

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment (2016 Measures No. 1) Regulation 2016

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 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 2015* (GMST) currently prescribes the table.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Amendment (2016 Measures No. 1) Regulation 2016* (the Regulation) is to incorporate measures announced in the 2015-16 Mid-Year Economic and Fiscal Outlook measure (MYEFO), *Medicare Benefits Schedule – New and amended listings* from 1 May 2016. The Regulation also makes minor and machinery administrative changes to remove optometry services from the GMST from 1 April 2016. To maintain the legal basis for Medicare benefits for optometry services, these items have been prescribed under ministerial determination under section 3C(1) of the Act from 1 April 2016. This is consistent with other allied health services available under Medicare.

1 April 2016 commencement

- **Optometry services**

The removal of optometry services from the GMST. From 1 April 2016 the existing items will be removed from the GMST and be prescribed by ministerial determination under section 3C(1) of the Act, consistent with other allied health services available under the MBS. Listing the optometry services under a 3C determination will not, in any way, affect the current eligibility for payment, or the amounts of Medicare rebate payable, for optometry services.

This change is for the purpose of reducing red tape for optometrists, as they will no longer have to enter into a Common Form of Undertaking with the Government to provide Medicare services.

The original Common Form of Undertaking was created in 1975 and has been remade five times since then to reflect changes to Medicare fee structures and machinery of government processes. The Common Form of Undertaking originally included a number of conditions, including price setting, which over time have been either removed or are now redundant. The current Common

Form of Undertaking, last revised on 1 January 2015, reflects the 2014-15 Budget measure for optometry services, which saw the removal of the charging cap that applied to optometrists accessing the Medicare Benefits Schedule (MBS), and now enables optometrists to set their own fees similar to other health providers. The Common Form of Undertaking's remaining purpose is to enable optometrists to participate in Medicare, which can be achieved by more efficient alternate means. Optometrists will still be required to meet State and Territory registration standards.

The section 3C determination has already been made and registered.

1 May 2016 commencement

- **A new item for hernia repair and revisions to two existing items**
The addition of item 30640 for the repair of large and irreducible scrotal hernias and amendment to items 30620 and 30621 will ensure the services for the repair of umbilical, epigastric or linea alba hernias are targeted to symptomatic patients that require mesh or other formal repair.
- **Simplify the items for the repair of wrist and finger fractures to better reflect specific pathologies and clinical practice**
This change will consolidate 16 items to seven for the treatment of finger fractures, and replace six existing items with six new items for the treatment of wrist fractures. The changes to the items will better reflect specific pathologies (as opposed to having an MBS item for every bone in the hand) and contemporary clinical practice.
- **Addition of two new colonoscopy items**
The addition of two new colonoscopy items 32088 and 32089. These items will mirror existing items 32090 and 32093 however the new items will be for participants on the National Bowel Cancer Screening Program, for follow-up of a positive faecal occult blood test result. These items will enable identification of the number of colonoscopies being conducted as a result of the National Bowel Cancer Screening Program.
- **Addition of new items for insertion and removal of synthetic sling**
The addition of two new items (37040 and 37338) for the insertion and removal of synthetic male sling system for the treatment of stress urinary incontinence.
- **Amendment to transluminal stent insertion items**
This change will amend two existing items (35306 and 35309) to clarify that payment of these items is based on the number of affected blood vessels, not the number of stents placed. The amendments for these items will restrict multiple claiming when more than one stent is inserted into a single vessel or vessels of a single limb in a single procedural event.
- **Removal of out-of-hospital benefits for certain items**
These amendments to 32 existing items will clarify that the service must be performed in-hospital. The changes will ensure uniformity between the MBS item descriptors and the benefits payable, and to ensure these services are provided in an appropriate clinical setting.
- **Removal of 'must be performed in the operating room of a hospital'**
This change will amend existing items (34539 and 35646) to ensure uniformity between the MBS item descriptors and the benefits payable. Currently these items can be billed either in or out of hospital, however the

item descriptors make mention of ‘in the operating theatre of a hospital. The item descriptor will be amended to remove ‘in an operating theatre of a hospital’ to clarify the appropriate clinical setting is either in in-hospital or out-of-hospital, consistent with the clinical advice from medical craft groups.

Consultation

General consultation has occurred with Optometry Australia in relation to optometry services, which has indicated its support to remove the need to sign the outdated Common Form of Undertaking for the purpose of Medicare benefits.

Consultation was also undertaken with the relevant craft groups in relation to the changes to items 35646 and 34539. Advice from the National Association of Specialist Obstetricians and Gynaecologists (NASOG) and the Royal Australian and New Zealand College of Radiologists is that it is clinically appropriate to perform these services both in, or out, of a hospital setting.

All of the other changes in the Regulation 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.

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 *Legislation Act 2003*.

Sections 1 to 4 and Schedule 1 of the Regulation will commence on 1 April 2016. Schedule 2 of the Regulation will commence on 1 May 2016.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Amendment (2016 Measures No. 1) Regulation 2016*Section 1 – Name

This section provides for the Regulation to be referred to as the *Health Insurance (General Medical Services Table) Amendment (2016 Measures No. 1) Regulation 2016*.

Section 2 – Commencement

This section provides, for the Regulation, that sections 1 to 4 and Schedule 1 of the Regulation will commence on 1 April 2016. Schedule 2 of the Regulation will commence on 1 May 2016.

Section 3 – Authority

This section provides that 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, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Optometry service amendments***Health Insurance (General Medical Services Table) Regulation 2015*****Item [1] – Schedule 1 Subclause 1.2.3(1)**

This item will omit the reference to optometry items 10905 to 10929 in subclause 1.2.3(1).

