

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Regulation 2016

Subsection 133(1) 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 general medical services which sets 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 such a table.

Subsection 4(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is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 Legislation (FRL). The GMST was registered on the FRL on 19 June 2015.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Regulation 2016* (the Regulation) is to repeal the GMST and prescribe a new table of general medical services for the 12 month period beginning on 1 July 2016, to ensure that Medicare benefits continue to be payable for services listed in the GMST.

In addition, the Regulation makes minor and machinery amendments to the GMST by:

- Removing 14 items as part of the first round of changes from the MBS Review Taskforce process. The first stage of work has provided recommendations about the removal of lower-volume MBS items in some specialities where there is clinical consensus that they no longer represent clinical best-practice. This amendment removes eight ear, nose and throat items (11321, 18246, 41680, 41695, 41758, 41761, 41849 and 41852), four gastroenterology items (13500, 13503, 32078 and 32081), obstetrics item 16504 and thoracic medicine item 11500.
- Including Norfolk Island under the definition of ‘regional, rural or remote area’ under Part 3 of the Dictionary to ensure residents on Norfolk Island are entitled to services available to ‘very remote’ areas of Australia. This includes the higher bulk-billing incentive payment for the telepsychiatry items 353 to 361 and antenatal item 16400.
- Amending the descriptor of the Intensity-Modulated Radiation Therapy (IMRT) item 15275 to clarify the service should only be performed by a linear accelerator.

- Amending the item descriptor of item 32089 in line with clinical advice to ensure the service can be performed via multiple techniques and is consistent with current clinical practice.
- The removal of incorrect references to other clauses in subclause 1.1.4(1). Clause 1.1.4 defines the meaning of *single course of treatment* for referred specialist and consultant physician services. The clauses currently listed in subclause 1.1.4(1) either do not exist or are not relevant to the subclause.

Consultation

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

Public consultation on the removal of the 14 above listed items 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 Faculty of Radiation Oncology within the Royal Australian and New Zealand College of Radiologists was consulted on the IMRT descriptor clarification in the proposed Regulation and is fully supportive. The Faculty has communicated with its Fellows who provide radiotherapy services to assist with clarification of original policy intent.

The Colorectal Surgical Society of Australia and New Zealand provided advice on the removal of the reference to argon plasma coagulation from the item descriptor of item 32089.

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 *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 (General Medical Services Table) Regulation 2016*Section 1 – Name

This section provides for the Regulation to be referred to as the *Health Insurance (General Medical Services Table) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 July 2016.

Section 3 – Authority

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

Section 4 – Schedule(s)

This section provides 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.

Section 5 – General medical services table

This section provides that the new table of medical services set out in Schedule 1 be prescribed for subsection 4(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 proposed Regulation, and includes references to certain words and expressions which are defined elsewhere in the Regulation.

Schedule 1 – General medical services table

This part of the regulation continues the existing General Medical Services Table and makes the following machinery amendments:

Removal of 14 items

The Regulation removes 14 items from the MBS. This amendment would remove eight ear, nose and throat items (11321, 18246, 41680, 41695, 41758, 41761, 41849 and 41852), four gastroenterology items (13500, 13503, 32078 and 32081), obstetrics item 16504 and thoracic medicine item 11500. The proposed Regulation would also make consequential amendments to clauses 1.2.4(1), 1.2.5(1) and 1.2.8(1) and item 32087 to reflect the removal of the above mentioned items.

Norfolk Island

The definition of ‘regional, rural or remote area’ under Part 3 of the Dictionary has been amended to include Norfolk Island. This change ensures that residents on Norfolk Island are entitled to services available to ‘very remote’ areas of Australia.

Amendment to item 15275

This change amends the item descriptor of the Intensity-Modulated Radiation Therapy (IMRT) item 15275 to clarify that the service can only be delivered by a fixed or dynamic gantry linear accelerator or by a helical non C-arm based linear accelerator.

Amendment to item 32089

This amendment removes the words 'by argon plasma coagulation' from item 32089 to reflect advice provided by relevant clinical groups. Argon plasma coagulation is not a method used for the removal of polyps.

Removing incorrect references to other subclauses in subclause 1.1.4(1)

This change removes references to clauses 1.1.1 and 1.1.10 which do not exist and the reference to *minor attendance* in the dictionary. The clause regarding the definition of *minor attendance* is not relevant for the purpose of 1.1.4

Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical Services Table) Regulation 2015*.

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) 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 Regulation is to repeal the GMST and prescribe a new table of general medical services for the 12 month period beginning on 1 July 2016, to ensure that Medicare benefits continue to be payable for services listed in the GMST.

In addition, the Regulation makes minor and machinery amendments to the GMST by:

- Removing 14 items as part of the first round of changes from the MBS Review Taskforce process. The first stage of work has provided recommendations about the removal of lower-volume MBS items in some specialities where there is clinical consensus that they no longer represent clinical best-practice. This amendment removes eight ear, nose and throat items (11321, 18246, 41680, 41695, 41758, 41761, 41849 and 41852), four gastroenterology items (13500, 13503, 32078 and 32081), obstetrics item 16504 and thoracic medicine item 11500.
- Including Norfolk Island under the definition of ‘regional, rural or remote area’ under Part 3 of the Dictionary to ensure residents on Norfolk Island are entitled to services available to ‘very remote’ areas of Australia. This includes the higher bulk-billing incentive payment for the telepsychiatry items 353 to 361 and antenatal item 16400.
- Amending the descriptor of the Intensity-Modulated Radiation Therapy (IMRT) item 15275 to clarify the service should only be performed by linear accelerator.
- Amending item 32089 to ensure that the item descriptor is consistent with current clinical practice.
- The removal of incorrect references to other clauses in subclause 1.1.4(1). Clause 1.1.4 defines the meaning of *single course of treatment* for referred specialist and consultant physician services. The clauses currently listed in subclause 1.1.4(1) either do not exist or are not relevant to the subclause.

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 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 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.

The amendments to items 15275 and 32089 are to ensure that the MBS remains up to date and reflects current clinical practice.

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