

EXPLANATORY STATEMENT

NATIONAL HEALTH ACT 1953

DETERMINATION UNDER SUBSECTION 84(1)

National Health (Collaborative arrangements for midwives) Amendment Determination 2013

Subsection 84(1) of the *National Health Act 1953* (the Act) authorises the Minister to make a legislative instrument specifying the kinds of collaborative arrangements with the kinds of medical practitioners that an eligible midwife must participate in when providing midwifery treatment in order to satisfy the definition of ‘authorised midwife’ in the Act.

In April 2010 the Act and the *Health Insurance Act 1973* were amended to provide for new arrangements to enhance and expand the role of midwives, allowing for a greater role in the provision of quality health services.

From 1 November 2010, midwives approved as an ‘authorised midwife’ were given the ability to prescribe certain medicines under the Pharmaceutical Benefits Scheme (PBS). Subsection 84(1) of the Act defines ‘authorised midwife’ as an eligible midwife in relation to whom an approval is in force under section 84AAF, so far as the eligible midwife provides midwifery treatment in a collaborative arrangement of a kind or kinds specified in a legislative instrument made by the Minister for the purpose of the definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument.

The *National Health (Collaborative arrangements for midwives) Determination 2010* (the Principal Determination) specifies the kinds of collaborative arrangements with the kinds of medical practitioner.

The types of collaborative arrangements for which the Principal Determination currently provides are:

- the midwife being employed or engaged by an obstetrician or a medical practitioner who provides obstetric services (an ‘obstetric specified medical practitioner’) or an entity that employs or engages at least one obstetric specified medical practitioner;
- the midwife receiving patients on written referral from an obstetric specified medical practitioner or a medical practitioner at a hospital authority who is authorised by the authority to participate in collaborative arrangements (together, ‘specified medical practitioners’);
- the midwife has a signed written agreement with one or more specified medical practitioners; and
- the midwife recording in a patient’s written records an acknowledgement by a named specified medical practitioner that the practitioner will be collaborating in the care of the patient, and details of matters such as any consultation, referral or

transfer of care for the woman and tests requested and that the results have been given to the collaborating specified medical practitioner.

Since the measure was introduced on 1 November 2010, midwives have reported ongoing difficulties in establishing collaborative arrangements. This has hindered their ability to participate in the Medicare and PBS arrangements, which is reflected in the lower than expected uptake of the measure.

In recognition of this, following the 10 August 2012 Standing Council on Health (SCoH) meeting, it was announced that the Commonwealth had agreed to expand the types of collaborative arrangements available to midwives in an attempt to make it easier for midwives to work collaboratively with medical practitioners employed or engaged by hospitals or other health services.

In accordance with the SCoH announcement, the purpose of the *National Health (Collaborative arrangements for midwives) Amendment Determination 2013* is to enable midwives to demonstrate collaborative arrangements that provide pathways for consultation, referral and transfer of care to specified medical practitioners employed or engaged by a public or private hospital or other entity such as a health service, through an arrangement with the hospital or entity.

To ensure safety and quality of maternity care, midwives wishing to prescribe medicines under the PBS must have endorsement in accordance with the Nursing and Midwifery Board of Australia's (NMBA) registration standard for endorsement for scheduled medicines for eligible midwives. This requirement will not be altered by these amendments.

The NMBA requirements for endorsement include the midwife demonstrating:

- current unrestricted registration;
- the equivalent of three years full time post initial registration experience as a midwife;
- evidence of current competence to provide pregnancy, labour, birth and postnatal care, through professional practice review; and
- an approved qualification to prescribe scheduled medicines required for practice across that continuum of midwifery care in accordance with relevant State and Territory legislation

The *National Health (Collaborative arrangements for midwives) Amendment Determination 2013* adds a new type of collaborative arrangement for an eligible midwife who is credentialed for a hospital, having successfully undergone a formal assessment of his or her qualifications, skills, experience and professional standing. It is expected that appropriately qualified medical practitioner/s would be involved in the assessment. The midwife is also required to have a defined scope of clinical practice at the hospital and be eligible to treat his or her own patients at the hospital. The hospital must employ or engage at least one obstetric specified medical practitioner. It is expected that the hospital will have a formal written agreement with such midwives, addressing consultation, referral and transfer of care, relevant clinical guidelines and locally determined policies

The *National Health (Collaborative arrangements for midwives) Amendment Determination 2013* also allows for a collaborative arrangement to arise where an eligible midwife has a written agreement with an entity other than a hospital that employs or engages at least one obstetric specified medical practitioner. Such a written agreement is expected to incorporate provisions for addressing consultation, referral and transfer of care, relevant clinical guidelines and locally determined policies

In both cases, as for existing types of collaborative arrangements, the arrangement must involve collaboration between the eligible midwife and relevant medical practitioner/s, including communication for the purposes of consultation between midwife and practitioners, referral of a patient and transfer of a patient's care. Guidelines for such communication should be agreed.

Details of this legislative instrument are set out in the Attachment.

This legislative instrument commences immediately after the commencement of the *Health Insurance Amendment (Midwives) Regulations 2013*. That regulation makes corresponding changes to the *Health Insurance Regulations 1975* to expand collaborative arrangements for the purposes of Medicare.

Consultation

Extensive consultation was undertaken with relevant medical and midwifery groups and consumers. The groups included the Australian Private Midwives Association, the Australian College of Midwives, the Australian Medical Association, the Australian and New Zealand College of Obstetricians and Gynaecologists, the National Association of Specialist Obstetricians and Gynaecologists, the Royal Australian College of General Practitioners, the Maternity Coalition, and CRANApplus, who provide support and advocacy for health professionals working in remote Australia. This was done through meetings, teleconferences and correspondence. Midwifery and consumer groups were generally supportive of the changes, which they consider would improve access to midwifery services. Medical groups were not opposed in principle, but were particularly concerned to ensure that there are effective mechanisms for communication, consultation, referral and transfers between midwives and collaborating medical practitioners, preferably through the development of agreed national guidelines. A 1 September 2013 implementation date for these changes will allow additional time for the groups to reach agreement on joint national guidelines.

