

EXPLANATORY STATEMENT

Select Legislative Instrument No. 10, 2014

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment (Various Measures) Regulation 2014

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 2013* currently prescribes such a table.

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

The regulation includes a number of changes to Medicare services, including the introduction of a new item for the injection of botulinum toxin type A for adult patients with chronic migraine as recommended by the Medical Services Advisory Committee.

The regulation also amends a capsule endoscopy item to simplify the eligibility requirements for patients by removing the age and time restrictions. Minor amendments also update the MBS in line with current official titles, medical terminology, and clinical practice.

Details of the regulation are set out in the Attachment.

Consultation

New item 18377 – Botox for migraine

The Department of Human Services (Medicare) and Department of Veterans' Affairs have been consulted regarding the introduction of the new item for the prophylaxis of headaches in adult patients with chronic migraine.

During the MSAC assessment of the professional service, the application was made available for public comment. Relevant stakeholders and professional groups were specifically given the opportunity to provide feedback on the application. These included the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, Uro-Gynaecological Association of Australia, and the Urological Society of Australia and New Zealand. No

feedback was received opposing introduction of the new Botox item. Ongoing consultation has also occurred with Allergan Australia Pty Ltd, the MSAC applicant and manufacturer of Botox.

Capsule endoscopy item 11820

The Gastroenterological Society of Australia was consulted, and their support given, to the amendment of the capsule endoscopy item (item 11820).

Aboriginal and Torres Strait Islander Health Practitioners

No consultation was required for the amendments where ‘Aboriginal health worker/s’, has been replaced with ‘Aboriginal and Torres Strait Islander Health Practitioner/s’. The *National Registration and Accreditation Scheme* currently provide that 10 health professions are regulated by nationally consistent legislation. From 1 July 2012, four new professions were included in this scheme, including the Aboriginal and Torres Strait Islander health practitioner. Consequently, mention of the *registered Aboriginal health worker* in the GMST Regulations 2011 was replaced by *Aboriginal and Torres Strait Islander health practitioner* in the *Health Insurance (General Medical Services Table) Amendment Regulations 2012*, commencing 1 July 2012. However, when the compilation was made this amendment was not included. The inclusion of the amendment therefore in the Various Measures Regulation 2014 is primarily to reinstate the current title as *Aboriginal and Torres Strait Islander health practitioners*.

Rett’s Disorder

During June and July 2013, the then Department of Families, Housing, Community Services and Indigenous Affairs (now Department of Social Services) conducted consultations in each capital city to obtain feedback from stakeholders on the implications of the adoption of the DSM-5 in Australia. These forums culminated in a national workshop of key experts in Melbourne on 30 July 2013. The purpose of the national workshop was to consider the outcomes of the forums and develop advice to the incoming Government on future policy decisions about eligibility to the Helping Children with Autism (HCWA) package.

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 March 2014.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Amendment (Various Measures) Regulation 2014*

Section 1 – Name of regulation

This section provides for the regulation to be referred to as the *Health Insurance (General Medical Services Table) Amendment (Various Measures) Regulation 2014*.

Section 2 – Commencement

This section provides for the regulation to commence on 1 March 2014.

Section 3 – Authority

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

Section 4 – Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Health Insurance (General Medical Services Table) Regulation 2013

Items [1] and [3] – Subclause 1.1.3(2) of Schedule 1 (paragraph (a) of the example), and Subclause 2.16.4(3) of Schedule 1

Items 1 and 3 substitute the words “health workers” with “and Torres Strait Islander health practitioners” to align with the Australian Health Practitioner Regulation Authority’s professional title for these practitioners.

Item [2] – At the end of clause 2.5A.2 of Schedule 1

Item 2 adds Rett’s disorder to the meaning of *eligible disability* to include this disorder in the conditions covered under these services. This aligns with the Better Start for Children with Disability initiative.

Item [4] – Schedule 1 (item 11820)

Item 4 amends the item to remove the age and time restrictions currently placed on the item which align with the recommendations made by the Medical Services Advisory Committee (MSAC). This will reduce the number of tests a person has prior to being eligible for capsule endoscopy.

Items [5], [8] and [10] – Schedule 1 (item 11823 column headed “Description” paragraph (c)); items 30680, 30682, 30684; and 30686)

Items 5, 8 and 10 omit the word “double” from item 11823, 30680, 30682 and 30684, as a result of recommendations made by the MSAC regarding single balloon endoscopy. The

resultant term ‘balloon endoscopy’, expands services to be for either single or double “balloon endoscopy”.

Item [6] – Subclauses 2.42A.1(1) and (2) of Schedule 1

Item 6 omits “18375” and substitute “18377” for the item range listed, to include the new item 18377. This will result in this item being covered by the rules for botulinum toxin items to align with other existing Botox items.

Item [7] – Schedule 1 (after item 18375)

Item 7 introduces the new item 18377, for the injection of botulinum toxin (Botox) for headaches in adults with chronic migraine which was recommended by the Pharmaceutical Benefits Advisory Committee and the MSAC. Item 18377 has a co-dependant Pharmaceutical Benefits Scheme (PBS) item, as the supply of botulinum toxin is subsidised under the PBS.

Items [9] and [11] – Schedule 1 (items 30684 and 30686)

Items 9 and 11 omit the words “or laser”, and substitute “, laser coagulation or argon plasma” as a result of recommendations made by the MSAC regarding single balloon endoscopy to expand the techniques covered, to reflect appropriate clinical practice.

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 (Various Measures) Regulation 2014

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 2013* (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.

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 (Various Measures) Regulation 2014* (Various Measures Regulation 2014) prescribes amendments to the Principal Regulation which outlines the general medical services which are eligible for Medicare benefits, the amount of fees applicable for each item and rules for interpretation of the table.

Following the Medical Services Advisory Committee (MSAC) recommendation for listing, and subsequent approval by the Minister, the new MBS item for the injection of Botulinum toxin type A for prophylaxis of headaches in adult patients with chronic migraine and to remove the age and time restrictions from capsule endoscopy item 11820 was introduced on 1 March 2014. A number of other minor amendments were made to bring the Medicare Benefits Schedule in line with current titles, medical terminology and clinical practice.

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 for the prophylaxis of headaches in adult patients with chronic migraine and the approved savings measure to remove the age and time restrictions from capsule endoscopy item 11820 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