

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 80, 2014**

#### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) 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) Regulations 2013* (the 2013 Regulations) currently prescribe 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Subsection 4(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15<sup>th</sup> 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 2013 Regulations were registered on the Federal Register of Legislative Instruments on 26 November 2013 and commenced on 2 December 2013.

This regulation repeals the 2013 Regulations and prescribes a new table of general medical services for the 12 month period beginning on 1 July 2014.

Under the Act, Medicare benefits are paid as a prescribed percentage of the fees for services listed in the proposed regulation. As part of the 2014-15 Budget, the Australian Government decided to provide a fee increase of two per cent for general practitioner attendance services. The regulation implements the two per cent fee increase for all general practitioner attendance services covered by Medicare.

The new table of general medical services also makes a number of minor changes to Medicare services, which include:

- the listing of two new Medicare Benefit Schedule (MBS) services for transcatheter closure of patent ductus arteriosus and ventricular septal defect as alternative techniques to open heart surgery, and an amendment to an additional transcatheter item to remove the words '*for congenital heart disease*' to allow for surgical closure of both congenital and acquired defects as a result of advice from the Medical Services Advisory Committee (the MSAC);
- amendments to MBS ophthalmology services which were recommended as a result of the *MSAC Ophthalmology Review Stage II*, which combine two MBS ophthalmology

services for corneal transplantation into one service with a revised fee. The amendments also make minor wording changes to three MBS ophthalmology services to more accurately describe the type of ophthalmology service performed;

- amendments to four cardiac resynchronisation services. The amendments expand the description of three cardiac resynchronisation services so that Medicare benefits could be provided to patients who suffer from mild chronic heart failure. Currently, for these three services only those patients who suffer moderate to severe chronic heart failure receive Medicare benefits. A minor drafting amendment has been made to these three cardiac resynchronisation services and an additional cardiac resynchronisation service so that the current description of moderate to severe chronic heart failure patient indicator contained in clause 2.44.16, and applicable to all four services, is moved into each individual descriptor for the service. This amendment makes clause 2.44.16 superfluous, and the regulation would delete clause 2.44.16;
- the listing of a new eligible group, which grants access to Medicare eligible health assessment services for former servicing members of the Australian Defence Force, including former Reservists. The health assessment supports general practitioners in identifying and diagnosing the early onset of mental and/or physical health problems that benefit from further assessment or treatment; and
- the merging of four MBS mastectomy items into three items, by removing the gender specific terminology in the item descriptors ('male' or 'female') and replacing them with gender neutral terminology. These changes reflect the Australian Government Guidelines on the Recognition of Sex and Gender, developed by the Attorney-General's Department.

### Consultation

The Department of Health has consulted with the medical profession, including the Australian Medical Association, Royal Australian College of Surgeons, the Cardiac Society of Australia and New Zealand and other relevant professional medical groups as well as the Medical Services Advisory Committee.

The National Lesbian, Gay, Bisexual, Transgender and Intersex Health Alliance and the Organisation Intersex International have also been consulted throughout the process to ensure the item descriptors incorporate appropriate language.

All stakeholder groups have expressed their approval for the changes to proceed.

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 July 2014.

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

## ATTACHMENT

### **DETAILS OF THE HEALTH INSURANCE (GENERAL MEDICAL SERVICES TABLE) 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) Regulation 2014* (the Regulation).

#### Section 2 – Commencement

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

#### 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 – 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.

#### Section 6 – Dictionary

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

#### Schedule 1 – General medical services table

This part of the regulation contains the fee increase of two per cent for the following items in the general medical services table:

- All items in Group A1
- All items in Group A5
- All items in Group A6
- Items 193, 195, 197, and 199 in Group A7
- Items 597 and 599 in Group A11
- Items 701 to 715 in Group A14
- Items 721 to 758 in Group A15
- All items in Group A17
- All items in Group A18
- All items in Group A20
- All items in Group A22

- All items in Group A27
- Item 139 in Group A29
- All items in Group A30
- All items in Group M1

This part of the regulation also contains the following minor changes to Medicare services:

- The listing of two new transcatheter items (38273 and 38274) and the inclusion of the words *'for congenital heart disease'* in item 38751;
- Amendments to four ophthalmology items (42653, 42808, 42794, and 42744), and the removal of four redundant ophthalmology items (42621, 42659, 42737, and 42797);
- Amendments to cardiac resynchronisation items to clarify the types of heart conditions that must be present before eligibility for items 38365, 38368, 38371 and 38654. Clause 2.44.16 is now redundant and has been deleted because the restrictions in clause 2.44.16 have been inserted in the descriptors for items 38365, 38368, 38371, and 38654;
- A new eligible group, former serving members of the ADF at risk of developing mental or physical health problems, to be able to claim the four time-tiered MBS Health Assessment Items (701, 703, 705 and 707) contained in Division 2.16 - Group A14; and
- Two new mastectomy items (31519 and 31525), one amended mastectomy item (31524), and the deletion of three now defunct mastectomy items (31518, 31521 and 31527).

