

EXPLANATORY STATEMENT

Select Legislative Instrument No. 173, 2015

Health Insurance Act 1973

Health Insurance Legislation Amendment (2015 Measures No. 2) 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.

Subsections 4(1) and 4A(1) of the Act provides that regulations may prescribe a table of medical and pathology services which set out items of medical and pathology services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulation 2015* (GMST) and the *Health Insurance (Pathology Services Table) Regulation 2015* (PST) currently prescribe such tables.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2015 Measures No. 2) Regulation 2015* (the Regulation) is to implement two measures announced in the 2015-16 Budget and to incorporate minor amendments to ensure the Medicare Benefits Schedule (MBS) remains up-to-date and representative of best medical practice. The two measures that were announced in the 2015-16 Budget are the removal of the Healthy Kids Check and the listing of new items for a second opinion for certain pathology tests. The Regulation will introduce the following changes:

- **Remove Healthy Kids Check**
As announced in the 2015-16 Budget measure *Medicare Benefits Schedule – health assessment items – modification* this change will remove references to the ‘Healthy Kids Check’ from the GMST. This includes deleting subclause 2.16.2(1)(a), regulation 2.16.4, deleting item 10986 and consequential amendments to clauses 2.30.2 and 2.30.3. The Government is ceasing the Health Kids Check health assessments to avoid the duplication between health assessments under the Medicare Benefits Schedule and the child health assessments already provided by the states and territories.
- **Introducing rebates for second expert opinions for certain pathology tests**
As announced in the 2015-16 Budget measure *Medicare Benefits Schedule – new and amended listings* this change will introduce new Medicare rebates for second expert opinions for testing of bone marrow specimens, tissue and cellular pathology (excluding gynaecology) testing where the treating

practitioner and pathology practitioner agree that a second opinion is required for diagnostic purposes.

- **Amend cardiac perfusion item 22060 to clarify qualified medical perfusionists must perform the service**
 This change will amend item 22060 in the GMST to restrict its claiming to the medical perfusionist who continuously operates the heart-lung machine. In Australia, both medical perfusionists (medical specialists) and clinical perfusionists (trained technicians) provide perfusion services, but only medical perfusionists should be funded under Medicare. This change will clarify that item 22060 must be performed by a qualified medical perfusionist.
- **Amend two incontinence management items to restrict use to in-hospital only**
 This change will amend item 32213 (placement of sacral nerve leads) and 32214 (the connection to a neurostimulator) for the management of faecal incontinence to restrict the services to in-hospital services only. Medical advice indicates these services are not appropriate to be provided out-of-hospital.
- **Amend two items to limit the insertion of Ventricular Assist Devices (VADs) to patients with chronic heart failure and who are awaiting a heart transplant**
 This change will amend items 38615 and 38618 in the GMST to restrict practitioners from using the items for long-term, permanent support in patients with chronic heart failure who are ineligible for heart transplantation (destination therapy). The strength of the available evidence in relation to the safety, clinical effectiveness and cost-effectiveness of VAD as destination therapy has not yet been considered by the Medical Services Advisory Committee (MSAC). Therefore, the two current VAD items have been amended to make it clear that the insertion of VADs cannot be used as destination therapy.
- **Amend skull fracture repair item 39615 to allow endoscopic procedures**
 This change will amend item 39615 in the GMST to allow skull fracture repair to be carried out using either endoscopic methods or cranioplasty. This item currently allows for the repair of skull fractures using cranioplasty. The amendment to this item descriptor will allow the skull fracture repair procedure to be carried out using either endoscopic methods or cranioplasty, bringing the item descriptor into line with current clinical best practice.
- **Amend contour reconstruction item 45051 to prevent access for cosmetic purposes.**
 This change will amend item 45051 (contour reconstruction) in the GMST to specify that medical practitioners must demonstrate surgery is required due to damage or deformity caused by trauma or disease before Medicare is payable. This change will clarify that item 45051 cannot be claimed for cosmetic surgery.
- **Minor technical drafting changes which clarify existing items**

