

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (Diagnostic Imaging Services Table) 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 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 2016* (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Subsection 4AA(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15<sup>th</sup> 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 18 August 2016.

#### **Purpose**

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017* is to repeal the DIST and prescribe a new table of diagnostic imaging services. This will ensure that Medicare benefits continue to be payable for diagnostic imaging services listed in the DIST. The Regulations will incorporate three documents per the requirements in the *Legislation Act 2003*.

The DIST references the NEMA Standards Publication NU 2-2007, *Performance Measurements of Positron Emission Tomographs*, which has not been incorporated under Section 14 (1)(b) of the *Legislation Act 2003*.

Incorporation of this document will be considered before the annual remake of the DIST in 2018.

#### **Consultation**

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

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

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

The Regulations commence on the day after they are registered on the FRL.

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

## ATTACHMENT

**Details of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017***Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after it is registered on the FRL.

Section 3 – Authority

This section provides that the Regulations are 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.

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 Regulations.

Schedule 1 – Diagnostic imaging services table

This part of the Regulations will remake the existing diagnostic imaging services table, which is currently prescribed by the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2016*.

The Regulations also make the following machinery amendments to the previous table:

**Incorporated documents**

The Regulations incorporate three documents in the existing diagnostic imaging services table per the requirements in the *Legislation Act 2003*:

- Clause 2.4.4 incorporates the *Requirements for PET Accreditation (Instrumentation & Radiation Safety) 2nd Edition (2012)*, issued by the Australian and New Zealand Society of Nuclear Medicine Inc, and the *NEMA*

*Standards Publication NU 2-2007, Performance Measurements of Positron Emission Tomographs*, published by the National Electrical Manufacturers Association (USA) – as existing at the time when the proposed Regulations commence.

- Part 3—Dictionary incorporates the July 2010 edition of the *Australian Standard Geographical Classification* (ASGC) (ABS catalogue number 1216.0), published by the Australian Statistician, as existing at the time when this instrument commences. This is the document that was published in July 2010, and is available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1216.0Main+Features1July%202010>.

### **Professional supervision**

This removes the word ‘professional’ from the phrase ‘professional supervision’ in clauses 2.1.2, 2.2.1, 2.3.1, 2.3.2 and 2.5.3 and MRI items 64387, 63488, 63489, 63490. The phrase ‘professional supervision’ does not have a different meaning to ‘supervision’, and the change is to apply consistent terminology throughout the table.

### Schedule 2 – Repeals

This section repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2016*.

## 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) 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 DIST and prescribe a new table of diagnostic imaging services. This will ensure that Medicare benefits continue to be payable for diagnostic imaging services listed in the DIST. The Regulations will incorporate three documents per the requirements in the *Legislation Act 2003*.

#### **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 Regulations maintain 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**