#### Schedule 2 – Repeal

This section repeals the *Health Insurance (General Medical Services Table) Regulation 2013*.

## 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 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 *Health Insurance (General Medical Services Table) Regulation 2014* repeals the *Health Insurance (General Medical Services Table) Regulation 2013* to ensure that the medical services funded through the Medicare Benefits Schedule (MBS) continue to be up-to-date, representative of best medical practice, and reflective of government commitments.

In accordance with section 4(1) of the *Health Insurance Act 1973*, the regulation prescribes a table of medical services containing: items of services, the amounts of fees applicable for each item, and rules for interpretation. Amendments to the regulation include:

- A fee increase of two per cent for general practitioner attendance items and bulk billing incentives;
- The listing of two new MBS services for transcatheter closure of patent ductus arteriosus and ventricular septal defect as alternative techniques to open heart surgery, and an amendment to an additional transcatheter item to remove the words '*for congenital heart disease*' to allow for surgical closure of both congenital and acquired defects as a result of advice from the Medical Services Advisory Committee (MSAC);
- Amendments to MBS ophthalmology services which were recommended as a result of the *MSAC Ophthalmology Review Stage II*, which will combine two MBS ophthalmology services for corneal transplantation into one service with a revised fee. The amendments also make minor wording changes to three MBS ophthalmology services to more accurately describe the type of ophthalmology service performed;
- Amendments to four cardiac resynchronisation services. The amendments expand the description of three cardiac resynchronisation services so that Medicare benefits could be provided to patients who suffer from mild chronic heart failure. Currently, for these three services only those patients who suffer moderate to severe chronic heart failure receive Medicare benefits. A minor drafting amendment is also made to these three cardiac resynchronisation services and an additional cardiac resynchronisation service so that the current description of moderate to severe chronic heart failure patient indicator contained in clause 2.44.16, and applicable to all four services, is moved into each individual descriptor for the service. This amendment makes clause 2.44.16 superfluous, and the regulation deletes clause 2.44.16;
- The listing of a new eligible group, which will grant access to Medicare eligible health assessment services for former servicing members of the Australian Defence Force, including former Reservists. The health assessment will support general practitioners in identifying and diagnosing the early onset of mental and/or physical health problems that benefits from further assessment or treatment; and

- The merging of four MBS mastectomy items into three items, by removing the gender specific terminology in the item descriptors ('male' or 'female') and replacing them with gender neutral terminology. These changes reflect the Australian Government Guidelines on the Recognition of Sex and Gender, developed by the Attorney-General's Department.

### **Human rights implications**

The regulations engage Articles 2, 9 and 12 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 reports that the '*highest attainable standard of health*' takes into account the country's available resources. This 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*

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 reports 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 is 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 to the regulation advance rights to health and social security primarily by increasing access to publicly subsidised health services.

- Increasing the MBS fee for general practitioner attendance items results in more affordable primary health care.
- Amendments to gender specific mastectomy items uphold critical components of the right to health - *the right to non-discrimination and equality* – as individuals, in accessing these services, will have the option of identifying as male, female or

indeterminate/intersex/unspecified. The elimination of duplicate items, as a result of these changes, will not deny benefits to persons who already have them.

- The listing of two new transcatheter closure items, as alternatives to open heart surgery, and an amendment to an additional transcatheter closure item to enable it to cover surgical closure of not only congenital defects, but also acquired defects; advances access to Commonwealth subsidised health care and therefore the right to health and social security.
- Broadening the scope of ophthalmology items to reflect current clinical practice upholds the right to health and social security as relevant patients/groups can access appropriate services.
- Medicare subsidised cardiac resynchronisation therapy for patients with mild heart failure ensures MBS services reflect current clinical practice and there is greater patient access to this therapy.
- Access to Medicare eligible health assessment services for former servicing members of the Australian Defence Force, including former Reservists, advances access to the right to health and social security for this new eligible group.

### **Conclusion**

The Legislative Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Peter Dutton**  
**Minister for Health**