

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2016 Measures No. 2) 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.

Subsections 4(1) and 4AA(1) of the Act provides that regulations may prescribe a table of medical and diagnostic imaging services which set out items of services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulation 2016* (GMST) and the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2016* (DIST) currently prescribe such tables. The *Health Insurance Regulations 1975* (HIR) prescribe other 'matters' which the Governor-General may make regulations for in accordance with subsection 133(1) of the Act.

Section 19AA of the Act provides that Medicare benefits are payable for professional services performed by medical practitioners (who are GPs or specialists/consultant physicians), or persons registered under section 3GA of the Act. Section 3GA prescribes these persons as medical practitioners in approved placements. The application process is prescribed in subsection 3GA(5) of the Act. This includes the provision for regulations to prescribe the 'body specified' and the 'course or program'. These are prescribed in the HIR.

Subsection 23B(6) of the Act provides that a participating optometrist (optometrists who had signed the Common Form of Undertaking) may terminate an undertaking at any time. Regulation 15 of the HIR prescribes the process for participating optometrists to terminate the agreement.

Subsection 21(1) of the Act provides that for the purposes of the Act, an eligible midwife must meet the requirements as set out in the regulations. Regulation 14A of the HIR outlines these requirements.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2016 Measures No. 2) Regulation 2016* (the Regulation) is to amend the GMST, DIST and HIR to implement measures announced in the 2015-16 Mid-Year Economic and Fiscal Outlook (MYEFO) and the 2016-17 Budget. The Regulation also makes minor consequential amendments to the HIR. These amendments are required to be implemented on 1 November 2016 and 1 January 2017 respectively. The Regulation makes the following amendments:

Medicare Benefits Schedule medical services (from 1 November 2016)

- **Addiction medicine:** In the *Australian Government's Response to the National Ice Taskforce Final* MYEFO measure, it was announced that 15 new items would be included on the Medicare Benefits Schedule (MBS) to treat people suffering from

addiction disorders. These new items will provide access to addiction medicine services provided by addiction medicine specialists.

- **Sexual health:** In the *Medicare Benefits Schedule – New and amended listings* MYEFO measure, it was announced that 16 new items would be included in the MBS to treat people suffering from sexually transmissible infections and/or sexual function disorders, including Hepatitis C and HIV. These new items will provide access to sexual health medicine services provided by sexual health medicine specialists.
- **Magnetic resonance imaging (MRI) breast scan:** In the *Medicare Benefits Schedule – Magnetic Resonance Imaging of the breast* Budget measure, it was announced that new diagnostic imaging services would be listed on the MBS to provide breast cancer screening services by MRI for eligible patients. The MRI scans are available for patients with occult breast cancer where conventional imaging fails to show the source of the tumour (item 63487 for scans on newer equipment and item 63488 for aged equipment), and for patients with suspect breast cancer who require a biopsy where the lesion is only identifiable by MRI (item 63489 for scans on newer equipment and item 63490 for aged equipment).
- **Diabetic retinopathy:** In the *Medicare Benefits Schedule – listing of photography with non-mydratic retinal cameras* Budget measure, it was announced that 2 new items would be listed on the MBS to allow medical practitioners to test for diabetic retinopathy with a non-mydratic retinal camera. Aboriginal and Torres Strait Islander patients will be eligible for the test annually (item 12325) and non-Indigenous patients once every two years (item 12326).
- In the *Medicare Benefits Schedule – new and amended listings* Budget measure, it was announced that a range of changes would be made to the MBS. This includes:
 - **Skin services:** The current 57 MBS items for excision of skin lesions and skin flap repairs are repetitive and confusing, factors which often make claiming the most appropriate items difficult for providers. Nine items have been amended and the remaining 48 replaced by 28 new items to describe current clinical practice more clearly, as recommended by the Medical Services Advisory Committee (MSAC) at its November 2015 meeting.
 - **Vascular surgery:** Item 34103 for exploration or ligation of a great artery or great vein has been amended to clarify the definition of ‘great artery’ and ‘great vein’ in the item descriptor, limit the item to two claims in the same episode and restrict its use (co-claiming) with 6 other varicose vein items (32508, 32511, 32520, 32522, 32523 or 32526); as recommended by MSAC at its October 2015 meeting.
 - **Plastic and reconstructive surgery:** Item 45018 can be claimed for a service requiring the correction of a contour deformity by using a dermal, dermal fat or fascia graft as a filler. This item has been amended to restrict its use with neurosurgical items 40300 to 40351, as it is not clinically appropriate for dermofat grafting to be claimed in association with spinal surgery.
 - **Patch testing:** Four items for skin patch testing have been amended or replaced and three new items added to test a greater number of allergens on one occasion, consistent with clinical practice in Australia. The item descriptors have also been amended to clearly refer to the number of allergens in a test rather than a ‘standard’ test battery as per the current wording. The changes were recommended by MSAC at its February 2016 meeting.
 - **Hip arthroscopy:** Therapeutic hip arthroscopy (49366) and hip arthrotomy (49303) has been amended to prevent their use for the management of femoroacetabular impingement (FAI). This was recommended by MSAC at

