EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 12

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment Regulation 2013 (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 II of the Act provides for the payment of Medicare benefits for 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 set out in the general medical, pathology and diagnostic imaging tables.

Subsection 4(1) of the Act provides that the regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services) which sets out items of medical services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulation 2012* (the Principal Regulation) currently prescribes such a table.

The regulation amends the Principal Regulation to ensure that the medical services funded through the Medicare Benefits Schedule (MBS) continue to be up-to-date and representative of best medical practice.

Schedule 1 to the regulation includes a number of minor changes to implement Government policies in relation to Medicare. This includes amendments resulting from a project to introduce uniformity between the general medical services table and MBS Online, a plain English resource containing a listing of most of the Medicare items and information on the interpretation of the items to assist medical professionals in delivering Medicare services. An important element of this project was to ensure that MBS item descriptors as clearly as possible set out requirements that must be satisfied before an item can be claimed.

The regulation also implements a 2012-13 Budget measure to prevent certain complex procedures from attracting a Medicare benefit when they are performed out of hospital. Paragraph 1.1.6 of the Principal Regulation states that an item including the symbol (H) can only be performed or provided in a hospital. For Medicare purposes, a patient receives a rebate of 75 per cent of the item fee where the service is provided in hospital and a rebate of 85 per cent of the item fee where the service is provided out of hospital. By placing the symbol (H) against certain items it will make clear that, from 1 March 2013, these procedures will only be eligible for a Medicare benefit of 75 per cent of the item fee where they are performed in a hospital or accredited day surgery facility.

Schedule 2 to the regulation adds two new items 32523 and 32526 from 1 May 2013 for the use of radiofrequency ablation for severe varicose veins. These new items are the result of a Medical Services Advisory Committee recommendation. This amendment also moves two items for endovenous laser therapy (ELT) that are currently included in a section 3C determination into the general medical services table and make amendments to the ELT item

descriptors so that they align with new radiofrequency ablation items so that only veins with demonstrated disease severity are treated.

Details of the regulation are set out in the Attachment.

The Act specifies no conditions which 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*.

Schedule 1, which covers all amendments excluding the new items for radiofrequency ablation for severe varicose veins and the amendment to two items for ELT, commences on 1 March 2013. Schedule 2, which covers the new items for radiofrequency ablation for severe varicose veins and the amendment to two items for ELT, commences on 1 May 2013.

Consultation

The *Health Insurance (General Medical Services Table) Amendment Regulation (No. 1)* includes a number of minor changes to implement Government policies in relation to Medicare.

Letters were sent to the relevant craft groups outlining the reason for the change and setting out the proposed amended item descriptor/s as it would appear in the general medical services table. The groups consulted were: the Australian Medical Association, the Australian and New Zealand Association of Neurologists, the Australian and New Zealand Society of Vascular Surgeons, the Royal Australian and New Zealand Society of Ophthalmologists, the Cardiac Society of Australia and New Zealand, the Colorectal Surgical Society of Australia and New Zealand, the Royal Australasian College of Surgeons, the Royal Australian and New Zealand College of Radiologists, the Australasian College of Phlebology, the Australian and New Zealand Society of Phlebology and the Australian Association of Consultant Physicians. The responses received from these craft groups approved the amendments.

No consultation was undertaken in relation to items 16 and 17 which removed the out of hospital benefit for certain items as this decision was included as part of the 2012-13 Budget.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No. 1)*

Section 1 – Name of regulation

This section provides for the regulation to be referred to as the *Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No.* 1*).*

Section 2 – Commencement

This section provides for the regulation to commence as follows:

(a) on 1 March 2013 – Sections 1 – 3 and Schedule 1;
(b) on 1 May 2013 – Schedule 2.

Section 3 – Amendment of *Health Insurance (General Medical Services Table) Regulation 2012*

This section provides that the Schedules to the regulation amend the *Health Insurance (General Medical Services Table) Regulation 2012*.

