



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 162 2002–03

Health Care (Appropriation) Amendment Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 162 2002–03

Health Care (Appropriation) Amendment Bill 2003

Amanda Elliot and Nathan Hancock
Social Policy and the Law and Bills Digest Groups
27 May 2003

Contents

Background	1
Medicare Agreements (1984 - 1998)	1
Health Care Agreements (1998-2003)	2
Negotiations	2
The Legislation	2
Flexibility	3
Finance	4
Health Care Agreements (2003-2008)	4
Negotiations	4
Finance	5
Main Provisions	7
Concluding Comments	8
Endnotes	9

Health Care (Appropriation) Amendment Bill 2003

Date Introduced: 14 May 2003

House: Representatives

Portfolio: Health and Ageing

Commencement: Royal Assent

Purpose

To amend the *Health Care (Appropriation) Act 1998* to:

- extend the period of operation of the Act for a second five year period
- To appropriate \$42 010 000 000 to make a Commonwealth contribution over five years to the cost of hospitals emergency services during the 5 year period
- Alter the Act so that the definitions in the Act are consistent with the *Health Insurance Act 1973*, and
- Empower the Minister to delegate to an SES employee in the Department of Health and Ageing the power to make certain funding decisions about programs and projects to States, hospitals or other persons.

Background

Medicare Agreements (1984 - 1998)

Free, universal access to public hospital services is one of the central principles of Medicare. Although public hospitals are primarily the responsibility of the States and Territories, under Medicare, the Commonwealth makes a substantial financial contribution to them. With the introduction of Medicare in 1984 Commonwealth support for public hospitals was provided under Medicare Agreements. The last series of Medicare Agreements were negotiated in 1993 pursuant to the *Health Insurance Act 1973*. At the time section 24 allowed the Commonwealth and States to make agreements with respect to 'public hospital services' and 'other health services', subject to certain standard 'heads of agreement' listed in Schedule 2A of the Act.¹

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The last Medicare Agreement expired on 30 June 1998, at which time the Commonwealth sought to negotiate new Agreements with the States and Territories. These new Agreements were renamed the Australian Health Care Agreements, which are discussed below. It is significant to note that the negotiations leading up to the last Medicare Agreement were marked by a dispute over the role of private health insurance and a requirement in the 'heads of agreement' for States to commit to the Medicare Principles.²

Health Care Agreements (1998-2003)

Commonwealth support for public hospitals is now given under the *Health Care (Appropriation) Act 1998* (the 1998 Act). These arrangements expire on 30 June 2003.

Negotiations

The 1998 Bill was introduced 'against a background of stalled negotiations between the Commonwealth and most States over a replacement for [existing] Medicare Agreements'.³

The Commonwealth had proposed the negotiation of Australian Health Care Agreements (AHCAs) with each of the States involving a 'very generous increase of 15 per cent, in real terms, in health funding to the States over the next five years [to 30 June 1998]'.⁴ But, negotiations were marked by disputes with some States over the quantum of funding.

The Legislation

In the end, the 1998 Act allowed a \$29bn appropriation over five years 'to make a Commonwealth contribution ... to the cost of health and emergency services that are currently or were historically provided by hospitals in the States and Territories'.⁵

Specifically, it provided for grants to States or to hospitals or 'other persons' in relation to:⁶

- the provision of hospital based health and emergency services, or
- projects or programs to improve the efficiency and effectiveness of, the demand for, or patient outcomes in relation to such health and emergency services.

In general, it gave the Minister the discretion to determine:

- the amount of a grant
- the method for payment of a grant, and
- the times for payment of a grant.

Payments to States were given under the auspices of 'specific purpose payments' under section 96 of the Constitution. Section 96 provides that the Commonwealth Parliament may grant financial assistance to any State on such terms and conditions as it sees fit.

Grants to States were subject to conditions specified in any AHCAs.⁷

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Such grants required that a State adhered to certain Health Care Agreement Principles:⁸

- public hospitals services must be provided free of charge to public patients
- access to public hospital services must be provided on the basis of clinical need and within a clinically appropriate period to public patients, and
- people should have equitable access to public hospital services regardless of their geographical location.

These principles largely reproduced the principles applying under Medicare Agreements. However, as the original Bills Digest noted, *Principle 3* created an '*unambiguous* requirement ... to ensure the provision of equitable access to public hospital services, regardless of a person's geographic location'.⁹ Failure to provide equitable access was not merely an aspiration but a precondition for payment under the grant arrangement.

