

## **EXPLANATORY STATEMENT**

### ***NATIONAL HEALTH ACT 1953***

#### **DETERMINATION UNDER SUBSECTION 84(1)**

##### ***National Health (Collaborative arrangements for nurse practitioners) Determination 2010***

### **Purpose and Operation**

This legislative instrument is made pursuant to subsection 84(1) of the *National Health Act 1953* (the Act) and determines the kinds of collaborative arrangements with the kinds of medical practitioners that an eligible nurse practitioner must participate in when providing nurse practitioner treatment in order to satisfy the definition of ‘authorised nurse practitioner’ in subsection 84(1) of the Act.

This instrument is part of the implementation of the *Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010* (the Midwives and Nurse Practitioners Act) which commenced on the Royal Assent on 12 April 2010 and provides for new arrangements to enhance and expand the role of nurse practitioners and midwives, allowing them to take a greater role in providing quality health care.

The Midwives and Nurse Practitioners Act amends both the Act and the *Health Insurance Act 1973* to enable nurse practitioners and appropriately qualified and experienced midwives to request appropriate diagnostic imaging and pathology services for which Medicare benefits may be paid. It allows these health professionals to be authorised as PBS prescribers able to prescribe certain medicines under the Pharmaceutical Benefits Scheme (PBS). Secondary legislation will also provide for such matters as the creation of new Medicare items and referrals under the Medicare Benefits Schedule (MBS).

Access to MBS services and PBS subsidised medicines will be available to patients of appropriately qualified and experienced midwives and nurse practitioners from 1 November 2010. To be authorised to prescribe under the PBS midwives and nurse practitioners will need to be able to prescribe medicines under State or Territory law, within the practitioner’s scope of practice.

The Act (as amended by the Midwives and Nurse Practitioners Act) allows nurse practitioners who are approved as an ‘authorised nurse practitioner’ to prescribe certain medicines under the PBS. Subsection 84(1) defines ‘authorised nurse practitioner’ as an eligible nurse practitioner in relation to whom an approval is in force under section 84AAJ, so far as the eligible nurse practitioner provides nurse practitioner 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 of ‘authorised nurse practitioner’, with one or more medical practitioners of a kind or kinds specified in the legislative instrument.

An eligible nurse practitioner is a person who is registered or authorised (however described) as a nurse practitioner by or under State or Territory law (subsections 84AAI(1) and 4(1) of the Act).

This legislative instrument determines that, for the purposes of the definition of 'authorised nurse practitioner', an eligible nurse practitioner may be in a collaborative arrangement with a specified medical practitioner. All kinds of medical practitioners are specified medical practitioners.

This legislative instrument also determines that there are four kinds of collaborative arrangement. The kinds of collaborative arrangement are:

- being employed or engaged by a medical practice that employs or engages at least one medical practitioner;
- receiving patients on referral from a medical practitioner;
- having a signed agreement with a medical practitioner;
- maintaining written records of certain specified information relating to working collaboratively with a medical practitioner.

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

This legislative instrument commences on the later of 1 July 2010, or, the day after it is registered.

## **Consultation**

Consultation regarding implementation of the arrangements for access by patients to midwife and nurse practitioner Medicare services and PBS prescribing occurred via advisory groups established to advise on specific issues and technical aspects. The advisory groups included practitioners from relevant medical and health professions, with experience in midwifery, nursing, general practice, obstetrics, and representatives from registration bodies, state and territory health services, regional and remote health services, Indigenous populations, and consumers. Advice included advice on Medicare and PBS eligibility, collaborative arrangements with medical professionals, authorisation as PBS prescribers, and medicines suitable for PBS prescribing.

**DETAILS OF THE NATIONAL HEALTH (COLLABORATIVE ARRANGEMENTS FOR NURSE PRACTITIONERS) DETERMINATION 2010**

**Part 1 Preliminary**

**Section 1 Name of Determination**

Section 1 provides that the title of this Determination is the *National Health (Collaborative arrangements for nurse practitioners) Determination 2010* (the Determination).

**Section 2 Commencement**

Section 2 provides that the Determination commences on the later of 1 July 2010, or, the day after it is registered.

**Section 3 Definitions**

Section 3 defines relevant terms used in the Determination.

**Section 4 Specified medical practitioners**

The definition of ‘authorised nurse practitioner’ in subsection 84(1) of the *National Health Act 1953* (the Act) requires an eligible nurse practitioner to provide nurse practitioner treatment in a collaborative arrangement of a kind of kinds specified in a legislative instrument, *with one or more medical practitioners of kind or kinds specified in the legislative instrument* (emphasis added).

Section 4 specifies that all kinds of medical practitioners are specified medical practitioners for the purposes of the definition of authorised nurse practitioner.

**Part 2 Collaborative arrangements**

**Section 5 Collaborative arrangements – general**

The definition of ‘authorised nurse practitioner’ in subsection 84(1) of the Act requires an eligible nurse practitioner to provide nurse practitioner treatment *in a collaborative arrangement of a kind or kinds specified in a legislative instrument*, with one or more medical practitioners of a kind or kinds specified in the legislative instrument (emphasis added).

Subsection 5(1) specifies the kinds of collaborative arrangements for the purposes of the definition of authorised nurse practitioner.

### *Nurse practitioner employed or engaged by a medical practice*

Paragraph 5(1)(a) provides for a kind of collaborative arrangement where the eligible nurse practitioner is employed or engaged by one or more specified medical practitioners or by an entity that employs or engages one or more specified medical practitioners. The reference to ‘employs or engages’ covers both employees and contractors. This will cover an eligible nurse practitioner who is employed or engaged by a medical practice so long as that medical practice employs or engages at least one medical practitioner.

