

A BILL

entitled

HEALTH INSURANCE AMENDMENT ACT 2019

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WHEREAS it is expedient to amend the Health Insurance 1970, the Bermuda Hospitals Board Act 1970 and statutory instruments made under the Health Insurance Act 1970 and the Bermuda Hospitals Board Act 1970 to provide for a new method of funding hospital treatment provided by the Bermuda Hospitals Board in respect of standard health benefit;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

HEALTH INSURANCE AMENDMENT ACT 2019

Citation

1 This Act, which amends the Health Insurance Act 1970 (“the principal Act”), may be cited as the Health Insurance Amendment Act 2019.

Amends section 1

2 Section 1(1) of the principal Act is amended—

- (a) by repealing the definition of “the general hospital” and substituting—
 - “ “the general hospital” has the meaning given in section 1(1) of the Bermuda Hospitals Board Act 1970;”;
- (b) by inserting the following definitions, each in its alphabetical place—
 - “ “hospital fees” has the meaning given in section 1(1) of the Bermuda Hospitals Board Act 1970;
 - “insured person” means an individual who is insured;
 - “Mutual Re-insurance Fund” means the fund established under section 3A(1);
 - “Mutual Re-insurance Fund premium” means the premium referred to as such in section 3A(1);”;
- (c) in the definition of “standard premium”, by inserting “and the Mutual Re-insurance Fund” after “benefit”.

Amends section 2

3 Section 2(1) of the principal Act is amended—

- (a) in paragraph (a), by deleting “, and the use of dialysis facilities,”;
- (b) in paragraph (b), by deleting “, and the use of dialysis facilities,”;
- (c) in paragraph (bb), by deleting “, and the use of dialysis facilities,”;
- (d) in paragraph (c), by deleting “, including the use of dialysis facilities,”;
- (e) in paragraph (e), by deleting “and the use of dialysis facilities”.

Amends section 3A

4 Section 3A of the principal Act is amended—

- (a) in subsection (1), by deleting “amount as part” and substituting “premium (the “Mutual Re-insurance Fund premium”), which is part”;
- (b) by inserting after subsection (1)—

“(1A) The Mutual Re-insurance Fund premium shall be paid to the Mutual Re-insurance Fund no later than 30 days after the start of the week or month (as the case may be) covered by the payment.”;

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(c) by inserting after subsection (2A)—

“(2AA) The sums received from the Mutual Re-insurance Fund under subsection (2A)(d) shall be applied by the Board towards the cost of its provision of standard health benefit to insured persons.”;

(d) in subsection (2E), by inserting “or a person who is entitled to full or partial subsidy under section 2” after “insured person”;

(e) in subsection (2E)(a), by deleting “subsections (2F) and (2G)” and substituting “subsection (2G)”;

(f) by repealing subsection (2F); and

(g) in subsection (2G), by deleting “and section 2(1)”.

Inserts section 3B

5 The principal Act is amended by inserting after section 3A—

“Hospital fees covered by Mutual Re-insurance Fund only if Mutual Re-insurance Fund premium paid

3B (1) Subject to subsection (2), where a licensed insurer, or an employer who operates an approved scheme, pays (as required by section 3A(1A)) the Mutual Re-insurance Fund premium into the Mutual Re-Insurance Fund in respect of an insured person—

(a) the insured person shall receive hospital treatment in respect of standard health benefit provided by the Board without charge; and

(b) the insurer or employer (as the case may be) shall not be liable to indemnify the insured person for any hospital fees in respect of standard health benefit provided by the Board to the insured person.

(2) Any licensed insurer, or any employer who operates an approved scheme, that does not pay the Mutual Re-insurance Fund premium into the Mutual Re-insurance Fund as required by section 3A(1A) in respect of an insured person shall, during any period that the Mutual Re-insurance Fund premium remains unpaid, be liable to indemnify the insured person for any hospital fees in respect of hospital treatment in respect of standard health benefit received by the insured person.”.

