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Health Legislation Amendment (Private Health  
Industry Measures) Bill 2002

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Health Legislation Amendment (Private Health Industry  
Measures) Bill 2002

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16 May 2002

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# Health Legislation Amendment (Private Health Industry Measures) Bill 2002

**Date Introduced:** 21 March 2002

**House:** Senate

**Portfolio:** Health and Ageing

**Commencement:** Schedule 1, items 1 to 7 commence on the day on which the Act receives Royal Assent. Schedule 1, items 8 and 9 commence on the 28<sup>th</sup> day after the day on which the Act receives Royal Assent. Schedule 2 of the Act commences on a day to be fixed by proclamation or otherwise on a day six months from Royal Assent.

## Purpose

The stated purpose of the *Health Legislation Amendment (Private Health Industry Measures) Bill 2002* ('the Bill') is to amend the *National Health Act 1953*, 'to remove unintended differences between the provisions relating to contractual gap cover arrangements introduced in 1995 and gap cover schemes which were introduced in 2000.'<sup>1</sup> The Bill also aims to amend the *Health Insurance Act 1973*, to transfer responsibility for approving and monitoring billing agents from the Private Health Insurance Administration Council (PHIAC) to the Health Insurance Commission (HIC).

## Background

### The 'Gap'

The term 'gap' generally refers to the difference between the fee a doctor charges for services provided in a hospital and the combined Medicare benefit and private health insurance benefit for those services.<sup>2</sup> It can also refer to the difference between hospital charges and the amount that is covered for a hospital stay by a health fund.

The issue of gap payments has long been of concern to health insurance funds, governments and consumers. Under current arrangements there are two models under which health insurance funds are able to offer insurance cover for gap payments. These

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are contractual gap agreements and gap cover schemes. Currently there are discrepancies between the two models.

## Previous Government Action

Until 1995, the *National Health Act 1953* prevented private health insurance funds from providing benefits in excess of the Medicare Benefit Schedule (MBS) fee. Medicare covered 75% of the MBS fee and private health funds were only permitted to cover the remaining 25%. In 1995, following the passage of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1994*,<sup>3</sup> health insurance funds were able to make payments for medical services above the MBS fee where an agreement was in place between the fund and the doctor (Medical Purchaser-Provider Agreements). The legislation also allowed for the establishment of agreements between hospitals and doctors (Hospital Purchaser-Provider Agreements) and between hospitals and health insurance funds (Practitioner Agreements). After the passage of this legislation, health insurance funds were successful in negotiating limited or no out-of-pocket hospital costs with many hospitals for their membership with hospital cover. However, the funds encountered resistance from medical practitioners to the negotiation of Medical Purchaser-Provider Agreements and medical charges.

In 2000 the Howard government began introducing further legislative reforms aimed at increasing private health insurance coverage in Australia. These reforms included the introduction of lifetime health cover, the 30% rebate on private health insurance, and the introduction of gap cover.

In August 2000, the *Health Legislation Amendment (Gap Cover Scheme) Act 2000* amended the *National Health Act 1953* and the *Health Insurance Act 1973*. The amendments enabled health funds to establish gap cover schemes. Under these schemes, health funds are able to provide ‘no gap’ cover (where the patient has no out of pocket expenses) and/or ‘known gap’ cover (where the patient is notified of any out-of-pockets before treatment starts) without the need for specific contracts. The 2000 legislation is discussed in [Bills Digest No 134 of 1999-2000](#).

