



Number 17 of 2001

HEALTH INSURANCE (AMENDMENT) ACT 2001

REVISED

Updated to 21 March 2023

This Revised Act is an administrative consolidation of the *Health Insurance (Amendment) Act 2001*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Environmental Protection Agency (Emergency Electricity Generation) (Amendment) Act 2023* (6/2023), enacted 10 March 2023, and all statutory instruments up to and including the *Appointment of Special Advisers (Minister of State at the Department of the Taoiseach) Order 2023* (S.I. No. 169 of 2023), made 21 March 2023, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Health Insurance Acts 1994 to 2022: this Act is one of a group of Acts included in this collective citation (*Health Insurance (Amendment) Act 2022* (49/2022), s. 8(3)). The Acts in this group are:

- *Health Insurance Act 1994* (16/1994)
- *Health Insurance (Amendment) Act 2001* (17/2001)
- *Health Insurance (Amendment) Act 2003* (11/2003)
- *Health Insurance (Amendment) Act 2007* (3/2007)
- *Health Insurance (Miscellaneous Provisions) Act 2009* (24/2009), Part 2
- *Health Insurance (Miscellaneous Provisions) Act 2011* (34/2011), ss. 2 , 3 and 4
- *Health Insurance (Amendment) Act 2012* (45/2012)
- *Health Insurance (Amendment) Act 2013* (48/2013), other than s. 12
- *Health Insurance (Amendment) Act 2014* (42/2014), other than s. 8
- *Health Insurance (Amendment) Act 2015* (54/2015), other than s. 6
- *Health Insurance (Amendment) Act 2016* (19/2016), other than s. 8
- *Health Insurance (Amendment) Act 2017* (37/2017), other than s. 6
- *Health Insurance (Amendment) Act 2018* (35/2018), other than ss. 5 to 7
- *Health Insurance (Amendment) Act 2019* (49/2019), other than s. 5
- *Health Insurance (Amendment) Act 2020* (24/2020), other than s. 5
- *Health Insurance (Amendment) Act 2021* (47/2021), other than s. 8
- *Health Insurance (Amendment) Act 2022* (49/2022), other than s. 7

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Voluntary Health Insurance (Amendment) Act 2008 (6/2008)*

All Acts up to and including *Environmental Protection Agency (Emergency Electricity Generation) (Amendment) Act 2023 (6/2023)*, enacted 10 March 2023, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Health Insurance (Amendment) Act 2001 (Commencement) Order 2009 (S.I. No. 212 of 2009)*
- *Health Insurance (Amendment) Act 2001 (Commencement) Order 2005 (S.I. No. 322 of 2005)*
- *Health Insurance (Amendment) Act, 2001 (Commencement of Certain Provisions) Order 2001 (S.I. No. 514 of 2001)*

All statutory instruments up to and including *Appointment of Special Advisers (Minister of State at the Department of the Taoiseach) Order 2023 (S.I. No. 169 of 2023)*, made 21 March 2023, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of definition of “health insurance contract” in Principal Act.
3. Further amendment of section 2(1) of Principal Act.
4. Certain arrangements by employers to constitute health insurance contracts.
5. Prohibition of non-community rated health insurance contracts.
6. Premiums which may be charged under health insurance contracts in certain circumstances.
7. Provision of information.
8. Obligation to provide health insurance.
9. Risk equalisation schemes.
10. Limited exemption from requirement to make returns and otherwise comply with risk equalisation scheme.
11. Annual report with respect to the operation of a scheme.
12. Performance of functions under Principal Act — equality of treatment of undertakings.
13. Miscellaneous amendments of Principal Act.
14. Additional powers of Voluntary Health Insurance Board. (*Repealed*)
15. Short title, collective citation and commencement.

ACTS REFERRED TO

Civil Service Regulation Act, 1956	1956, No. 46
Health Act, 1970	1970, No. 1
Health Insurance Act, 1994	1994, No. 16
Health (Nursing Homes) Act, 1990	1990, No. 23
Insurance Act, 1936	1936, No. 45
Taxes Consolidation Act, 1997	1997, No. 39
Voluntary Health Insurance Acts, 1957 to 1998	



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HEALTH INSURANCE (AMENDMENT) ACT 2001

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AN ACT TO AMEND AND EXTEND THE HEALTH INSURANCE ACT, 1994, AND TO MAKE PROVISION WITH RESPECT TO THE POWERS OF THE VOLUNTARY HEALTH INSURANCE BOARD. [27th June, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition.