These changes will make minor drafting changes to the GMST and PST. These changes include:

- (a) amending two items (15900 and 31516) in the GMST that were inserted on 1 September 2015 to clarify that these services must only be performed in-hospital in accordance with best clinical practice;
- (b) moving item 31516 from Subgroup 7 to Subgroup 10 in the GMST to reflect how the item appears in the Government published Medicare Benefits Schedule;
- (c) a minor drafting change to the title of Group P13 in the PST to reflect the fact that that Group P13 currently covers both P10 and P11 services. References to bulk billing will also be amended to include a hyphen for consistency.

- **Revised listings for paediatric surgical services**

The introduction of a new paediatric surgery item in the GMST which provides Medicare benefits for surgical treatment of hypospadias suffered by children under 10 years of age. The new item will have a 30 per cent fee loading compared to the same service performed on patients 10 years of age and over, to recognise the complexity and time to perform the service on younger children. This amendment follows similar amendments made to other paediatric items in the GMST which took effect on 1 September 2015.

Consultation

Consultation was undertaken on the changes to the MBS in the Regulation. The pathology, contour reconstruction, skull fracture, insertion of Ventricular Assist Devices, cardiac perfusion and incontinence management item amendments were considered and agreed to by the Medical Services Advisory Committee (MSAC).

MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through listing on the MBS. This includes the listing of new items, or amendments to existing items on MBS.

As part of the MSAC process, consultation was undertaken with professional bodies, consumer groups, the public and clinical experts for proposals put forward for consideration by the Committee.

Further consultation was undertaken by the Department with:

- Australian and New Zealand Association of Paediatric Surgeons
- Australian Dental Association
- Australian and New Zealand Association of Oral and Maxillofacial Surgeons
- Australian and New Zealand College of Anaesthetists
- Australian Society of Otolaryngology, Head and Neck Surgery
- Australian Society of Plastic Surgeons
- Cardio-thoracic Surgeons
- Ear, Nose and Throat Surgeons
- General Surgeons Australia
- Orthopaedic Surgeons
- Royal Australasian College of Surgeons

- Royal Australian and New Zealand College of Ophthalmologists
- Urological Society of Australia and New Zealand
- Vascular Surgeons
- Australian Society of Anaesthetists
- Royal Australasian College of Surgeons
- National Association of Medical Perfusionists of Australia
- Australian and New Zealand College of Perfusionists
- Australia and New Zealand Society of Cardiothoracic Surgeons
- Australasian Society of Cardio-Vascular Perfusionists
- Australasian Board of Cardio-Vascular Perfusion

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 will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on 1 November 2015.

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

ATTACHMENT

Details of the *Insurance Legislation Amendment (2015 Measures No. 2) Regulation 2015*Section 1 – Name of regulation

This section provides for the Regulation to be referred to as the *Health Insurance Legislation Amendment (2015 Measures No. 2) Regulation 2015*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 November 2015.

Section 3 – Authority

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

Section 4 – Schedule(s)

This section provides that 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.

Schedule 1 – Amendments***Health Insurance (General Medical Services Table) Regulation 2015*****Item [1] – Schedule 1 repeal paragraph 2.16.2(1)(a)**

This item will repeal the paragraph that refers to the Healthy Kids Check from the “Types of health assessments”.

Item [2] – Schedule 1 repeal clause 2.16.4

This item will repeal clause 2.16.4. This clause provides information on the requirements of a Healthy Kids Check.

Item [3] – Schedule 1 Division 2.28 (Group A10 table, Subgroup 2 (subheading))

This item will make a minor drafting change by omitting the incorrectly spelled wording “Subgroup 2 – Teleheath attendance” and substituting with “Subgroup 2 – Telehealth attendance”.

Item [4] – Schedule 1 repeal clauses 2.30.2 and 2.30.3

This item will repeal the clauses 2.30.2 and 2.30.3. These clauses provide information on the application of, and restrictions on item 10986 - for a practice nurse or an Aboriginal and Torres Strait Islander Health Practitioner that undertakes a Healthy Kids Check on behalf of a medical practitioner.