Amends section 13D

6 Section 13D of the principal Act is amended by renumbering the existing provision as subsection (1) and thereafter inserting—

“(2) Nothing done by or on behalf of the Committee in carrying out its functions in respect of the Mutual Re-Insurance Fund shall be construed as contravening subsection (1).”.

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Amends section 31

7 Section 31 of the principal Act is amended—

- (a) in subsection (1), by deleting “Notwithstanding” and substituting “Subject to section 3B(1), notwithstanding”; and
- (b) in subsection (2), by deleting “A licensed” and substituting “Subject to section 3B(1), a licensed”; and
- (c) by inserting after subsection (7)—

“(8) For greater clarity, a licensed insurer is not liable to indemnify an insured person in respect of hospital treatment in respect of standard health benefit under subsections (1) and (2) if the insured person is at the time he receives the treatment entitled to hospital treatment in respect of standard health benefit provided by the Board without charge under section 3B(1).”.

Amends section 32

8 Section 32 of the principal Act is amended by inserting after subsection (3)—

“(4) Where—

- (a) an insured person receives, for injuries sustained in an accident involving a motor vehicle, hospital treatment in respect of standard health benefit provided by the Board without charge pursuant to section 3B(1); and
- (b) a person who is insured under a policy of insurance issued to him pursuant to the Motor Car Insurance (Third Party Risks) Act 1943 either admits liability for the injuries or is adjudged by a court of competent jurisdiction to be so liable,

then, notwithstanding anything to the contrary in any contract or any enactment or the common law, the injured person shall have a right to recover the expenses incurred for hospital treatment in respect of standard health benefit for which such person is insured pursuant to this Act, and such right shall be transferred and vest in the Board.

(5) Where a person has received hospital treatment in the general hospital in respect of standard health benefit as a result of an accident involving a motor vehicle, notwithstanding anything in section 3B(1) or in section 13AA of the Bermuda Hospitals Board Act 1970, for the purposes of subsection (4) and section 4(2) of the Motor Car Insurance (Third Party Risks) Act 1943, hospital fees in effect at the time the treatment is received shall be used to determine the expenses incurred by the hospital (the Board) in affording such treatment.”.

Amends section 40

9 Section 40 of the principal Act is amended—

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- (a) in subsection (1)(b), by deleting “the standard health benefit” and substituting “standard health benefit and the Mutual Re-insurance Fund”; and
- (b) in subsection (1A)—
 - (i) by deleting the semi-colon at the end of paragraph (a) and substituting “; and”;
 - (ii) by repealing paragraph (b); and
 - (iii) in paragraph (c), by deleting “, 3(3)”.

Consequential amendments to Bermuda Hospitals Board Act 1970

10 The Bermuda Hospitals Board Act 1970 is amended—

- (a) in section 1(1)—
 - (i) in the definition of “fees”, by deleting ““fees” includes” and substituting ““hospital fees” means”, and moving the definition to its new alphabetical place;
 - (ii) in the definition of “the general hospital”, by deleting “any premises which may be declared by the Minister, by notice published in the Gazette, to be part thereof” and substitute “any other facility operated by the Board”; and
- (b) by inserting after section 13—

“Hospital fees in respect of standard health benefit chargeable in certain circumstances

13AA (1) Subject to section 3B of the Health Insurance Act 1970, if a person receives treatment provided by the Board that is in respect of standard health benefit and the person—

- (a) is insured or qualifies for fully subsidized treatment, no hospital fees shall be chargeable for the treatment;
 - (b) is not insured and does not qualify for fully subsidized treatment, the full amount of the hospital fees shall be chargeable for the treatment; or
 - (c) is not insured and qualifies for partially subsidized treatment, the portion of the hospital fees that is not covered by the subsidy shall be chargeable for the treatment.
- (2) For the avoidance of doubt, if a person receives treatment provided by the Board that is not in respect of standard health benefit, the full amount of the hospital fees shall be chargeable for the treatment.
- (3) In this section—

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“fully subsidized treatment” means full subsidy under paragraph (a), (c) or (e) of section 2(1) of the Health Insurance Act 1970;

“insured” has the meaning given in section 1(1) of the Health Insurance Act 1970;

“partially subsidized treatment” means partial subsidy under paragraph (b) or (bb) of section 2(1) of the Health Insurance Act 1970.”.

