

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (After Hours Services) Regulations 2018

Subsection 133(1) of the *Health Insurance Act 1973* (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 tables. The *Health Insurance (General Medical Services Table) Regulations 2017* (GMST) prescribes such a table.

Paragraph 10(2)(aa) of the Act provides that Medicare benefits are payable in respect of a service at an amount equal to 100% of the schedule fee if prescribed in regulations. Regulation 6EF(a) of the *Health Insurance Regulations 1975* (HIR) specifies that the services described in an item in the GMST and mentioned in column 3 of Schedule 6 of the HIR are services for which the Medicare benefit is 100% of the schedule fee.

Purpose

Medicare has always provided items for after-hours services. The current urgent after-hours items 597, 598, 599 and 600 were introduced in May 2010 for the provision of urgent after-hours services where the patient's condition requires urgent medical attention during the after-hours period.

In 2016 the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce) reviewed the four items for urgent after-hours home visits. This was prompted by concerns raised by professional medical bodies about the quality of after-hours services and Medicare data showing an increase in utilisation far in excess of population growth.

The Taskforce found that growth in urgent after-hours services was driven by the increased availability of medical deputising services which use a medical workforce largely made up of medical practitioners without vocational training (otherwise known as 'non-vocationally registered medical practitioners'). The Taskforce also noted that in 2015-16, 70% of all urgent after-hours services were provided by non-vocationally registered medical practitioners and GP trainees employed by medical deputising services, who work exclusively in the after-hours period. This is also reflected in the 2016-17 figures.

Medical deputising services are entities which arrange for doctors to provide after-hours medical services to patients. These entities can hire doctors who do not have vocational training through a general practice college to meet their obligations to provide care during the entire after-hours period.

Although they do not have the formal specialist training, these doctors receive the same fee as a vocationally registered general practitioner for providing urgent after-hours services due to Commonwealth health workforce programs.

In response to the review, the Taskforce recommended a number of changes to encourage the provision of after-hours services through a patient's usual general practice. This was in recognition of the benefits of providing continuity of care to patients through a general practice.

The Taskforce recommendations were based on significant concerns that were raised by professional medical bodies in relation to the urgent after-hours items. A key consideration in the development of the Government's response has been to balance the interest of the Taskforce recommendations with the need to continue genuine after-hours service delivery and not adversely impact rural areas.

The purpose of the *Health Insurance Legislation Amendment (After Hours Services) Regulations 2018* (the Regulations) is to amend the GMST and the HIR from 1 March 2018. The Regulations implement the first phase of the Government's response to the Taskforce recommendations on urgent after-hours items, as announced in the 2017-18 Mid-Year Economic and Fiscal Outlook.

The Regulations amend the existing Medicare urgent after-hours items to improve the quality of after-hours services and incentivise better value care through targeted benefits. These changes have been carefully developed through close collaboration with the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP).

The 1 March 2018 changes implemented by the Regulations include:

- **No change to the benefit for high-value care**

The existing urgent after-hours item 597 has been replaced by item 585, which has an equivalent fee of \$129.80. The new item can be billed by general practitioners (vocationally registered through a general practice college). General practice trainees can also access this item while training. Non-vocationally registered doctors working for an accredited general practice will also have access to this item through the Regulations and the After Hours Other Medical Practitioners Program. These doctors would have been billing item 597.

- **A reduced fee for care provided by other doctors working only in after-hours**

Doctors in metropolitan areas without vocational training who would have been billing item 598 will be able to bill new item 591. Item 591 has a fee of \$100.00. Doctors without vocational training working for a medical deputising service (an entity providing services in the after-hours period only), who would have been billing item 597, should now bill item 591.

The fee for this item will be further reduced to \$90.00 from 1 January 2019. This will be implemented by another legislative instrument prior to commencement.

- **Regional exemption for other doctors**

This change allows all non-vocationally registered doctors working in Modified Monash areas 3 to 7 to bill new urgent after-hours item 588, which has a fee of \$129.80 equivalent to item 585. This provides an incentive for providers to continue providing services in these areas. Currently, only 6% of after-hours services are provided in Modified Monash areas 3 to 7.