its November 2015 meeting following a review of clinical effectiveness and cost effectiveness of therapeutic hip arthroscopy which found a lack of evidence supporting the use of therapeutic hip arthroscopy to treat FAI. Item 48424 has also been restricted from being claimed to treat FAI as it is often co-claimed with the two hip surgery procedures.

- **Circumcision:** At its February 2016 meeting, MSAC recommended the MBS items for circumcision be amended to differentiate services by the type of anaesthesia used instead of patient age and the type of medical practitioner who rendered the service. The 4 current items (30653, 30656, 30659 and 30660) have been removed and replaced with 2 new items. One for circumcision procedures performed under anaesthesia and one for all other circumcision procedures (30654 and 30658).

Addition of Independent Pathways Program (from 1 November 2016)

Under the *Medicare Benefits Schedule — Support for rural and remote registrars* Budget measure, it was announced that general practice registrars training on the Australian College of Rural and Remote Medicine Independent Pathway program would be able to claim Medicare benefits at the vocationally registered level. The Regulation amends Part 2 of Schedule 5 of the HIR to implement this measure.

Consequential amendments

The Regulation makes consequential amendments to remove redundant provisions in the HIR and to reflect current administrative practice.

- Removal of Regulation 15 from the HIR from 1 November 2016. On 1 April 2016, the optometry services were removed from the GMST and prescribed by ministerial determination under section 3C(1) of the Act. This removed the requirement for optometrists to enter into a Common Form of Undertaking (Undertaking) with the Government to provide Medicare services. Entry into an Undertaking is now only required for optometrists wishing to participate in the Visiting Optometrists Scheme (VOS). As the Undertaking is no longer relevant for the delivery of Medicare optometric services, the method of notification to terminate an undertaking that is prescribed in Regulation 15 is no longer appropriate. The Regulation removes Regulation 15 from the HIR.
- Apply the existing case conference items for consultant physicians (825-828) and consultant psychiatrists (855-858) to the meaning of *multidisciplinary case conference team* in the general medical services table (clause 1.1.3) from 1 November 2016. This will clarify the types of providers that may be a member of the multidisciplinary team. This is consistent with how it is currently being administered by the Department of Human Services.
- Amendment to 14A of the HIR from 1 January 2017. This change will substitute 'eligible' midwife to 'endorsed' midwife for consistency with the Nursing and Midwifery Board of Australia's new registration standard terminology. Midwives granted notation as an 'eligible midwife' before 31 December 2016 will still have 18 months from the date of notation to complete a board approved program of study and apply for endorsement.

Consultation

Consultation was undertaken by the Department with the Royal Australasian College of Surgeons, the Neurosurgical Society of Australasia and the Australian Society of Plastic Surgeons regarding the appropriate use of item 45018.

Prior to the announcement of the *Medicare Benefits Schedule — Support for rural and remote registrars* Budget measure, the Department consulted with the Australian College of Rural and Remote Medicine following receipt of a proposal from the College to include the Independent Pathway as a section 3GA programme under the HIR.

Consultation for the amendment to 14A of the HIR was undertaken with the Nursing and Midwifery Board of Australia and other midwifery organisations.