1.—In this Act “Principal Act” means the Health Insurance Act, 1994.

Amendment of
definition of
“health insurance
contract” in
Principal Act.

2.—The following definition is substituted for the definition of “health insurance contract” in section 2(1) of the Principal Act:

“‘health insurance contract’ means, without prejudice to section 2A, a contract of insurance, or any other insurance arrangement, the purpose or one of the purposes of which is to provide for the making of payments by an undertaking, whether or not in conjunction with other payments, specifically for the reimbursement or discharge in whole or in part of fees or charges in respect of the provision of hospital in-patient services or relevant health services, but does not include—

(a) a contract of insurance, or any other insurance arrangement, the sole purpose of which is to provide for the making of payments, directly to the person who effected the contract or entered into the arrangement or to any of the persons named in the contract or the arrangement, by an undertaking in respect of sickness, injury or disease of amounts calculated by reference only to the duration of—

(i) the sickness, injury or disease, or

(ii) the treatment of the sickness, injury or disease,

or

(b) a contract of insurance, or any other insurance arrangement, the sole purpose of which is to provide for the making of payments by an undertaking, to or on behalf of a dependent person (within the meaning of the Health (Nursing Homes) Act, 1990), in respect of the provision, other than as hospital in-patient services, of nursing care to such a person, or

(c) a contract of insurance that complies with the following conditions—

- (i) it provides for the making of payments in respect of the provision of relevant health services but not hospital in-patient services,
 - (ii) the premiums payable under it are payable on the basis of community rating,
 - (iii) it is effected by a person (including a body established under the laws of a place outside the State) who—
 - (I) on 1 May 2000 effected or offered to effect contracts of insurance which, had *section 2* of the *Health Insurance (Amendment) Act, 2001*, been in operation on that date, would have fallen within subparagraphs (i) and (ii), and
 - (II) on or before that date had been informed by the Minister that he was not required to be registered for the purpose of effecting such contracts,
- and
- (iv) it is not effected on or after the date (being a date falling after the commencement of *section 2* of the *Health Insurance (Amendment) Act, 2001*), if any, on which the person is entered in the Register pursuant to an application by him in that behalf,

or

- (d) a contract of insurance, or any other insurance arrangement, the purpose of which is to provide for the making of payments specifically for the reimbursement or discharge of fees or charges in respect of the provision of hospital in-patient services or relevant health services to persons or any dependants of any of them and the following conditions are satisfied—
 - (i) neither the said persons nor any such dependants are domiciled or ordinarily resident in the State,
 - (ii) of the said persons to whom the said contract or arrangement relates who are temporarily resident in the State during the subsistence of the said contract or arrangement—
 - (I) those persons are so resident for the purpose of carrying out their duties as employees, and
 - (II) those persons constitute not more than—
 - (A) 20 per cent of the total number of persons (other than dependants of them) to whom the said contract or arrangement relates, and
 - (B) 20 of the total number of persons employed in the State by the one person;”.

Further amendment of section 2(1) of Principal Act.

3.—Section 2(1) of the Principal Act is further amended by—

- (a) the deletion of the definition of “ancillary health services”,
- (b) the insertion of the following definition after the definition of “the Council Directives”:
 “‘day patient service’ means a health service provided in, or by persons attached to, a hospital in the following circumstances—
 - (a) the patient concerned is admitted on an elective basis for care or treatment or both,

- (b) such care or treatment does not require the use of a bed overnight, and
- (c) the patient is discharged as scheduled;”,
- (c) the substitution of the following definition for the definition of “hospital in-patient services”:
- “‘hospital in-patient services’ means in-patient services within the meaning of the Health Act, 1970, and includes any day patient service;”,
- (d) the substitution of the following definition for the definition of “premium”:
- “‘premium’ has the meaning assigned to it by the Insurance Act, 1936, and, in relation to a health insurance contract, includes any payment made to the undertaking concerned in respect of each person party to or named in the contract;”,
- (e) the insertion of the following definition after the definition of “the Registrar”:
- “‘relevant health services’ means out-patient services, general medical practitioner services and services consisting of the supply of drugs or medical preparations;”,
- and
- (f) the substitution of the following definition for the definition of “risk equalisation”:
- “‘risk equalisation’ means the sharing of prescribed costs of registered undertakings between the undertakings (being costs incurred in respect of payments under health insurance contracts to or in relation to the persons party to or named in such contracts) by means of payments made by or to such undertakings in accordance with the terms and conditions of a scheme;”.

