

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (General Medical 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 4(1) of the Act provides that regulations may prescribe a table of 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 2016* (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Subsection 4(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is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 10 May 2016.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Regulations 2017* is to repeal the GMST and prescribe a new table of medical services. This will ensure that Medicare benefits continue to be payable for services listed in the GMST.

In addition, the Regulations make minor and machinery amendments to the GMST by:

- Inserting items 15700, 15705, 15710, 15800 and 15850 into Group T2- Radiation Oncology of the GMST. These items are currently listed in the *Health Insurance (Radiation Oncology) Determination 2010*.
- Insert item 23990 into Group T10 – Anaesthesia performed in connection with certain services (Relative Value Guide) of the GMST. This item is currently listed in the *Health Insurance (Anaesthesia Service) Determination 2016*.
- Insert items 11219 and 11220 into Group D1 – Miscellaneous Diagnostic Procedures and Investigations of the GMST. These items are currently listed in the *Health Insurance (Optical Coherence Tomography) Determination 2016*.

The Regulations also incorporate 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>. The document is referenced in the existing general medical services table.

The GMST references four non-legislative documents that are not incorporated under Section 14(1)(b) of the *Legislation Act 2003*. These documents are:

- The Australian Immunisation Handbook
- The ADF Post-discharge GP Health Assessment Tool
- The National Immunisation Program Schedule
- The Australian Type II Diabetes Risk Assessment Tool

Incorporation of these documents will be considered before the annual remake of the GMST in 2018.

Consultation

Consultation was not undertaken for the remake of this instrument 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 (General Medical Services Table) Regulations 2017*Section 1 – Name

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

Section 2 – Commencement

This section provides for the Regulations to commence the day after the instrument is registered.

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 – 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 in Part 3 of Schedule 1 at the end of the Regulations.

Schedule 1 – General medical services table

This part of the Regulations remakes the existing general medical services table, which is currently prescribed by the *Health Insurance (General Medical Services Table) Regulation 2016*.

This part of the Regulations also makes the following machinery amendments to the previous table:

Inclusion of 8 items

The Regulations include eight items which are currently prescribed by determination. The Regulations incorporate five radiation oncology items (15700, 15705, 15710, 15800 and 15850), two diagnostic procedures and investigations items (11219 and 11220), and one anaesthetic item (23990). These items are already available on the MBS, so there is no change to patients or providers.

Incorporated documents

The Regulations (Part 3—Dictionary) will incorporate 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>.

Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical 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 (General Medical 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 repeal the GMST and prescribe a new table of medical services. This will ensure that Medicare benefits continue to be payable for services listed in the GMST.

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 will 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