

DRAFT SECOND READING SPEECH

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Health Amendment (Fees Validation) Bill 2015

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Madam Speaker, on occasion, historical anomalies require validation legislation so that intended practice is formalised and clarified. We have seen it in recent years in respect of Crown lands fees which the Parliament validated.

On this occasion, the anomaly relates to certain patient fees from 2007 onwards, and the Government is taking positive steps to address it.

This Bill corrects an administrative anomaly, validating that certain patient fees collected by the Crown under the *Health Act 1997* (herein referred to as the "Tasmanian Health Act") have been properly collected.

The Bill will retrospectively validate the past collection of certain fees and ensure that these fees are correctly charged in the future, by amending fees regulations made under the Tasmanian Health Act in respect of 'nursing-home-type patient' fees. It also amends the Tasmanian Health Act to validate such fees charged since 1 April 2007 in respect of the historical anomaly.

For convenience, I will refer to 'nursing-home-type-patients' as NHTPs.

I will first outline the relevant features of the public health fees system for NHTPs.

The *Health Act 1997* enshrines the Medicare Principles that 'eligible' persons must be given the choice to receive public hospital services free of charge as public patients.

The Act also provides for circumstances where fees are charged, including for what are known as 'ineligible' persons. In those circumstances, if any hospital service is provided by the State, a fee is payable in accordance with the Act.

These services are provided and charged by the Tasmanian Health Service. Fees are subject to waiver in circumstances considered appropriate.

Regulations under the Act prescribe the fees for the various patient categories and services where those circumstances arise.

Two of the categories are NHTPs, and people who are not NHTPs.

NHTPs are 'ineligible' pursuant to an order made under the Commonwealth Health Insurance Act 1973 which removed NHTPs from the category of *eligible* persons.

The term 'nursing-home-type patient' is something of a misnomer. For the purposes of the Commonwealth and State funding arrangements, the historical characteristic is a patient is charged after an initial 35 days of free care if they continue to receive nursing and accommodation care but not acute hospital treatment.

In the public hospital setting, patients fitting these criteria are typically elderly patients or patients with mental health issues.

NHPT are currently defined in Tasmanian legislation with reference to the Commonwealth Act.

Before 1 April 2007, the Commonwealth Act defined an NHPT as a patient in a hospital who had been provided with accommodation and nursing care for a continuous period exceeding 35 days. The definition had the following important characteristics:

- It excluded patients for whom a statutory certificate had been issued by a medical practitioner declaring that the relevant patient was in need of acute care.
- It had statutory provisions for review of a statutory certificate. This was mainly of relevance for private patients in public hospitals. For example, a private insurer could seek review of whether a patient was 'acute', as private fees for 'acute' patients are higher than non-acute patients.
- It clarified that continuous period included a period in more than one hospital, and periods that included discharges from hospital of less than 7 days.

On 1 April 2007, the Commonwealth Act was amended with the intention of dispensing with the statutory requirement for an acute care certificate and the statutory review process of that certificate. It changed the definition of NHPT to refer to a patient in a hospital who has been provided with accommodation and nursing care 'as an end in itself' for a continuous period of more than 35 days.

The key intended change here that I emphasise is that:

- a reference to patients being charged fees where they were receiving accommodation and nursing care 'but not subject to an acute care certificate' was changed to
- a reference to being charged fees where they were receiving accommodation and nursing care 'as an end in itself'.

The understood intention was not to change the patient group, but to simplify the definition and dispense with the formal statutory acute care certification as the Commonwealth no longer wished to be involved in issues arising from certification.

That States and Territories agreed with that intention. In practice hospitals continued to use an internal certification process to determine whether patients were 'acute' or not acute. A patient subject to an acute care certificate is treated as not receiving accommodation and nursing care 'as an end in itself' and not charged NHPT fees. This resolves any ambiguity as to when a person is an NHPT or not.

As a result of a patient complaint in 2013 about fees that were charged to the patient, the Health Complaints Commissioner sought advice on the NHPT fees issue.

This identified that the 2007 amendment had technical consequences for the patients captured by the NHPT definition. These consequences were unintended and unanticipated.

The consequence identified in 2013 was that mental health patients could not be charged NHTP fees if they happened to be on involuntary mental health orders. This was because the change from an explicit 'non-acute' test to an 'as an end in itself' test could be interpreted as ruling out patients whose accommodation and nursing care was for the purposes of their order under the then *Mental Health Act*.

In effect, former Tasmanian Governments have collected fees from involuntary mental health patients, unaware that there was no legislative basis for the collection of those fees at that time as an unintended consequence of a technical change to the Commonwealth Act to which the Tasmanian fees regulations referred.

The former Government quite properly ceased the collection of these fees in mid-2013, presumably on receipt of the same advice of the need to establish a proper legal basis for the charging of fees that this Government has received.

More recently, a further possible anomaly was identified. That is, in simplifying the reference to 35 days, the Commonwealth amendment could be interpreted as unintentionally changing the way in which those days were counted.

This is again an administrative anomaly, which may impact the validity of fees charged under both the current and former Tasmanian Governments.

The Bill addresses these issues by amending the Regulations to insert a new definitional provisions and consequential changes that emulates the necessary parts of the prior Commonwealth definition. That is the Bill provides patients subject to an acute care certificate are not charged NHTP fees, and clarifies the intended manner in which days are counted continues.

This is not a matter of policy change – the collection of such fees is a long established and well understood practice – rather it is the unintended technical consequence from an amendment to commonwealth legislation and this Bill does not seek to go further than establishing a proper legal basis for the existing policy.

This will enable patients who are currently charged to be charged into the future, and enable future charging to occur for involuntary patients when the Department and THS have ensured they have been given sufficient notice and information. Mechanisms for the reduction and waiver of fees in appropriate circumstances will continue to apply.

The Bill also inserts provisions in the Health Act to provide that any fee charged during the validation period that would have been invalid only because it did not meet the amended definition was in fact valid.

I am pleased to clarify the position on these fees and restore consistency to the intended charging of long-stay non-acute patients for services provided to them, so that all patients are charged in the same way and the public health system is funded in respect of these services.

Madam Speaker, I commend the Bill to the House.