Schedule 1 – Amendments

Item [1] – Schedule 1, subclause 1.2.8 (1)
This item inserts item 11727 in clause 1.2.8 'Services that may be provided by persons other than medical practitioners'. The amendment enables implanted defibrillator testing provided for under item 11727 to be given by a person who is not a medical practitioner on behalf of the treating practitioner.

Item [2] – Schedule 1, Group A3, after item 109
This item moves item 113, for a short initial videoconference attendance, from 'Group A4 – Consultant Physician (other than psychiatry) attendances to which no other item applies' to 'Group A3 – Specialist attendances to which no other item applies'. The numerical ordering of the table had prevented item 113 from sitting within Group A3. However, as the item is to be performed by a specialist, the item will be included in Group A3 after 109 and the range be amended to include item 113.

Item [3] – Schedule 1, Group A4, item 113
This item removes item 113 from 'Group A4 – Consultant Physician (other than psychiatry) attendances to which no other item applies' to allow for the item to be included in Group A3 (see item [2]).

Item [4] – Schedule 1, item 133, paragraph (d)
This item amends item 133. Item 133 is for a subsequent consultant physician attendance where item 132 has been claimed by the same consultant physician in the preceding 12 months. The amendment is to permit item 133 to be claimed in circumstances where the practitioner who rendered item 132 was a locum tenens and not the patient's ongoing treating practitioner.

Item [5] – Schedule 1, item 11503
This item amends item 11503 for the measurement of the functioning of the respiratory system as a result of a review undertaken by the Department to simplify item descriptors and to improve the overall drafting consistency of the Regulation. The amendment does not make a substantive change to the item.

Item [6] – Schedule 1, items 11602 to 11605
This item amends items 11602, 11604 and 11605 as a result of a review undertaken by the Department to simplify item descriptors and to improve the overall consistency of the Regulation. Items 11602, 11604 and 11605 relate to diagnostic examinations for various venous conditions, including the preparation of a report on the examinations, and may be provided by a person other than a medical practitioner on behalf of the practitioner. The amendments made by this item also impose a requirement for the report component of item 11602 to be provided by a medical practitioner.

Item [7] – Schedule 1, items 11708 and 11709
This item amends continuous ECG items 11708 and 11709 to include information currently set out in an explanatory note (D1.20) that appears on MBS Online. The information clarifies that changing a tape or batteries will not result in a separate service being provided, however further monitoring following the analysis and reporting on an earlier period of monitoring will result in a new service. This permits explanatory note D1.20 to be deleted from MBS Online as it will become redundant.

Item [8] – Schedule 1, after paragraph 11820 (e)
This item amends the item descriptor for item 11820 to include information that is currently set out in explanatory note (D.1.22) applying to the item that appears on MBS Online. The information relates to the meaning to be given to an 'episode of bleeding' and the number of times item 11820 may be claimed during a single episode of bleeding or within a 12 month period. This permits this information to be deleted from explanatory note D1.22.

Item [9] – Schedule 1, subclause 2.43.5 (4)
This item amends subclause 2.43.5(4), which deals with the application of anaesthesia items appearing in Group T10 of the general medical services table, to include reference to item 55026. Item 55026 relates to ultrasonic cross-sectional echography and appears in the *Health Insurance (Diagnostic Imaging Capital Sensitivity) Determination 2011*. Item 55026 is the 'capital sensitivity' item mirroring item 55054 of the diagnostic imaging services table, but with a reduced schedule fee to reflect that the service has been provided on older diagnostic imaging equipment. Subclause 2.43.5(4) currently prohibits an item in Group T10 from being claimed if the item is provided in association with a service to which item 55054 applies. This item amends subclause 2.43.5(4) so that an item in Group T10 could also not be claimed where it is provided in association with a service to which item 55026 applies.