Item [5] – Schedule 1 repeal item 10986

This item will repeal item 10986. Item 10986 allows for a practice nurse or an Aboriginal and Torres Strait Islander Health Practitioner to undertake a Healthy Kids Check on behalf of a medical practitioner.

Item [6] – Schedule 1 (cell at item 11719, column headed “Fee (\$)”)

This item will make a minor drafting change to round the schedule fee to the nearest 5 cents from \$66.86 to \$66.85 for item 11719. The Medicare benefits paid to patients will not be affected.

Item [7] – Schedule 1 (cell at item 11720, column headed “Fee (\$)”)

This item will make a minor drafting change to round the schedule fee to the nearest 5 cents from \$66.86 to \$66.85 for item 11720. The Medicare benefits paid to patients will not be affected.

Item [8] – Schedule 1 Division 2.38 (Group T2 table, Subgroup 7 (subheading))

This item will make a minor drafting change by omitting item 15900 from Subgroup 7 of Group T2 and place it in Subgroup 10 of Group T2 to reflect how the item appears in the Government published Medicare Benefits Schedule.

Item [9] – Schedule 1 (item 15900, column headed “Description”, paragraph (g))

This item will make a minor technical change by amending item 15900 to clarify that this service is only to be provided in-hospital. This item was inserted on 1 September 2015. It is appropriate for this item to only be provided to patients admitted to hospital.

Item [10] – Schedule 1 (item 22060)

This item will amend item 22060 to provide that item 22060 is only available where the heart-lung machine or equivalent is continuously operated by a medical perfusionist.

Item [11] – Schedule 1 (item 31516, column headed “Description”)

This item will make a minor technical change by amending item 31516 to clarify that this service is only to be provided in-hospital. This item was inserted on 1 September 2015. It is appropriate for this item to only be provided to patients admitted to hospital.

Item [12] – Schedule 1 (item 32213, column headed “Description”, paragraph (b))

This item will make a minor technical change by amending item 32213 to clarify that this service is only to be provided in-hospital. It is appropriate for this item to only be provided to patients admitted to hospital.

Item [13] – Schedule 1 (item 32214, column headed “Description”, paragraph (b))

This item will make a minor technical change by amending item 32214 to clarify that this service is only to be provided in-hospital. It is appropriate for this item to only be provided to patients admitted to hospital.

Item [14] – Schedule 1 (item 37830)

This item will insert “, on a person 10 years of age or over” after “second stage” to restrict this item to children aged 10 years or older.

Item [15] – Schedule 1 (insert item 37831)

This item will create a new item to provide paediatric surgery services for persons under 10 years of age.

Item [16] – Schedule 1 (amend items 38615 and 38618)

This item will amend items 38615 and 38618 to ensure that the items are only used for one of the below procedures:

- a bridge to cardiac transplantation in patients with refractory heart failure and who are currently on a heart transplant waiting list, or are expected to be suitable candidates for cardiac transplantation following a period of support on the Ventricular Assist Device; or
- acute post cardiectomy support for failure to wean from cardiopulmonary transplantation; or
- cardiorespiratory support for acute cardiac failure which is likely to recover with short term support (less than 6 weeks)

And to clarify that these services are not for use as destination therapy in the management of patients with heart failure who are not expected to be suitable candidates for cardiac transplantation.

Item [17] – Schedule 1 (item 39615, column headed “Description”)

This item will omit “cranioplasty and repair of” and substitute “repair of by cranioplasty or endoscopic approach”. This change aligns the procedure with current clinical best practice.

Item [18] – Schedule 1 (amend item 45051)

This item will amend item 45051 for contour reconstruction to prevent it from being used for cosmetic purposes.

