



This Digest replaces an earlier version dated 5 June 2009, amending statements on pages 4 & 8 specifying the range of assisted reproductive technology items that are proposed to be capped through a legislative instrument.

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009

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Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009

Date introduced: 28 May 2009

House: House of Representatives

Portfolio: Health and Ageing

Commencement: 1 January 2010

Links: The *relevant links* to the [Bill](#), [Explanatory Memorandum](#) and [second reading speech](#) can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of this Bill is to amend the *Health Insurance Act 1973* (HIA 1973) to allow the Minister for Health and Ageing to make determinations, by legislative instrument, that will specify the maximum benefit payable under the Extended Medicare Safety Net (EMSN) for certain items listed on the Medicare Benefits Schedule (MBS).

Background

The Extended Medicare Safety Net (EMSN) is intended to protect patients from high out-of-pocket medical costs for out-of-hospital medical services, such as GP and specialist attendances. In 2008 expenditure on the EMSN was \$414 million.¹

The current safety net arrangements actually comprise two safety nets. The original Medicare safety net was introduced at the same time Medicare commenced in 1984. It covers the difference between the Medicare benefit and the schedule fee for out-of-hospital services once expenditure on 'gap expenses' reach \$383.90. After qualifying for the safety net, the Medicare benefit increases to 100 per cent of the schedule fee, rather than the usual 85 per cent.

1 N Roxon, 'Second reading speech: Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009', House of Representatives, *Debates*, 28 May 2009, p. 8, viewed 2 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-05-28%2F0025%22>

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The EMSN was introduced by the former Howard Government in 2004 as part of the ‘Medicare Plus’ reforms, to tackle high out-of-pocket costs for medical services.² The then Labor Opposition opposed its introduction.³ Under the EMSN patients are reimbursed 80 per cent of their out-of-pocket costs for all out-of-hospital Medicare services, once annual personal expenditure on these reaches a certain threshold (indexed annually). The expenditure thresholds are currently set at: \$555.70 for families in receipt of the Family Tax Benefit Part A (FTB (A)) and concession card holders, and \$1111.60 for all others. The proposed measures contained in this Bill only affect the EMSN and do not affect other arrangements such as those under the original Medicare safety net (or benefits for dental items provided to patients with chronic conditions that are also subject to a ‘cap’).

While EMSN payments have provided many with financial relief from significant out-of-pocket medical costs, a recent review of the EMSN, commissioned by the Government, cites evidence that those in greatest financial need may be missing out on its benefits, while some doctors have been charging excessive fees.⁴ The review found that for every EMSN benefit dollar that is paid to a patient, 78 cents went towards meeting the doctors’ higher fees, rather than reducing patients out-of-pocket costs. Further, those who have benefited most from more affordable services, have tended to be wealthier as they are in a better position to be able to access more expensive specialist services in the first place.⁵

Concerns over the cost of the safety net and the charging of excessive fees by some doctors have been raised previously.⁶ In 2005, prompted by concerns over the increasing

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- 2 T Abbott (Minister for Health and Ageing), *MedicarePlus*, media release, 10 March 2004, viewed 2 June 2009, <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2004-ta-abb026.htm?OpenDocument&yr=2004&mth=3>
 - 3 J Gillard (Shadow Minister for Health), *Transcript of doorstep: Parliament House 11 March 2004: Medicare minus deal in the Senate*, media release, 11 March 2004, Parliament House, Canberra, viewed 3 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FIKW6%22>
 - 4 Centre for Health Economics Research and Evaluation (CHERE), *Extended Medicare safety net: review report 2009: a report by the Centre for Health Economics Research and Evaluation*, report prepared for the Department of Health and Ageing, University of Technology Sydney, Sydney, 2009, p. vi, viewed 2 June 2009, [http://www.health.gov.au/internet/main/publishing.nsf/Content/Review_%20Extended_Medicare_Safety_Net/\\$File/ExtendedMedicareSafetyNetReview.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/Review_%20Extended_Medicare_Safety_Net/$File/ExtendedMedicareSafetyNetReview.pdf)
 - 5 CHERE, *Extended Medicare safety net: review report 2009*, pp. vi-vii.
 - 6 A Pratt and L Buckmaster, ‘The health budget: a framework for sustainability?’, *Implications: Budget 2005–06*, Parliamentary Library, Canberra, June 2005, viewed 2 June 2009, http://libiis1/Library_Services/Implications/2005-06/HealthBudget.htm; see also M Metherell, ‘Net loss for the sick’ *Sydney morning herald*, 16 April 2005, p. 35, viewed 2 June 2009,