Item [10] – Schedule 1, after clause 2.44.15
This item introduces two new rules to incorporate information currently contained in explanatory notes 'T8.52 – Sacral Nerve Stimulation' and 'T8.33 – Artificial Bowel Sphincter' appearing on MBS Online. New clause 2.44.15A sets out a number of contraindications for the provision of sacral nerve stimulation under items 32213 to 32218, including where the patient is under 18 years of age, is medically unfit for surgery or is pregnant or planning pregnancy. New clause 2.44.15B sets out a number of contraindications for the insertion or removal of an artificial bowel sphincter under items 32220 or 32221, including where the patient is pregnant or has an inflammatory bowel disease.

Item [11] – Schedule 1, after item 32021
This item introduces a new item 32023 for the endoscopic insertion of colonic stents for large bowel obstruction. This item implements a recommendation of the Medical Services Advisory Committee.

Item [12] – Schedule 1, item 33806
This item amends the item descriptor for item 33806 to incorporate information currently contained in explanatory note 'T8.39 – Embolectomy or Thrombectomy' that appears on MBS Online. The information makes clear that irrespective of the number of incisions made to access an artery or bypass graft, item 33806 may only be claimed once per extremity. This permits the deletion of explanatory note T8.39.

Item [13] – Schedule 1, subparagraph 2.44.16 (a) (iii)
This item amends a minor spelling mistake to replace the word 'vernicular' with 'ventricular' in subparagraph 2.44.16(a)(iii).

Items [14] – Further amendments—specialist, consultant physician or psychiatrist
This item amends items 2100 to 2220 of Schedule 1 by omitting 'specialist, consultant physician or psychiatrist' and inserting 'specialist or consultant physician'. This is because psychiatrists are considered to be specialists for Medicare purposes and do not need to be separately referenced.

Item 15 – Further amendments—specialist, physician or psychiatrist
This item amends clauses 2.18A.4 and 2.30.6 and items 2100 to 2195 of Schedule 1 to change the references to 'specialist, physician or psychiatrist' to 'specialist or consultant physician'. This is because psychiatrists are considered to be specialists for Medicare purposes and therefore do not need to be separately referenced.

Items [16] and [17] – Further amendments—(H) and (H) (Anaes.)
These items add the symbol '(H)' to the item descriptors for items 13870 to 13888, 30165 to 30174, 30189, 30120, 45522, 45556, 45638 to 45644, and 52343 to 52375. Clause 1.1.6 of the Regulation states that an item including the symbol (H) can only be performed or provided in a hospital. For Medicare purposes, a patient receives a rebate of 75 per cent of the item fee where the service is provided in hospital and a rebate of 85 per cent of the item fee where the service is provided out of hospital. As a result, where an item is annotated with an (H) only the 75 per cent rebate is payable. These items implement a 2012-13 Budget measure.

<u>Schedule 2 – Amendment commencing on 1 May 2013</u>

Item [1] – Schedule 1, after item 32517
This item adds two new items, 32523 and 32526 from 1 May 2013 for the use of radiofrequency ablation for severe varicose veins, as the result of a Medical Services Advisory Committee recommendation.

This item also moves two items for endovenous laser therapy (ELT) that are currently included in a section 3C determination into the general medical services table and make amendments to the ELT item descriptors so that they align with new radiofrequency ablation items so that only veins with demonstrated disease severity are treated. The two ELT items currently included in the determination are 32520 and 32526.

Statement of Compatibility with Human Rights

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

Health Insurance (General Medical Services Table) Amendment Regulation 2013 (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 instrument will amend the *Health Insurance (General Medical Services Table) Regulation 2012* (the Regulation) to ensure that the medical services funded through the Medicare Benefits Schedule continue to be up-to-date and representative of best medical practice.

In accordance with s 4 of the *Health Insurance Act 1973*, the Regulation prescribes a table of medical services containing: items of medical services; the amount of fees applicable for each item; and rules for the interpretation of the table.