Certain arrangements by employers to constitute health insurance contracts.

4.—The following section is inserted after section 2 of the Principal Act:

“2A.—(1) Subject to *subsections (2) and (3)*, any arrangement entered into by an employer whereby he or she agrees to reimburse or discharge the whole or a part of fees or charges which have been or may be incurred by an employee, or any dependant of an employee, of the employer in respect of the provision to the employee or such a dependant of hospital in-patient services shall be deemed to be a health insurance contract for the purposes of this Act and, accordingly, an employer who enters into such an arrangement shall be deemed, for the purposes of this Act, to be carrying on a health insurance business.

(2) Subsection (1) does not apply to any arrangement entered into by a Minister of the Government with respect to a person holding office under, or in the service of, the State (including a member of the Defence Forces and a civil servant within the meaning of the Civil Service Regulation Act, 1956) or any dependant of such a person.

(3) *Subsection (1)* does not apply to any arrangement entered into by an employer whereby he or she agrees to discharge the whole or part of an excess amount payable by an insured person or reimburse, in whole or in part, such a person in respect of the payment by the person of such an amount.

(4) In *subsection (3)*—

‘excess amount’ means an amount (not being an amount that exceeds £100 or such other amount as may be prescribed or that is payable to the insurer) payable in respect of the provision to the insured person, on a distinct occasion, of hospital in-patient services and which amount falls to be paid

by the insured person by reason of the operation, and the operation alone, of an excess clause;

‘excess clause’ means a provision of the contract referred to in the definition of ‘insured person’ in this subsection which provides that an amount of the kind referred to in the preceding definition shall not be payable by the insurer;

‘insured person’ means an employee, or any dependant of an employee, of the employer, being an employee or dependant who is party to or named in a health insurance contract effected with an undertaking other than the employer;

‘insurer’ means the undertaking which has effected the contract referred to in the preceding definition.”.

Prohibition of non-community rated health insurance contracts.

5.—The following section is substituted for section 7 of the Principal Act:

“7.—(1) (a) Subject to subsection (4) and section 7A, the premium payable under any health insurance contract effected by a particular registered undertaking shall be the same as that payable under every other such contract (after due allowance has been made in respect of the payment of any premium by instalments) that—

(i) is effected by that undertaking,

(ii) is in respect of the same period as that to which the first-mentioned contract relates,

(iii) relates to the same health services as those to which the first-mentioned contract relates, and

(iv) provides for the same payments by the undertaking in respect of those services as those provided for by the first-mentioned contract.

(b) A registered undertaking shall not effect a health insurance contract that contravenes paragraph (a).

(c) A health insurance contract that complies with paragraph (a) (or which would comply with that paragraph but for its falling within subsection (4) or section 7A) shall be known as a community rated health insurance contract and ‘community rating’ shall be construed accordingly.

(2) Without prejudice to the generality of subsection (1), premiums payable under health insurance contracts shall not be varied by reference to—

(a) the age, sex or sexual orientation or the suffering or prospective suffering of a person from a chronic disease, illness or other medical condition or from a disease, illness or medical condition of a particular kind,

(b) the frequency of the provision of health services to a person, or

(c) the amounts of payments or the number of different payments to which a person becomes entitled under such a contract.

(3) The amounts of the payments provided by a health insurance contract in respect of the health services to which it relates shall not be varied by reference to the age, sex or sexual orientation of the person to whom those services are provided.

(4) Notwithstanding subsections (1) and (2), a premium payable under a health insurance contract effected by a registered undertaking—

(a) shall, in so far as it relates to a person under the age of 18 years, be—

(i) waived, or

(ii) reduced, such a premium being not more than 50 per cent of the premium in respect of a person other than the persons specified in this subsection under a health insurance contract effected by that undertaking,

and

(b) may be reduced in so far as it relates—

(i) to a person who is of or over the age of 18 years and under the age of 23 years, is receiving fulltime education and is dependent on the person with whom the contract is effected, such a premium being not more than 50 per cent of the premium in respect of a person other than the persons specified in this subsection under a health insurance contract effected by that undertaking,

(ii) to a person who is a member of a restricted membership undertaking and is in receipt of a pension recognised for the purposes of the undertaking, or

(iii) to a person who is a member, for the purposes of health insurance, of a group of persons, such a premium being, if it is reduced, not less than 90 per cent of the premium in respect of a person other than the persons specified in this subsection under a health insurance contract effected by that undertaking.”.

