

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Health Insurance Act 1973

Health Insurance Legislation Amendment (2016 Measures No. 1) Regulation 2016

Subsection 133(1) of 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 4A(1) and 4AA(1) of the Act provides that regulations may prescribe a table of pathology and diagnostic imaging services which sets out items of pathology and diagnostic imaging services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (Pathology Services Table) Regulation 2015* (PST) and the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2015* (DIST) currently prescribe such tables.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2016 Measures No. 1) Regulation 2016* (the Regulation) is to remove 10 diagnostic imaging items from the Medicare Benefits Schedule (MBS), amend two existing diagnostic imaging items and include Norfolk Island as a very remote area for the purpose of diagnostic imaging and pathology Medicare services. The Regulation introduces the following changes:

- **Removal of 10 items and amendment of two existing diagnostic imaging items**

This change removes 10 diagnostic imaging items and amends two existing diagnostic imaging items as part of the first round of changes from the MBS Review Taskforce (the taskforce) process. The first stage of work has provided recommendations about the removal of lower-volume MBS items where there is clinical consensus that they no longer represent clinical best-practice. This includes the removal of 10 diagnostic imaging items and the amendment of two existing diagnostic imaging items in the DIST. Items 58924, 58926, 59503, 59504, 59736, 59737, 59760, 59761, 61465 and 61711 have been removed, and items 59715 and 59716 have been amended to restrict the service to patients under 16 years of age.
- **Including Norfolk Island as a very remote area**

Including Norfolk Island as a very remote area for the purpose of diagnostic imaging and pathology Medicare services, as part of the 1 July 2016 Norfolk Island reforms.

Consultation

Consultation was undertaken on all changes in the Regulation.

Public consultation on the removal of the 10 above listed items and the amendment to items 59715 and 59716 was conducted between 21 December 2015 and 8 February 2016. In addition all relevant professional Colleges were specifically invited to provide feedback on the recommendations.

The Norfolk Island community was consulted on the inclusion of Norfolk Island for the purposes of eligibility for Medicare benefits as part of the Norfolk Island reforms.

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*.

The Regulation commences on 1 July 2016.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2016 Measures No. 1) Regulation 2016*

Section 1 – Name

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

Section 2 – Commencement

This section provides for the Regulation to commence on 1 July 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 - Amendments

Health Insurance (Diagnostic Imaging Services Table) Regulation 2015

Item [1] – Schedule 1 Clause 1.2.2 (table item 5)

This item omits “11” from item 5 in the table (Rest of diagnostic radiology). This is a consequential amendment as a result of the deletion of items 59503 and 59504 which are the only items in *Subgroup 11 - Radiographic examination in connection with pregnancy*. See item 5.

Item [2] – Schedule 1 (items 58900, 58902, 58903 and 58905)

This item makes a consequential amendment to omit items 58924 and 58926 from the item descriptors of items 58900, 58902, 58903 and 58905. See item 3.

Item [3] – Schedule 1 (items 58924 and 58926)

This item repeals items 58924 and 58926 from the diagnostic imaging services table.

Item [4] – Schedule 1 Subdivision D of Division 2.3 (heading)

This item makes a consequential amendment by repealing the current heading ‘Subdivision D—Subgroups 11 to 14 of Group I3’ and substituting with ‘Subdivision D—Subgroups 12 to 14 of Group I3’ to reflect the removal of *Subgroup 11—Radiographic examination in connection with pregnancy*. See item 5.

Item [5] – Schedule 1 Subdivision D of Division 2.3 (Group I3 table, Subgroup 11)

This item repeals Subgroup 11 which contains items 59503 and 59504.

Item [6] – Schedule 1 (items 59715 and 59716)

This item amends items 59715 and 59716 to restrict their use to patients under 16 years of age.

Item [7] – Schedule 1 (items 59736, 59737, 59760, 59761, 61465 and 61711)

This item repeals items 59736, 59737, 59760, 59761, 61465 and 61711 from the diagnostic imaging services table.

Item [8] – Schedule 1 Subclause 2.6.1(4) (definition of regional, rural or remote area)

This item repeals the current definition of *regional, rural or remote area* and substitute to include Norfolk Island as a *regional, rural or remote area* for the purposes of diagnostic imaging services. This amendment will mean medical practitioners (GPs) on Norfolk Island will be able to claim 64991 for bulk-billed services, consistent with outer regional, remote and very remote areas in mainland Australia.

Item [9] – Schedule 1 Part 3 (definition of RA4)

This item repeals the current definition of RA4 in the dictionary and substitute to include Norfolk Island under the definition. This amendment will mean Norfolk Island will be exempt from the capital sensitivity measure, consistent with outer regional, remote and very remote areas in mainland Australia.

Health Insurance (Pathology Services Table) Regulation 2015**Item [10] – Schedule 1 subclause 2.12.1(3) (definition of regional, rural or remote area)**

This item repeals the current definition of *regional, rural or remote area* and substitute to include Norfolk Island as a *regional, rural or remote area* for the purposes of pathology services. This amendment will mean GPs on Norfolk Island will be able to claim the higher bulk-billing incentive item (74991), consistent with outer regional, remote and very remote areas in mainland Australia.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation 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 purpose of the *Health Insurance Legislation Amendment (2016 Measures No. 1) Regulation 2016* (the Regulation) is to remove 10 diagnostic imaging items from the Medicare Benefits Schedule (MBS), amend two existing diagnostic imaging items and include Norfolk Island as a very remote area for the purpose of diagnostic imaging and pathology Medicare services. The Regulation introduces the following changes:

- **Removal of 10 items and amendment of two existing diagnostic imaging items**
 This change removes 10 diagnostic imaging items and amends two existing diagnostic imaging items as part of the first round of changes from the MBS Review Taskforce (the taskforce) process. The first stage of work has provided recommendations about the removal of lower-volume MBS items where there is clinical consensus that they no longer represent clinical best-practice. This includes the removal of 10 diagnostic imaging items and the amendment of two existing diagnostic imaging items in the DIST. Items 58924, 58926, 59503, 59504, 59736, 59737, 59760, 59761, 61465 and 61711 have been removed, and items 59715 and 59716 have been amended to restrict the service to patients under 16 years of age.
- **Including Norfolk Island as a very remote area**
 Including Norfolk Island as a very remote area for the purpose of diagnostic imaging and pathology Medicare services, as part of the 1 July 2016 Norfolk Island reforms.

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

The removal of specific items follows an extensive review by the MBS Review Taskforce which identified that there were concerns with continued coverage of these services. They identified concerns with the services meaning they were no longer clinically relevant. These included: safety concerns with the procedure; the service has no place in contemporary clinical practice; the item incentivises low value care; and/or the service is better covered under other existing MBS items.

The MBS Review Taskforce recommended the removal of these services which was supported by the Government.

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