EXPLANATORY STATEMENT

**Select Legislative Instrument 2012 No. 212**

*Health Insurance Act 1973*

*Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 1)*

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.

Part VAA of the Act establishes the Professional Services Review (the PSR) Scheme. The PSR Scheme is intended to provide an effective peer review mechanism to deal quickly and fairly with concerns about possible inappropriate practice. The objective of the scheme is to protect the integrity of the Medicare and Pharmaceutical Benefits Scheme (PBS) from inappropriate practice in relation to Medicare Benefits Schedule (MBS) billing and PBS prescribing and to protect the integrity of the MBS and PBS. Under the Act, ‘inappropriate practice’ is conduct in connection with rendering services that the practitioner’s peers would conclude was unacceptable to the general body of their profession, such as over-servicing patients or over-prescribing drugs listed on the PBS.

It is not within the scope of the PSR Scheme to investigate a practitioner’s compliance with his or her standards of professional conduct or performance. The HIA (Section 106XB) gives the Director of PSR committee the power to inform the ‘appropriate bodies’ if the Director, or a PSR Committee undertaking a review, forms the opinion that a practitioner has failed to comply with his or her professional standards. The ‘appropriate bodies’ are identified in the Schedule to the *Health Insurance (Profession Services Review) Regulations 1999* (the Principal Regulations).

The Schedule to the Principal Regulations currently lists various state and territory registration boards and bodies as the regulatory authorities that are notified in the case of practitioners failing to comply with their relative professional standards. The introduction of the National Registration and Accreditation Scheme (NRAS), implemented under the *Health Practitioner Regulation National Law Act 2009 (Qld),* has made the current Schedule lists of boards and bodies defunct. All states and territories have enacted consistent legislation. The Schedule requires updating so that registration boards or other boards listed in the Schedule are aligned with the responsible bodies established under NRAS.

The purpose of the regulation is to:

* update the bodies prescribed in the Schedule to the Principal Regulations to refer to the new national registration boards for health professions subject to the PSR Scheme;
* add reference to the Nursing and Midwifery Board of Australia in the Schedule to the Principal Regulations. This is a result of nurse practitioners and midwives being able to provide medicare-eligible services and prescribe pharmaceutical benefits, and being subject to the PSR Scheme from November 2010; and
* make minor technical amendments to the Principal Regulations.

Details of the amendments are set out in the Attachment.

In the preparation of the regulation amendments to the Professional Services Review, the Department has consulted internally extensively. This occurred during the period of September 2011 to May 2012. Externally the Department consulted the Office of Best Practice Regulation in 2010, the Department of Human Services and the Australian Health and Practitioner Registration Authority beginning in October 2011.

The Act does not specify any conditions that need to be met before the power to make the regulation may be exercised.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on the day after registration on the Federal Register of Legislative Instruments.

 Authority: Subsection 133(1) of the *Health Insurance Act 1973*

**ATTACHMENT**

**Details of the *Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 1)***

Section 1 – Name of Regulation

This section provides for the regulation to be referred to as the *Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for the regulation to commence on the day after it is registered.

Section 3 – Amendment of the *Health Insurance (Professional Services Review) Regulations 1999*

This section provides that Schedule 1 amends the *Health Insurance (Professional Services Review) Regulations 1999* (the Principal Regulations).

Schedule 1 Amendments

**Item [1] – Regulation 3, notes 1 and 2**

This item deletes notes 1 and 2 to regulation 3 of the Principal Regulations and insert a new note that provides a range of words and expressions used in the regulations to have the same meaning as that given in the *Health Insurance Act 1973* (the Act).

**Item [2] – Regulation 4, note**

This item deletes reference to the term ‘subs’ in the note of regulation 4 of the Principal Regulations and replace it with ‘subsection’.

**Item [3] – Regulation 7**

Item [3] corrects a typographical error in the definition of ‘professional attendance’ by replacing reference to Part 3 of the general medical services table with reference to Part 2 of the general medical services table in order to ensure that the Principal Regulations make reference to the correct part of the general medical services table.

**Items [4] and [5] – Regulations 7 and 11, note**

These items delete notes to regulations 7 and 11, respectively, of the Principal Regulations. These are technical consequential amendment, resulting from amendments to the note in regulation 3 (item [1] refers).