No consultation was undertaken on the other consequential amendments as the changes are machinery in nature.

All of the other changes in the Regulation were considered and agreed to by the 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 the 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*.

The Regulation will commence on 1 November 2016. Part 2 of the Regulation will commence on 1 January 2017.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2016 Measures No. 2) Regulation 2016*

Section 1 – Name

This section provides for the Regulation to be referred to as the *Health Insurance Legislation Amendment (2016 Measures No. 2) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 November 2016. Part 2 of the Regulation will commence on 1 January 2017.

Section 3 – Authority

This section provides that the Regulation 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

Part 1 – Main amendments

Health Insurance (Diagnostic Imaging Services Table) Regulation 2016

Item [1] - Subclause 2.5.1(1) of Schedule 1

This item omits item 63486 and substitutes with “63467, 63487 to 63490, 63470 to 63486”. This amendment will add the new items for patients with occult breast cancer to subclause 2.5.1(1) which outlines the requirements for the use of the new items (see item 3).

Item [2] - Subclause 2.5.1(2) of Schedule 1

This item omits item 63486 and substitutes with “63467, 63487 to 63490, 63470 to 63484”. This amendment will add the new items for patients with occult breast cancer to subclause 2.5.1(2) which outlines the requirements for the use of the new items (see item 3).

Item [3] – Schedule 1 (insert new items 63487, 63488, 63489 and 63490)

This item inserts 4 new items 63487, 63488, 63489 and 63490 after item 63467. These items will be for patients with occult breast cancer where conventional imaging fails to show the source of the tumour and for patients with suspect breast cancer who require a biopsy where the lesion is only identifiable by MRI.

Health Insurance (General Medical Services Table) Regulation 2016**Item [4] – Schedule 1 subparagraph 1.1.3(b)(i)**

This item adds consultant physician items 825-828, consultant psychiatrist items 855-858 and new items for addiction medicine (6029-6042) and new items for sexual health (6064-6075) to the meaning of multidisciplinary case conference team in subclause 1.1.3(b)(i). This will clarify the types of providers that may be a member of the multidisciplinary team.

Item [5] – Schedule 1 subclause 1.1.4(1)

This item adds the new sexual health and addiction medicine items 6018, 6019, 6024, 6025, 6026, 6051, 6052, 6058, 6059, 6060, 6062 and 6063 to clause 1.1.4 which defines a single course of treatment.

Item [6] – Schedule 1 subclause 1.2.2(1)

This item adds the new sexual health and addiction medicine items 6018 to 6028 and 6051 to 6063 to clause 1.2.2 which specifies the referral requirements for an attendance by specialist or consultant physician.

Item [7] – Schedule 1 subclause 1.2.3(1)

This item adds the new sexual health and addiction medicine items 6018 to 6028 and 6051 to 6063 to clause 1.2.3 which specifies the requirements for a professional attendance service.

Item [8] – Schedule 1 subclause 1.2.4(1)

This item adds the new sexual health and addiction medicine items 6018 to 6024, 6051 to 6058, 6062 and 6063 to clause 1.2.4 which specifies the requirements for personal attendance by medical practitioners generally.

Item [9] – Schedule 1 paragraph 1.2.4(3)(c)

This item adds the new sexual health and addiction medicine telehealth items 6025, 6026, 6059 and 6069 to clause 1.2.4(3)(c) which specifies the requirements for personal attendance for a telehealth service.

Item [10] – Schedule 1 subclause 1.2.5(1)

This item adds the new sexual health and addiction items 6018 to 6024, 6028, 6051 to 6058, 6062 and 6063 to clause 1.2.5 which specifies the requirements for personal attendance by medical practitioners.

Item [11] – Schedule 1 subclause 1.2.5(4)(c)

This item adds the new sexual health and addiction medicine telehealth items 6025, 6026, 6059 and 6069 to subclause 1.2.5(4)(c) which specifies the requirements for personal attendance for a telehealth service.

Item [12] – Schedule 1 subclause 1.2.8(1)

This item makes a consequential amendment to subclause 1.2.8(1) by omitting the reference to items 12015, 12018 and 12021 and substituting with items 12017, 12021, 12022 and 12024. This change will remove the existing items and replace them with the new items for patch testing for the purpose of clause 1.2.8, regarding services that may be provided by persons other than medical practitioners.

