

EXPLANATORY STATEMENT

Select Legislative Instrument No. 83, 2015

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) Regulation 2015

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 4AA(1) of the Act provides that the regulations may prescribe a table of diagnostic imaging services which sets out items of diagnostic imaging services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (Diagnostic Imaging Services Table) Regulation 2014* (DIST) currently prescribes such a table.

Subsection 4AA(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is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 (FRLI). The DIST was registered on the FRLI on 17 October 2014.

The purpose of the regulation is to repeal the DIST and prescribe a new table of diagnostic imaging services for the 12 month period beginning on 1 July 2015. The DIST will be remade on 1 July 2015 to align the timing with the General Medical Services Table remake which is also 1 July 2015. The Pathology Services Table, made under subsection 4A(1) of the Act, will also be remade to commence on 1 July 2015. Aligning the commencement dates of the three components of the full Medical Benefits Schedule (MBS) is a coherent approach as there is no administrative or policy reason to have the three components of the full MBS remade at different times of the year. Standardising the remake of the full MBS gives practitioners and patients more clarity and certainty on the MBS remake process.

Additionally, this regulation makes machinery amendments to the DIST by:

- Inserting the symbol ‘(K)’ in the item descriptors for items 60072, 60075 and 60078 to clarify that these items are for selective arteriography or selective venography by digital subtraction angiography technique on new and upgraded radiography machines. At present, these items are currently and correctly being used by providers with new or upgraded equipment whilst items 60073, 60076 and 60079 are available for the same services respectively on older upgraded or not upgraded equipment. Inserting the symbol ‘(K)’ would give clearer indication which items should be used

for new or upgraded equipment. This amendment does not change current benefits or entitlements, and

- Continuing to allow the payment of Medicare benefits for MRI scans provided to people suffering or suspected of suffering from Crohn's disease under the *Health Insurance (MRI Crohn's disease) Determination 2014*, by inserting the items in the Determination into the DIST. The Determination ceases on 1 July 2015.

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 2015.

Consultation

Consultation was not undertaken for this instrument as it is machinery in nature and it does not alter existing arrangements.

Consultation was undertaken for the original measure implementing the equipment requirements for items 60072, 60075, 60078, 60073, 60076 and 60079. The Department of Health consulted with the Diagnostic Imaging Advisory Committee (DIAC). The members of DIAC include representatives from the Royal College of Radiologists, the Australian Medical Association, the Royal College of General Practitioners, the Australian Diagnostic Imaging Association, and representatives from other industry groups. Public consultation was also undertaken as part of the usual Medical Services Advisory Committee process, with submission received from the Royal Australian and New Zealand College of Radiologists.

Stakeholder groups expressed their approval for the changes to proceed. These changes were announced by the Government under the 2014/15 Budget measure *MBS – revised capital sensitivity provisions for diagnostic imaging equipment* which took effect on 1 January 2015.

Consultation was undertaken in regard to creating items for the payment of Medicare benefits for MRI scans for Crohn's disease. The Department of Health consulted with key stakeholders via MSAC's standard Protocol Advisory Sub-Committee (PASC) process. PASC noted that the responses were positive and supportive and that the potential disadvantages are few (only that some patients experience claustrophobia with MRI).

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

ATTACHMENT

DETAILS OF THE HEALTH INSURANCE (DIAGNOSTIC IMAGING SERVICES TABLE) REGULATION 2015Section 1 – Name of regulation

This section provides for the regulation to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides for the regulation to commence on 1 July 2015.

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 – Diagnostic imaging services table

This section provides that the new table of pathology services set out in Schedule 1 be prescribed for subsection 4AA(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.

Part 2 of Schedule 1 – Diagnostic imaging services table

This part of the regulation continues the diagnostic imaging services table and makes the following machinery amendments to the previous table:

- Inserts the symbol ‘(K)’ into the item descriptors for items 60072, 60075, and 60078 to clarify that capital sensitivity provisions apply to these items, and
- Inserts the items and relevant clauses contained within the *Health Insurance (MRI Crohn’s disease) Determination 2014* into Group I5 of the DIST and at clauses 2.5.7, 2.5.1 and 2.5.10.

Schedule 2 – Repeal

This section repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2014*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance (Diagnostic Imaging Services Table) Regulation 2015

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 (Diagnostic Imaging Services Table) Regulation 2015* repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2014* to align the timing of the Diagnostic Imaging Services Table (DIST) remake with the General Medical Services Table remake which is also 1 July 2015.

In accordance with section 4AA(1) of the Act, the regulation prescribes a table of diagnostic imaging services containing: items of services, the amounts of fees applicable for each item, and rules for interpretation. The amendments to the regulation:

- Insert the symbol ‘(K)’ in the item descriptors for items 60072, 60075 and 60078 to clarify that these items are for selective arteriography or selective venography by digital subtraction angiography technique on new and upgraded radiography machines. At present, these items are currently and correctly being used by providers with new or upgraded equipment whilst items 60073, 60076 and 60079 are available for the same services respectively on older upgraded or not upgraded equipment. Inserting the item ‘(K)’ gives clearer indication which items should be used for new or upgraded equipment, and
- Continue to allow current arrangements under the *Health Insurance (MRI Crohn’s disease) Determination 2014* (the Determination), which ceases on 30 June 2015 to apply, by inserting the provisions of the Determination into the DIST.

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 maintain current rights to health and social security by maintaining access to publicly subsidised health services.

The Determination allows Medicare benefits to be claimed for MRI scans provided to people suffering or suspected of suffering from Crohn's disease. This Determination was an interim arrangement, with the intention that these items be transferred into the DIST at the next opportunity. As the Determination will cease on 30 July 2015, the Determination will be transferred and continued under the authority of the DIST.

The capital sensitivity provisions encourage providers to upgrade and replace aged equipment as appropriate. Almost all services listed in the DIST have two different schedule fees – '(K)' items cover services provided on newer or upgraded equipment and a listed at a higher fee. '(NK)' items cover the same services provided on aged equipment and are provided approximately 50 per cent of the equivalent (K) item schedule fee. Inserting the symbol '(K)' in items 60072, 60075, and 60078 will give a clearer indication on which items should be used by practitioners who use new or upgraded equipment. This amendment does not change current benefits or entitlements

Conclusion

The Legislative Instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

Sussan Ley

Minister for Health