**Item [6] – Subregulation 12(1)**

Subregulation 12(1) currently states that through subsection 106XB(1) of the Act, the appropriate body to which the Director of Professional Services Review (PSR) may direct a notification about a general practitioner is a State or Territory body specified in the Schedule. As a result of the new National Registration and Accreditation Scheme (NRAS), the Medical Board of Australia now regulates medical practitioners for all States and Territories.

Item [6] deletes reference to an appropriate body for a general practitioner being the body for ‘the State or Territory in which the general practitioner practises his or her practice’ and replaces it with a general reference to a body ‘that, for a general practitioner’ regulates practice.

**Item [7] – Paragraph 12(1)(a)**

Item [7] deletes reference to the term ‘licensing’ in paragraph 12(1)(a) of the Principal Regulations. This is because under NRAS, all regulated health professionals are registered to practice instead of licensed to practice. Licensing is no longer relevant.

**Item [8] – Subregulation 12(2)**

Item [8] deletes reference in subregulation 12(2) of the Principal Regulations to an appropriate body for a practitioner (other than a general practitioner) being the body specified in Schedule 2 to the Principal Regulations responsible for regulating that type of practitioner, in the State or Territory in which the practitioner (other than a general practitioner) practises his or her practice or specialty. This is replaced by a general reference to the appropriate bodies ‘for a practitioner other than a general practitioner’. This is a consequential amendment following the implementation of the NRAS, which establishes single national boards for each regulated profession.

**Item [9] – Paragraph 12(2)(a)**

Item [9] deletes reference to the term ‘licensing’ in paragraph 12(2)(a) of the Principal Regulations. This is because under NRAS, all regulated health professionals are registered to practice instead of licensed to practice.

**Item [10] – Schedule 1, item 1**

Schedule 1, item 1 currently sets out now defunct state and territory medical registration boards as appropriate bodies which the Director of PSR may notify in respect of a general practitioner suspected of failing to comply with his or her professional standards, in accordance with subregulation 12(1) of the Principal Regulations.

Item [10] deletes these references and replace them with reference to the Medical Board of Australia. This amendment reflects the implementation of the new national registration process and ensures that the appropriate regulatory body for a referral of a general practitioner, for the purposes of paragraph 106XB(3)(a) of the Act, is the Medical Board of Australia.

**Item [11] – Schedule 2**

Item [11] amends Schedule 2 to the Principal Regulations by:

(i) removing reference to state or territory health professional registration bodies specified for the purpose of subregulation 12(2) of the Principal Regulations to whom referrals of practitioners (other than a general practitioner) may be made by the Director of PSR. This is a consequential amendment that follows from the implementation of the NRAS and the subsequent creation of national registration boards; and

(ii) adding reference to the Nursing and Midwifery Board of Australia as a result of nurse practitioners and midwives being able to provide medicare-eligible services and prescribe pharmaceutical benefits from November 2010 and becoming subject to referral by the Director of PSR to an appropriate regulatory body for suspected non-compliance with professional standards.

These amendments to Schedule 2 ensure that the appropriate regulatory bodies are able to receive referrals in accordance with paragraph 106XB(3)(b) of the Act.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Health Insurance (Professional Services Review) Regulations 1999* (the Principal Regulations) currently prescribes various state and territory registration boards as appropriate regulatory bodies that must be notified in relation to practitioners who have failed to comply with their professional standards. However these bodies no longer exist as a result of the National Registration and Accreditation Scheme, implemented by a ‘National Law’ in each State or Territory. Under the National Law, the various state or territory registration boards for each regulated health profession have been replaced by a single national board for the profession.

The *Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 1)*:

(i) updates the bodies prescribed in the Schedule to the Principal Regulations to refer to the
 national registration boards for health professions subject to the Professional Services
 Review (PSR) Scheme;

(ii) adds reference to the Nursing and Midwifery Board of Australia in the Schedule to the
 Principal Regulations. This is a result of nurse practitioners and midwives becoming
 able to provide medicare-eligible services and prescribing pharmaceutical benefits, and
 becoming subject to the PSR Scheme, from November 2010; and

(iii) makes minor technical amendments to the Principal Regulations.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Tanya Plibersek**

**Minister for Health**