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cost of the EMSN the Howard government raised the safety net expenditure thresholds so as to reduce the numbers of people who would qualify for the EMSN and rein in costs.⁷

The Bill proposes amendments that will allow the Minister to specify through legislative instrument that certain Medicare items have their EMSN benefit ‘capped’ to a specified amount. The items to be capped and the level of the EMSN benefit cap will be established by legislative instrument, allowing it to be subject to Parliamentary scrutiny. A draft Ministerial determination and explanatory statement outlining details of the items the Government proposes be capped was tabled by the Minister at the time the Bill was introduced.⁸ According to this draft, items to be capped include: all obstetric services (items 16400–16636) including a number of diagnostic imaging (ultrasound) services, some Assisted Reproductive Technology services (items 13200–13251), the item for cataract surgery (items 42702), the item for hair transplantation (item 45560), an item for varicose vein surgery (item 32500) and the item for the injection of a therapeutic substance into an eye (item 42740).

The Government argues the measures proposed in this Bill will support the ‘long term sustainability’ of the EMSN and create a mechanism whereby expenditure on the EMSN can be managed ‘responsibly’. Savings of more than \$450 million over four years are anticipated to be generated by the implementation of this measure.⁹

Basis of policy commitment

The measures proposed in this Bill were announced in a media release by the Minister for Health and Ageing, Nicola Roxon, as part of the 2009–10 Budget.¹⁰

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F5WQF6%22>

- 7 The original thresholds were set lower: \$300 for concession card holders and FTB(A) recipients and \$700 for all others but were increased to \$500 and \$1000 in 2005. T Abbott, *Budget 2005–06: Health budget responsible and sustainable*, press release, 10 May 2005, viewed 2 June 2009, <http://www.health.gov.au/internet/budget/publishing.nsf/Content/health-budget2005-hbudget-hmedia01.htm>
- 8 Health Insurance (Extended Medicare Safety Net) Determination 2009 (Draft). See also accompanying Explanatory Statement from the Minister.
- 9 N Roxon, (Minister for Health and Ageing) *A sustainable Medicare safety net*, media release, 12 May 2009, viewed 2 June 2009, <http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2009-hmedia12.htm>; also N Roxon, ‘Second reading speech’.
- 10 N Roxon, *A sustainable Medicare safety net*.

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Committee consideration

The Bill has not been referred to Committee.

Position of significant interest groups/press commentary

There has been little commentary on the main thrust of this Bill, which proposes to empower the Minister to cap benefits through the mechanism of a legislative instrument. Most of the commentary around this Bill has largely focused on the general proposal to 'cap' EMSN benefits, and the merits, or otherwise, of capping specific Medicare items. There would, presumably, be further scope to debate the merits of specific 'caps' when, and if, a motion to disallow a particular instrument is moved.

Some groups have reacted positively to the proposed changes to the EMSN. The Australian Healthcare & Hospitals Association's Prue Power welcomed the reform of the safety net because it will 'target benefits more directly to those in need' and 'reduce' manipulation of the safety net by private medical providers.¹¹ Robert Wells, an academic from the ANU argued the changes will address 'some of the outrageous rorts' under the current safety net.¹²

Others are worried the measure will undermine the affordability of certain services. Dr Andrew Pesce from the national body representing obstetricians and gynaecologists (and President-elect of the Australian Medical Association) has expressed concern that capping the EMSN will significantly affect the affordability of private obstetric services. If women can no longer afford private obstetric care, he argues, they will be forced back into the public hospital system, which is already 'overwhelmed and barely coping'. Dr Pesce has also criticised the review of the EMSN, upon which the Government based many of its assumptions, as flawed.¹³ The proposed changes affecting assisted reproductive technology (ART) services prompted AMA President, Dr Rosanna Capolingua, to express concern that assisted reproductive services may become unaffordable, except for the 'most

11 P Power (Executive Director AHHA), *Mixed fortunes for hospitals*, media release, Canberra, 12 May 2009.

12 R Wells (Director Australian Primary Health Care Research Institute and the Menzies Centre for Health Policy), *Policy expert welcomes health reform*, media release, Canberra, 13 May 2009.

13 A Pesce (National Association of Specialist Obstetricians and Gynaecologists), *Obstetric safety net: women lose out from the Budget*, media release, 12 May 2009.

