**HEALTH INSURANCE ACT 1975**

No. 58 of 1975

An Act to amend the Health Insurance Act 1973.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

**Short title and citation.**

**1.** (1) This Act may be cited as the Health Insurance Act 1975.

(2) The Health Insurance Act 1973 is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Health Insurance Act 1973-1975.

**Commencement.**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation.**

**3.** Section 3 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the definition of “nursing care”, the following definition:—

“‘optometrist’ means a person registered or licensed as an optometrist or optician under a law of a State or an internal Territory that provides for the registration or licensing of optometrists or opticians;”;

(b) by inserting in sub-section (1), after the definition of “outpatient service”, the following definition:—

“‘participating optometrist’ means an optometrist, or other person, in respect of whom there is in force an undertaking given by him and accepted by the Minister under section 23b;”;

(c) by omitting from sub-section (1) the definition of “professional service” and substituting the following definition:—

“‘professional service’ means—

(a) a medical service to which an item relates, being a service that is rendered by or on behalf of a medical practitioner;

(b) a prescribed medical service to which an item relates, being a service that is rendered in an operating theatre of a hospital by a dental practitioner approved by the Minister for the purposes of this definition; or

(c) a service specified in an item that is expressed to relate to a professional attendance by a participating optometrist, being a service that is rendered by an optometrist, being a participating optometrist or an optometrist acting on behalf of a participating optometrist;

(d) by omitting from sub-section (4) the words “A reference” and substituting the words “Subject to sub-section (4a), a reference”; and

(e) by inserting after sub-section (4) the following sub-section:—

“(4a) A reference in this Act to a professional attendance by a participating optometrist shall be read as a reference to an attendance by an optometrist, being a participating optometrist or an optometrist acting on behalf of a participating optometrist, on a patient at which the attending optometrist in the course of the practice of his profession, provides a service of a kind to which the undertaking of the participating optometrist under section 23b relates but as not including a reference to an attendance at premises owned by, or in the possession of, a participating optometrist that are not covered by the undertaking of the participating optometrist under section 23b.”.

**Agreement for reciprocal treatment of visitors to Australia and other countries.**

**4.** Section 7 of the Principal Act is amended by omitting from sub-section (1) the words “medical and hospital care” and substituting the words “medical, hospital and other care”.

**Increased fee in complex cases.**

**5.** Section 11 of the Principal Act is amended by adding at the end thereof the following sub-section: —

“(6) This section does not apply in relation to a claim for a medical benefit in respect of a professional service covered by an item that is expressed to relate to a professional attendance by a participating optometrist.”.

**6.** Section 13 of the Principal Act is repealed and the following section substituted:—

**Contact lenses.**

“13. (1) This section applies to a course of attention that includes an attendance, or attendances, covered by item 186, being—

(a) a course of attention of a patient who is not included in a prescribed class of patients; or

(b) a course of attention that commences within 3 years of the commencement of an earlier course of attention of the patient that—

(i) included an attendance, or attendances, covered by item 186; and

(ii) was not a course of attention to which this section applies.

“(2) The medical benefit payable under item 186 in respect of attendances in a course of attention to which this section applies is—

(a) an amount equal to the amount that would be payable as medical benefit in respect of those attendances if those attendances were an attendance covered by item 182; or

(b) such other amount as is prescribed.”.

**Medical service outside Australia.**

**7.** Section 21 of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section: —

“(4) This section does not apply in relation to—

(a) a service specified in an item that is expressed to relate to a professional attendance by a participating optometrist;

(b) a medical service to which an item that includes the symbol ‘(D)’relates; or

(c) a medical service rendered in a country the Government of which is, when the service is rendered, a party to an agreement with the Government of Australia under section 7.”.

**8.** After section 23 of the Principal Act the following sections are inserted in Part II:—

**Common form of undertaking.**

“23a. (1) The Minister may, after consultation with the Australian Optometrical Association, draw up a common form of undertaking to be given by an optometrist who wishes to become a participating optometrist under this Act.