Premiums which may be charged under health insurance contracts in certain circumstances.

6.—The following section is inserted after section 7 of the Principal Act:

“7A.—(1) In this section, ‘insured person’ means any person, other than the registered undertaking, who is party to or named in the health insurance contract concerned and is of or over the age of 35 years.

(2) Notwithstanding section 7, a registered undertaking may require, on account of any of the circumstances referred to in paragraph (a), (b), (c) or (d) of subsection (4), the payment under a health insurance contract of a premium the amount of which is greater than that of the premium (in this section referred to as the ‘unadjusted premium’) which could have been required to be paid if this section had not been enacted.

(3) Any requirement to pay such a greater amount is subject to regulations under subsection (6).

(4) The following are the circumstances mentioned in subsection (2)—

(a) the insured person has not previously effected or been named in a health insurance contract with the registered undertaking concerned or any other undertaking,

(b) the insured person had previously effected or been named in a health insurance contract with a restricted membership undertaking of the kind referred to in subsection (2)(b) of section 12 that has served on the Minister a notice under the provision of a scheme mentioned in that subsection before the date specified for the purposes of that subsection,

(c) in the period of the 12 months preceding the date on which the registered undertaking concerned was requested to effect the health insurance contract (not being a contract that falls within paragraph (b)) no health insurance contract was in force to which the insured person was a party or in which he or she was named,

(d) the following conditions are complied with in relation to the health insurance contract concerned—

(i) the contract provides more favourable terms to the insured person (whether in respect of the health services to which the contract relates or the nature or the amounts of the payments to be made by the registered undertaking concerned in respect of those services) than those provided to the insured person in the contract prior to its being renewed or, as the case may be, than those provided to the insured person in the health insurance contract lastly effected with another undertaking to which the insured person was a party or in which he or she was named,

(ii) the provision of those more favourable terms has been made at the request of the insured person.

(5) The difference between the amount of the premium which a registered undertaking requires to be paid by virtue of this section and the amount of the unadjusted premium is referred to in this section as the 'relevant increase'.

(6) The Minister may by regulations provide that the amount of the relevant increase—

(a) shall be determined by the registered undertaking concerned in a manner specified in the regulations (in subsection (7) referred to as the 'relevant method'),

(b) shall not, in any case, be greater than such percentage as is specified in the regulations of the amount of the unadjusted premium.

(7) Regulations under subsection (6) may—

(a) specify a different relevant method or a different percentage of the amount of the unadjusted premium by reference to—

(i) the different circumstances referred to in paragraphs (a) to (d) of subsection (4) on account of which the relevant increase is required to be paid,

(ii) different cases involving any of those circumstances that may occur,

(b) require that the registered undertaking concerned, in determining the amount of the relevant increase, take into account, to the extent and in the manner specified in the regulations, any previous period or periods during which the insured person was a party to or named in a health insurance contract effected with that or any other registered undertaking.”.

Provision of
information.

7.—The following section is inserted after section 7A (inserted by this Act) of the Principal Act:

“7B.—(1) In this section—

'any insured person concerned' means any person who is a party to or named in the health insurance contract referred to in subsection (3) (other than the requester);

'the first-mentioned undertaking' shall be construed in accordance with subsection (2);

'the requester' shall be construed in accordance with subsection (2).

(2) The Minister may by regulations require each registered undertaking ('the first-mentioned undertaking') to furnish to another registered undertaking ('the requester'), if—

- (a) the requester needs the statement for the purposes referred to in subsection (3),
- (b) the requester makes a request for the statement, and
- (c) the information concerned is in the possession of, or may reasonably be procured by, the first-mentioned undertaking,

a statement in writing of—

- (i) the period or periods during which any insured person concerned was a party to or named in a health insurance contract effected with the first-mentioned undertaking,
- (ii) unless a statement of this matter would fall to be provided under subparagraph (iii), the extent to which the first-mentioned undertaking could have been required to discharge or pay fees or charges in relation to hospital accommodation under the health insurance contract lastly effected by it, being a contract to or in which any insured person concerned was a party or named,
- (iii) in respect of each (if any) health insurance contract effected by the first-mentioned undertaking, being a contract to or in which any insured person concerned was a party or named and under which the undertaking required or could have required the payment of a premium of an amount referred to in section 7A(2), the extent to which the undertaking could have been required under that contract to discharge or pay fees or charges in relation to hospital accommodation, and
- (iv) such other matters as may be prescribed for the purpose of facilitating compliance by the requester with section 7A.

