

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 227

Health Insurance Act 1973

Health Insurance (Pathology Services Table) Amendment Regulations 2009 (No. 3)

Subsection 133 (1) of the *Health Insurance Act 1973* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides, in part, for payments of Medicare benefits in respect of professional services rendered to eligible persons. Section 9 of the Act provides that Medicare benefits shall be calculated by reference to the fees for medical services, including pathology services, set out in prescribed tables.

Section 4A of the Act provides that the regulations may prescribe a table of pathology services that sets out items of pathology services, the amount of fees applicable in respect of each item, and rules for interpretation of the pathology services table. The *Health Insurance (Pathology Services Table) Regulations 2008* currently prescribe such a table.

The purpose of the regulations is to make item 66900 exempt from the coning rule, by adding it to rule 18A. The coning rule is the restriction for which Medicare benefits are paid for pathology services within a single patient episode. This rule applies to out of hospital pathology services requested by general practitioners and limits the benefits payable to only three services with the highest schedule fee. The coning rule applies to all items on the Pathology Services Table unless specified.

Item 66900 was introduced on 1 May 2009 and is a direct mirror of existing item 12533 on the General Medical Services Table, which provides a rebate for a carbon-labelled urea breath test for *Helicobacter pylori*. Item 66900 was created to solve a Medicare Australia billing issue for pathologists trying to claim this test. Since item 12533 is not included in the episode cone rule, to act as an effective mirror item 66900 needs also to be exempt.

This exemption is to be backdated to 1 May 2009 to ensure continuity of the exemption and to ensure no patients are disadvantaged by limited payment of benefits due to incorrect application of the coning rule.

The retrospective commencement of these regulations does not offend subsection 12(2) of the *Legislative Instruments Act 2003*. The only possible effect on individuals affected by the amendment is that they may be entitled to a Medicare payment to which they would not be entitled under the regulations before the amendment was made. The amendment made by the regulations therefore does not adversely affect the rights or impose liabilities on any person (other than the Commonwealth or an authority of the Commonwealth).

The descriptor for item 66900 is amended to indicate that it is subject to rule 18.

The Pathology Services Table Committee (PSTC) has discussed the proposal regarding item 66900 at a recent meeting. PSTC members, who include representatives of the Royal College

of Pathologists of Australasia, the Australian Association of Pathology Practices and the National Coalition of Public Pathology, agreed on the proposal in the form put forward in the minute. These organisations are the three peak representative bodies for pathology in Australia.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations are taken to have commenced on 1 May 2009.