“(2) The common form of undertaking shall provide for the following matters, as well as any other matters that the Minister considers appropriate:—

(a) the kinds of service to which the undertaking relates;

(b) a specification of such of the premises owned by, or in the possession of, the optometrist at which he provides services of a kind to which the undertaking relates as are covered by the undertaking;

(c) an assurance by the optometrist that the fee to be charged by him for the services provided at a professional attendance to which an item that is expressed to relate to a professional attend­ance by a participating optometrist relates will not exceed the appropriate fee specified in that item, with the addition, in the case of a domiciliary visit made at the request of the patient, of a further fee not exceeding an amount specified in the undertaking;

(d) an assurance by the optometrist that, where a professional service (not being a service covered by item 186 that is included in a course of attention to which section 13 applies) is rendered by the optometrist on his own behalf, or by another optometrist acting on his behalf, to a person who identifies himself to the op­tometrist rendering the service as—

(i) an eligible pensioner or a dependant of an eligible pensioner; or

(ii) a person included in a low income group of persons specified in the undertaking or a dependant of such a person,

not being a service rendered at premises owned by, or in the possession of, the optometrist that are not covered by the undertaking, the optometrist will ensure that—

(iii) the person who has incurred the medical expenses in respect of that service is asked whether he wishes to make an assignment under sub-section 20(3) of his right to the payment of the medical benefit in respect of that service; and

(iv) where the person indicates that he so wishes—arrangements are made for the making and acceptance of an assignment under that sub-section;

(e) limitations with respect to advertising by the optometrist with respect to the benefits payable under this Act to his patients.

“(3) The Minister may, at any time, after consultation with the Australian Optometrical Association, vary the common form of undertaking.

“(4) The Minister shall forward to the Australian Optometrical Association a copy of the common form of undertaking and of any variation of that common form.

“(5) In this section, ‘optometrist’ includes a person who employs optometrists to provide services in the course of the practice of their profession.

**Undertaking by optometrists.**

“23b. (1) Where a person, being an optometrist within the meaning of section 23a, gives to the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister shall either—

(a) on behalf of Australia, accept the undertaking; or

(b) refer to an Optometrical Services Committee of Inquiry for inquiry and report the question whether he would be justified in refusing to accept the undertaking.

“(2) On receipt of a report upon a reference under sub-section (1), the Minister, after considering the report, shall either, on behalf of Australia, accept the undertaking or refuse to accept the undertaking.

“(3) The Minister shall serve, either personally or by post on the optometrist concerned notification of acceptance or refusal of acceptance of an undertaking under this section.

“(4) Where a refusal by the Minister under sub-section (2) to accept an undertaking given by a person who wishes to become a participating optometrist does not take effect by reason of being disallowed on review or in accordance with a judgment or order on appeal, the Minister shall be deemed, for the purposes of this Act, to have accepted that undertaking on behalf of Australia under that sub-section.

“(5) Where the common form of undertaking is varied by the Minister under sub-section 23a(3), an undertaking accepted under this section shall be deemed, for the purposes of this Act, to have been varied to accord with the common form of undertaking as so varied by the Minister.

“(6) A participating optometrist may, at any time, terminate an undertaking, either wholly or in so far as it covers particular premises, by serving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is served.

“(7) For the purposes of this Act—

(a) an undertaking comes into force when accepted by the Minister and ceases to be in force if—

(i) the undertaking is wholly terminated by the participating optometrist under sub-section (6); or

(ii) the Minister’s acceptance of the undertaking is wholly revoked under section 23c; and

(b) premises covered by an undertaking cease to be so covered if—

(i) the undertaking is terminated by the participating optometrist under sub-section (6) in so far as it covers those premises; or

(ii) the Minister’s acceptance of the undertaking is revoked under section 23c, in so far as it covers those premises.

**Determinations by Minister with respect to participating optometrists.**

“23c. (1) Where an Optometrical Services Committee of Inquiry makes a recommendation referred to in paragraph 106f(2)(b), the Minister may make a determination, in writing, in accordance with that recommendation.

“(2) Where the Minister makes a determination under sub-section (1) he shall serve, either personally or by post, on the person to whom the determination relates, a notification in writing setting out the determination.

“(3) Where a determination under sub-section (1) that an amount of medical benefit be payable to Australia by a person who is or has been a participating optometrist takes effect or takes effect as varied, the amount specified in the determination is recoverable by Australia from the person as a debt due to Australia.

**Date of effect of determinations by Minister.**

“23d. (1) In this section, ‘determination’ means—

(a) a refusal by the Minister, under sub-section 23b(2), to accept an undertaking given by a person who wishes to become a participating optometrist; or

(b) a determination by the Minister under section 23c.

“(2) Where the Minister makes a determination, then—

(a) if no request for review of the determination under Division 4a of Part V is lodged within the period allowed for such a request—the determination takes effect at the expiration of that period;

(b) if a request for review of the determination under Division 4a of Part V is lodged within the period allowed for such a request, then—

(i) if the determination is disallowed on the review—the determination does not take effect; or

(ii) if the determination is upheld or varied on the review and no appeal against the decision on the review is made under section 122 within the period allowed for such an appeal—the determination takes effect, or takes effect as varied, at the expiration of that period; or

(c) if an appeal against the decision on the review is made under section 122 within the period allowed for such an appeal, the determination does not have effect until the appeal, and any further appeal to the High Court, are determined and, upon the determination of the appeal and any such further appeal, the determination takes effect or takes effect as varied or does not take effect, in accordance with the judgment or order on the appeal or further appeal.”.