### *Nurse practitioner receiving patients on referral from a specified medical practitioner*

Paragraph 5(1)(b) provides that an eligible nurse practitioner will be in a collaborative arrangement if a specified medical practitioner refers a patient in writing to the nurse practitioner for treatment.

### *Signed agreement and nurse practitioner’s written records*

The two kinds of collaborative arrangement specified at paragraphs 5(1)(c) and (d) are described in more detail in the item-by-item description for sections 6 and 7, respectively.

Subsection 5(2) provides that each kind of collaborative arrangement specified in subsection 5(1) must provide for:

- consultation between the nurse practitioner and a medical practitioner;
- referral of patients to a medical practitioner; and
- transfer of a patient’s care to a medical practitioner.

Subsection 5(2) ensures that all kinds of collaborative arrangement must deal with the issues of how collaboration is to occur regarding consultation, referral and transfer.

Subsection 5(3) provides that a collaborative arrangement of a kind specified in paragraph 5(1)(a), (b) or (c) may apply to more than one patient. Subsection 5(3) does not provide that a collaborative arrangement of a kind specified in paragraph 5(1)(d) (mentioned in section 7) can apply to more than one patient. The kind of collaborative arrangement mentioned in section 7 (nurse practitioner’s written records) contains elements which must be patient specific, so a separate collaborative arrangement must exist for each patient

However, subsection 5(4) provides that the acknowledgement from a medical practitioner mentioned in paragraph 7(1)(c) may apply to more than one patient. This has the effect that, although the kind of collaborative arrangement mentioned in section 7 (nurse practitioner’s written records) is specific to a patient, a nurse practitioner can obtain an acknowledgement from a medical practitioner that he or she will collaborative with the nurse practitioner for more than one of the nurse practitioner’s patients. This would mean that the nurse practitioner does not have to obtain a separate acknowledgement for every patient.

## **Section 6 Agreement between eligible nurse practitioner and 1 or more specified medical practitioners**

Subsection 6(1) provides that an agreement may be made between an eligible nurse practitioners and one or more specified medical practitioners. This agreement is a kind of collaborative arrangement for the purposes of the definition of authorised nurse practitioner in subsection 84(1) of the Act (see paragraph 5(1)(c)).

Subsection 6(2) provides that the agreement must be in writing and signed by the eligible nurse practitioner and each specified medical practitioner who is a party to the agreement.

## **Section 7 Arrangement – nurse practitioner’s written records**

Section 7 provides for a kind of collaborative arrangement where an eligible nurse practitioner must record certain specified information regarding a patient in the nurse practitioner’s written records. This is a kind of collaborative arrangement for the purposes of the definition of authorised nurse practitioner in subsection 84(1) of the Act (see paragraph 5(1)(d)).

Paragraph 7(1)(a) requires the nurse practitioner to record the name of at least one specified medical practitioner who the nurse practitioner is, or will be, collaborating with in the patient’s care (a ‘named medical practitioner’).

Paragraph 7(1)(b) requires the nurse practitioner to record that he or she has informed the patient that he or she will be providing services in a collaborative arrangement.

Paragraph 7(1)(c) requires the nurse practitioner to record an acknowledgement by a named medical practitioner that he or she will be collaborating in the patient’s care.

Paragraph 7(1)(d) requires the nurse practitioner to record plans for the circumstances in which the nurse practitioner will consult with a medical practitioner, refer the patient to a medical practitioner, and transfer the patient’s care to a medical practitioner.

Paragraph 7(1)(e) requires the nurse practitioner to record any consultation or other communication between the nurse practitioner and a medical practitioner about the patient’s care.

Paragraph 7(1)(f) requires the nurse practitioner to record any transfer of the patient’s care by the nurse practitioner to a medical practitioner.

Paragraph 7(1)(g) requires the nurse practitioner to record any referral of the patient by the nurse practitioner to a medical practitioner.

Paragraph 7(1)(h) requires that, if the nurse practitioner gives a copy of a document mentioned in subsections 7(2) or (3) to a named medical practitioner – when the copy is given.

Paragraph 7(1)(i) requires that, if the nurse practitioner gives a copy of a document mentioned in subsections 7(4) or (5) to the patient's usual general practitioner – when the copy is given.

Subsection 7(2) provides that if the nurse practitioner refers the patient to a specialist or consulting physician, or if the nurse practitioner requests diagnostic imaging or pathology services for the patient, the nurse practitioner must give a copy of the referral, or the results of the services, to a named medical practitioner if:

- the nurse practitioner consults, refers the patient to, or transfers the patient's care to the named medical practitioner; and
- the named medical practitioner asks the nurse practitioner for a copy of the referral or results.

Subsection 7(3) provides that the nurse practitioner must give a named medical practitioner a record of the services provided by the nurse practitioner to the patient if:

- the nurse practitioner consults, refers the patient to, or transfers the patient's care to the named medical practitioner; and
- the named medical practitioner asks the nurse practitioner for the record.

Subsection 7(4) provides that if the nurse practitioner refers the patient to a specialist or consultant physician, or if the nurse practitioner requests diagnostic imaging or pathology services for the patient, and the patient's usual medical practitioner is not a named medical practitioner, the nurse practitioner must give a copy of the referral, or the results of the services, to the patient's usual general practitioner.

Subsection 7(5) provides that if the patient's usual general practitioner is not a named medical practitioner, the nurse practitioner must give the patient's usual general practitioner a record of the services provided by the nurse practitioner to the patient.

Subsection 7(6) provides that subsections 7(4) and (5) only apply if the patient consents.

Subsection 7(7) defines the term 'usual general practitioner' for the purposes of section 7 of the Determination to include a medical practitioner nominated by the patient.