The *Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No. 1)* (the Amendment Regulation) will include a number of minor changes to implement Government policies in relation to Medicare. This includes amendments resulting from a project to introduce greater uniformity between the general medical services table and MBS Online, the plain English online resource listing of most of the Medicare items and information to assist medical professionals in delivering Medicare services. MBS Online sets out the item descriptors for the Medicare items and refers readers to explanatory notes containing additional information relevant for the interpretation and claiming of the items. An important element of this project was to ensure that MBS item descriptors as clearly as possible set out requirements that must be satisfied before an item can be claimed.

The Amendment Regulation makes the following changes:

- enabling item 11727 for implanted defibrillator testing to be provided on behalf of the treating practitioner by another person who is not a medical practitioner (item 1, Schedule 1)
- moving item 113 for a short initial videoconference by a specialist from Group A4 of the general medical services table (nominally for consultant physician attendances) to Group A3 (for specialist services). Item 113 currently appears in Group A4 as a result of the numerical ordering of the table. This amendment will not make any substantive changes to the rules for claiming item 113 (items 2 and 3, Schedule 1)
- allowing the payment of Medicare benefit for consultant physician item 133 in expanded circumstances. Item 133, for a follow-up attendance during a single course of treatment, can currently only be claimed where a patient is seen by the same consultant physician who provided the initial attendance in the course of treatment. The amendments will enable the item to also be claimed where a locum tenens provided the initial attendance (item 4, Schedule 1).
- minor technical amendments to improve the drafting of item 11503 (item 5, Schedule 1)

- minor technical amendments to improve the drafting of items 11602, 11604 and 11605 which relate to diagnostic examinations for various venous conditions, including the preparation of a report on the examinations, and may be provided by a person other than a medical practitioner on behalf of the practitioner.
- amending the item descriptors for continuous ECG items 11708 and 11709 to include information currently set out in an explanatory note in MBS Online. The information clarifies that changing a tape or batteries will not result in a separate service being provided, however further monitoring following the analysis and reporting on an earlier period of monitoring will result in a new service (item 7, Schedule 1)
- amending the item descriptor for item 11820 to include information that is currently set out in explanatory note (D.1.22) on MBS Online. The information relates to the meaning to be given to an 'episode of bleeding' and the number of times item 33806 may be claimed during a single episode of bleeding or within a 12 month period (item 8, Schedule 1).
- amending subclause 2.43.5(4), which deals with the application of anaesthesia items appearing in Group T10 of the general medical services table, to include reference to item 55026. Item 55026, relating to ultrasonic cross-sectional echography, is the 'capital sensitivity' item mirroring item 55054 of the diagnostic imaging services table, but has a reduced schedule fee to reflect that the service has been provided on older diagnostic imaging equipment. Subclause 2.43.5(4) currently prohibits an item in Group T10 from being claimed if the item is provided in association with a service to which item 55054 applies. This item would amend subclause 2.43.5(4) so that an item in Group T10 could also not be claimed where it is provided in association with a service to which item 55026 applies (item 9, Schedule 1).
- introducing two new rules to incorporate information currently contained in explanatory notes T8.52 and T8.33 in MBS Online. New clause 2.44.15A would set out a number of contraindications for the provision of sacral nerve stimulation under items 32213 to 32218, including where the patient is under 18 years of age, is medically unfit for surgery or is pregnant or planning pregnancy. New clause 2.44.15B would set out a number of contraindications for the insertion or removal of an artificial bowel sphincter under items 32220 or 32221, including where the patient is pregnant or has an inflammatory bowel disease (item 10, Schedule 1)
- introducing a new Medicare item for the endoscopic insertion of colonic stents for large bowel obstruction (item 11, Schedule 1)
- amending the item descriptor for item 33806 to incorporate information currently contained in explanatory note 'T8.39 – Embolectomy or Thrombectomy' that appears on MBS Online about the number of times the item may be claimed per extremity (item 12, Schedule 1)
- correcting a spelling error in subparagraph 2.44.16(a)(iii) (item 13, Schedule 1)
- adding the symbol '(H)' to a number of item descriptors. Items including the symbol (H) can only be performed in a hospital. For Medicare purposes, a patient receives a rebate of 75 per cent of the item fee where the service is provided in hospital and a rebate of 85 per cent of the item fee where the service is provided out of hospital. As a result, where an item is annotated with an (H) only the 75 per cent rebate is payable. These amendments implement a 2012-13 Budget measure (items 14 and 15, Schedule 1)