Consequential amendment to Bermuda Hospitals Board (Hospital Fees) Regulations 2018

11 The Bermuda Hospitals Board (Hospital Fees) Regulations 2018 are amended by inserting after regulation 1—

“Hospital fees payable subject to section 13AA of Bermuda Hospitals Board Act 1970

1A Subject to section 13AA (hospital fees in respect of standard health benefit chargeable in certain circumstances) of the Bermuda Hospitals Board Act 1970, hospital fees shall be payable to the Board under these Regulations.”.

Consequential amendments to Health Insurance (Standard Health Benefit) Regulations 1971

12 The Health Insurance (Standard Health Benefit) Regulations 1971 are amended—

(a) in regulation 2—

(i) by inserting “provided by the Board” after “in-patient services”;

(ii) in subparagraph (xiv), by deleting “or in an establishment approved by the Council”; and

(iii) after subparagraph (xxvii), by inserting—

“(xxviii) any in-patient hospital treatment provided by the Board in respect of standard health benefit for which hospital fees are prescribed by regulations made under section 13 of the Bermuda Hospitals Board Act 1970.”;

(b) in regulation 3—

(i) by renumbering the existing regulation as paragraph (1);

(ii) in paragraph (1)—

(A) by revoking subparagraph (xv) and substituting—

“(xv) health care services or products provided in the home of a patient, or services in support of home-based care, where the services, the products, the person responsible for the provision of such services, and the reimbursement rates, have been approved by the Council.”;

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(B) by revoking subparagraph (xxxviii) and substituting—

“(xxxviii) diabetes counselling and wound care products where the facility, the services, the products and the reimbursement rates have been approved by the Council.”;

(C) by inserting after subparagraph (xlv)—

“(xlv) any outpatient hospital treatment provided by the Board in respect of standard health benefit for which hospital fees are prescribed by regulations made under section 13 of the Bermuda Hospitals Board Act 1970.”; and

(iii) by inserting after paragraph (1)—

“(2) For greater clarity, the outpatient services listed in the following subparagraphs of paragraph (1)—

- (i) subparagraphs (i) to (iv);
- (ii) subparagraph (vii);
- (iii) subparagraphs (ix) to (xi);
- (iv) subparagraph (xiii); and
- (v) subparagraphs (xvi) to (xxviii),

are included in standard health benefit where those outpatient services are provided by the Board.”;

(c) in regulation 9—

- (i) by deleting “\$101.97” and substituting “\$331.97”; and
- (ii) by deleting “\$23.53” and substituting “\$76.61”; and

(d) in regulation 10—

- (i) by deleting “\$214.17” and substituting “\$1,025.96”; and
- (ii) by deleting “\$49.42” and substituting “\$236.76”.

Consequential amendments to Health Insurance (Mutual Re-Insurance Fund) (Prescribed Sum) Order 2014

13 Paragraph 2 of the Health Insurance (Mutual Re-Insurance Fund) (Prescribed Sum) Order 2014 is amended—

- (a) in subparagraph (a), by deleting “Fund, the sum of \$50.35” and substituting “Health Insurance Fund, the sum of \$35.89”; and
- (b) in subparagraph (c), by deleting “\$0.55” and substituting “\$1.00”; and
- (c) in subparagraph (d), by deleting “\$13.16” and substituting “\$231.33”.

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Consequential amendment to Health Insurance (Maternity Benefit) Regulations 1971

14 Regulation 1 of the Health Insurance (Maternity Benefit) Regulations 1971 is amended in the definition of “maternity treatment” by deleting “a hospital” and substituting “the general hospital”.

Consequential amendment to Health Insurance (Mental Illness, Alcohol and Drug Abuse) Regulations 1973

15 Regulation 1 of the Health Insurance (Mental Illness, Alcohol and Drug Abuse) Regulations 1973 is amended by deleting “a hospital” and substituting “the general hospital”.