In relation to gap cover schemes, the current Bill has two stated aims: first, to ‘align, where appropriate, requirements relating to gap cover schemes with those applicable to contractual methods of addressing the gap’;<sup>4</sup> and second, to ‘consolidate and clarify the obligations of registered health funds to provide information to the public and the Department’.<sup>5</sup>

The Bill seeks to achieve these aims by introducing the following changes:

- a health fund which pays benefits to a doctor under an approved gap cover scheme, and assignment of a contributors’ Medicare benefits to a health fund under an approved gap cover scheme, will not be liable to any duty or charge under any State or Territory law, or any law of the Commonwealth that applies only to a Territory

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- health funds will be required to comply with a contributor's request to provide information to a medical practitioner, to enable or assist the medical practitioner to inform the patient about the expected costs of treatment covered by a gap cover scheme
- health funds will be required to comply with any request by the HIC for access to documents that relate to the payment of Medicare benefits to the fund under a gap cover scheme
- any person - including members of the public - will be able to access, on request, fund lists of hospitals, day hospital and medical practitioners with which a fund has contractual agreements
- the Department of Health and Ageing will be able to access copies of registered organisations' Hospital Purchaser Provider Agreements (HPPAs), Medical Purchaser Provider Agreements (MPPAs) and Practitioner Agreements (PAs) attached to its HPPAs, and
- responsibility for approval of billing agents will be transferred from the Private Health Administration Council to the HIC.

The Bill additionally introduces the following changes:

- the Minister for Health and Ageing will be able to determine that a scheme where - pursuant to a Certified Agreement or an Enterprise Agreement - an employer contributes directly towards the health care expenses of employees, is not an 'employee health benefits scheme' (and therefore not a 'health insurance business') under the *National Health Act 1953*, and
- health funds will be able to offer discounts to contributors where they pay three months or more in advance.

## Position of significant interest groups

While there has been little public comment in relation to this Bill, there has been significant comment on gap payments by a number of interest groups over the years. There continues to be some debate about the 'gap'. Health insurance funds and organisations representing the industry have claimed that doctors are not participating in the available gap coverage schemes or are using the schemes to push up the cost of their services. The medical profession have argued that the health fund gap cover arrangements place an undue administrative burden on doctors. The Australian Medical Association (AMA) has argued that insurance funds are using gap cover arrangements to compromise the independence of relationship between doctors and patients. Health care consumer groups, such the Consumers Health Forum of Australia, have generally been supportive of the introduction of gap cover arrangements.

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## Views of the Medical Profession

Although the AMA was supportive of the 2000 legislation, its praise for ‘no-gap’ products has waned over the past 2 years. Early in 2002 the Queensland branch of the AMA (AMAQ)<sup>6</sup> launched a *Say no to No Gaps* campaign, because of a concern that ‘no gap’ products represented a step towards managed care. An outline of the main debates about managed care is provided in *Prospects for Managed Health Care in Australia*,<sup>7</sup> a research paper published by the Parliamentary Library in June 2000. The introduction of managed care has long been a major concern for the AMA,<sup>8</sup> which has lobbied strongly against it. Although the clinical independence of medical practitioners is protected to an extent under current legislation,<sup>9</sup> the AMAQ has reported that some doctors have felt pressured by health funds to participate in no-gap schemes, and that there has been interference by health funds in the doctor-patient relationship.

## Views of the Insurance Industry

The private health insurance industry has strongly supported the introduction of gap cover arrangements, arguing that the growth of gap payments was one of the reasons for the decline in membership of private health insurance in Australia. As reported above the AMA has expressed concern with the introduction of no-gap schemes and the potential interference by health funds in the relationship between doctors and patients. Organisations representing the private health insurance industry have strongly denied that health funds are seeking to promote managed care.<sup>10</sup>

## Views of Consumer Organisations

Organisations such as the Consumers’ Health Forum and the Australian Consumers’ Association have been generally supportive of ‘gap cover’ insurance. However, they have expressed concerns at the difficulty that consumers have in accessing details of doctors who are participating in ‘gap cover’ schemes<sup>11</sup>. This Bill will, if passed, address some of these concerns, by requiring private health insurance funds to make details of doctors who are participating in ‘gap cover’ schemes accessible to any member of the fund or general public who requests such information.

