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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HEALTH LEGISLATION AMENDMENT (AUSTRALIAN COMMUNITY
PHARMACY AUTHORITY AND PRIVATE HEALTH INSURANCE) BILL**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon. Nicola Roxon, MP)

HEALTH LEGISLATION AMENDMENT (AUSTRALIAN COMMUNITY PHARMACY AUTHORITY AND PRIVATE HEALTH INSURANCE) BILL 2010

OUTLINE

The Bill provides for amendments to the *National Health Act 1953* relating to the arrangements for approving pharmacists to supply pharmaceutical benefits to the community. Pharmaceutical benefits are drugs or medicinal preparations for which benefits will be paid by the Commonwealth (commonly referred to as 'PBS medicines'). Under the *National Health Act 1953*, a pharmacist may only supply pharmaceutical benefits at or from particular premises if the pharmacist is approved by the Secretary for that purpose.

These amendments are the result of the agreed negotiations of the Fifth Community Pharmacy Agreement (the Fifth Agreement) between the Minister for Health and Ageing and the Pharmacy Guild of Australia, and within that context, to retain the Pharmacy Location Rules (the Rules). It is intended that the Fifth Agreement will commence on 1 July 2010 and expire on 30 June 2015.

The Bill will also amend the *Private Health Insurance Act 2007* (PHI Act) to correct technical errors relating to 'new arrivals' and lifetime health cover.

Australian Community Pharmacy Authority

The *National Health Act 1953* currently gives effect to the Rules and the operation of the Australian Community Pharmacy Authority (ACPA) only until 30 June 2010, the expiry date of the existing community pharmacy agreement (The Fourth Agreement). These minor amendments are required to extend the Rules and the operation of the ACPA for the term of the Fifth Agreement to end 30 June 2015.

Lifetime Health Cover

Lifetime health cover provisions are contained in Part 2-3 (sections 31-1 to 40-5) of the PHI Act.

The purpose of the lifetime health cover provisions is to encourage people to take out hospital cover before their lifetime health cover base day. The lifetime health cover base day is defined in section 34-25.

The amendment will give effect to the original policy intention of the lifetime health cover provision relating to migrants by ensuring that all non-Australian citizens (including those who arrived in Australia on a permanent residence visa) have a 'lifetime health cover base day' on the later of the 1 July following their 31st birthday and the first anniversary of their 'medicare eligibility day'.

'Hospital cover' (section 34-15) is defined as "so much of a complying health insurance policy as covers hospital treatment". An adult has hospital cover if he or she is insured under a complying health insurance policy that covers hospital treatment.

A person who takes out hospital cover after their lifetime health cover base day may have to pay a lifetime health cover loading on their hospital cover. A person who ceases to have hospital cover after their 'lifetime health cover base day' and then wishes to resume hospital cover may also have to pay a lifetime health cover loading on their hospital cover premium.

'Permitted days without hospital cover' (section 34-20) are any of the following days:

- days on which a private health insurer has granted a suspension in accordance with Private Health Insurance (Lifetime Health Cover) Rules;
- days on which (not counting suspension days) the person is overseas for a continual period of more than one year;
- the first 1,094 days (not counting suspension days or periods overseas of more than one year) that the person is without hospital cover.

Financial Impact Statement

There are no financial impacts for the Government as a result of this Bill.

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NOTES ON CLAUSES

Clause 1 – Short Title

This clause provides that the Bill, once enacted, may be cited as the *Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Act 2010*.

Clause 2 – Commencement

The table in clause 2 specifies when various parts of the Act will commence. Sections 1 to 3 and anything in the Act not covered by this table, as well as Schedule 1, commence on the day the Act receives the Royal Assent. Schedule 2 commences on 1 July 2010.

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Bill, is amended or repealed as set out in the applicable items in the Schedule concerned, once enacted and any other item has effect according to its terms. Schedule 1 amends the *National Health Act 1953* and Schedule 2 amends the *Private Health Insurance Act 2007*.

**SCHEDULE 1 — AMENDMENTS RELATING TO THE AUSTRALIAN
COMMUNITY PHARMACY AUTHORITY**

This Schedule provides for amendments relating to the operation of the Australian Community Pharmacy Authority (the Authority) and the Ministerial rules administered by the Authority. The Authority's role is to consider applications made by pharmacists' for approval to supply pharmaceutical benefits, and to make recommendations to the Secretary as to whether or not such applications should be approved. In making its recommendations, the Authority must comply with the rules determined by the Minister under section 99L of the *National Health Act 1953*. At present the only rules made by the Minister relate to the location of approved pharmacists, currently referred to as the 'pharmacy location rules'.

Currently, the *National Health Act 1953* provides for the Authority and the existing Ministerial rules to cease operation at the end of 30 June 2010. The amendments made by this Part provide for the Authority and the Ministerial rules to continue to operate until the end of 30 June 2015, to coincide with the expiry of the Fifth Agreement.

Item 1 – Subsection 90(3C)

This item omits the date '30 June 2010' and substitutes the date '30 June 2015'.

Item 2 – Section 99Y

This item omits the date ‘30 June 2010’ and substitutes the date ‘30 June 2015’.

SCHEDULE 2 — AMENDMENTS RELATING TO LIFETIME HEALTH COVER

Private Health Insurance Act 2007

Item 1 – Section 34-25

This item repeals section 34-25 and substitutes a new section 34-25. Section 34-25 specifies the meaning of lifetime health cover base day.

