

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) 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 4AA(1) of the Act provides that 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 2015* (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Subsection 4AA(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is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 Legislation (FRL). The DIST was registered on the FRL on 19 June 2015.

Purpose

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2016* (the Regulation) is to repeal the DIST and prescribe a new table of diagnostic imaging services for the 12 month period beginning on the day following the instrument's registration on the FRL, to ensure that Medicare benefits continue to be payable for diagnostic imaging services listed in the DIST.

In addition, the Regulation makes minor and machinery amendments which are administrative in nature to make the DIST consistent with the Department of Human Services (DHS) administration of the MBS:

- Diagnostic imaging items 55707 and 55714 can only be rendered if the service is requested. A requested service is designated by the (R) symbol in the DIST. The current item descriptors state the services must be referred by a medical practitioner or participating midwife, but incorrectly display the (NR) symbol. An (R) symbol has been added and the (NR) symbol removed from the item descriptors to clarify this requirement, consist with the DHS administration of the items.
- Diagnostic imaging items 58508, 61654 and 63075 are subject to the capital sensitivity provision (NK), meaning they should be claimed for services rendered on machines past their effective life. These items incorrectly display both the (NK) and (K) symbols. The (K) symbol has been removed from the item descriptors leaving just the (NK) symbol to clarify the fee for these services should only be half the fee of services rendered with newer machines, consist with the DHS administration of the items.

- Correction of a typographical error in item 60031. This amendment removes and replaces the (RK) symbol with (NK) symbol to clarify that the item should be claimed for services rendered on machines past their effective life. This is consistent with the DHS administration of the item. The (RK) symbol has no meaning in the DIST.
- The removal of references to the transitional arrangements for the regional exemption from the capital sensitivity measure for computed tomography, which ceased on 30 June 2016.

Consultation

Consultation was not undertaken on the Regulation as it is machinery in nature and it does not alter existing arrangements.

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 the day after it is registered on the Federal Register of Legislation.

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

ATTACHMENT

Details of the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2016*Section 1 – Name

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

Section 2 – Commencement

This section provides for the Regulation to commence on the day after it is registered on the Federal Register of Legislation.

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

Section 5 – Diagnostic imaging services table

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

Section 6 – Dictionary

This section provides for a Dictionary in Part 3 of Schedule 1 at the end of the Regulation.

Schedule 1 – Diagnostic imaging services table

Schedule 1 continues the existing Diagnostic Imaging Services Table and makes the following machinery amendments to the previous table:

Addition of (R) symbol in items 55707 and 55714

This amendment removes the (NR) symbol and adds the (R) symbol for items 55707 and 55714 to clarify that these items can only be rendered if requested. This is consistent with the DHS administration of the items.

Removal of (K) symbol from items 58508, 61654 and 63075

This amendment removes the (K) symbol from items 58508, 61654 and 63075 (leaving the (NK)) to clarify the fee for these services should only be half the fee of services rendered with newer machines. This is consistent with the DHS administration of the items.

Amendment to item 60031

This amendment corrects a typographical error in item 60031 by removing the (RK) symbol and replacing with the (NK) symbol. This clarifies the service should be rendered on a newer machine, consist with the DHS administration of the item. The (RK) symbol has no meaning in the DIST.

Removal of subclause (6)(aa) of clause 1.2.3

Subclause (8) of clause 1.2.3 provides for the repeal of subclause (6)(aa) of clause 1.2.3 at the end of 30 June 2016. This amendment removes the transitional arrangements for the regional exemption from the capital sensitivity measure for computed tomography which ceased on 30 June 2016.

Schedule 2 – Repeals

This section repeals the *Health Insurance (Diagnostic Imaging 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 (Diagnostic Imaging 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 Regulation repeals the DIST to prescribe a new table of diagnostic imaging services for the 12 month period beginning on the day following the instrument's registration on the FRL, to ensure that Medicare benefits continue to be payable for diagnostic imaging services listed in the DIST. If the Regulation is not registered on the FRL prior to the existing table's sunset date, there will be no legal basis for the payment of Medicare benefits for almost all diagnostic imaging services on the MBS.

In accordance with subsection 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.

In addition, the Regulation makes minor and machinery amendments which are administrative in nature to make the DIST consistent with the Department of Human Services (DHS) administration of the MBS:

- Diagnostic imaging items 55707 and 55714 can only be rendered if the service is requested. A requested service is designated by the (R) symbol in the DIST. The current item descriptors state the services must be referred by a medical practitioner or participating midwife, but incorrectly display the (NR) symbol. An (R) symbol has been added and the (NR) symbol removed from the item descriptors to clarify this requirement, consist with the DHS administration of the items.
- Diagnostic imaging items 58508, 61654 and 63075 are subject to the capital sensitivity provision (NK), meaning they should be claimed for services rendered on machines past their effective life. These items incorrectly display both the (NK) and (K) symbols. The (K) symbol has been removed from the item descriptors leaving just the (NK) symbol to clarify the fee for these services should only be half the fee of services rendered with newer machines, consist with the DHS administration of the items.
- Correction of a typographical error in item 60031. This amendment removes and replaces the (RK) symbol with (NK) symbol to clarify that the item should be claimed for services rendered on machines past their effective life. This is consistent with the DHS administration of the item. The (RK) symbol has no meaning in the DIST.
- The removal of references to the transitional arrangements for the regional exemption from the capital sensitivity measure for computed tomography, which ceased on 30 June 2016.

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

This Legislative Instrument will maintain the legal basis for the payment of Medicare benefits for almost all diagnostic imaging services, maintaining 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.

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