Item [2] – Schedule 1 Clause 1.2.7

This item will omit the reference to the optometry items that are currently prescribed in clause 1.2.7.

Item [3] – Schedule 1 Amendment to the heading of Division 2.1

This item will omit the reference to group A10 in the heading of division 2.1 as the optometry items that are currently prescribed in group A10 of the general medical services table will be removed and prescribed in a ministerial determination.

Item [4] – Schedule 1 Amendment to the note in Division 2.1

This item will omit the reference to group A10 in the note to the Division 2.1 heading as the optometry items that are currently prescribed in group A10 of the general medical services table will be removed and prescribed in a ministerial determination.

Item [5] – Schedule 1 Clause 2.5A.1 (paragraph (c) of the definition of eligible allied health provider)

This item will replace ‘participating optometrist’ with ‘optometrist’ as providers no longer have to be a participating optometrist, as defined in the Act, to provide services under Medicare.

Item [6] – Schedule 1 Clause 2.10.5 (paragraph (c) of the definition of eligible allied health provider)

This item will replace ‘participating optometrist’ with ‘optometrist’ as providers no longer have to be a participating optometrist, as defined in the Act, to provide services under Medicare.

Item [7] – Schedule 1 Division 2.28 – Group A10: Optometric services provided by participating optometrist

This item will repeal the division containing the optometry services in the GMST. The legal basis for the payment of Medicare benefits for these services will be prescribed by ministerial determination from 1 April 2016.

Item [8] – Schedule 1 Part 3 (definition of bulk-billed)

This item will make a consequential amendment by omitting the reference to the meaning of bulk-billed in subclause 2.28.4(3) as division 2.28 will be repealed. See item 7 above.

Schedule 2 – Other service amendments

Part 1— General amendments

Health Insurance (General Medical Services Table) Regulation 2015

Item [1] – Schedule 1 (repeal and substitute items 30620 and 30621)

This item will amend two existing items for the provision of hernia services to reflect current clinical practice, by repealing the current items and replacing with a new item descriptor. There will be no change to the item number of the service or the associated schedule fee.

Item [2] – Schedule 1 (insert item 30640)

This item will insert a new item 30640 after item 30639. This item has been added to ensure that the repair of large and irreducible scrotal hernias (where the surgery exceeds 2 hours) is adequately funded.

Item [3] – Schedule 1 (insert items 32088 and 32089)

This item will insert two new items (32088 and 32089) after item 32087. These items will be for the provision of fiberoptic colonoscopies for participants registered on the National Bowel Cancer Screening Program, following a positive faecal occult blood test.

Item [4] – Schedule 1 (item 34539)

This item will amend the item descriptor of item 34539 to remove the reference to being performed in the operating theatre of a hospital. The appropriate clinical body have advised that this item is clinically appropriate to perform either in, or out, of hospital.

Item [5] – Schedule 1 (item 35306)

This item will amend item 35306 for transluminal stent insertion to prevent it from being claimed more than once when more than one stent is inserted into a single vessel or vessels of a single limb in a single procedural event.

Item [6] – Schedule 1 (item 35309)

This item will amend item 35309 for transluminal stent insertion to prevent it from being claimed more than once when more than one stent is inserted into a single vessel or vessels of a single limb in a single procedural event.

Item [7] – Schedule 1 (item 35646)

This item will amend the item descriptor of item 34646 to remove the reference to being performed in an operating theatre of a hospital. The appropriate clinical body have advised that this item is clinically appropriate to perform either in, or out, of hospital.

Item [8] – Schedule 1 (insert 37040)

This item will insert new item 37040 after 37038 for the provision of the insertion of synthetic male sling system for the treatment of stress urinary incontinence.

Item [9] – Schedule 1 (insert 37338)

This item will insert new item 37338 after 37336 for the provision of the division or removal of synthetic male sling system for the treatment of stress urinary incontinence.

Item [10] – Schedule 1 (items 47300 to 47345)

This item will repeal items 47300 to 47345 and substitute with new items 47301, 47304, 47307, 47310, 47313, 47316 and 47319. The seven new items will consolidate the 16 current items for the treatment of finger fractures.

Item [11] – Schedule 1 (items 47360 to 47375)

This item will repeal items 47360 to 47375 and substitute with new items 47361, 47362, 47364, 47367, 47370 and 47373. The new items will replace the six current items for the treatment of wrist fractures to six new items.

Part 2—Restricting services to in-hospital services***Health Insurance (General Medical Services Table) Regulation 2015*****Items [12] – [43] – Schedule 1 (items 31551, 32145, 32212, 35103, 35630, 39135, 45020, 45823, 45851, 46486, 46489, 46516, 47381, 47385, 47426, 47456, 47696, 47906, 48603, 50115, 50330, 50348, 50390, 50516, 50524, 50552, 50568, 50600, 52097, 52106, 52135 and 53206)**

This item will amend the above listed items to clarify that these services are only to be provided in-hospital.

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 (2016 Measures No. 1) Regulation 2016

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 Regulation will incorporate measures announced in the 2015-16 Mid-Year Economic and Fiscal Outlook measure (MYEFO), *Medicare Benefits Schedule – New and amended listings* from 1 May 2016. The Regulation also makes minor and machinery administrative changes to remove optometry services from the GMST from 1 April 2016. To maintain the legal basis for Medicare benefits for optometry services, these items will be prescribed under ministerial determination under section 3C(1) of the Act from 1 April 2016. This is consistent with other allied health services available under Medicare.

Human rights implications

The Regulations engage Articles 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 maintain or 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