The original Bills Digest noted that the power to issue grants to hospitals and 'other persons' was a 'considerable departure from traditional and current arrangements'.¹⁰

Further details of the 1998 Act are included in [Bills Digest No. 225 1997-98](#).

Flexibility

The 1998 Bill provided the basis for the Commonwealth's financial contribution to public hospitals and was notable for its flexibility. The Bills Digest made the following comment:

For example, where an agreement is not in place between the Commonwealth and a State, the Bill provides the Minister for Health and Family Services with considerable discretion over the conditions under which grants of financial assistance are made for public hospital services. The Bill provides also that payments of financial assistance may be made to entities other than a State, including a hospital or 'other person', which is a considerable departure from traditional and current arrangements.¹¹

Essentially, the 1998 Act moved from a framework of funding direct to the States, governed by the *Health Insurance Act 1973* and the Medicare Principles, to a dual framework of direct and indirect funding, governed by ministerial discretion and AHCAs:

The current Medicare Agreements and the proposed Australian Health Care Agreements detail the roles and responsibilities of each level of government in the funding and provision of public hospital services. The Bill will make funds available and provides the Minister for Health and Family Services with considerable discretion to establish, via determinations, the conditions under which financial assistance may be provided and the amount, frequency and method of payment. However, it can be argued that this falls short of a negotiated, agreed document which commits both levels of government to particular courses of action over the five year period. It is possible also that different conditions may be determined for different jurisdictions.¹²

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Finance

In financial terms the 1998 Act contained two basic features:

- (a) a five year appropriation from 1 July 1998 to 30 June 2003,¹³ and
- (b) a global financial limit of \$31.8bn.¹⁴

As noted above, the present AHCAs run for five year periods, expiring on 30 June 2003. The next round of AHCAs would commence on 1 July 2003 and expire on 30 June 2008. At the end of each 5 year appropriation, the 1998 Act must be amended in order to ensure continued funding. The present Bill is designed to provide for the next round of AHCAs.

Health Care Agreements (2003-2008)

The present Bill has been introduced into an environment in which the States, Territories and Commonwealth are again at loggerheads over their contribution to health care funding in Australia, the reasons for this are explored more broadly below. Essentially, the negotiation of the 2003-08 AHCAs between the Commonwealth and States and Territories has stalled and there are no new agreements to take over from the current agreements.

Negotiations

Discussions about the 2003-08 Agreements have been taking place for some time. In April 2002 the Australian Health Ministers jointly announced that the new agreements would be negotiated on the basis of the following objectives:

- Commonwealth/State relations in the health arena should focus on the provision of optimal care and health outcomes, regardless of jurisdictional boundaries.
- It is in the best interests of all Australians for the Commonwealth, States and Territories to work co-operatively to improve the health and wellbeing of the community and the way in which health services are provided.

It was proposed by the Australian Health Ministers that the 2003-08 AHCAs should 'contain the principles, objectives and proposed health outcomes designed to achieve those objectives'.¹⁵ In order to promote this outcome, nine reference groups were established, each designed to consider a specific area of health policy and, after such consideration provide recommendations and advice that would help inform the development of the 2003-08 AHCAs. The nine reference groups addressed the following policy areas:

- Interaction between hospital funding and private health insurance
- Improving rural health
- Interface between aged and acute care

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- Continuum between preventative, primary, chronic and acute models of care
- Improving indigenous health
- Improving mental health
- Information technology, research and e-health
- Quality and safety
- Collaboration on workforce, training and education

Each reference group was co-chaired by a non-government clinical expert in that specific policy area and a senior government health official. Membership of each reference group was selected by the co-chairs on the basis of expertise. Each reference group had a sponsoring Minister.¹⁶

The development of the reference group and the involvement of clinicians in the development of the next ACHAs was a significant shift from the usual process. Arguably, it is surprising that clinicians have never played a formal role in previous Agreements. Despite being ostensibly about health, the AHCAs and their predecessors the Medicare Agreements have been primarily about health financing and have had little to do with health outcomes, consequently health care providers have had little involvement in their negotiations.¹⁷

At the time of the announcement there was wide spread optimism amongst health care professionals about the possibilities and potential that such participation could bring with it. Numerous papers were published in leading medical and health policy journals arguing that even if the stated aims of the Australian Health Ministers were only partially realised, there would be a substantial change in the relationship between health care and health care financing in Australia.¹⁸

The stalling of the negotiations of the next AHCAs has meant that this initial optimism has given way to a much more pessimistic view. Some commentators have argued that the breakdown in negotiations has little to do with rigorous debate about how to achieve the best health outcomes for the Australian people and centres almost entirely on health care financing.¹⁹ Focusing around a number of claims and counterclaims about the status of the Commonwealths and States and Territories respective financial contributions to public hospitals the negotiations of the next AHCAs echo previous negotiations in that any discussion about the impact such significant amounts of money is likely to have on the actual health status of the Australian population seems to be, strangely, absent.