## Main Provisions

**Item 1 of Schedule 1** introduces **proposed subsection 73BDB(d)** into the *National Health Act 1953*. This amendment provides that where, under a gap cover scheme of a registered organisation (*i.e.* health fund), either:

- the registered organisation pays a benefit to a medical practitioner; or

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- the Health Insurance Commission assigns a health fund contributor's Medicare benefit to a registered organisation, approved billing agent, hospital, day hospital or other person.

that payment or assignment is not liable to any duty or charge under State or Territory law, or any law of the Commonwealth that applies only to a Territory.

Under the current arrangements contractual gap agreements are not subject to such duties or charges, yet gap cover schemes are. The proposed amendment removes this apparent anomaly.

**Item 1 of Schedule 1** also introduces **proposed subsection 73BDB(2)** into the *National Health Act 1953*. This amendment provides that, for the purposes of section 73BDB, 'medical practitioner' has the same meaning as in subsection 73BDA(7), namely, that it includes accredited dental practitioners, dental practitioners in hospitals providing services for which Medicare benefits are payable, and people on whose behalf a medical practitioner or dental practitioner (as here defined) provide professional services. This amendment is apparently introduced to ensure consistency between gap cover schemes and contractual gap agreements.<sup>12</sup>

**Item 2 of Schedule 1** introduces **proposed paragraph (hba)** into **Schedule 1** of the *National Health Act 1953*. This amendment requires health funds to comply with a contributor's request to provide information to a medical practitioner, to enable or assist the medical practitioner to inform the patient about the expected costs of treatment covered by gap cover. The *Explanatory Memorandum* explains this change as follows:<sup>13</sup>

This amendment facilitates the provision of information by medical practitioners in accordance with subsection 73BDD(7) of the NHA which provides that the Minister must not approve a gap cover scheme unless the scheme provides for insured persons to be informed in writing, where appropriate, of any amounts that the person can reasonably be expected to pay for treatment. This amendment will ensure that health funds are obliged to provide information to assist the informed financial consent process under both contractual gap agreements and gap cover schemes.

**Item 3 of Schedule 1** introduces **proposed paragraph (o)** into **Schedule 1** of the *National Health Act 1953*. This amendment will oblige health funds to provide the HIC with access to documents relating to Medicare benefits paid under a gap cover scheme, when the HIC requests this. The *Explanatory Memorandum* states that this change 'will enable the HIC to access all necessary documents to audit the payment of Medicare benefits and ensure that public money has been properly directed'.<sup>14</sup>

**Item 4 of Schedule 1** amends **subsection 73ABC(1)**, to allow officers of the Department of Health and Ageing to access health fund contractual agreements with hospitals, day hospitals and medical practitioners (*i.e.* Medical Purchaser-Provider Agreements, Hospital Purchaser-Provider Agreements and Practitioner Agreements) The *Explanatory Memorandum* states this change 'will enable the Department to ensure that these

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agreements comply with legislative requirements imposed on such contracts, such as the provision of information on charges sufficient to allow patients to give properly informed financial consent to treatment.<sup>15</sup>

**Item 5 of Schedule 1** amends **subsection 73ABC(3)** of the *National Health Act 1953*, to require health funds to delete identification and pricing details from contractual agreements before providing them to the Department of Health and Ageing or to any other person. The amendment aims to protect the privacy of contracted parties. Protection already exists under the existing subsection 73ABC(3) of the *National Health Act 1953*. However, with the amendment contained in Item 4 of Schedule 1, discussed above, which gives departmental officers access to the contractual agreements entered into by health funds, this amendment ensures that those officers are not provided with information that would compromise the privacy of the parties to those contracts.

