Act 1973 by s.18 of the Health Legislation Amendment Act 1983.

Section 17 of the Health Insurance Act 1973 identifies situations where medicare benefits are not payable. Section 18(1)(a) added a new subsection to the legislation to provide that medicare benefits would not be paid for prescribed professional services rendered to patients of or at recognised State and Territory hospitals by a medical practitioner who is exercising rights of private practice unless:

- the practitioner has entered into an agreement with a recognised hospital; and
- the practitioner is acting in accordance with that agreement.

Ss.17(4) defines that as an agreement between the medical practitioner and recognised hospital made on or after 1 February 1984 under which the practitioner has a right to render professional services on his/her own behalf in respect of patients of or at recognised hospitals.

Under the provisions of the amended s.17 the Commonwealth Minister for Health was given power to set guidelines for contracts between specialists in public hospitals and the relevant hospitals. Under these
guidelines diagnostic specialists, such as pathologists and radiologists, would have to charge at or below schedule fees when exercising their private practice rights in public hospitals.

As well, under the provisions of s.17, the Government intended placing upper limits on the amount of income diagnostic specialists - both full time, salaried staff and visiting, private practitioners - could earn from their private practice rights in public hospitals.

The provisions of amended s.17 have served to fuel a long, often acrimonious debate between the largest doctors' organisation, the Australian Medical Association (AMA) and the Federal Government.

The Government has argued, inter alia, that because these specialists are using highly expensive equipment and resources in publicly funded hospitals the Government has a right to issue guidelines concerning contracts.

The AMA's criticism of Medicare has been chiefly aimed at some of the provisions of s.17 of the Health Legislation Amendment Act 1983. The leaders of the AMA have argued that their members are not particularly worried by the specific elements of the guidelines to the agreements. For example, they argue that most diagnostic specialists charge at or below the schedule fee already. The AMA further argues that their opposition to contracts based on s.17 guidelines is not influenced by possible constraints on a source of income. Rather, the AMA argues, their opposition is philosophical.

The AMA's major complaint has been that s.17 provides no avenue of appeal against any guidelines issued by the Commonwealth Minister for Health. The AMA and its supporters have argued that doctors should not have to accept such conditions. Some opponents of Medicare have further claimed that s.17 is the thin edge of the wedge, the first step in the nationalisation of Australia's medical profession.

In the first few months of 1984 both argument and negotiation over the provisions of s.17 have continued. Also during that time:

- A committee has been established to inquire into private practice rights in Australia's public hospitals. It will be chaired by Professor David Pennington, Dean of the Faculty of Medicine at Melbourne University.
The other two members will be representatives of the AMA and the Commonwealth;

the Ministers for Health in NSW, Victoria, South Australia and Western Australia agreed on conditions governing the provision of diagnostic services in the public hospitals in their States;

Members of the AMA and some specialist organisations in various States and the Australian Capital Territory have considered, and in some cases have begun, protest industrial action. This has generally constituted a withdrawal of services from public hospitals, except in the case of emergencies.

Senator Haines of the Australian Democrats announced on 13 March 1984 she would move to amend s.17 of the Health Insurance Act to make the guidelines subject to disallowance in the Parliament.

28 March 1984, the Minister for Health, Hon. Neal Blewett M.P. introduced the Health Insurance Amendment Bill 1983 to provide Parliament with the power to review guidelines issued under s.17 of the Principal Act.

Main Provisions

Sub-clause 3(1)(a) inserts a new ss.(1A) which provides that where the Commonwealth Minister for Health is satisfied that the laws of a State or Territory or agreements or arrangements under such laws serve to regulate the provision of prescribed medical services in a manner consistent with any guidelines issued under s.17, the Commonwealth Minister for Health may sign an instrument which will exempt the medical practitioner from having to enter such an agreement with the Commonwealth. This declaration by the Minister will be retrospective where appropriate.

Sub-clause 3(1)(b) adds new ss.17(5), 17(6), 17(7) and 17(8).
New ss.17(5) provides that guidelines formulated by the Minister must be Gazetted, and then laid before each House of Parliament, where they may be disallowed.

For further information, if required, contact:

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