Finance

The Commonwealth has proposed, what it argues, is a 17 per cent real increase in funding, lifting its contribution to public hospital funding from \$32 billion to \$42 billion.²⁰ The States and Territories have rejected this offer, claiming that there has been a decrease of

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

approximately \$1 billion dollars over the five year period the Agreement is supposed to cover.²¹

According to the Department of Health and Ageing Portfolio Budget Statement this decrease in previous estimates is due to a:

greater proportion of public hospital services provided to non-admitted patients and a reduction in public hospital usage growth beyond growth resulting from demographic changes. This change in usage growth reflects in part the fact that more services are being provided in private hospitals following the introduction of the Government's 30 per cent Private Health Insurance Rebate and Lifetime Health Cover.²²

The savings are to be made over the life of the next Agreements with the following table providing details of the \$918.5 million in savings:

2003-04	2004-05	2005-06	2006-07
-108.9	-172.0	-264.6	-372.9

In what is becoming an increasingly predictable debate the States and Territories have countered this argument by restating their claim that public hospital waiting lists have not substantially decreased since the introduction of the Commonwealths private health insurance incentives, nor has there been a significant change in the number of admissions in public hospitals (although private hospital admissions have increased substantially).²³ Moreover, the States and Territories argue that the decline in bulk billing has seen a rise in the pressure on emergency departments of public hospitals and that the Commonwealth has failed to take into account issues associated with the ageing of the population.²⁴

According to data published by the Australian Institute of Health and Welfare (AIHW), the States and Territories have been falling behind in the amount they contribute to public hospitals out of their own resources when compared to the Commonwealth. In their most recent Health Expenditure publication, the AIHW points out that the State and Territory share of public hospital funding has fallen from 45.4 per cent in 1998-99 (the first year of the current ACHAs) to 43.4 per cent in 2000-01. Conversely, the Commonwealths contribution to public hospital funding has remained relatively stable over the same period (48.2 per cent in 1998-99 and 48.1 per cent in 2000-01), although it had increased from 45.2 per cent in 1997-98.²⁵

The Commonwealth has made clear that the \$42 billion it has offered the States and Territories is the maximum amount that will be offered under any new AHCA.²⁶ The Department of Health and Ageing Portfolio Budget Statement 2003-04 provides further details of the other conditions that the States and Territories must agree to, these include:

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- declare the level of funding which they intend to provide for public hospitals;
- adhere to the Medicare principles to provide free public hospital services; and
- an improved performance reporting framework.

The Portfolio Budget Statement goes on to state that:

States that meet these conditions and match the Commonwealth's funding growth rate will receive 100 per cent of the funds available for that State. States that meet the conditions outlined above but fall short of matching the Commonwealth's growth rate, will receive 96 per cent of the maximum available funding to that State.²⁷

The States and Territories have thus far refused to sign up to any new Agreement, arguing that public hospitals need a much higher injection of funding.

Refusal to sign up to a new Agreement does not mean that the funding runs out, any jurisdiction that does not sign on to a new Agreement would receive the same level of funding set out in the 1998-2000 Agreement. However, failure to pass this Bill will mean that the Commonwealth's financial contribution to public hospitals in all States and Territories will cease as of 1 July 2003, the date that the current legislation ceases to have effect.

Main Provisions

The gist of the proposed amendments is that there will now be 2 appropriation periods:

- (a) a five year appropriation from 1 July 1998 to 30 June 2003, and
- (b) a five year appropriation from 1 July 2003 to 30 June 2008 (**items 1, 2 and 4**).

The proposed financial limit for the second appropriation period is \$42.01bn (**item 5**).

Effectively, there are two appropriations with separate terms relating to the financial limit (**item 5**), parliamentary reporting times (**items 6 and 7**) and grant conditions (**item 8**).

Item 9 proposes **new section 7** that would permit the Minister to delegate, subject to ministerial directions, certain functions to a Departmental officer at SES level:

- the funding of 'projects or programs ... ', and
- the terms and conditions of grants in relation to such 'projects or programs ... '.