**Functions of Committee.**

**9.** Section 67 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) In this section—

‘professional service’ does not include a professional service covered by an item that is expressed to relate to a professional attendance by a participating optometrist;

‘treatment’ means a medical, surgical, obstetric or dental treatment.”.

**Interpretation.**

**10.** Section 79 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

“(1a) A reference in section 94, 95, 96, 104, 105 or 106 to a practitioner shall be read as including a reference to a person who has been a practitioner.”.

**Function of Committees.**

**11.** Section 82 of the Principal Act is amended by inserting in sub-section (1), after the word “rendering” (wherever occurring), the words “by a practitioner”.

**Recommendation Committee.**

**12.** Section 105 of the Principal Act is amended by inserting in paragraph (d), after the word “benefit” (second occurring), the words “or a specified part of that amount”.

**Determination by Minister.**

**13.** Section 106 of the Principal Act is amended—

(a) by inserting in paragraph (c) of sub-section (3), after the words “takes effect”, the words “or takes effect”; and

(b) by omitting from sub-section (4) the words “, that amount” and substituting the words “or takes effect as varied, the amount specified in the determination”.

**14.** After Division 3 of Part V of the Principal Act the following Division is inserted:—

*“Division 3a—Optometrical Services Committees of Inquiry*

**Definitions.**

“106a. In this Division, unless the contrary intention appears—

‘Committee’ means an Optometrical Services Committee of Inquiry;

‘member’ means a member of a Committee.

**Establishment of Optometrical Services Committees of Inquiry.**

“106b. (1) The Minister shall establish 1 or more Committees to be called Optometrical Services Committees of Inquiry.

“(2) Each Committee shall consist of 5 members.

“(3) The members of each Committee shall be appointed by the Minister and 4 of them shall be optometrists so appointed after consultation by the Minister with the Australian Optometrical Association.

“(4) Subject to sub-section (5), where a vacancy occurs in the office of a member, the Minister may appoint a person to that office.

“(5) Where an office referred to in sub-section (4) was occupied by an optometrist who had been appointed after a consultation referred to in sub-section (3), the Minister shall appoint an optometrist to that office and, before making that appointment, shall consult the Australian Optometrical Association.

“(6) Subject to this Act, each member holds office for such period as is specified by the Minister in the instrument of his appointment and is eligible for re-appointment.

“(7) An act or decision of a Committee is not affected by reason only of there being a vacancy or vacancies in the membership of the Committee.

**Function of Committee.**

“106c. A Committee shall inquire into, and report to the Minister on—

(a) a question referred to the Committee by the Minister under section 23b; or

(b) any other matter referred to the Committee by the Minister, being a matter that is relevant to the operation or administration of this Act and—

(i) arises out of the undertaking given by a participating optometrist and accepted by the Minister under section 23b; or

(ii) arises out of, or relates to, professional attendances by a participating optometrist on or after the date fixed for the purposes of section 10.

**Application of certain sections in relation to Committees.**

“106d. Sections 83 to 87 (inclusive), sections 89, 90, 91 and 93 and sections 95 to 103 (inclusive) apply in relation to an Optometrical Services Committee of Inquiry as if—

(a) a reference in those sections to a Medical Services Committee of Inquiry were a reference to an Optometrical Services Committee of Inquiry;

(b) a reference in those sections to a practitioner or to a medical practitioner were a reference to a person to whom a reference under section 106c relates;

(c) a reference in those sections to a matter the subject of a reference or to a matter referred by the Minister were a reference to a question or other matter referred by the Minister under section 106c; and

(d) a reference in sub-section 95(2) to the alleged conduct to which the hearing relates were a reference to the question or other matter to which the hearing relates.

**Committee may inform itself in any manner.**

“106e. The Committee may, for the purpose of its inquiry into a matter the subject of a reference, inform itself in such manner as it thinks fit, including conducting a hearing.

**Recommendation by Committee.**

“106f. (1) After completion by a Committee of an inquiry into a question or other matter referred to the Committee under section 106c, the Committee shall report to the Minister its findings with respect to the question or other matter.

