EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 186

Health Insurance Act 1973

Health Insurance Amendment (Midwives) Regulation 2013

Subsection 133(1) of the *Health Insurance Act 1973* (the Act) provides, in part, 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.

In April 2010 the Act was amended to provide for new arrangements to enhance and expand the role of certain midwives, allowing for a greater role in the provision of quality health services.

A 'participating midwife' is an eligible midwife who provides services in a 'collaborative arrangement' of a kind specified in regulations with a medical practitioner of a kind specified in the regulations. The *Health Insurance Regulations 1975* (the Principal Regulations) specify the kinds of collaborative arrangements with the kinds of medical practitioner.

From 1 November 2010, 'participating midwives' were given the ability to provide Medicare-eligible services, including the ability to provide antenatal and postnatal care, deliveries in a hospital setting (including a hospital birthing centre) and refer patients for appropriate Medicare-eligible diagnostic imaging and pathology services. They were also given the ability to prescribe pharmaceuticals under the Pharmaceutical Benefits Scheme.

The types of collaborative arrangements for which the Principal Regulations currently provide are:

- the midwife being employed or engaged by an obstetrician or a medical practitioner who provides obstetric services (an 'obstetric specified medical practitioner') or an entity that employs or engages at least one obstetric specified medical practitioner;
- the midwife receiving patients on written referral from an obstetric specified medical practitioner or a medical practitioner at a hospital authority who is authorised by the authority to participate in collaborative arrangements (together, 'specified medical practitioners');
- the midwife has a signed written agreement with one or more specified medical practitioners; and
- the midwife recording in a patient's written records an acknowledgement by a named specified medical practitioner that the practitioner will be collaborating in the care of the patient, and the clinical details of that collaboration (e.g. consultations with the practitioner and shared tests results).

Since the measure was introduced, midwives have reported ongoing difficulties in establishing collaborative arrangements. This has hindered their ability to participate in the Medicare arrangements.

In recognition of this, at the 10 August 2012 Standing Council on Health (SCoH) meeting, the Commonwealth agreed to expand the types of collaborative arrangements available to midwives in an attempt to make it easier for midwives to work collaboratively with medical practitioners employed or engaged by hospitals or other health services.

Accordingly, the purpose of the regulation is to enable midwives to demonstrate collaborative arrangements that provide pathways for consultation, referral and transfer of care to specified medical practitioners employed or engaged by a public or private hospital or other entity such as a health service, through an arrangement with the hospital or entity.

To ensure safety and quality of maternity care, midwives wishing to provide Medicare services are currently required to have notation as an eligible midwife, in accordance with the Nursing and Midwifery Board of Australia's (NMBA) Eligible Midwife Registration Standard. A midwife's notation is reviewed every 3 years. This requirement will not be altered by these amendments. To obtain notation, the midwife must meet a number of requirements including:

- holding unrestricted registration;
- having the equivalent of three years full time post registration experience;
- demonstrating current competence to provide maternity care across the continuum;
- completion of an approved professional practice program; and
- participating in continuing professional development.

The regulation adds a new type of collaborative arrangement for an eligible midwife who is credentialed for a hospital, having successfully completed a formal assessment of his or her qualifications, skills, experience and professional standing. It is expected that the assessment would involve an appropriately qualified medical practitioner/s. The midwife is also required to have a defined scope of clinical practice at the hospital and be eligible to treat his or her own patients at the hospital. The hospital must employ or engage at least one obstetric specified medical practitioner. It is expected that the hospital will have a formal written agreement with such midwives, addressing consultation, referral and transfer of care, relevant clinical guidelines and locally determined policies.

The regulation also allows for a collaborative arrangement to arise where an eligible midwife has a written agreement with an entity other than a hospital that employs or engages at least one obstetric specified medical practitioner. Such a written agreement is expected to incorporate provisions for addressing consultation, referral and transfer of care, relevant clinical guidelines and locally determined policies.

In both cases, as for existing types of collaborative arrangements, the arrangement must involve collaboration between the eligible midwife and relevant medical practitioner/s, including communication for the purposes of consultation between midwife and practitioners, referral of a patient and transfer of a patient's care. Guidelines for such communication should be agreed.

Details of the regulation are set out in the Attachment.

The Act specifies no conditions that need to be satisfied 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 September 2013.

Consultation

Extensive consultation was undertaken with relevant medical and midwifery groups and consumers. The groups included the Australian Private Midwives Association, the Australian College of Midwives, the Australian Medical Association, the Australian and New Zealand College of Obstetricians and Gynaecologists, the National Association of Specialist Obstetricians and Gynaecologists, the Royal Australian College of General Practitioners, the Maternity Coalition, and CRANA*plus,* who provide support and advocacy for health professionals working in remote Australia. This was done through meetings, teleconferences and correspondence. Midwifery and consumer groups were generally supportive of the changes, which they consider would improve access to midwifery services. Medical groups were not opposed in principle, but were particularly concerned to ensure that there are effective mechanisms for communication, consultation, referral and transfers between midwives and collaborating medical practitioners, preferably through the development of agreed national guidelines. A 1 September 2013 implementation date for these changes will allow additional time for the groups to reach agreement on joint national guidelines.