Item [13] – Schedule 1 (cell at item 825, column headed “Description”)

This item will repeal and substitute the description of item 825. This change will make a minor consequential amendment to the wording in item 825 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [14] – Schedule 1 (cell at item 826, column headed “Description”)

This item will repeal and substitute the description of item 826. This change will make a minor consequential amendment to the wording in item 826 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [15] – Schedule 1 (cell at item 828, column headed “Description”)

This item will repeal and substitute the description of item 828. This change will make a minor consequential amendment to the wording in item 828 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [16] – Schedule 1 (cell at item 855, column headed “Description”)

This item will repeal and substitute the description of item 855. This change will make a minor consequential amendment to the wording in item 855 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [17] – Schedule 1 (cell at item 857, column headed “Description”)

This item will repeal and substitute the description of item 857. This change will make a minor consequential amendment to the wording in item 857 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [18] – Schedule 1 (cell at item 858, column headed “Description”)

This item will repeal and substitute the description of item 858. This change will make a minor consequential amendment to the wording in item 858 to apply the item to clause 1.1.3. This amendment will clarify the types of providers that may be a member of the multidisciplinary case conference team. This is consistent with how it is currently being administered by the Department of Human Services.

Item [19] – Schedule 1 after Division 2.21

This item will insert divisions 2.21A—Group A31: Addiction medicine and 2.21B—Group A32: Sexual health medicine. These divisions include 15 new items which will treat people suffering from addiction disorders and 16 new items which will treat people suffering from sexually transmissible infections and/or sexual function disorders, including Hepatitis C and HIV. These new items will provide access to addiction medicine and sexual health medicine services provided by addiction medicine and sexual health medicine specialists.

Item [20] – Schedule 1 (items 11215 and 11218, column headed “Description”)

This item will make a consequential amendment by omitting “photography”, substituting with “angiography” to clarify what services medical practitioners should claim.

Item [21] – Schedule 1 (items 12000 and 12003, column headed “Description”)

This item will make a consequential amendment to items 12000 and 12003 by omitting the reference to items 12015, 12018, 12021 and substituting with items 12017, 12021, 12022 and 12024. This change will remove references to the existing items and replace them with the new items for patch testing. See item 22 also.

Item [22] – Schedule 1 (items 12012, 12015, 12018 and 12021)

This item will repeal items 12012, 12015, 12018 and 12021 and substitute them with amended existing items 12012 and 12021 and new items 12017, 12022 and 12024.

Item [23] – Schedule 1 (insert new items 12325 and 12326)

This item will insert 2 new items (12325 and 12326) after 12250 to allow medical practitioners to test for diabetic retinopathy with a non-mydratic retinal camera. One item will be for Aboriginal and Torres Strait Islander patients (annual test) and the other will be for non-Indigenous patients (once every two years).

Item [24] – Schedule 1 (item 30071, column headed “Description”)

This item will make a consequential amendment to omit the wording ‘mucous membrane’ from the item descriptor of 30071. A new item (30072) will be created for the provision of services involving the mucous membrane. See item 25 also.

Item [25] – Schedule 1 (insert new item 30072)

This item will insert new item 30072 after 30071. This new item will be for the provision of services involving the mucous membrane.

Item [26] – Schedule 1 (items 30653, 30656, 30659 and 30660)

This item will repeal the 4 existing items for circumcision (30653, 30656, 30659 and 30660) and replace with new items 30654 and 30658. The new items will differentiate services by the type of anaesthesia used instead of patient age and the type of medical practitioner who rendered the service.