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well off'.¹⁴ One IVF practitioner estimates that out-of-pocket expenses for an IVF cycle will rise from \$1600 up to \$3500 as a consequence.¹⁵

Another specialist, varicose vein expert Professor Ken Myers has expressed concern that the cap would add several hundred dollars to the out-of-pocket cost for varicose vein treatment, making it less affordable for pensioners.¹⁶

Opposition/Greens/Family First policy position/commitments

Some Opposition members have argued that the proposed capping of safety net benefits amounts to a 'broken promise'.¹⁷ However, the Opposition has not explicitly indicated that it will oppose this measure.¹⁸

No specific statements on this proposal from the Greens or the Independent Senators have been identified.

Financial implications

Budget Paper no. 2 outlined the savings expected to be realised from the introduction of this measure; details consistent with these savings were also provided in the Explanatory Memorandum.¹⁹

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- 14 R Capolingua, (Australian Medical Association), *This is no health budget for a recession*, media release, Canberra, 12 May 2009.
- 15 N Miller, 'Mothers hit by \$550 birth hike' *The age*, 14 May 2009, p. 1, viewed 2 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1WJT6%22>
- 16 N Miller, 'Safety net taps vein for extra expense', *The age*, 15 May 2009, p. 4, viewed 2 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FUAKT6%22>
- 17 S Ley (Shadow Minister for Justice and Customs), *Insurance cut an unhealthy blow for Australians*, media release, 14 May 2009, viewed 2 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F46MT6%22>
- 18 The Opposition has announced it will oppose one health measure from the 2009–10 Budget—the changes to the private health insurance rebate. M Turnbull (Opposition Leader), 'Second reading speech: Appropriation Bill (no. 1) 2009' House of Representatives, *Debates*, 14 May 2009, p. 81, viewed 2 June 2009, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-05-14%2F0177%22>

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The Government is also proposing to increase the schedule fee for 15 obstetric items from 1 January 2010, estimated to cost \$157.6 million over four years. Savings to be generated as a result of the provisions proposed in this Bill are estimated to be \$451.6 million over four years. Net savings of \$193.7 million over four years will be realised from the capping of the obstetric items, and savings of \$257.9 million are estimated from the capping of EMSN benefits for the other Medicare items.

Main provisions

Schedule 1—Amendments to the *Health Insurance Act 1973*

Item 1 proposes 2 new sections be inserted after subsection 10ACA(7) of the HIA 1973, which deals with the application of the safety net to families. **Proposed subsection 10ACA(7A)** provides that for Medicare items specified under **proposed section 10B** of the HIA 1973, the EMSN benefit should not exceed the EMSN benefit cap. **Proposed subsection 10ACA(7B)** outlines the method to be used for determining which EMSN benefit cap will apply where two or more pathology services are treated as if they were a single service. This allows for a patient to receive the higher cap benefit where 2 pathology services are treated as one service and both services are capped at different amounts.

Item 2 proposes to insert 2 new sections after section 10ADA(8) of the HIA 1973, which deals with the application of the safety net to individuals. **Proposed subsections 10ADA(8A)** and **(8B)** will have the same effect as the proposed sections that apply to families, as set out at **item 1**.

Item 3 proposes **new section 10B** be inserted after section 10A of the HIA 1973 and is essentially the central operative provision of the proposed amendments. **Proposed section 10B** will allow the Minister firstly, to determine by legislative instrument what MBS items will have a cap benefit applied and secondly, the amount of the cap benefit for each of the items. The instrument will be a disallowable instrument and subject to parliamentary scrutiny.²⁰

Item 4 proposes that the proposed EMSN benefit cap arrangements will only apply to services rendered after the commencement of the Act, which is January 2010.

19 Explanatory Memorandum, Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009, p. 2.

20 N Roxon, 'Second reading speech'.

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Concluding comments

The provisions proposed in this Bill will allow the Minister to determine through ministerial instrument that certain Medicare items can have their safety net benefits ‘capped’. A draft determination indicates that obstetric and ART services, a treatment for varicose veins, cataract surgery, hair transplantation surgery and the injection of a therapeutic substance into the eye will have their benefits capped.

The Government intends that the proposed changes will make the safety net more sustainable into the future and result in some significant savings. But others argue that the changes will result in patients paying more for certain services. The extent to which this occurs could be assessed by a regular review of the proposed arrangements.

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