Details of the *National Health (Collaborative Arrangements for Midwives) Amendment Determination 2013*

Part 1 Preliminary

Section 1 Name of determination

Section 1 provides that the title of this determination is the *National Health (Collaborative arrangements for midwives) Amendment Determination 2013* (the Determination).

Section 2 Commencement

Section 2 provides that the Determination commences immediately after the commencement of the *Health Insurance Amendment (Midwives) Regulation 2013*.

Section 3 Amendment

Section 3 provides that instruments specified in a Schedule to the Determination are amended or repealed as set out in the relevant items in the Schedule, with any other items having effect according to their terms. The Schedule to the Determination specifies the *National Health (Collaborative arrangements for midwives) Determination 2010* (the Principal Determination).

Part 2 Collaborative Arrangements

Schedule 1 Amendments

Item 1 – Subsection 5(1)(a)

This item amends subsection 5(1)(a) of the Principal Determination to introduce an additional type of collaborative arrangement. Previous paragraph 5(1)(a) provided for a collaborative arrangement to be established where an eligible midwife is employed or engaged by one or more obstetric specified medical practitioners or an entity that employs or engages one or more obstetric specified medical practitioners.

Following the amendments made by the Determination, this type of collaborative arrangement becomes subparagraph 5(1)(a)(i). New subparagraph 5(1)(a)(ii) provides for a collaborative arrangement to also arise where an eligible midwife has a written agreement with an entity other than a hospital (such as a community health centre or a medical practice) that employs or engages at least one obstetric specified medical practitioner.

Item 2 – At the end of subsection 5(1)

This item expands the list of types of collaborative arrangements in subsection 5(1) by adding new paragraph 2C(1)(e) which specifies an arrangement mentioned in new section 8 (being a midwife credentialed for a hospital).

Item 3 – At the end of section 5

This item inserts new subsection 5(5). The new subsection makes clear, for the avoidance of doubt, that collaborative arrangements may involve specified medical practitioners in either the public or private sectors.

Item 4 – After section 7

This item provides for an additional type of collaborative arrangement under which an eligible midwife can collaborate with obstetric specified medical practitioners employed or engaged by a hospital, as described in new section 8. The hospital may be either a public or private hospital.

The new type of collaborative arrangement is demonstrated where an eligible midwife:

- is credentialed for a hospital, meaning the midwife has successfully undergone a formal process to assess the midwife’s ability to provide safe, high quality maternity care at the hospital;
- is granted a defined scope of clinical practice for the hospital, which will dictate the parameters of care that the eligible midwife can provide; and
- is authorised to provide midwifery care to his or her own patients privately at the hospital.

The hospital for which the midwife is credentialed must be one that employs or engages one or more obstetric specified medical practitioners.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Health (Collaborative arrangements for midwives) Amendment Determination 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Under the *National Health Act 1953* (the Act) and associated delegated legislation, ‘authorised midwives’ are able to prescribe certain medicines under the Pharmaceutical Benefits Scheme (PBS). A midwife is an ‘authorised’ midwife to the extent he or she is in a ‘collaborative arrangement’ of a type specified in a legislative instrument made by the Minister with a medical practitioner of a type also specified in the legislative instrument.

The *National Health (Collaborative arrangements for midwives) Determination 2010* (the Principal Determination) set out the types of collaborative arrangements and medical practitioners for the purposes of a midwife being an authorised midwife.

The *National Health (Collaborative arrangements for midwives) Amendment Determination 2013* (the Amending Determination) amends the Principal Determination to add two new types of collaborative arrangements to better facilitate appropriately qualified and experienced privately practising authorised midwives establishing collaborative arrangements with medical practitioners to provide safe, high quality midwifery care to women who choose this type of care.

The first of the two new types of arrangements is where an eligible midwife has a written agreement with an entity, other than a hospital, that employs or engages at least one obstetrician or other medical practitioner who provides obstetric services.

The second new type of arrangement is where an eligible midwife:

- is credentialed for a hospital that employs or engages at least one obstetrician or other medical practitioner who provides obstetric services, following successful completion of a formal assessment of the midwife’s competence, performance and professional suitability;
- has been granted clinical privileges for a defined scope of practice at the hospital; and
- can treat his or her own patients at the hospital.

The Amending Determination also makes it clear, for the avoidance of doubt, that for all types of collaborative arrangements the arrangement may involve practitioners in the public or private sectors.

Human rights implications

The Amending Determination positively engages the rights to health and social security, specifically as they affect the rights of women's reproductive health.

Following the introduction of arrangements to enable PBS-eligible prescribing by authorised midwives in 2010, midwives have experienced difficulty in establishing the currently available collaborative arrangements. These amendments expand the range of settings in which a collaborative arrangement may arise and, therefore, the range of settings in which an authorised midwife can prescribe medicines to his or her patients under the PBS.

This increases the range of Government subsidised birthing options available to women and support women in their choice of health professional.

Increasing access for midwives to prescribe medicines under the PBS will also assist in improving service delivery by enabling better use of the existing workforce and the development over time of new, more innovative models of care that can be tailored to meet local needs.

Conclusion

This Legislative Instrument is compatible with human rights as it impacts positively on the rights to health and social security.

The Hon Tanya Plibersek MP

Minister for Health