

## **EXPLANATORY STATEMENT**

Select Legislative Instrument No. 158, 2014

*Health Insurance Act 1973*

*Health Insurance (General Medical Services Table) Amendment (Chronic Disease Management) 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.

Section 4 of the Act provides that regulations may prescribe a table of medical 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 2014* (GMST) currently prescribes such table.

The Amendment Regulation will amend the GMST to ensure that the medical services funded through the Medicare Benefits Schedule (MBS) represent best practice and are reflective of government commitments. The Amendment Regulation will implement the 2013-14 Budget measure – ‘*Medicare Benefits Schedule – Removing double billing*’, which is to take effect on 1 November 2014.

The Amendment Regulation will restrict 36 consultation items from being claimed with three chronic disease management items by the same provider, for the same patient, on the same day. This will improve the efficiency and effectiveness of Medicare by preventing the potential for practitioners to double bill Medicare for similar services.

Details of the Amendment Regulation are set out in the Attachment.

The Act specifies no conditions which need to be met before the power to make the Amendment Regulation may be exercised.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulation commences on 1 November 2014.

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

## ATTACHMENT

**Details of the *Health Insurance (General Medical Services Table) Amendment (Chronic Disease Management) Regulation 2014*****Section 1 – Name**

This section will provide for the regulation to be referred to as the *Health Insurance (General Medical Services Table) Amendment (Chronic Disease Management) Regulation 2014*.

**Section 2 – Commencement**

This section will provide for the regulation to commence on 1 November 2014.

**Section 3 – Authority**

This section will provide that the regulation is made under the *Health Insurance Act 1973*.

**Section 4 – Schedules**

This section will provide 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.

**Schedule 1 – Amendments****Item [1] – After clause 2.17.10 of Schedule 1**

This item will insert clause 2.17.10A which restricts medical practitioners from claiming consultation items 3, 4, 23, 24, 36, 37, 44, 47, 52, 53, 54, 57, 58, 59, 60, 65, 597, 599, 598, 600, 5000, 5003, 5020, 5023, 5040, 5043, 5060, 5063, 5200, 5203, 5207, 5208, 5220, 5223, 5227 and 5228 with chronic disease management items 721, 723, or 732 for the same patient, on the same day.

## **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 (Chronic Disease Management) 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) Amendment (Chronic Disease Management) Regulation 2014* (the Amendment Regulation) amends the *Health Insurance (General Medical Services Table) Regulation 2014* (GMST), to implement the 2013-14 Budget measure – ‘*Medicare Benefits Schedule – Removing double billing*’, which is to take effect on 1 November 2014.

In accordance with section 4(1) of the *Health Insurance Act 1973* (the Act), the GMST prescribes tables of medical services containing items of medical services, the amounts of fees applicable for each item, and rules for interpretation. The regulation will amend the GMST on 1 November 2014 by inserting a new clause that restricts 36 consultation items from being claimed with three chronic disease management items by the same provider, for the same patient, on the same day.

#### **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 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 amendment will improve the efficiency and effectiveness of Medicare by preventing the potential for practitioners to double bill Medicare for similar services. It will advance rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

#### **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**