“(2) Subject to sub-section (3), a Committee may, in its report under sub-section (1), having regard to the findings in the report—

(a) where the report relates to a question referred to in paragraph 106c(a)—recommend to the Minister that he refuse to accept an undertaking given by a person who wishes to become a participating optometrist; or

(b) where the report relates to a matter referred to in paragraph 106c(b)—make one or more of the following recommendations:—

(i) that the participating optometrist be reprimanded;

(ii) that the acceptance by the Minister of the undertaking by the participating optometrist under section 23b be revoked, either wholly or in so far as the undertaking covers particular premises;

(iii) that—

(A) where a medical benefit is payable, but has not been paid, to the participating optometrist—the medical benefit or a specified part of the medical benefit cease to be payable; or

(B) where a medical benefit has been paid to the participating optometrist or has been paid or is payable to another person—the amount of the medical benefit or a specified part of that amount be payable to Australia by the participating optometrist.

“(3) The Committee shall not make a recommendation in a report under sub-section (1) unless it has conducted a hearing into the matter the subject of the report.

“(4) Where the Committee makes a recommendation in its report under sub-section (1), the Committee shall send to the Minister with the report a transcript of the proceedings at the hearing, and shall return any documents that accompanied the reference.

“(5) In this section, unless the contrary intention appears, ‘participating optometrist’ includes a person who has been a participating optometrist.

**Publications of particulars of determination of the Minister.**

“106g. (1) Where a determination of the Minister under section 23c takes effect or take effect as varied, the Minister may, if he thinks fit, cause to be published in the Gazette particulars of that determination, including a statement of the reasons for making the determination, which may take the form of, or include, a reference to, or an abstract from, the report to the Minister on which the determination is based.

“(2) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, a fair extract from or a fair abstract of a publication made in accordance with this section.

“(3) For the purposes of sub-section (2), a publication shall be deemed to be made in good faith if the person by whom it is made is not actuated by ill will to the person affected by the publication or by any other improper motive.

“(4) Nothing in this section authorizes the publication of the name of a patient or particulars that would enable a patient to be identified.

**Interpretation.**

**15.** Section 107 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) A reference in section 114, 116, 117, 118, 119 or 120 to a practitioner shall be read as including a reference to a person who has been a practitioner.”.

**16.** After Division 4 of Part V the following Division is inserted:—

*“Division 4a—Optometrical Services Review Tribunals*

**Definitions.**

“123a. In this Division, unless the contrary intention appears—

‘determination’ means—

(a) a refusal by the Minister, under sub-section 23b(2), to accept an undertaking given by a person who wishes to become a participating optometrist; or

(b) a determination by the Minister under section 23c;

‘judicial office’ means an office of a judge of a Federal Court or of the Supreme Court of a State or Territory;

‘member’ means a member of a Tribunal, and includes the President of a Tribunal;

‘Tribunal ’ means an Optometrical Services Review Tribunal.

**Establishment of Optometrical Services Review Tribunals.**

“123b. (1) The Governor-General may establish 1 or more Optometrical Services Review Tribunals for the purposes of this Act.

“(2) A Tribunal shall consist of a President and 2 other members, who shall be appointed in accordance with this section.

“(3) The President of a Tribunal shall be a person who—

(a) is or has been a holder of a judicial office; or

(b) is a legal practitioner of the High Court or of a Supreme Court of a State or internal Territory of not less than 5 years’ standing.

“(4) The 2 other members of a Tribunal shall be optometrists and 1 of them shall be nominated by the Minister after consultation with the Australian Optometrical Association.

“(5) The members of a Tribunal shall be appointed by the Governor-General and, subject to this Act, each member holds office for such period, not exceeding 5 years, as is specified by the Governor-General in the instrument of his appointment and is eligible for reappointment.

“(6) A member of an Optometrical Services Committee of Inquiry is not eligible for appointment as a member of a Tribunal.

“(7) Where a vacancy occurs in the office of a member, the Governor-General may appoint a person to that office in accordance with the preceding provisions of this section.

**Request for review of determination.**

“123c. (1) A person to whom a determination relates may, by notice in writing given to the Minister within a period of 30 days after the date upon which the notification of the determination is served on him, request the Minister to refer the determination to an Optometrical Services Review Tribunal for review.

“(2) There shall be set out in the request the grounds on which the request is made.