Regulations

16 (1) The Minister may by regulations make such transitional or operational arrangements as he considers necessary in consequence of the amendments made by this Act.

(2) Regulations under subsection (1) shall be subject to the negative resolution procedure, and the regulations may be deemed to have taken effect on a date that is earlier than the date on which they are made (being a date that is not earlier than 1 June 2019).

Commencement

17 This Act shall come into operation on 1 June 2019.

HEALTH INSURANCE AMENDMENT BILL 2019

EXPLANATORY MEMORANDUM

This Bill would amend the Health Insurance 1970 (“the principal Act”), the Bermuda Hospitals Board Act 1970 and statutory instruments made under the Health Insurance Act 1970 and the Bermuda Hospitals Board Act 1970 to provide for a new method of funding hospital treatment provided by the Bermuda Hospitals Board in respect of standard health benefit.

Clause 1 is self-explanatory.

Clause 2 amends section 1(1) of the principal Act (a) by making the definition of “the general hospital” reflect the definition given in the Bermuda Hospitals Board Act 1970 (see clause 10), (b) by adding definitions for “hospital fees” (which is given the meaning it has in the Bermuda Hospitals Board Act 1970), “insured person” (which clarifies that the insured person is an individual rather than a legal person), “Mutual Re-insurance Fund” and “Mutual Re-insurance Fund premium” (which is the prescribed portion of the standard premium that must be paid into the Mutual Re-insurance Fund each month in respect of each insured person), and (c) by amending the definition of “standard premium” to clarify that it is the premium payable in respect of standard health benefit and the Mutual Re-insurance Fund.

Clause 3 amends section 2(1). The effect of the amendments is that the use of dialysis facilities for those who qualify for subsidy will no longer be covered by subsidy, but dialysis for those persons will instead be covered under section 3A by the Mutual Re-insurance Fund.

Clause 4 amends section 3A in subsection (1) by redefining the “prescribed amount” as the “Mutual Re-insurance Fund premium” and clarifying that it is part of the standard premium. It inserts subsection (1A), which provides that the Mutual Re-insurance Fund premium must be paid to the Mutual Re-insurance Fund no later than 30 days after the start of the week or month (as the case may be) covered by the payment. It also inserts subsection (2AA), which provides that the sums received by the Board from the Mutual Re-insurance Fund (increased by clause 13(c) from the current \$13.16 per insured person per month to \$231.33 per insured person per month) shall be applied by the Board towards the cost of its provision of standard health benefit to insured persons. Subsections (2E), (2F) and (2G) are amended to move cover for dialysis for persons who qualify for subsidy to the Mutual Re-insurance Fund.

Clause 5 inserts section 3B, which provides that where a licensed insurer, or an employer who operates an approved scheme, pays (as required by section 3A(1A)) the Mutual Re-insurance Fund premium into the Mutual Re-Insurance Fund in respect of an insured person, the insured person shall receive hospital treatment in respect of standard health benefit provided by the Board without charge, and the insurer or employer (as the case may be) shall not be liable to indemnify the insured person for any hospital fees in respect of standard health benefit provided by the Board to the insured person. Any licensed insurer, or any employer who operates an approved scheme, that does not pay the Mutual

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Re-insurance Fund premium into the Mutual Re-insurance Fund as required by section 3A(1A) in respect of an insured person shall, during any period that the Mutual Re-insurance Fund premium remains unpaid, be liable to indemnify the insured person for any hospital fees in respect of hospital treatment in respect of standard health benefit received by the insured person.

Clause 6 amends section 13D to provide that nothing done by or on behalf of the Committee in carrying out its functions in respect of the Mutual Re-Insurance Fund shall be construed as contravening subsection (1), which prohibits the Committee from offering to the public any contract or plan of insurance other than the health insurance plan or the FutureCare plan.

Clause 7 amends section 31 to clarify that a licensed insurer is not liable to indemnify an insured person in respect of hospital treatment in respect of standard health benefit under subsections (1) and (2) if the insured person is at the time he receives the treatment entitled to hospital treatment in respect of standard health benefit provided by the Board without charge under section 3B.

