EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment (Obstetrics) 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 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 2017* (GMST) currently prescribes such a table.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Amendment (Obstetrics) Regulations 2017* (the Regulations) is to improve obstetrics care for patients and implement the recommendations of the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce). On 22 April 2015, the Government established the clinician-led Taskforce to undertake a review of the entire MBS to ensure it reflects current best clinical practice, aligns with the latest evidence and promotes the provision of health services that improve health outcomes. The changes include:

- **Two new consultation items for pregnancy complications where the service provided is more than 40 minutes**
  This change adds two new items (16533 and 16534) for the provision of treating pregnancy complications where the attendance is complex and prolonged. The new items mirror existing items 16508 and 16509 however they have an increased fee, require attendance of more than 40 minutes, and are payable for in-hospital services only. The higher fee more adequately reflects the work involved when treating pregnancy complications where the attendance is complex and prolonged.

- **A new item for a postnatal consultation between 4 and 8 weeks after birth**
  This change adds new item 16407 for the provision of a postnatal attendance between 4 and 8 weeks after birth performed by a general practitioner or obstetrician in hospital or at consulting rooms. The new item will require the medical practitioner or another suitably qualified health professional to undertake a mental health assessment of the patient, including screening for alcohol and drug use and domestic violence.

- **A new item for a postnatal home visit between 1 and 4 weeks after birth**
  This change adds new item 16408 for the provision of a postnatal attendance by an obstetrician, general practitioner or a registered midwife under the supervision of the medical practitioner who attended the birth. This item will enable patients who were privately admitted for the birth of their child to access a private postnatal service

between 1 and 4 weeks after the birth to give parity with publicly admitted patients who routinely receive an equivalent service through the public system. The service is intended to be provided at the patient's home, providing they are not a resident of a residential aged care facility.

- **Amendment to item 16522 – complex birth**
  This change amends item 16522 to include more detailed clinical requirements. This will provide clarity to medical practitioners on the requirement of billing this item.

- **Amendment of the fees for items 16515, 16520, 16527, and 16528**
  This change is to align the fees for items 16515, 16520, 16527 and 16528. Items 16515 (vaginal birth) and 16520 (caesarean section) are for the management of a birth where the patient has been transferred by another medical practitioner and the doctor undertaking the birth has not provided any of the antenatal care. Items 16527 (vaginal birth) and 16528 (caesarean section) are for the management of a birth where the patient has been transferred by a participating midwife and the doctor undertaking the birth has not provided any of the antenatal care. This change aligns these items with the principal birth item (16519) which does not distinguish between a vaginal and operative birth.

- **Amendment to item 16590 - planning and management of a pregnancy where the doctor intends to undertake the birth**
  This change amends item 16590 to clarify the intent of the item for medical practitioners. Item 16590 is for the planning and management of a pregnancy where the medical practitioner intends to undertake the birth for a privately admitted patient. This service can now only be claimed from 28 weeks gestation. This is intended to reduce inappropriate claiming and encourage continuity of care to ensure that the medical practitioner claiming item 16590 provides antenatal care for the duration of the pregnancy. This change also includes a requirement that the provider has privileges for intrapartum care in a hospital. The amended item will also include a new requirement for a mental health assessment to be performed by the medical practitioner or another suitably qualified health professional including screening for drug and alcohol use and domestic violence. This will ensure patients are screened for perinatal anxiety and depression (consistent with Australian guidelines), and improve early detection and intervention, improving mental health outcomes for patients. The fee for this item will be increased by 15% in recognition that the medical practitioner must be continuously available during the third trimester of the pregnancy.

- **Amendment to item 16591 - planning and management of a pregnancy where the doctor does not intend to undertake the birth**
  This change amends item 16591 to clarify the intent of the item for medical practitioners. Item 16591 is intended to be provided by a medical practitioner if the patient is intending to deliver as a public patient. This service can now only be claimed from 28 weeks gestation to reduce inappropriate claiming. This change also includes a new requirement for the provision of a mental health assessment performed by the medical practitioner or another suitably qualified health professional, including screening for drug and alcohol use and domestic violence. This will ensure patients are screened for perinatal anxiety and depression (consistent with Australian

guidelines), and improve early detection and intervention, improving mental health outcomes for patients.

- **Two new items for the management of second trimester fetal loss to replace existing item 16525 (for the management of second trimester labour**
  This change removes existing item 16525 (management of second trimester) and creates two new items (16530 and 16531) for the management of pregnancy loss. Item 16530 is for the management of pregnancy loss between 14 weeks to 15 weeks and 6 days gestation.

  Item 16531 is for the management of pregnancy loss between 16 weeks to 22 weeks and 6 days gestation. This item has a higher fee to reflect the additional time and complexity associated with managing late second trimester fetal loss, and the higher risk of maternal complications.

