

Submission to the Finance and Public Administration Committee Inquiry into Health Insurance Regulations

Introduction

1. The National Foundation for Australian Women (www.nfaw.org) is a non politically aligned feminist organisation which works to promote the advancement of women in all spheres.
2. We are particularly active in relation to the promotion of increasing numbers of women on Boards of management of corporations, in promoting an understanding of women's histories and the contributions women and their organisations have made to Australian society, and in examining the impacts of various social policies on the well-being of women and girls.
3. We welcome the invitation to make a submission to this Inquiry

Background

4. The Terms of Reference for the inquiry clarify that this is an inquiry into very specific issues around a particular item in the General Medical Services Table of the Health Insurance Act 1973, rather than a general inquiry into either Commonwealth or State/Territory health policies and laws concerning reproductive health and termination of pregnancy
5. On 16 September 2008 the Senate referred the following matter to the Finance and Public Administration Committee for inquiry and report on and not before 13 November 2008:
 - (a) the terms of item 16525 of Part 3 of Schedule 1 to the Health Insurance (General Medical Services Table) Regulations 2007;
 - (b) the number of services receiving payments under this item and the cost of these payments;
 - (c) the basis upon which payments of benefits are made under this item; and
 - (d) the effects of disallowing this item.”

Terms of Reference (a)

Health Insurance (General Medical Services Table) Regulations 2007 Select Legislative Instrument 2007 No. 355 as amended

Health Insurance Act 1973

Table of general medical services, services and fees – schedule 1, part 3

16525	Management of second trimester labour, with or without induction, for intrauterine fetal death, gross fetal abnormality or life threatening maternal disease, not being a service to which item 35643 applies (Anaes.)	267.0	0
35643	Evacuation of the contents of the gravid uterus by curettage or suction curettage not being a service to which item 35639 or 35640 applies, including procedures to which item 35626, 35627 or 35630 applies, if performed (Anaes.)	196.8	5

6. Broadly, States (and Territories) make the laws which regulate both medical practice and the operations of health services.
7. The Commonwealth makes funds available to support the provision of medical and other health services to Australian residents in two main fashions: by specific purpose payments through State and Territory Governments, primarily through the Commonwealth-State Hospitals Agreements which are settled on a five year basis; and through the provisions of the Health Insurance Act 1973, (as from time to time amended).
8. The Commonwealth Minister for Health has responsibility for health policy, including the nature and range of items to be included in the schedules of the Health Insurance Act.
9. The Commonwealth Minister for Human Services has responsibility for the administration of the Health Insurance Act by Medicare Australia.

Terms of Reference (b)

10. Medicare Australia, which is responsible for the management of the Health Insurance Act 1973, generates extensive statistical data about the services that have generated payments through the Act.
 11. In 2005 the Parliamentary Library produced a research brief on abortion in Australia¹ that provided a useful analysis of the statistical data sources on abortions in Australia.
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¹ Research Brief no. 9 2004–05

12. This reads, in part "Another limitation of the HIC data is that it only includes procedures undertaken on *private* patients in clinics or hospitals who claim a Medicare rebate. This is because women who have abortions as *public* patients in public hospitals do not need to claim a Medicare rebate: public hospital treatment is provided free of charge to all Australians who choose to be treated as public patients (Medicare rebates only apply to treatment provided on a fee-for-service basis).....
13. In summary, the limitations of the Medicare data for enumerating abortions in Australia are as follows:
 - a. It potentially over-counts abortion numbers, since it includes procedures which are not pregnancy terminations
 - b. The Medicare data does not include pregnancy terminations performed on public patients
 - c. It also *excludes* women who have terminations in private settings, but do not claim a Medicare rebate, and
 - d. The Medicare data does not include terminations conducted after 24 weeks (though the available evidence suggests that the number of these is relatively small)."