Clause 8 amends section 32 to enable the Bermuda Hospitals Board to recover the expenses incurred for hospital treatment provided by the Board where (a) an insured person receives, for injuries in an accident involving a motor vehicle, hospital treatment in respect of standard health benefit provided by the Board without charge pursuant to section 3B, and (b) a person who is insured under a policy of insurance issued to him pursuant to the Motor Car Insurance (Third Party Risks) Act 1943 either admits liability for the injuries or is adjudged by a court to be so liable.

Clause 9 amends section 40. The amendment to subsection (1) clarifies that the standard premium is payable in respect of standard health benefit and the Mutual Re-insurance Fund. In subsection (1A), paragraph (b) is repealed because overseas treatment is an additional benefit of the health insurance plan and the FutureCare plan, and is provided for in Orders made under sections 13(2)(b) and 13B(2)(b) respectively. The reference to section 3(3) in paragraph (c) is deleted because there is currently no such section.

Clause 10 makes consequential amendments to the Bermuda Hospitals Board Act 1970. It defines “hospital fees” and redefines “the general hospital” as being the KEMH and any other facility operated by the Board. It also inserts section 13AA, which sets out the circumstances in which hospital fees are chargeable. All hospital fees that are not standard health benefit are chargeable. Hospital fees are also chargeable in respect of a person who is not insured and does not qualify for fully subsidized treatment under section 2 of the Health Insurance Act 1970. No hospital fees are chargeable in respect of a person who is insured or a person who qualifies for fully subsidized treatment. If a person is not insured and qualifies for partially subsidized treatment, the portion of the hospital fees that is not covered by the subsidy shall be chargeable for the treatment. Section 13AA is however subject to section 3B of the Health Insurance Act 1970 (see clause 5).

Clause 11 makes a consequential amendment to the Bermuda Hospitals Board (Hospital Fees) Regulations 2018 to clarify that hospital fees under those Regulations are only payable if they are chargeable under section 13AA of the Bermuda Hospitals Board Act 1970.

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Clause 12 makes consequential amendments to the Health Insurance (Standard Health Benefit) Regulations 1971. Regulation 2 is amended to clarify that, to be standard health benefit, in-patient services must be provided by the Board. Regulation 3 is amended to clarify that, to be standard health benefit, out-patient services must be provided by the Board or, as the case may be, must be approved as such by the Bermuda Health Council. The standard premium under regulation 9 remains the same (\$355.31 a month) but the Mutual Re-insurance Fund premium portion of the standard premium increases from \$101.97 to \$331.97. The standard premium under regulation 10 (for persons over 65 who do not qualify for subsidized hospital treatment) also remains the same (\$1,227.53 a month) but the Mutual Re-insurance Fund premium portion of the standard premium increases from \$214.17 to \$1,025.96.

Clause 13 makes consequential amendments to the Health Insurance (Mutual Re-Insurance Fund) (Prescribed Sum) Order 2014. It changes the amounts paid from the Mutual Re-insurance Fund per month per insured person as follows: (a) to the Health Insurance Fund, \$50.35 decreases to \$35.89, (b) to the Bermuda Health Council, \$0.55 increases to \$1.00, and (c) to the Bermuda Hospitals Board, \$13.16 increases to \$231.33.

Clause 14 makes a consequential amendment to the Health Insurance (Maternity Benefit) Regulations 1971 to clarify that, to qualify for standard health benefit under these Regulations, “maternity treatment” must be provided in the general hospital.

Clause 15 makes a consequential amendment to the Health Insurance (Mental Illness, Alcohol and Drug Abuse) Regulations 1973 to make it clear that to qualify for standard health benefit under these Regulations, the treatment must be provided in the general hospital.

Clause 16 provides that the Minister may by regulations make such transitional or operational arrangements as he considers necessary in consequence of the amendments made by this Act. The regulations would be subject to the negative resolution procedure, and can be deemed to have effect from the commencement of this Act (1 June 2019).

Clause 17 is self-explanatory.