The Explanatory Memorandum explains that the estimated amount of the grants covered under section 4(1)(b) are \$359.8 million over the five years from 2003-2008.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Included within these grants are:

- Pathways Home Program
- Mental health
- Palliative Care, and
- Hospital Information and Performance Information Program.

Concluding Comments

The Commonwealth draws on three separate heads of power as Constitutional authority for the Bill. The relevant sections of the Constitution are sections 51(xxiiiA), 81 and 96. This Bill does not appropriate funds for the ordinary annual services of the Commonwealth and, therefore, it may be amended by the Parliament as long as the amendment does not entail a further appropriation of money. If the amendment involves increased appropriations, section 53 of the Constitution requires that it be communicated as a request to the House rather than as an amendment passed by the Senate itself. As with other appropriation bills, the appropriation of funds under this Bill means only that the funds are available to be spent, not that they must be spent.

Due to the failure of negotiations between the Commonwealth and the States and Territories over the proposed Australian Health Care Agreements, some uncertainty exists as to how the funding and provision of public hospital services will proceed during the five years from 1 July 2003. The early optimism of clinicians about the next AHCAs refocusing on improved health outcomes has given way to the reality of the continued focus on health care financing.

The current AHCAs detail the roles and responsibilities of each level of government in the funding and provision of public hospital services. The Bill will make funds available and provides the Minister for Health and Ageing with considerable discretion to establish, via determinations, the conditions under which financial assistance may be provided and the amount, frequency and method of payment. However, it can be argued that this falls short of a negotiated, agreed document which commits both levels of government to particular courses of action over the five year period.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Endnotes

- 1 Previous agreements were made pursuant to (repealed) section 24F of the *Health Insurance Act 1973*.
- 2 Bills Digest Service, Medicare Agreement Bill 1992, [Bills Digest 1993](#).
- 3 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 4 'Transcript of the Prime Minister the Hon John Howard MP Press Conference, Prime Minister's Courtyard, Parliament House', Press Release, Prime Minister, 20 March 1998, cited in Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 5 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 6 *Health Care (Appropriation) Act 1998*, paragraph 4(1)(b).
- 7 *Health Care (Appropriation) Act 1998*, paragraph 5(2)(a).
- 8 *Health Care (Appropriation) Act 1998*, section 6.
- 9 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 10 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 11 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 12 Paul Mackey, *Health Care (Appropriation) Bill 1998*, [Bills Digest No. 225 1997-98](#).
- 13 *Health Care (Appropriation) Act 1998*, subsection 4(2).
- 14 *Health Care (Appropriation) Act 1998*, subsection 4(3).
- 15 AHCA Reference Group Report, 2.
- 16 Details about membership and sponsoring Ministers as well as the final report of the [ACHA Reference Group Report](#) are available at <http://www.health.gov.au/haf/ahca.htm>
- 17 John P Paterson, Australian Health care Agreements 2003-08: a new dawn? *MJA*, 177, 313-315.
- 18 Michael A Reid, Reform of the Australian Health Care Agreements: progress or political ploy? *MJA*, 177: 310-312.
- 19 Peter Sainsbury, '[Umm... now, about the crisis in the Australian health care system](#)', *Online Opinion*, 22 April 2003.
- 20 Explanatory Memorandum Health Care (Appropriation) Bill 1998.
- 21 Paul Strick, Worth Wades in as Minister loses way, *The Advertiser*, Mon 5 May 2003. Indeed the West Australian government is apparently so concerned with the supposed decrease in funding on Monday 5 May it took out a full page advertisement in the West Australian encouraging West Australians to write, phone or fax the Prime Minister about their concerns with public hospital funding.
- 22 Department of Health and Ageing, [Portfolio Budget Statement 2003-04](#), page 106.
- 23 AIHW, [Hospital Statistics, 2000-01](#).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 24 A general overview of Medicare can be found on the Parliamentary Library e-brief [Medicare - Background Brief](#). A more detailed discussion of the decline in bulk billing can be found in the Parliamentary Library publication [The Decline in Bulk Billing: Explanations and Implications](#). Also available is a short publication responding to the debate about the universality of [Medicare: Is Medicare Universal?](#)
- 25 AIHW, [Health Expenditure Australia 2000 - 01](#).
- 26 Australian Health Care Agreements 2003-2008, Press Release, Prime Minister 23 April 2003.
- 27 Department of Health and Ageing, [Portfolio Budget Statement 2003-04](#), page 99.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.