**Item 6 of Schedule 1** amends **paragraph (ha) of Schedule 1** of the *National Health Act 1953*. This amendment requires health funds to provide – to anyone who requests the information - up-to-date lists of hospitals, day hospitals and medical practitioners with which they have contractual agreements. The *Explanatory Memorandum* explains this amendment as follows:<sup>16</sup>

The information is required by the Department to allow comprehension of the situation in relation to contracting by health funds. This information is also valuable to people considering joining a health fund or transferring from one fund to another as the lists illustrate the success a health fund has had in contracting and its ability to offer benefits on a genuine no-or-known gap basis.

Arguably, this amendment is particularly important in light of a number of accusations that have been levelled at health funds by consumer groups and the AMA relating to the inaccuracy of information of this kind that has been made available by health funds. For example, the [AMA web site](#) claims that some of the lists provided by health funds of the names of doctors who are listed as participating in gap cover arrangements are out of date or wrong. This amendment aims to prevent this kind of situation arising, by imposing more rigorous public disclosure requirements on health funds in relation to this kind of information.

**Item 7 of Schedule 1** inserts **proposed paragraphs (haa) and (hab)** in **Schedule 1** of the *National Health Act 1953*.

**Proposed paragraph (haa)** obliges health funds to provide all new contributors, and (on request) all existing contributors, with ‘all details of the contributor’s entitlements to benefits.’ This change addresses the criticism, made particularly by consumer groups and the AMA, that it is difficult for contributors to understand exactly what they are entitled to under their private health insurance.

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**Proposed paragraph (hab)** obliges health funds to produce and maintain written and electronic records detailing all health insurance tables offered by the fund. This material must:

- be freely available to any person
- provide contact details for the Private Health Insurance Ombudsman
- indicate the date at which the information is correct
- be on display in writing at all of the health fund's offices and outlets, and
- be able to be accessed electronically.

This last requirement, that records must be accessible electronically, may provide difficulties for some of the smaller health funds, as some of them do not have existing web sites. This amendment apparently requires them to establish and maintain – and absorb the costs associated with establishing and maintaining – a mechanism (such as a web site) that will ensure electronic access to this information.

**Item 8 of Schedule 1** repeals subsection 67(7) of the *National Health Act 1953*. Currently, that subsection prevents the Minister from determining that a scheme where - pursuant to a Certified Agreement or an Enterprise Agreement - an employer contributes directly towards the health care expenses of employees, is not an 'employee health benefits scheme' (and therefore not a 'health insurance business') under the *National Health Act 1953*. The current restriction applies *only* in respect of employer contributions made under a Certified Agreement or an Enterprise Agreement (as defined in Part VIB of the *Industrial Relations Act 1988*). The Second Reading Speech describes the current restriction as 'an anachronism', the removal of which 'will be beneficial to contributors and to private health insurance generally.'<sup>17</sup> Somewhat more explanation of this change is offered in the *Explanatory Memorandum*.<sup>18</sup>

The intention [of the current regulatory scheme in respect of employee health benefit schemes, which has been in place since October 1995] is to ensure that unregistered health schemes do not infringe the regulatory requirements applying to registered health funds, and in particular do not undermine the principle of community rating.

Many employers who contribute directly towards the health expenses incurred by their employees have sought a determination [that their 'top up' scheme is not an employee health benefits scheme, and therefore not a 'health insurance business'] under subsection 67(4) of the Act. However, subsection 67(7) of the Act ...[prevents this where] the 'top up' scheme is the subject of an agreement to which Part VIB of the *Industrial Relations Act 1988* applies....

The proposed amendment will remove this unnecessary restriction on the ability of the Minister to approve 'top up' schemes.

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**Item 9 of Schedule 1** amends **subparagraph (s)(i) of Schedule 1** of the *National Health Act 1953* to allow health funds to offer discounts where contributors pay three months in advance. Currently this is only permitted where contributors pay six months or more in advance.

**Items 1 to 7 of Schedule 2** amend the *Health Insurance Act 1973* to delete references to the Private Health Insurance Administration Council (PHIAC) and replace them with references to the Health Insurance Commission (HIC). The effect of this is to transfer all responsibility for the monitoring and regulation of billing agents from PHIAC to the HIC.