Terms of Reference (c)

14. The Medicare Benefits Schedule (MBS) outlines the terms under which Medicare benefits are payable. The General Explanatory note G1.1 in the Medicare Benefits Schedule November 2007, states "the Australian Medicare Program provides access to medical and hospital services for all Australian residents." It goes on to state "Medicare benefits are claimable for clinically relevant services."
15. This statement has its basis in the *Health Insurance Act 1973 (the Act) - Sect 10* as follows: "Entitlement to Medicare benefit
 - (1) Where, on or after 1 February 1984, medical expenses are incurred in respect of a professional service rendered in Australia to an eligible person, a medicare benefit calculated in accordance with subsection (2) is payable, subject to and in accordance with this Act, in respect of that professional service."
16. Entitlement is further clarified in Section 3 of the Act which contains the definitions::
 - a. "Professional service" means a service (other than a diagnostic imaging service) to which an item relates, being a clinically relevant service that is rendered by or on behalf of a medical practitioner.
 - b. "Clinically relevant service" means a service rendered by a medical or dental practitioner or an optometrist that is generally accepted in the medical, dental or optometrical profession (as the case may be) as being necessary for the appropriate treatment of the patient to whom it is rendered.
17. The question of the payment of Medicare benefits for item 16525 then depends on whether the criteria are met in terms of whether or not the procedure is a "professional service" and a "clinically relevant service." If these criteria are met then benefits under *the Act* are payable.

What is the position in legal terms regarding this procedure in State and Territory legislation?

18. Abortion is covered by the criminal statutes in every state and territory apart from the ACT which repealed them in 2002. Generally speaking, although abortion law varies between state and territory jurisdictions, abortion is not illegal if the procedure is performed to protect the mother's physical and mental health. In most jurisdictions the legality of abortion is more liberal than the criminal statutes imply because court rulings have expanded the interpretation of what constitutes serious danger to the woman's physical or mental health. Some rulings have broadened the definition to include the woman's economic and social circumstances. Some jurisdictions also include requirements that more than one medical practitioner be involved in the process (particularly as the pregnancy proceeds), residency restrictions and prescribed hospitals for performing abortions. The laws in Victoria are the subject of Parliamentary debate in that jurisdiction at the time of writing.
19. Another criminal law which is raised in relation to abortion is the crime of child destruction (acting with intent to destroy a child capable of being born alive unless doing so preserves the mother's life). Again there are some differences between the laws of the various states and territories. However, the absence of definitions in the various statutes and a paucity of prosecutions or court rulings make the implications of this offence for abortion procedures difficult to determine.
20. What is clear is that Medicare item 16525, which covers the medical care provided to pregnant women in their second trimester (14-26 weeks) who experience diagnosis of intrauterine death, gross foetal abnormality and life-threatening maternal health conditions, applies to procedures which are in general lawful in Australian jurisdictions.
21. The Medicare Australia submission, we anticipate, will provide the most current data in response to items (b) and (c) of the Terms of Reference.
22. We know of no reason to doubt the probity of those data.
23. This submission will next address the final item of the Terms of Reference:

Item (D) The effects of disallowing this item

24. The removal of item 16525 would have no effect on the legality of abortion or on the availability of the lawful procedures covered under it. Furthermore, the removal of a Medicare rebate for a lawful medical procedure would be quite inconsistent with the availability of rebates for other lawful medical procedures.
25. For many women, access to timely and safe abortion services is dependent on the cost being partially covered by Medicare rebates. If the rebate were removed some women would be forced into delayed decisions because of their economic circumstances and/or geographical location—i.e. the most vulnerable women would be adversely affected.
26. It should also be noted that although the number of women affected by the circumstances covered under item 16525 is small their circumstances are particularly distressing. To add to their distress by making access to lawful medical services more costly is unacceptable.

27. Furthermore, given that the procedure covered by Medicare Item 16525 is already conducted in the State and Territory public hospital systems, although the actual numbers are not known, it can be assumed that removal of the item from the Schedule will result in greater pressure being placed on those systems, and the generation of potential demand for additional payments through the Commonwealth State Hospital Cost Sharing agreements.

We look forward to the opportunity to appear before the Committee in a public hearing.

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Chair, Social Policy Committee

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