

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 46

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No. 2)

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. The regulation implements a recommendation contained in a report by the Indigenous Eye Health Unit at the University of Melbourne, the *Roadmap to Close the Gap in Vision*. This amendment broadens the scope of the Aboriginal and Torres Strait Islander adult health assessment under MBS item 715 to include an eye examination. This, in turn, will combat the high levels of refractive error, cataract and diabetic retinopathy experienced by Aboriginal and Torres Strait Islander people.

The regulation also includes two new items – 11244 and 37245 – on the general medical services table from 1 May 2013. Item 11244 is for a diagnostic B-scan of the orbital contents of the eye by an ophthalmologist and item 37245 is for the endoscopic enucleation of the prostate using a Holmium:YAG laser. These new items are the result of recommendations of the Medical Services Advisory Committee and are currently included as items on the general medical services table via a 3C determination which has effect from 1 March 2013. The determination will cease on 30 April 2013.

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*.

The regulation commences on 1 May 2013.

The regulation includes a number of minor changes to implement Government policies in relation to Medicare. Letters were initially sent to the relevant craft groups outlining the reason for the changes and setting out the proposed amended item descriptor/s as they would appear in the general medical services table. The groups consulted were: the Australian Association of Consultant Physicians, the Royal Australian College of General Practitioners, the Royal Australian and New Zealand College of Ophthalmologists, the Urological Society of Australia and New Zealand, the Australian and New Zealand Association of Urological Surgeons, the Australasian College of Phlebology and the Australian and New Zealand Society for Vascular Surgery. Consultation occurred via exchange of letters, emails and through telephone conversations. The responses received from these craft groups approved the amendments.

No consultation was undertaken in relation to item 3 which clarifies the meaning of ‘eligible disability’ under subclause 2.5A.2 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. 2)***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. 2)*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 May 2013.

Section 3 – Authority

This regulation is made under the *Health Insurance Act 1973*.

Schedule 1 – Amendments**Item [1] – Subclause 1.2.8(1) of Schedule 1**

This item allows the service described in item 11244 to be performed by a technician on behalf of a medical practitioner where the medical practitioner supervises the provision of the service.

Item [2] – Division 2.5 of Schedule 1 (paragraphs (d) and (e) of the cell at table item 133, column headed “Description”)

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. Item 132 is for an attendance by a consultant physician to develop a management plan for a patient with at least two morbidities (this can include complex congenital, developmental and behavioural disorders). The amendment permits 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 [3] – Paragraph 2.5A.2(o) of Schedule 1

This item amends clause 2.5A.2 to expand the definition of ‘eligible disability’. This increases the range of conditions that are eligible for Medicare funded allied health services and is a result of the expansion of the *Better Start Initiative for Children with Disabilities* which is managed by the Department of Families, Housing, Community Services and Indigenous Affairs.

Items [4] to [8] – Amendment to clauses 2.16.12 and 2.16.13

These items broaden the scope of the Aboriginal and Torres Strait Islander adult health assessment under MBS item 715 to include an eye examination which will combat the high levels of refractive error, cataract and diabetic retinopathy experienced by Aboriginal and Torres Strait Islander people.

Item [9] – Division 2.34 of Schedule 1 (after table item 11243)

This item introduces an item for a diagnostic brightness scan (B-scan) of the orbital contents of the eye. This is a diagnostic service used by ophthalmologists to diagnose various ocular diseases. The inclusion of this item is a result of a recommendation of the Medical Services Advisory Committee.

Item [10] – Division 2.44 of Schedule 1 (table item 32023)

This item would include an (H) against item 32023 to confirm that, in accordance with clause 1.1.6, the service applies only when performed or provided in hospital.

Item [11] – Division 2.44 of Schedule 1 (table items 32520 and 32522) and**Item [12] – Division 2.44 of Schedule 1 (table items 32523 and 32526)**

These items would amend minor spelling errors by replacing ‘sapheous’ with ‘saphenous’ in items 32520 and 32522 and replacing ‘cathether’ with ‘catheter’ in items 32523 and 32526.

Items [13] to [19] – Amendments to introduce a new item for prostatic hyperplasia

These items would introduce an item to treat the benign enlargement of the prostate and make a number of minor amendments to restrict the new item with existing procedures. Holmium laser enucleation of the prostate (HoLEP) is a method of completely removing the enlarged prostate gland, via the urethra. It is used to treat lower urinary tract symptoms in benign prostatic hyperplasia. The inclusion of this item is a result of a recommendation of the Medical Services Advisory Committee.

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. 2)

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 amends the *Health Insurance (General Medical Services Table) Regulation 2012* (the Principal 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 Principal 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. 2)* (the regulation) includes a number of minor changes to implement Government policies in relation to Medicare. The primary changes included in the Amendment Regulation are:

- the implementation of a recommendation contained in a report by the Indigenous Eye Health Unit at the University of Melbourne, the *Roadmap to Close the Gap in Vision*. This amendment broadens the scope of Aboriginal and Torres Strait Islander adult health assessment under MBS item 715 to include an eye examination. This, in turn, will help to combat the high levels of refractive error, cataract and diabetic retinopathy experienced by Aboriginal and Torres Strait Islander people.
- The regulation also includes two new items – 11244 and 37245 – on the general medical services table from 1 May 2013. Item 11244 is for a diagnostic B-scan of the orbital contents of the eye by an ophthalmologist and item 37245 is for the endoscopic enucleation of the prostate using a Holmium:YAG laser. These new items are the result of recommendations of the Medical Services Advisory Committee and are currently included as items on the general medical services table via a 3C determination which took effect from 1 March 2013. The determination ceases on 30 April 2013.

Human Rights Implications

The 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 realization 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 1 to 2 and 10 to 18 of Schedule 1 to the 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 amendment made by item 3 will clarify the eligible disabilities that may allow a child to access certain additional allied health services under a care plan. This amendment does not impact on patient rights to health and social security.

The amendment made by items 4 to 8 will implement a recommendation contained in a report by the Indigenous Eye Health Unit at the University of Melbourne, the *Roadmap to Close the Gap in Vision*. This amendment will broaden the scope of Aboriginal and Torres Strait Islander adult health assessment under MBS item 715 to include an eye examination and will therefore increase rights to health and social security.

The amendments made by item 9 and 19 create two new Medicare items on the general medical services table for a diagnostic B-scan and laser treatment for benign prostatic hyperplasia. These new items will allow patients to receive Commonwealth subsidies for these services and therefore increase the rights to health and social security.

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