Billing agents act as an agent for the patient in receiving doctors' bills, making claims from health funds, making claims from HIC, and sending a final summarised account to patients detailing any out-of-pocket payments required. Currently PHIAC is the approving authority for billing agents. Any organisation wishing to set up as a billing agency must apply to PHIAC and comply with applicable guidelines and conditions. Under current arrangements, however, the responsibility for approving and monitoring billing agencies is split between PHIAC and the HIC, a state of affairs which arguably 'may be an impediment to fraud detection.'<sup>19</sup> The Explanatory Memorandum states that this amendment will 'remove a layer of regulation for billing agents; improve efficiency; and eradicate the risk of error in data transfer between agencies.'<sup>20</sup>

**Item 8 of Schedule 2** puts in place transitional provisions in relation to the transfer from PHIAC to the HIC of responsibilities in relation to the approval and monitoring of billing agents. These transitional provisions enable PHIAC to finalise consideration of applications for approval as a billing agent, or revoke an approval as a billing agent, provided the applications and/or considerations have been submitted to or undertaken by PHIAC before the amendments made by **Items 1 – 7 of Schedule 2** commence.

## Endnotes

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- 1 Senator Ian Campbell, Health Legislation Amendment (Private Health Industry Measures) Bill 2002, *Second Reading Speech*, Senate, 21 March 2002, 1205.
- 2 Department of Health and Ageing, what is the 'gap'? <http://www.health.gov.au/privatehealth/gapsfaq/whatgap.htm>, (accessed Monday 13 May 2002.)
- 3 [Health Legislation \(Private Health Insurance Reform\) Amendment Act 1994](#).
- 4 Senator Ian Campbell, Health Legislation Amendment (Private Health Industry Measures) Bill 2002, *Second Reading Speech*, Senate, 21 March 2002, 1250.
- 5 Senator Ian Campbell, Health Legislation Amendment (Private Health Industry Measures) Bill 2002, *Second Reading Speech*, Senate, 21 March 2002.

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- 6 The web site of the Queensland branch of the Australian Medical Association can be accessed at: <http://www.amaq.com.au/main.htm>.
- 7 The Parliamentary Library publication, *Prospects for Managed Care in Australia* is available from the Department of the Parliamentary Library or accessible at the following web site: <http://www.aph.gov.au/library/pubs/rp/1999-2000/2000rp25.htm>
- 8 The AMA has some information regarding its position on managed care on its web site, at: <http://www.ama.com.au>. The Parliamentary Library paper [Prospects for Managed Care in Australia](#) provides a summary of the positions of various key players.
- 9 *National Health Act 1953*, s. 73BDA (2)(d)),
- 10 The Australian Health Insurance Association has been most outspoken on this issue, with spokesperson Russell Schneider making numerous statements on this topic over the years. For instance a media release dated Wednesday 5 July 2000 available from the AHIA web site at: <http://www.ahia.org.au>.
- 11 The Consumers' Health Forum of Australia outlines its approach to gap cover in its submission [Health Legislation Amendment \(Gap Cover Schemes\) Bill 2000](#). The Australian Consumers' Association provides extensive consumer information on private health insurance and outlines their approach to 'gap cover' arrangements at their [web site](#).
- 12 See *Explanatory Memorandum*, p. 3.
- 13 *ibid.*, pp. 3–4.
- 14 *ibid.*, p. 4.
- 15 *ibid.*, p. 4.
- 16 *ibid.*, p. 4.
- 17 Senator Ian Campbell, Health Legislation Amendment (Private Health Industry Measures) Bill 2002, [Second Reading Speech](#), Senate, 21 March 2002, 1250.
- 18 *op. cit.* p. 2.
- 19 *ibid.*, p. 5.
- 20 *ibid.*, p. 5.

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