**Application of certain sections in relation to Tribunals.**

“123d. Sections 109, 110, 112 and 113, sections 115 to 118 (inclusive), sub-sections 119(1) and (3) and sections 120 to 122 (inclusive) apply in relation to an Optometrical Services Review Tribunal as if—

(a) a reference in those sections to a Medical Services Review Tribunal were a reference to an Optometrical Services Review Tribunal;

(b) a reference in those sections to a Committee were a reference to an Optometrical Services Committee of Inquiry;

(c) a reference in those sections to a determination under section 106 were a reference to a determination within the meaning of this Division;

(d) a reference in those sections to a practitioner were a reference to a person to whom a determination relates;

(e) a reference in those sections to a request by a practitioner under section 114 were a reference to a request by a person under section 123c; and

(f) a reference in sub-section 119(1) to the matter to which the determination relates were a reference to the question or other matter to which the determination relates.”

**Payments to be made by Commission.**

**17.** Section 125 of the Principal Act is amended by inserting after the word and letters “Part IV” the words “or under an arrangement under section 129a”.

**18.** After section 129 of the Principal Act the following section is inserted: —

**Special arrangements for optometrical services.**

“129a. The Minister may on behalf of Australia make such special arrangements with participating optometrists as he thinks fit for the purpose of ensuring that an adequate optometrical service will be available to persons living in isolated areas.”.

**Amendment of Schedule 1**.

**19.** Schedule 1 to the Principal Act is amended as set out in the Schedule to this Act.

**Transitional provision with respect to courses of attention that commenced before proclaimed date.**

**20.** (1) In this section, “proclaimed date” means the date fixed for the purposes of section 10 of the Health Insurance Act 1973-1975.

(2) Where a course of attention by a participating optometrist of a patient (other than a course of attention involving the prescription and fitting of contact lenses) commenced, but was not completed, before the proclaimed date, then, for the purposes of the application of the Health Insurance Act 1973-1975 in relation to—

(a) the attendance or attendances during that course of attention that occurred on or after the proclaimed date; and

(b) the attendance or attendances constituting a subsequent course of attention of that patient by a participating optometrist,

that first-mentioned course of attention shall be deemed to have commenced on the proclaimed date and the first attendance in that course shall be deemed to have been covered by item 180.

(3) Where—

(a) a course of attention by a participating optometrist of a patient involving the prescription and fitting of contact lenses commenced before the proclaimed date; and

(b) the attendance during that course of attention at which the contact lenses were delivered to the patient occurred on or after the proclaimed date,

then, for the purposes of the application of the Health Insurance Act 1973-1975 in relation to—

(c) the attendances, other than the first, in that course of attention; and

(d) the attendance or attendances constituting a subsequent course of attention of that patient by a participating optometrist,

that first-mentioned course of attention shall be deemed to have com­menced on the proclaimed date, the first attendance in that course shall be deemed to have been covered by item 180 and all attendances, other than the first, that preceded the attendance at which the contact lenses were delivered to the patient shall be deemed to have occurred on the day on which the contact lenses were so delivered.

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SCHEDULE Section 19

AMENDMENTS OF SCHEDULE 1 TO THE PRINCIPAL ACT

1. After rule 9 of the Rules for the Interpretation of the Table of Medical Services the following rule is added:—

“10. A reference in item 180 to the proclaimed date shall be read as a reference to the date fixed for the purposes of section 10.”.

2. Before item 70 insert the following heading in Part 1 of the Table of Medical Services:—

“Professional Attendances by Medical Practitioners”.

3. After item 199 insert the following heading and items in Part 1 of the Table of Medical Services:—

“Professional Attendances by Participating Optometrists

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| “180 | Professional attendance by a participating optometrist—an attendance that is the sole or first attendance in a single course of attention that commenced on or after the proclaimed date, being | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| (a) the first or only course of attention of the patient by a participating optometrist since the proclaimed date; or |
| (b) the second or a subsequent course of attention of the patient by a participating optometrist since the proclaimed date, being a course of attention commencing not earlier than 12 months after the commencement of the preceding course of attention  |
| “182 | Professional attendance by a participating optometrist—an attendance (not being an attendance covered by item 186) that is the second attendance in a single course of attention in respect of which the first attendance is covered by item 180  | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 |
| “184 | Professional attendance by a participating optometrist—an attendance (not being an attendance covered by item 186) that is the third or a subsequent attendance in a single course of attention of a patient who, in the professional opinion of the attending optometrist, has a need for that attend­ance, being a course of attention in respect of which the first attendance is covered by item 180  | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 | 6.50 |
| “186 | Professional attendance by a participating optometrist—all attendances after the first, being those attendances regarded as a single service, in a single course of attention involving the prescription and fitting of contact lenses, being a course of attention in respect of which the first attendance is covered by item 180  | 65.00 | 65.00 | 65.00 | 65.00 | 65.00 | 65.00”. |