

# **Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012**

*Introduced into the House of Representatives on 27 June 2012*

*Portfolio: Health and Ageing*

## **Committee view**

1.2 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.3 The committee notes that the bill engages the right to health contained in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to social security contained in Article 9 of the ICESCR.

## **Purpose of the bill**

1.4 This bill amends the *Health Insurance Act 1973* to allow the application of Extended Medicare Safety Net (EMSN) benefit caps to apply where more than one Medicare service is performed on the same patient on the same occasion and is deemed to be 'one professional service'.

## **Compatibility with human rights**

*Right to social security (Article 9 ICESCR)*

*Right to the enjoyment of the highest attainable standard of physical and mental health (Article 12 ICESCR)*

1.5 Items 1 and 2 of this bill are intended to ensure that doctors who perform more than one service on the same patient on the same occasion are unable to avoid the EMSN caps that currently apply to individual operation services. The resulting saving in Government expenditure can be directed to programs to increase the health of all Australians.

1.6 The statement of compatibility notes that while this bill may increase the out-of-pocket costs for some patients in certain circumstances, all patients will still be eligible for the existing Medicare rebate and any associated benefits from the Original Medicare safety net for families and individuals. Patients will also still be eligible for EMSN benefits, however, if the fee charged for the service by the doctor is high enough that the EMSN benefits calculated are higher than the EMSN benefit cap, the patient will receive the lower amount equal to the EMSN benefit cap amount.

1.7 The statement of compatibility states that to the extent that the bill may limit the right to health or social security, it addresses a legitimate objective and is reasonable, necessary and proportionate in the circumstances.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

1.8 Article 9 of ICESCR provides:

‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.’

1.9 The UN Committee on Economic Social and Cultural Rights has described the right to social security as the right to a minimum essential level of benefits that will enable persons to acquire ‘at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education’

1.10 Article 12(1) of ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

1.11 The UN Committee has stated that the notion of 'the highest attainable standard of health' takes into account both the conditions of the individual and the country's available resources. The Committee recognises that good health cannot be ensured by a country, nor can countries provide protection against every possible cause of human ill health. Consequently, the right must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the individual to realise his or her highest attainable standard of health. The Committee has stated that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

1.12 Article 4 of ICESCR provides:

‘the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.’