

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 248, 2013**

#### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) Regulation 2013*

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 be calculated by reference to the fees for medical services set out in prescribed 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 2012 Regulation) currently prescribes such a table.

Subsection 4(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the fifteenth sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the Regulation is registered on the Federal Register of Legislative Instruments. The 2012 Regulation was registered on the Federal Register of Legislative Instruments on 30 October 2012 and commenced on 1 November 2012.

The purpose of the Regulation is to repeal the 2012 Regulation and prescribe a new table of general medical services for the 12 month period commencing the day after registration..

The new table of general medical services also makes a number of minor changes to Medicare services. This includes a new item for the intravesical injection of botulinum toxin for the treatment of urinary incontinence. The new item is being added to the table due to recommendations of the Pharmaceutical Benefits Advisory Committee and the Medical Services Advisory Committee.

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 the day after registration.

#### Consultation

During MSAC's assessment of the professional service for the injection of botulinum toxin for urinary incontinence due to neurogenic detrusor overactivity, the application was made

available for public comment. As part of this process, specific stakeholders and professional groups were given an opportunity to provide feedback on the application. Relevant professional groups who provided feedback included the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, Uro-Gynaecological Association of Australia and Urological Society of Australia and New Zealand. No feedback was received opposing the introduction of the new Botox item. Ongoing consultation has also occurred with Allergan Australia Pty Ltd, the applicant and manufacturer of Botox.

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

**Details of the *Health Insurance (General Medical Services Table) Regulation 2013***

Section 1 – Name of regulation

This section provides for the regulation to be referred to as the *Health Insurance (General Medical Services Table) Regulation 2013* (the Regulation).

Section 2 – Commencement

This section provides for the regulation to commence the day after registration.

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 a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Section 5 – Dictionary

This section provides for a Dictionary at the end of the regulation, which defines certain words and expressions used in the regulation, and include references to certain words and expressions which are defined elsewhere in the regulation.

Schedule 1 – General medical services table

This section provides that the new table of general medical services (other than diagnostic imaging services and pathology services) set out in Schedule 1 be prescribed for subsection 4(1) of the Act.

Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical Services Table) Regulation 2012*.

# 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) 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**

The instrument repeals the *Health Insurance (General Medical Services Table) Regulation 2012* 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 section 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) Regulation 2013* (the regulation) includes a new Medicare Benefits Schedule item on the general medical services table for the injection of botulinum toxin for the treatment of urinary incontinence due to neurogenic detrusor overactivity.

### **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 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 new service for the injection of botulinum toxin will advance the human rights to health and social security by assisting private patients with financial costs associated with receiving this clinically relevant medical service.

**The Hon. Peter Dutton MP**

**Minister for Health**