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

ATTACHMENT

Details of the *Health Insurance Amendment (Midwives) Regulation 2013*

Section 1 – Name of regulation

This section provides that the name of the regulation is the *Health Insurance Amendment (Midwives) Regulation 2013.*

Section 2 – Commencement

This section provides that the regulation commences on 1 September 2013.

Section 3 – Authority

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

Section 4 – Schedule(s)

This section provides that each instrument specified in the Schedule to this instrument is amended or repealed as specified in the applicable item(s) in the Schedule and any other items in the Schedule have effect according to their terms. The *Health Insurance Regulations 1975* (the Principal Regulations) are specified in Schedule 1.

Schedule 1 – Amendments

Item [1] – Paragraph 2C(1)(a)
This item amends paragraph 2C(1)(a) to introduce an additional type of collaborative arrangement. Current paragraph 2C(1)(a) provides for a collaborative arrangement to be established where an eligible midwife is employed or engaged by one or more obstetric specified medical practitioners or an entity that employs or engages one or more obstetric specified medical practitioners. Following the amendments, this type of collaborative arrangement will become subparagraph 2C(1)(a)(i). New subparagraph 2C(1)(a)(ii) provides for a collaborative arrangement to also arise where an eligible midwife has a written agreement with an entity other than a hospital (such as a community health centre or a medical practice) that employs or engages at least one obstetric specified medical practitioner.

Item [2] – At the end of subregulation 2C(1)
This item expands the list of types of collaborative arrangements in regulation 2C by adding new paragraph 2C(1)(e) which specifies an arrangement mentioned in new regulation 2EA (being a midwife credentialed for a hospital).

Item [3] – At the end of regulation 2C
This item inserts new subregulation 2C(5). The new subregulation, for the avoidance of doubt, makes clear that collaborative arrangements may involve specified medical practitioners in either the public or private sectors.

Item [4] – After regulation 2E
This item provides for an additional type of collaborative arrangement under which an eligible midwife can collaborate with obstetric specified medical practitioners employed or engaged by a hospital, as described in new regulation 2EA. The hospital may be either a public or private hospital.

The new type of collaborative arrangement is demonstrated where an eligible midwife:

- is credentialed for a hospital, meaning the midwife has successfully completed a formal process to assess his or her ability to provide safe, high quality maternity care at the hospital;
- is granted a defined scope of clinical practice for the hospital, which will dictate the parameters of care that he or she can provide; and
- is authorised to provide midwifery care to his or her own patients on a private basis at the hospital.

The hospital for which the midwife is credentialed must be one that employs or engages one or more obstetric specified medical practitioners.

Statement of Compatibility with Human Rights

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

Health Insurance Amendment (Midwives) Regulation 2013

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

Under the *Health Insurance Act 1973* (the Act) and associated delegated legislation, 'participating midwives' are able to provide services for which a Medicare benefit is payable, and request certain Medicare-eligible diagnostic imaging and pathology services. An eligible midwife is only a participating midwife to the extent he or she is in a 'collaborative arrangement' as defined in regulations with a medical practitioner of a type also defined in regulations.

The *Health Insurance Regulations 1975* (the Principal Regulations) set out the types of collaborative arrangements and medical practitioners for the purposes of a midwife being a participating midwife.

The *Health Insurance Amendment (Midwives) Regulation 2013* (the Amending Instrument) amends the Principal Regulations to add two new types of collaborative arrangements to better facilitate appropriately qualified and experienced privately practising eligible midwives establishing collaborative arrangements with medical practitioners to provide safe, high quality Medicare rebateable midwifery care to women who choose this type of care.

The first of the two new types of arrangements is where an eligible midwife has a written agreement with an entity, other than a hospital, that employs or engages at least one obstetrician or other medical practitioner who provides obstetric services. The second new type of arrangement is where an eligible midwife:

- is credentialed for a hospital that employs or engages at least one obstetrician or other medical practitioner who provides obstetric services, following successful completion of a formal assessment of the midwife's competence, performance and professional suitability;
- has been granted clinical privileges for a defined scope of practice at the hospital; and
- can treat his or her own patients at the hospital.

The Amending Instrument also makes it clear, for the avoidance of doubt, that for all types of collaborative arrangements the arrangement may involve practitioners in the public or private sectors.

Human rights implications

The Amending Instrument positively engages the rights to health and social security, specifically as they affect the rights of womens' reproductive health.

Following the introduction of Medicare-eligible services able to be provided by midwives in 2010, midwives have experienced difficulty in establishing the currently available collaborative arrangements. These amendments expand the range of settings in which a collaborative arrangement may arise and, therefore, the range of settings in which midwifery services may be provided as Medicare-eligible services.

This increases the range of Government subsidised birthing options available to women and support women in their choice of health professional.

Increasing access for midwives to providing primary maternity care under Medicare will also assist in improving service delivery by enabling better use of the existing workforce and the development over time of new, more innovative models of care that can be tailored to meet local needs.

Conclusion

This Legislative Instrument is compatible with human rights as it impacts positively on the rights to health and social security.

The Hon Tanya Plibersek MP

Minister for Health and Medical Research