  The management of second trimester labour for fetal loss from 23 weeks gestation should be claimed under existing item 16522 (complex birth).

- **Amendment to item 16406 (for consultation with an obstetrician where the patient has been referred by a participating midwife)**
  This change amends item 16406 to remove the restriction on the service being performed at 32-36 weeks of the patient's pregnancy. Removing the requirement that this item can only be claimed when the patient is 32-36 weeks gestation allows participating midwives to collaborate with the obstetrician or general practitioner earlier in the pregnancy if clinically appropriate.

- **Removing two items (16633 and 16636) that reduce the MBS fee where interventional procedures are performed on multiple pregnancies**
  This change removes items 16633 and 16636. This change removes the current fee restriction for patients with a multiple pregnancy, who have an interventional procedure on the second or subsequent fetus/es. Currently the fee is reduced by 50% of the fee for the first fetus when provided to additional fetuses. It is considered that while there may be some efficiencies in performing multiple interventional techniques on a patient that has a multiple pregnancy in terms of patient counselling and consent, the procedures themselves are in fact more complex for the second and additional fetuses.

- **Amending item descriptors to simplify wording**
  This change amends items 105 and 16401 to help clarify that items 16401 and 16404 should be used for obstetric attendances, and not items 104 and 105.

- **Amending item descriptors to update terminology**
  This change makes minor amendments to items 16508, 16509, 16515, 16518, 16519, 16606, 20855, 20946, 20958, 51306, 51309 and 51312. The minor amendments are to clarify the intent of the items and update the terminology used in the items. Further information on these changes can be found in the attachment.

Consultation
The draft obstetrics recommendations were released for public consultation between 9 September 2016 and 8 October 2016. The recommendations were widely accepted by respondents to the consultation and public feedback was provided to the Taskforce for consideration prior to the finalisation of its recommendations to Government.

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 Regulations commence on the later of:

(a) 1 November 2017; and

(b) immediately after the commencement of section 1 of the *Health Insurance (Extended Medicare Safety Net) Determination 2017*.

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Amendment (Obstetrics) Regulations 2017*

Section 1 – Name

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

Section 2 – Commencement

This section provides for the Regulations to commence on the later of:

(a) 1 November 2017; and

(b) immediately after the commencement of section 1 of the *Health Insurance (Extended Medicare Safety Net) Determination 2017*.

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

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.

Schedule 1 – Amendments

Item [1] – Subclause 1.2.2(1) of Schedule 1

This item inserts new items 16407, 16408, 16533, 16534 and existing items 16508 and 16509 after item 16404 in subclause 1.2.2(1) - Attendance by specialist or consultant physician. This is to clarify the referral arrangements for these services when provided by an obstetrician or midwife, on behalf of an obstetrician. A referral is not required where the service is provided by a general practitioner.

Item [2] – Subclause 1.2.3(1) of Schedule 1

This item omits existing items 16590 and 16591 from subclause 1.2.3(1) - Professional attendance services and inserts new items 16407, 16408, 16533, 16534 and existing items 16508 and 16509. This is to clarify that the items are professional attendance services.

Item [3] – Schedule 1 (at the end of the cell at item 105, column headed "Description")

This item adds "other than a service to which item 16404 applies" at the end of the cell at item 105. This is to clarify that item 16404 should be used for subsequent obstetric attendances, and not item 105.

Item [4] – Clause 2.40.1 of Schedule 1 (definition of midwife)
This item repeals the definition of midwife for item 16400 because it is being inserted into clause 2.40.2 (see item 5).

Item [5] – Clauses 2.40.2 and 2.40.3 of Schedule 1
This item repeals clauses 2.40.2 and 2.40.3. Clause 2.40.2 has been repealed because the items currently contained within it (16633 and 16636) are being repealed (see item 26).

Clause 2.40.2 has been substituted to provide for the meaning of midwife in items 16400 and 16508.

Clause '2.40.3 – Meaning of delivery' has been repealed because it is no longer required. This is to reflect terminology changes throughout the Regulations from "delivery" to "birth".

Item [6] – Clause 2.40.6 of Schedule 1
This item repeals clause 2.40.6 – Limitation of items 16590 and 16591. This is because the limitations on these items are now contained in each of the item descriptors (see item 24).

Item [7] – Schedule 1 (item 16401), column headed "Description")
This item omits "other than a service to which item 104 applies". The restriction is being removed because it is already specified in item 104.

Item [8] – Schedule 1 (item 16406, column headed "Description")
This item amends item 16406 to remove the restriction on the service being performed at 32-36 weeks gestation.

Item [9] – Schedule 1 (insert new items 16407 and 16408)
This item inserts new items 16407 and 16408 after 16406. New item 16407 is for the provision of a postnatal attendance between 4 and 8 weeks after the birth. New item 16408 will enable patients who were privately admitted for the birth of their child to access a private postnatal service between 1 and 4 weeks after the birth to give parity with publicly admitted patients who routinely receive an equivalent service through the public system.