Item [27] – Schedule 1 (items 31200 to 31240)

This item will repeal items 31200 to 31240 and substitute with new items 31206 to 31216, 31221 and the amended items 31220 and 31225 for the removal of tumours, cysts, ulcers or scars. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [28] – Schedule 1 (items 31255 to 31335)

This item will repeal items 31255 to 31335. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [29] – Schedule 1 (item 31340, column headed “Description”)

This item will make a consequential amendment to omit items 31255 to 31335 and substitute with new skin items 31356, 31358, 31359, 31361, 31363, 31365, 31367, 31369, 31371,

31372, 31373, 31374, 31375 or 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [30] – Schedule 1 (after item 31355)

This item will insert new items 31356 to 31376 for the provision of services for malignant and non-malignant skin services. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [31] – Schedule 1 (cell at item 34103, column headed “Description”)

This item will repeal and substitute the item descriptor of item 34103. This amendment will limit the item to two claims in the same episode and restrict its use with 6 other varicose vein items (32508, 32511, 32520, 32522, 32523 or 32526).

Item [32] – Schedule 1 (item 45000, column headed “Description”)

This item will amend item 45000 to restrict its use with new items 31356 to 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [33] – Schedule 1 (item 45003, column headed “Description”)

This item will amend item 45003 to restrict its use with new items 31356 to 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [34] – Schedule 1 (cell at item 45018, column headed “Description”)

This item will repeal and substitute the descriptor of item 45018. This amendment will restrict the item from being used with neurosurgical items 40300 to 40351, as it is not considered clinically appropriate for dermofat grafting to be claimed in association with spinal surgery.

Item [35] – Schedule 1 (item 45200, column headed “Description”)

This item will amend item 45200 to restrict its use with new items 31356 to 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [36] – Schedule 1 (insert new items 45201 and 45202)

This item will insert new items 45201 and 45202 after 45200. The new items will be for the provision of services for surgical excision in the removal of malignant or non-malignant skin lesion. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [37] – Schedule 1 (items 45203 and 45206, column headed “Description”)

This item will amend items 45203 and 45206 to restrict their use with new items 31356 to 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [38] – Schedule 1 (item 45207, column headed “Description”)

This item will amend items 45207 to restrict its use with items 31356 to 31376. This is part of the package of amendments to the skin lesions and skin flap repairs items.

Item [39] – Schedule 1 (cell at item 48424, column headed “Description”)

This item will repeal and substitute the descriptor of item 48424. This amendment will restrict the item from being used for the management of femoroacetabular impingement.

Item [40] – Schedule 1 (cell at item 49303, column headed “Description”)

This item will repeal and substitute the descriptor of item 49303. This amendment will restrict the item from being used for the management of femoroacetabular impingement.

Item [41] – Schedule 1 (cell at item 49366, column headed “Description”)

This item will repeal and substitute the descriptor of item 49366. This amendment will restrict the item from being used for the management of femoroacetabular impingement.

Item [42] – Part 3 of Schedule 1 (at the end of the definition of *organise and coordinate*)

This item will add the new items for addiction medicine (6029 to 6042) and sexual health (6064 to 6075) to the definition of *organise and coordinate* in the dictionary.

Item [43] – Part 3 of Schedule 1 (at the end of the definition of *participate*)

This item will add the new items for addiction medicine (6035 to 6042) and sexual health (6071 to 6075) to the definition of *participate* in the dictionary.

Health Insurance Regulations 1975**Item [44] – Regulation 15**

This item will make a consequential amendment by repealing Regulation 15 which is now redundant.

Item [45] – Part 2 of Schedule 5 (at the end of the table)

This item will insert the ‘Australian College of Rural and Remote Medicine’ under ‘Body’ and ‘Independent Pathway’ under ‘Program’ in Part 2 – Specified bodies and programs. This amendment will allow general practice registrars training on the Australian College of Rural and Remote Medicine Independent Pathway program access to Medicare benefits at the vocationally registered level.

Part 2 – Amendments relating to midwives***Health Insurance Regulations 1975*****Item [46] – Before regulation 1**

This item will insert ‘Part 1- General’ before regulation 1. This is because Part 2 is being added for the transitional arrangements for midwives (see item 48).

Item [47] – Regulation 14A

This item will repeal and substitute regulation 14A to reflect the Nursing and Midwifery Board of Australia’s (NMBA) new registration standard terminology.

Item [48] – After regulation 31

This item will insert ‘Part 2—Transitional, savings and application provisions’ to provide transitional arrangements for midwives until the end of 30 June 2018.

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. 2) 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

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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.

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