(3) The purposes mentioned in subsection (2) are the determination by the requester of the amount of the relevant increase (within the meaning of section 7A) it proposes to require a person to pay to it under a health insurance contract to be effected or effected by it with that person.”.

Obligation to provide health insurance.

8.—The following section is substituted for section 8 of the Principal Act:

“8.—(1) A registered undertaking, other than a restricted membership undertaking, shall not refuse to effect a health insurance contract with or for a person of whatever age or such a person and his or her dependants except in such cases (if any) or in such circumstances (if any) as may be prescribed.

(2) A restricted membership undertaking shall not—

- (a) impose as a condition of qualification for membership of the undertaking a requirement as to age,
- (b) refuse to admit to membership of the undertaking a person who is qualified for such membership and requests to be so admitted, or
- (c) refuse to effect a health insurance contract with or for such a person as aforesaid or with or for such a person and his or her dependants,

except in such cases (if any) or in such circumstances (if any) as may be prescribed.

(3) The Minister may prescribe the maximum waiting periods for eligibility for payment under a health insurance contract which a registered undertaking may impose in respect of the person effecting the contract or his or her dependants

and, in particular, but without prejudice to the generality of the foregoing, in respect of a person who—

- (a) is of or under a prescribed age,
- (b) is of or over a prescribed age,
- (c) is suffering from a medical condition when the contract is effected,
- (d) effects such a contract without previously having effected a health insurance contract in the State, or
- (e) effects such a contract with that undertaking having previously effected such a contract with the undertaking whether in respect of the same or different services.

(4) (a) Subject to paragraph (b), where a health insurance contract effected by a person with a registered undertaking ceases to be in force for any reason, that or any other registered undertaking shall not refuse to effect another health insurance contract with the person, irrespective of his or her age, in respect of the same services except in such cases (if any) or in such circumstances (if any) as may be prescribed.

(b) A restricted membership undertaking may refuse to effect a health insurance contract with a person referred to in paragraph (a) if the person is not entitled to membership of the undertaking.

(5) Subject to subsection (6), where a health insurance contract effected with a registered undertaking ('the first-mentioned contract') ceases to be in force and a person who was a party to or named in that contract effects, within such period after that cesser as may be prescribed, such a contract with another registered undertaking ('the second-mentioned contract')—

(a) the waiting period for eligibility for any payment under the second-mentioned contract to—

(i) that person, or

(ii) any other person who is named in that contract and was also a party to or named in the first-mentioned contract,

shall not be any longer than it would have been if the second-mentioned contract had been effected at the time the first-mentioned contract had been effected, and

(b) there shall be deemed to have expired so much of that period as is equal to so much of the like period under the first-mentioned contract as had expired at the time of the cesser aforesaid.

(6) If a person referred to in subsection (5) is of or over the age of 23 years and the first-mentioned contract in that subsection was effected with a restricted membership undertaking of the kind referred to in subsection (2)(b) of section 12 that served on the Minister a notice under the provision of a scheme mentioned in that subsection (2)(b) before the date specified for the purposes of that subsection, then paragraphs (a) and (b) of subsection (5) shall not apply to that person."

Risk equalisation schemes.

9.—The following sections are substituted for section 12 of the Principal Act:

"12.—(1) The Minister may prescribe a scheme or schemes of risk equalisation (which or each of which shall be known as a risk equalisation scheme and is referred to in this Act as 'a scheme').