Modified Monash is a geographical classification system developed by the Department of Health (the Department) for categorising metropolitan, regional, rural and remote locations according to both geographical remoteness and population size, based on population data published by the Australian Bureau of Statistics. The Department uses the Australian Statistical Geography Standard (ASGS) system as published by the Australian Bureau of Statistics in July 2011, but has different numbering system. Maps of the Modified Monash areas and the Department's remoteness classification are available at www.doctorconnect.gov.au.

- **Subsequent item for multiple patients treated at the same location, regardless of the treating practitioner**

In certain instances, a doctor may see multiple patients at the one location. A new item (594) has been created for these subsequent attendances. The fee for this item is \$41.95.

- **No change to the benefit for unsociable urgent after-hours**

There has been no change to the fees for the unsociable urgent after-hours items 599 and 600, which are for services provided between 11pm and 7am.

- **Remove the two-hour booking option**

Currently, an urgent after-hours service can be organised two hours before commencement of the after-hours period. The two-hour booking option has been removed from new items 585, 588, 591 and 594 and the existing unsociable urgent after-hours items (599 and 600).

- **Change 'urgent treatment' to 'urgent assessment'**

Currently, an urgent after-hours service requires the patient's medical condition to need urgent treatment. This incentivises the immediate treatment of the patient where it would be more appropriate to delay treatment until in-hours or to avoid treatment altogether. This amendment changes the requirement from 'urgent treatment' to 'urgent assessment' for new items 585, 588, 591 and 594 and the existing unsociable urgent after-hours items (599 and 600). Doctors can bill the items if they consider it clinically relevant that the patient requires urgent assessment in the after-hours period. Retaining a record of the assessment has also been made a requirement.

Consultation

Concerns about the current use of the urgent after-hours items were raised with members of the Taskforce. Concerns were also raised by the RACGP, the AMA, the Australian College of Rural and Remote Medicine, the Rural Doctors Association of Australia and the Consumers Health Forum. The RACGP and AMA have released public statements on this topic.

The Taskforce endorsed reports were released for public comment prior to finalisation of the recommendations to Government. This was undertaken through the public consultation process during consideration by the Taskforce.

Following the Taskforce's recommendations to Government, the Government has also consulted closely with peak groups, including the AMA, the RACGP and medical deputising services peak bodies and providers.

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 commence on 1 March 2018.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (After Hours Services) Regulations 2018*Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (After Hours Services) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 March 2018.

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***Health Insurance (General Medical Services Table) Regulations 2017*****Items 1, 9, 10 and 13**

These items make a consequential amendment by removing references to deleted items 597 and 598 from subclause 1.2.4(1), paragraph 2.17.10A(b), item 10992 and clause 3.1 (definition of responsible person). These items also insert references to the four new items (585, 588, 591 and 594) into each of the above-mentioned areas.

Item 2 - Clause 2.15.1 of Schedule 1 (heading)

This item makes a consequential amendment by repealing the heading of clause 2.15.1 and substituting with 'Meaning of patient's medical condition requires urgent assessment'. This is to reflect the wording change from 'treatment' to 'assessment' in the existing items (599 and 600) and is consistent with the wording used in the new items (585, 588 and 591).

Item 3 – Subclause 2.15.1(1) of Schedule 1

This item makes a consequential amendment to remove reference to 'treatment' and replace with 'assessment'. This is to reflect the wording change in the existing items (599 and 600) and is consistent with the wording used in the new items (585, 588 and 591).

Item 4 - Clause 2.15.2 of Schedule 1

This item makes a consequential amendment by removing references to deleted items 597 and 598 from subclause 2.15.2. This item also inserts references to the four new items (585, 588, 591 and 594) into each clause 2.15.2.

Item 5 - Clause 2.15.3 of Schedule 1

This item makes a consequential amendment by removing references to deleted items 597 and 598 from subclause 2.15.3. This item would also insert references to the four new items (585, 588, 591 and 594) into each clause 2.15.3.

Item 6 - At the end of clause 2.15.3 of Schedule 1

This item inserts a new requirement that a record of the assessment be retained for new items 585, 588, 591 and existing items 599 and 600.