- amending references in items 2100 to 2220 and clauses 2.18A.4 and 2.20.6 to remove redundant references (items 16 and 17, Schedule 1)
- adding two new Medicare items for radiofrequency ablation for severe varicose veins from 1 May 2013 (item 1, Schedule 2)
- adding two items for endovenous laser therapy to the Regulation that are currently in the *Health Insurance (Endovenous Laser Therapy) Determination 2012*. This will place these items in the Regulation on an ongoing basis. The amendments would take effect 1 May 2013, with the determination being revoked immediately beforehand. Minor amendments to the descriptors for the items would be made so that the endovenous laser therapy items align with the new radiofrequency ablation items in requiring demonstrated disease severity (item 1, Schedule 2)

Human Rights Implications

The Amendment Regulation engages Articles 2, 9 and 12 and of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

The right to health – the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee has also stated that the 'highest attainable standard of health' takes into account the country's available resources. The right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs and conditions necessary for the realisation of the highest attainable standard of health.

The right to social security is contained in article 9 of the ICESCR. It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The Committee has stated that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them.

However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

Analysis

The amendments made by items 2, 3, 5, 7, 13, 16 and 17 of Schedule 1 to the Amendment Regulation do not engage any of the relevant rights. They are technical amendments that do not alter current arrangements for the payment of Medicare benefits.

The amendments made by items 1, 4 and 11 of Schedule 1 to the Amendment Determination makes the following changes:

- previously Medicare benefits were only payable for item 11727 where the service was provided by a medical practitioner. The amendments made by item 1 of Schedule 1 will also allow benefits to be paid where the service is provided by a person other a medical practitioner who is acting under the supervision of the treating practitioner;
- the amendments made by item 4 will enable Medicare benefits to be paid for item 133 where the practitioner who provided the initial consultation in the course of treatment was a locum tenens and not the patient's ongoing treating practitioner;
- item 11 of Schedule 1 adds a new Medicare item to the Determination.

The amendments made by item 9 of Schedule 1 prevent the payment of Medicare benefits for most anaesthesia services where the service is provided in association with a service to which diagnostic imaging item 55026 applies. However, the restriction is justified due to a concern that Medicare funding is being provided for a new use of existing technology (ultrasound guided anaesthesia procedures) ahead of proper evaluation. The practice is the subject of an MSAC application into its safety, effectiveness and cost-effectiveness after which a final decision will be made on the appropriateness of permitting Medicare funding for this practice. In the interim the limitation is necessary to ensure new services delivered under Medicare items are properly evaluated.

The amendments made by items 14 and 15 of Schedule 1 prevent the payment of Medicare benefits for the affected services when provided out of hospital. However, the restriction is justified as paying Medicare rebates for the provision of complex services outside of a recognised hospital may compromise patient quality of care, as the facilities established to provide these services may not meet the appropriate accreditation standards that are required of a private hospital.

The amendments made by item 1 of Schedule 2 create two new Medicare items for radiofrequency ablation have been created, which will allow patients to receive Commonwealth subsidies for these services and increase the rights to health and social security. The amendments also move two Medicare items from the *Health Insurance (Endovenous Laser Therapy) Determination 2012* to the Regulations, which of itself does not have any impact on the ability of patients to claim benefits for these services. However, a minor amendment has been made to the item descriptors to specify a particular method of demonstrating clinical need for the services. This amendment is necessary as Medicare services are only payable where the service is clinically necessary for the patient. In this instance, the requirement for a duplex ultrasound will clarify how clinical necessity is to be documented.

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