- (2) (a) Subject to paragraphs (b) and (c), a scheme shall apply to each registered undertaking and each such undertaking shall comply with the terms and conditions of the scheme.
- (b) A scheme may include a provision specifying that the scheme shall not, at any time on and from the service on the Minister of the notice hereafter referred to, apply to a restricted membership undertaking which—
- (i) was carrying on business in the State before the commencement of *section 9* of the *Health Insurance (Amendment) Act, 2001*, and
- (ii) was, on 1 May 2000, a registered undertaking,
- if, before a date specified for the purposes of this subsection by the Minister, the undertaking serves a notice on the Minister stating that it does not wish any scheme to apply to it.
- (c) A scheme may include a provision specifying that the scheme shall not apply to so much of the activities of a registered undertaking as consist of effecting health insurance contracts that solely provide for the making of payments for the reimbursement or discharge in whole or in part of fees or charges in respect of the provision of relevant health services.
- (3) (a) A scheme shall include a provision requiring each registered undertaking to make returns (each of which is referred to in this Act as a 'return') to the Authority in relation to such matters concerning its health insurance business as may be prescribed.
- (b) The provision referred to in paragraph (a) shall require a return to be made—
- (i) in the case of the first return, in respect of such period as may be prescribed,
- (ii) in the case of the second or any subsequent return, in respect of each period of—
- (I) 3 months, or
- (II) such greater duration as may be prescribed,
- and to be so made not later than such number of days after the end of the period to which it relates as may be prescribed.
- (4) (a) A scheme shall include a provision requiring—
- (i) the making of payments by registered undertakings to the Authority of such amounts as may be determined by the Authority in such manner and by reference to such matters as may be specified in the scheme (including the nature and distribution of insured risks amongst the undertakings),
- (ii) the making of payments by the Authority of such amounts as may be determined by the Authority to such registered undertakings as may be so determined in such manner and by reference to such matters as may be specified in the scheme (including the nature and distribution of insured risks amongst the undertakings).
- (b) The provision referred to in paragraph (a) shall provide that the requirements of the provision shall not have effect until such day as the Minister determines and appoints for that purpose in accordance with the provision of the scheme referred to in paragraph (c).
- (c) A scheme shall include a provision—

- (i) requiring the Authority to—
 - (I) evaluate and analyse each return made to it (and such an evaluation and analysis shall be made by reference to the matters that are specified in the scheme for the purposes of the provision referred to in paragraph (a)),
 - (II) prepare and furnish to the Minister, at such intervals as may be prescribed, a report in relation to—
 - (A) such an evaluation and analysis in so far as it relates to returns made to it in a prescribed period, and
 - (B) matters concerning the carrying on of health insurance business and developments in relation to health insurance generally that the Authority considers ought to be included in the report as a result of that evaluation and analysis,
 - (III) if it appears to the Authority from such an evaluation and analysis that conditions specified in the scheme related to the nature and distribution of insured risks amongst the registered undertakings are fulfilled, include in that report a recommendation by it that the Minister ought or ought not (as it considers appropriate having regard to the best overall interests of health insurance consumers) to exercise the power hereafter mentioned in this subsection,
 - (ii) providing that the Minister shall consider any such report made to him or her under the provision and—
 - (I) if the report includes a recommendation by the Authority that the Minister ought to exercise the power referred to in this subparagraph, may, or
 - (II) if it appears to the Minister that conditions specified in the scheme related to the nature and distribution of insured risks amongst the registered undertakings are fulfilled, shall (unless it appears to the Minister, having consulted with the Authority in relation to the best overall interests of health insurance consumers, that there are good reasons for not doing so), determine that the requirements of the provision referred to in paragraph (a) shall have effect on and from a specified day and appoint a day for that purpose accordingly.
- (5) The provision of a scheme referred to in subsection (4)(c) shall require the Authority, if it appears to the Authority that a recommendation of the kind referred to in that provision is required to be included in a report under that provision, to—
- (a) give notice to each registered undertaking of the fact that it proposes to include such a recommendation in the report, the nature of that proposed recommendation and the reasons therefor,
 - (b) invite, by means of that notice, the undertaking to make, within 21 days from the date of the service of the notice on the undertaking, representations to the Authority in relation to the nature of the recommendation that, in the undertaking's opinion, ought to be included in the report, and
 - (c) take into account any such representations made to it within that period before finally deciding what the nature of the said recommendation ought to be.

(6) The provision of a scheme referred to in subsection (4)(c) shall require the Minister, if he or she proposes to make a determination of the kind referred to in subparagraph (ii) of that subsection, to—

- (a) give notice to each registered undertaking of the fact that he or she proposes to make such a determination (and the day proposed to be appointed under that provision accordingly) and the reasons for that proposed determination,
- (b) invite, by means of that notice, the undertaking to make, within 21 days from the date of the service of the notice on the undertaking, representations to the Minister as to why, in the undertaking's opinion, the said determination ought not to be made, and
- (c) shall take into account any such representations made to him or her within that period before finally deciding whether to make the said determination.

(7) A scheme may provide—

- (a) that a registered undertaking which has made a return shall, on request being made of it to do so by the Authority, furnish to the Authority such information or documents in its possession or capable of being procured by it and forming the basis of that return as is or are specified in the request and that the undertaking shall comply with such a request not later than 7 days from the date the request is made,
- (b) that a report referred to in subsection (4)(c)(i)(II) shall be in such form, and contain such particulars in relation to the evaluation and analysis concerned, as the Minister determines.