Item [10] – Schedule 1 (item 16508, column headed "Description")
This item makes a minor amendment to update the terminology used in the item. This change omits "intra-uterine growth retardation" and substitutes it with "fetal growth restriction"

Item [11] – Schedule 1 (item 16508, column headed "Description")
This item restricts new item 16533 from being claimed when a service is provided under item 16508. Providers should use either 16508 or 16533.

Item [12] – Schedule 1 (item 16509, column headed "Description")
This item restricts new item 16534 from being claimed when a service is provided under item 16509. Providers should use either 16509 or 16534.

Item [13] – Schedule 1 (item 16515, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 16515. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [14] – Schedule 1 (item 16515, column headed "Fee ($)")
This item amends the fee for item 16515 to align this service with the principal birth item (16519) which does not distinguish between a vaginal and operative birth.

Item [15] – Schedule 1 (item 16518, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 16518. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [16] – Schedule 1 (item 16519, column headed "Description")
This item omits the word "delivery" and substitutes with "birth" in item 16519. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [17] – Schedule 1 (item 16520, column headed "Fee ($)")
This item amends the fee for item 16520 to align this service with the principal birth item (16519) which does not distinguish between a vaginal and operative birth.

Item [18] – Schedule 1 (item 16522)
This item repeals existing item 16522 and substitutes it with an amended description of item 16522. The amended item descriptor includes detailed clinical requirements to provide clarity to medical practitioners when billing this item.

Item [19] – Schedule 1 (item 16525)
This item repeals item 16525. Two new items (16530 and 16531) have been inserted for the management of pregnancy loss (see item 23).

Item [20] – Schedule 1 (item 16527, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 16527. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [21] – Schedule 1 (item 16527, column headed "Fee ($)")
This item amends the fee for item 16527 to align this service with the principal birth item (16519) which does not distinguish between a vaginal and operative birth.

Item [22] – Schedule 1 (item 16528, column headed "Fee ($)")
This item amends the fee for item 16528 to align this service with the principal birth item (16519) which does not distinguish between a vaginal and operative birth.

Item [23] – Schedule 1 (insert new items 16530, 16531, 16533 and 16534)
This item adds 4 new items 16530, 16531, 16533 and 16534 after item 16528.
Item 16530 is for the management of pregnancy loss between 14 weeks to 15 weeks and 6 days gestation. Item 16531 is for the management of pregnancy loss between 16 weeks to 22 weeks and 6 days gestation. Items 16533 and 16534 are for the provision of treating pregnancy complications where the attendance is complex and prolonged.

Item [24] – Schedule 1 (items 16590 and 16591)
This item repeals existing items 16590 and 16591 and substitutes them with amended descriptions of these items. The amended item descriptors include detailed requirements to provide clarity to medical practitioners when billing these items, including a change to the patient eligibility from 20 weeks to 28 weeks gestation. The restriction on these items that is

currently prescribed in clause 2.40.6 is now contained in the amended items (clause 2.40.6 is repealed in item 6).

Item [25] – Schedule 1 (item 16606, column headed "Description")
This change makes a minor spelling amendment by omitting the word "foetus", and substituting with the word "fetus".

Item [26] – Schedule 1 (items 16633 and 16636)
This item repeals items 16633 and 16636. This change removes the current fee restriction on interventional procedures performed on the second or subsequent fetus/es.

Item [27] – Schedule 1 (item 20855, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 20855. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [28] – Schedule 1 (item 20946, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 20946. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [29] – Schedule 1 (item 20958, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 20958. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [30] – Schedule 1 (item 51306, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 51306. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [31] – Schedule 1 (item 51309, column headed "Description")
This item omits the word "delivery" and substitutes it with "birth" in item 51309. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [32] – Schedule 1 (item 51312, column headed "Description")
This item makes a consequential amendment to item 51312 to remove item 16633. Item 16633 is being repealed (see item 26).

Item [33] – Schedule 1 - Dictionary (definition of amount under clause 2.40.2)
This item makes a consequential amendment by repealing the definition of 'amount under clause 2.40.2' from the dictionary. This is because clause 2.40.2 is being repealed and replaced and will no longer prescribe the definition of 'amount under clause 2.40.2' (see item 5).

Item [34] – Dictionary
This item inserts the definition of birth to reflect the terminology changes throughout the Regulations. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

Item [35] – Schedule 1 Dictionary (definition of *delivery*)
This item repeals the definition of delivery to reflect the change in terminology throughout the Regulations. The reason for the change from "delivery" to "birth" is because the term "birth" is preferred by patients.

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) Amendment (Obstetrics) 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 purpose of the Regulations is to improve obstetrics care for patients and implement the recommendations of the MBS Review Taskforce.

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

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