Health Insurance (Pathology Services Table) Regulation 2015

Item [19] – Schedule 1 Paragraph 1.2.7(2)(a)

This item will make a minor technical drafting change by omitting “Bulk billing incentive for episodes consisting of a P10 service”, and substituting with “Bulk-billing incentive”. This change is consequential on the change which will result from the drafting change in item 24 (below).

Item [20] – Schedule 1 after clause 2.5.1

This item will insert clause 2.5.2 after clause 2.5.1 to provide limitations on new items 72858 and 72859 (see item 21). These items will only apply to a service that is covered by items 65084 or 65087; or group P5 items 72813, 72816, 72817, 72818, 72823, 72824, 72825, 72826, 72827, 72828, 72830, 72836 or 72838; or an item in group P6 (other than items 73053, 73055 or 73057). These items will also not apply if the accredited pathology laboratory in which the second opinion is provided is the same laboratory in which the original opinion was provided.

Item [21] – Schedule 1 (insert items 72858 and 72859)

This item will insert new items (72858 and 72859) into group P5 for the provision of second opinion on a patient specimen requested by the treating practitioner where further information is required for accurate diagnosis and patient management.

Item [22] – Schedule 1 (insert items 73899 and 73900)

This item will insert new items (73899 and 73900) into group P10 before item 73920. These items will be for the initiation of a patient episode associated with new items 72858 or 72859.

Item [23] – Schedule 1 repeal Subclause 2.12.1(2) (definition of bulk billed)

This item will make a minor drafting change by repealing the definition of “bulk billed” in subclause 2.12.1 and inserting it into the dictionary. See item 30 (below).

Item [24] – Schedule 1 Division 2.13 (heading)

This item will make a minor drafting change to reflect the fact that Group 13 currently covers both P10 and P11 (not just P10 services). This change will have no impact on Medicare benefits. The change omits “Division 2.13—Group P13: bulk billing incentive for episodes consisting of a P10 service” and substitute with “Division 2.13—Group P13: bulk-billing incentive”.

Item [25] – Schedule 1 Division 2.13 (note)

This item will make a minor drafting change by amending the note in Group P13 to clarify that the items in Group P13 apply to pathology services in Group P10 (patient episode) and Group P11 (specimen referred). This follows the amendment in item 24 (above).

Item [26] – Schedule 1 Division 2.13 (Group P13 table, heading)

This item will make a minor drafting change by omitting the current heading (Group P13—Bulk billing incentive for episodes consisting of a P10 service) and substituting with “Group P13 – Bulk-billing incentive” to reflect the changes being made in item 24 (above).

Item [27] – Schedule 1 (items 74992 to 74994)

This item will make a minor drafting change by omitting references to “bulk billed” and substituting with “bulk-billed” with a hyphen for consistency.

Item [28] – Schedule 1 (item 74995)

This item will amend bulk-billing incentive item 74995 to allow it to be claimed for bulk-billed episodes which consist of either of the second opinion services.

Item [29] – Schedule 1 (items 74996 to 74999)

This item will make a minor drafting change by omitting references to “bulk billed” and substituting with “bulk-billed” with a hyphen for consistency.

Item [30] – Schedule 1 Part 5 (definition of bulk-billed)

This item will make a minor drafting change by omitting the current definition contained within Part 5 which currently refers to the definition contained in subclause 2.12.1(2). The current definition of bulk-billed will be inserted in the dictionary provided in Part 5 and the definition in subclause 2.12.1(2) will be deleted. See item 23 (above).

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (2015 Measures No. 2) 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 Legislation Amendment (2015 Measures No. 2) Regulation 2015 amends the *Health Insurance (General Medical Services Table) Regulation 2015* (GMST) and the *Health Insurance (Pathology Services Table) Regulation 2015* (PST).

In accordance with Subsections 4(1) and 4A(1) of the *Health Insurance Act 1973* (the Act), the regulations prescribes a table of medical and pathology services containing: items of services, the amounts of fees applicable for each item, and rules for interpretation.

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

This Regulation 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 maintains existing arrangements and the protection of human rights.

Sussan Ley

Minister for Health