

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Pathology Services Table) Amendment (Cervical Cancer Screening) Regulations 2017

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) of the Act provides that regulations may prescribe a table of pathology services which set out items of services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (Pathology Services Table) Regulation 2016* (PST) currently prescribes such a table.

Purpose

The purpose of the *Health Insurance (Pathology Services Table) Amendment (Cervical Cancer Screening) Regulations 2017* (the Regulations) is to amend the PST to implement interim arrangements for the National Cervical Screening Program from 1 May 2017. The Regulations increase the fee amount for items 73053, 73055 and 73057 from \$19.45 to \$28.00 (meaning that patients would receive a higher Medicare rebate for these services) and introduces a new Liquid Based Cytology (LBC) cervical screening item (73069) with a fee of \$36.00.

Consultation

Consultation was undertaken by the Department with the pathology sector to ensure that women will be able to continue to access the current Pap Test items to screen for cervical cancer until a new testing program commences.

Details of the Regulations are set out in the [Attachment](#).

The Act specifies no conditions which need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commences on 1 May 2017.

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

ATTACHMENT

Details of the *Health Insurance (Pathology Services Table) Amendment (Cervical Cancer Screening) Regulations 2017*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Pathology Services Table) Amendment (Cervical Cancer Screening) Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 May 2017.

Section 3 – Authority

This section provides that the Regulations are made under the *Health Insurance Act 1973*.

Section 4 – Schedules

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 (Pathology Services Table) Regulation 2016

Item [1] – Subclause 1.2.7(1) of Schedule 1 (paragraph (d) of the definition of set of pathology services)

This item adds new item 73069 to subclause 1.2.7(1)(d). This change exempts the item from being treated as part of a ‘set of pathology services’.

Item [2] – Subparagraph 2.5.2(1)(a)(iii) of Schedule 1

This item adds new item 73069 to subparagraph 2.5.2(1)(a)(iii). This change provides that items 72858 and 72859 (for a second opinion) cannot be claimed on the basis of results from item 73069.

Item [3] – Schedule 1 (item 73045, column headed “Pathology service”)

This item restricts new item 73069 from being billed with item 73045 (cytology test for malignancy).

Item [4] – Schedule 1 (items 73053, 73055 and 73057, column headed “Fee (\$)”)

This item increases the fee from \$19.45 to \$28.00 for items 73053, 73055 and 73057.

Item [5] – At the end of Division 2.6 of Schedule 1 (after item 73067)

This item inserts new item 73069 after item 73067 for the provision of liquid based cytology cervical screening services.

Item [6] – Schedule 1 (items 73922 and 73923, column headed “Pathology service”)

This item amends pathology episode initiation items 73922 and 73923 (for the collection of the specimen) to include new liquid based cytology cervical screening item 73069. This change allows providers to bill the new item (73069) with item 73922 or 73923.

Item [7] – Part 3 of Schedule 1 (table)

This item adds an abbreviation in ‘Part 3 – Abbreviations’ for new item 73069.

Statement of Compatibility with Human Rights

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

Health Insurance (Pathology Services Table) Amendment (Cervical Cancer Screening) Regulations 2017

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 Regulations amend the PST to implement interim arrangements for the National Cervical Screening Program from 1 May 2017. The Regulations increase the fee amount for items 73053, 73055 and 73057 from \$19.45 to \$28.00 (meaning that patients would receive a higher Medicare rebate for these services) and introduce a new LBC cervical screening item (73069).

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.

Greg Hunt

Minister for Health