

EXPLANATORY STATEMENT

Select Legislative Instrument No. 194, 2014

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) 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.

Subsections 4(1) of the Act provides that the regulations may prescribe a table of medical services which set 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 2014* (GMST) currently prescribes such a table. The *Health Insurance Regulations 1975* (HI Regulations) prescribe other ‘matters’ which the Governor-General may make regulations for in accordance with subsection 133(1) of the Act.

The *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014* (the Regulation) amends the GMST to set a time limitation on specific general practice attendances funded through the Medicare Benefits Schedule (MBS) to ensure Government rebates continue to be up-to-date, representative of best practice medical practice, and reflective of Government commitments.

Previously, Level A general practice (GP) attendance items 3 and 5000 did not have a time requirement unlike the remaining GP attendances. In principle, it was always intended that these items would be billed for short, simple GP attendances, but in practice a substantial number of simple attendances lasting less than 10 minutes are billed as Level B GP attendance items 23 and 5020, which attract a higher Medicare-recommended fee and patient rebate.

The Regulation amends items 3, 23, 5000 and 5020 to better reflect the time that a GP spends with their patients. From 19 January 2015, Level A items will apply to a GP attendance lasting less than 10 minutes and amended Level B items will apply to a GP attendance lasting at least 10 minutes and less than 20 minutes. The overarching goal of these amendments is to ensure that Medicare expenditure accurately reflects the time a GP spends with a patient.

Consultation

In accordance with Section 18 of the *Legislative Instruments Act 2003*, the nature of the Regulation is such that it was inappropriate to consult. The decision to alter entitlement to Medicare benefits was taken as part of Government’s Mid-Year Economic and Financial Outlook 2014-15.

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 19 January 2015.

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

Details of the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014*

Section 1 – Name

This section provides for the Regulation to be referred to as the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014*

Section 2 – Commencement

This section provides for the Regulation to commence on 19 January 2015.

Section 3 – Authority

This section provides that the Regulation is made under the *Health Insurance Act 1973*.

Section 4 – Schedules

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.

Schedule 1 – Amendments

Health Insurance (General Medical Services Table) Regulation 2014

Item [1] – Schedule 1 (item 3, column headed “Description”)

This item amends item 3 so that it is limited to professional attendances lasting less than 10 minutes.

Item [2] – Schedule 1 (item 23, column headed “Description”)

Item 2 amends item 23 so that is limited to professional attendances lasting at least 10 minutes and less than 20 minutes.

Item [3] – Schedule 1 (item 5000, column headed “Description”)

Item 3 amends item 5000 so that it applies to a professional attendance after-hours lasting less than 10 minutes.

Item [4] – Schedule 1 (item 5020, column headed “Description”)

Item 4 amends item 5020 so that it applies to a professional attendance after-hours lasting at least 10 minutes and less than 20 minutes.

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 (Duration of Attendance) 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 (Duration of Attendance) Regulation 2014* (the Regulation) amends the *Health Insurance (General Medical Services Table) Regulation 2014* (GMST), to implement the Government's decision and ensure general practice (GP) attendances 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 Subsection 4(1) of the *Health Insurance Act 1973* (the Act), the GMST prescribes a table 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 19 January 2015, by modifying Level A (item 3 and 5000) GP attendance items so they apply to those less than 10 minutes and modifying Level B (item 23 and 5020) GP attendance items so they apply to those less than 10 minutes but more than 20 minutes.

These amendments address the issue of unjustified rapid throughput of patients rather than the provision of appropriate care that may range from a simple short intervention to one that requires a more comprehensive and hence time consuming service. It is expected that this new time requirement will require doctors to bill for a Level A more frequently, reflective of the time taken with a patient and possible clinical need, and hence reduce the Medicare rebate that the Government pays for that service. Alternatively GPs will be required to spend more time with the patient in order to claim a Level B, thus providing a more comprehensive service of which fewer can be provided within the 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 amendments will improve Medicare by ensuring that Medicare services billed by practitioners are more reflective of the actual time spent with patients. 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