(8) A scheme may provide that a registered undertaking which has made representations under the provision of the scheme referred to in subparagraph (i) or (ii) of subsection (4)(c) to the Authority or, as the case may be, the Minister shall, on request being made of it to do so by the Authority or the Minister, as appropriate, furnish to the Authority or the Minister such information or documents in its possession or capable of being procured by it and forming the basis of those representations as is or are specified in the request and that the undertaking shall comply with such a request not later than 7 days from the date the request is made.

(9) A scheme may provide—

- (a) for the establishment and maintenance by the Authority of a fund into which all moneys paid to the Authority under the scheme shall be paid and out of which all moneys paid by the Authority under the scheme shall be paid, and
- (b) for the keeping by the Authority of specified accounts in relation to the scheme and the furnishing of copies of those accounts, as audited by the Comptroller and Auditor General, and copies of the reports of the Comptroller and Auditor General thereon to the Minister at specified times.

(10) (a) A reference in this section to—

- (i) a health insurance consumer is a reference to a person, other than the registered undertaking, who is party to, or named in, a health insurance contract or likely to be interested in being such a party or being so named,
- (ii) insured risks among registered undertakings is a reference to the risks that have been respectively insured by the undertakings under health insurance contracts, and

(iii) the best overall interests of health insurance consumers includes a reference to the need to maintain the application of community rating across the market for health insurance and to facilitate competition between undertakings.

(b) The conditions specified in a scheme for the purposes of the provision of the scheme referred to in subsection (4)(c)(i)(III) may be different from the conditions specified in the scheme for the purposes of the provision of the scheme referred to in subsection (4)(c)(ii)(II).

(c) The nature and distribution of insured risks amongst registered undertakings to which conditions as aforesaid relate may be expressed in the scheme concerned by reference to the amounts that would fall to be paid to or by a particular registered undertaking or undertakings under the provision of the scheme referred to in subsection (4)(a) if the requirements of that provision had effect at the time of the making of the evaluation and analysis to which the report concerned referred to in subsection (4)(c)(i)(II) relates.

12A.—(1) The contents of returns shall, in so far as they can be related to individual undertakings, be disclosed only where necessary for the functions of the Authority or the Minister.

(2) Subject to subsection (1), the Authority may, where it considers it appropriate to do so, disclose aggregate data derived from returns (other than returns made to the Authority during the period lastly referred to in section 12B(1) by an undertaking that has served a notice under and in accordance with that section).

(3) The Minister may engage a person whom he or she considers to be competent and qualified to do so to advise him or her and to consult with him or her in relation to the functions of the Minister under a scheme.

(4) A payment due by a registered undertaking to the Authority under a scheme may be recovered by the Authority from the undertaking as a simple contract debt in any court of competent jurisdiction.”

Limited exemption from requirement to make returns and otherwise comply with risk equalisation scheme.

10.—The following section is inserted after section 12A (inserted by this Act) of the Principal Act:

“12B.—(1) Neither—

(a) the requirement of any scheme to make a return or returns, in so far as the return or returns would relate to the period of 6 months beginning on the date referred to hereafter in this section, nor

(b) the other provisions of any scheme, in respect of the period of 36 months beginning on that date,

shall apply to an undertaking (other than a restricted membership undertaking) if, before the date on which it commences the carrying on of a health insurance business (‘the commencement date’), it serves a notice on the Authority or, if the establishment day is subsequent to the commencement date, the Minister, stating that it does not wish—

(i) that requirement to make a return or returns relating to the period of 6 months beginning on the commencement date, and

(ii) the other provisions of any scheme, in respect of the period of 36 months beginning on the commencement date,

to apply to it.

(2) Where an undertaking serves a notice under and in accordance with subsection (1), any returns made by the undertaking pursuant to a scheme during the period referred to in paragraph (ii) of that subsection shall be disregarded by the Authority in determining any payments under the provision of the scheme referred to in section 12(4)(a).

(3) As respects 2 or more registered undertakings which are associated companies of one another, only one of those undertakings may serve a notice under and in accordance with subsection (1).

(4) In determining, for the purposes of this section, whether one company is an associated company of another company, section 432 and the other relevant provisions of Part 13 of the Taxes Consolidation Act, 1997, shall apply.

(5) In this section, 'company' has the same meaning as it has in the Corporation Tax Acts."

Annual report with respect to the operation of a scheme.