This amendment changes the way a person’s lifetime health cover base day is determined. These changes were necessary to correct a number of anomalies that arose in the application of the now repealed definition of ‘new arrival’. In particular, the former definition of ‘new arrival’ had the unintended effect that a person who visited Australia temporarily, for example as a tourist, and then later emigrated to Australia, would not be a ‘new arrival’ for the purposes of the *Private Health Insurance Act 2007* (the PHI Act). This had several unintended consequences. Firstly, it resulted in a person who became eligible for Medicare after arriving in Australia having a lifetime health cover base day fall prior to their ‘medicare eligibility day’. Secondly, a person who turned 31 on or before 1 July 2000 and was overseas on that date had a lifetime health cover base day of 1 July 2000 and was able to immediately access permitted days without hospital cover, without actually having taken out a private hospital cover policy.

Subsection 34-25(1) provides that as a general rule a person’s lifetime health cover base day is the 1 July after the person turns 31. This general rule is subject to subsections 34-25(2), (3) and (4).

Subsection 34-25(2) provides that if a person had a lifetime health cover base day on or before 30 June 2010 that lifetime health cover base day remains the person’s lifetime health cover base day. This subsection is included to avoid having an application provision which would remain in this amending Act, but which would not appear in the PHI Act. It also means that the lifetime health cover base day a person had before 30 June 2010 will not change due to the operation of the new section 34-25.

Subsection 34-25(3) specifies how to determine the lifetime health cover base day for a person who is not an Australian citizen and is not covered by subsection 34-25(2). Subject to subsection 34-25(4), the lifetime health cover base day of a person who is not an Australian citizen on their ‘medicare eligibility day’ and not covered by subsection 34-25(2) is the later of the 1 July after the person turns 31, or the first anniversary of the person’s ‘medicare eligibility day’. ‘Medicare eligibility day’ is defined in subsection 34-25(5). The effect of this subsection is that a person who is not an Australian citizen will not have a lifetime health cover base day until a point in time (as calculated by this subsection) after that person has a medicare eligibility day.

Subsection 34-25(4) provides that if a person is overseas on the day calculated under subsections 34-25(1) or (3), their lifetime health cover base day is the first anniversary of the person's first return to Australia from overseas, or the person's first entry to Australia, after the day worked out under subsection 34-25(1) or (3). The intention of this subsection is that a person, who otherwise would be subject to a lifetime health cover loading, has one year from their arrival in, or return to, Australia in which to purchase a complying health insurance product.

Subsection 34-25(5) defines a person's medicare eligibility day. This definition is the same as the repealed subsection 34-25(3). '(M)edicare eligibility day' is the day on which the person is registered by the Medicare Australia CEO as an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*.

Item 2 – Section 34-30

Item 2 makes a technical amendment to allow for the addition of subsection 34-30(2).

Item 3 – Paragraph 34-30(b)

Item 3 omits the word 'and' as it is no longer required because of the repeal of paragraph 34-30(c).

Item 4 – Paragraph 34-30(c)

Item 4 repeals paragraph 34-30(c). This paragraph is replaced by the new subsection 34-30(2).

Item 5 – At the end of section 34-30

Item 5 inserts a new subsection 34-30(2) which specifies that for the purposes of Part 2-3 of the PHI Act, a person is taken not to have returned to Australia from overseas, or to have entered Australia, if the person's return or entry to Australia, is for a period of less than 90 days.

The purpose of this amendment is to ensure that if a person has been overseas and returns to or enters Australia for less than 90 days, they are still treated as being overseas and section 34-25(4) will not apply until they return to, or enter Australia for a period greater than 90 days.

Item 6 – After paragraph 37-5(a)

Item 6 inserts a new paragraph (aa) in section 37-5. Section 37-5 provided that persons who were aged over 31 years and were overseas on 1 July 2000 were taken to have hospital cover on their lifetime health cover base day and have automatic access to 'permitted days without cover'. For a person who was not a 'new arrival', the lifetime health cover base day for a person who turned 31 on or before 1 July 2000 was 1 July 2000. For a 'new arrival' in this age group, this was the first anniversary of their medicare eligibility day. Because such people were taken to have hospital cover on their lifetime health cover base day they could wait almost four years after their

medicare eligibility day, rather than one year, without incurring a lifetime health cover loading.

The amendment to section 37-5 means that from 1 July 2010, the section will only apply to people who were an Australian citizen or Australian resident on 1 July 2000, or whose lifetime health cover base day was on or before 30 June 2010.

Subparagraph 37-5(aa)(iii) operates so as not to disadvantage anyone who section 37-5 applied to prior to the commencement of these amendments.

Item 7 – After section 37-5

A new section 37-7 is inserted which states that if the 1 July after a person turns 31 has not arrived, lifetime health cover does not yet apply to the person. This clarifies the policy and legislative position that lifetime health cover does not apply to a person before the 1 July following that person's 31st birthday.

Item 8 – Clause 1 of Schedule 1

This item inserts a new definition in the PHI Act for *Australian citizen*. It provides that Australian citizen has the same meaning as in the *Australian Citizenship Act 2007*.

Item 9 – Clause 1 of Schedule 1 (definition of *medicare eligibility day*)

This item amends the definition of Medicare eligibility day. This is a technical amendment to reflect the fact that the definition of Medicare eligibility day has moved from 34-25(3) to 34-25(5).

Item 10 – Clause 1 of Schedule 1 (definition of *new arrival*)

This item repeals the definition of new arrival as the term 'new arrival' is no longer used in the PHI Act.