11.—The following section is inserted after section 33 of the Principal Act:

"33A.—(1) The Authority shall, in each of the periods referred to in subsection (3), evaluate the operation of the provision of a scheme referred to in section 12(4)(a) (in this section referred to as 'the equalisation payment provision') with respect to its effects on the interests of health insurance consumers and make a report on such an evaluation to the Minister.

(2) The Minister shall, as soon as may be after the receipt by him or her of a report under subsection (1), cause copies of it to be laid before each House of the Oireachtas.

(3) The periods mentioned in subsection (1) are—

(a) the period of 12 months beginning on the day on which a requirement to make a payment under the equalisation payment provision first arises, and

(b) each successive period of 12 months (other than a period of 12 months in which the equalisation payment provision is not in operation).

(4) The reference in subsection (1) to health insurance consumers shall be construed in accordance with section 12(10)(a)(i)."

Performance of functions under Principal Act — equality of treatment of undertakings.

12.—The following section is inserted after section 33A (inserted by this Act) of the Principal Act:

"33B.—Without prejudice to any specific provision of this Act, or regulations thereunder, in that behalf and save where the operation of the provision necessarily requires a difference in such treatment, the Minister and the Authority shall perform the functions conferred on them by or under this Act in such a manner as will result in registered undertakings being treated equally in similar circumstances."

Miscellaneous amendments of Principal Act.

13.—The Principal Act is amended—

(a) in section 1(2), by the substitution for "Subject to section 12(2)(b), this Act" of "This Act",

(b) in section 3 by—

(i) the insertion in subsection (3) after "Every regulation under this Act" of "(other than a regulation referred to in subsection (4))", and

(ii) the addition of the following subsection:

“(4) Where regulations are proposed to be made under—

(a) this section for the purposes of section 7A, 7B, 8, 9, 10, 12 or 13 (‘the listed sections’), or

(b) any of the listed sections,

a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.”,

(c) in section 10, by the substitution for “ancillary” of “relevant”,

(d) in section 11(ii)(l), by the substitution for “an ancillary” of “a relevant”,

(e) in section 17(4), by the substitution for “section 12(3)(b)” of “section 12(4)(a)(ii)”,

(f) in section 21(1)(c), by the deletion of “under section 12(4)”, and

(g) in section 32(1), by the substitution for “under section 12(3)” of “under a scheme”.

Additional powers of Voluntary Health insurance Board.

14.—F1[...]

Annotations

Amendments

F1 Repealed (5.06.2008, 10.01.2010) by *Voluntary Health Insurance (Amendment) Act 2008* (6/2008), s. 21 and sch., S.I. Nos. 171 of 2008, 213 of 2009.

Short title, collective citation and commencement.

15.—(1) This Act may be cited as the Health Insurance (Amendment) Act, 2001.

(2) The Principal Act and this Act may be cited together as the Health Insurance Acts, 1994 and 2001, and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes

E1 Power pursuant to subs. (3) exercised (9.06.2009) by *Health Insurance (Amendment) Act 2001 (Commencement) Order 2009* (S.I. No. 212 of 2009).

2. The 9th day of June 2009 is appointed as the day on which—

(a) sections 5 and 13 (in so far as they are not already in operation),

and

(b) sections 6 and 7,

of the Health Insurance (Amendment) Act 2001 (No. 17 of 2001) shall come into operation.

E2 Power pursuant to subs. (3) exercised (29.06.2005) by *Health Insurance (Amendment) Act 2001 (Commencement) Order 2005* (S.I. No. 322 of 2005).

2. The 29th day of June 2005 is appointed as the day on which sections 3 (in so far as it is not already in operation) and 8 of the Health Insurance (Amendment) Act 2001 (No. 17 of 2001) come into operation.

E3 Power pursuant to section exercised (19.11.2001) by *Health Insurance (Amendment) Act 2001 (Commencement of Certain Provisions) Order 2001* (S.I. No. 514 of 2001).

3. The following provisions of the Health Insurance (Amendment) Act, 2001 (No. 17 of 2001), come into operation on 19 November 2001:

(a) sections 1 and 2,

(b) paragraphs (b) to (f) of section 3,

(c) section 4,

(d) section 5, except in so far as it relates to the amendment of the Principal Act by section 6,

(e) sections 9, 10, 11 and 12,

(f) paragraphs (a) to (g) of section 13, except in so far as paragraph (b) relates to the amendment of the Principal Act by section 6, and

(g) sections 14 and 15.