Item 7 – Clause 2.15.4 of Schedule 1

This item repeals current clause 2.15.4 (Effect of determination under section 106TA of Act) and substitutes with ‘2.15.4 Meaning of *after-hours rural area*’. This item also inserts new clause 2.15.5 ‘References to general practitioner in items do not include certain participants in After Hours Other Medical Practitioners Program’.

This change will:

- Remove the ability for general practitioners that have had a Professional Services Review (PSR) determination against them (have been disqualified from billing Medicare services in an item in group A1 of the GMST) from billing items 585, 588, 591, 594 and 599 and 600. This provides consistency with the Taskforce’s recommendation to ensure urgent after-hours services are provided appropriately.
- Insert the meaning of after-hours rural area.
- Insert new clause 2.15.5 to prevent non-VR GPs who provide services through a medical deputising service from billing new urgent after hours items 585 to 594. Non-VR GPs who are participating in the After Hours Other Medical Practitioners Program (AHOMP) through an accredited general practice will be able to bill these items.

Item 8 – Schedule 1 (items 597 to 600)

This item repeals existing items 597 to 600 and replaces them with new items 585, 588, 591 and 594 and revised items 599 and 600. Information on each of the new items and the amendments to existing items 599 and 600 can be found in the front of the explanatory statement.

Item 11 – Clause 3.1 of Schedule 1

This item inserts new definitions for ‘*2013 estimated resident population*’, ‘*after-hours rural area*’, ‘*ASGS*’, ‘*Modified Monash areas 2, 3, 4, 5, 6, and 7*’ and ‘*patient’s medical condition requires urgent assessment*’ into the dictionary.

Modified Monash is a geographical classification system developed by the Department of Health (the Department) for categorising metropolitan, regional, rural and remote locations according to both geographical remoteness and population size, based on population data published by the Australian Bureau of Statistics. The Department uses the Australian Statistical Geography Standard (ASGS) system as published by the Australian Bureau of Statistics in July 2011, but has different numbering system. Maps of the Modified Monash areas and the Department’s remoteness classification are available at www.doctorconnect.gov.au.

Item 12 - Clause 3.1 of Schedule 1 (definition of patient's medical condition requires urgent treatment)

This item makes a consequential amendment by removing the definition of '*patient's medical condition requires urgent treatment*' from the dictionary. This term is no longer required as it has been replaced with '*patient's medical condition requires urgent assessment*'.

Item 14 – Clause 3.1 of Schedule 1

This item inserts a definition for *Urban Centre and Locality* into the dictionary.

Health Insurance Regulations 1975**Item 15 - Schedule 6 (table item 6, column headed “Item of the general medical services table”)**

This item omits deleted items 597 and 598 from Schedule 6 - *Services for which medicare benefit is 100% of Schedule fee* and inserts new items 585, 588, 591 and 594. This is to allow Medicare benefits be paid at 100% of the schedule fee for the new items.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (After Hours Services) Regulations 2018

This Disallowable 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 Disallowable Legislative Instrument

Medicare has always provided items for after-hours services. The current urgent after-hours items 597, 598, 599 and 600 were introduced in May 2010 for the provision of urgent after-hours services where the patient's condition requires urgent medical attention during the after-hours period.

In 2016 the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce) reviewed the four items for urgent after-hours home visits. This was prompted by concerns raised by professional medical bodies about the quality of after-hours services and Medicare data showing an increase in utilisation far in excess of population growth.

The Taskforce found that growth in urgent after-hours services was driven by the increased availability of medical deputising services which use a medical workforce largely made up of medical practitioners without vocational training (otherwise known as 'non-vocationally registered medical practitioners'). The Taskforce also noted that in 2015-16, 70% of all urgent after-hours services were provided by non-vocationally registered medical practitioners and GP trainees employed by medical deputising services, who work exclusively in the after-hours period. This is also reflected in the 2016-17 figures.

Medical deputising services are entities which arrange for doctors to provide after-hours medical services to patients. These entities can hire doctors who do not have vocational training through a general practice college to meet their obligations to provide care during the entire after-hours period.

Although they do not have the formal specialist training, these doctors receive the same fee as a vocationally registered general practitioner for providing urgent after-hours services due to Commonwealth health workforce programs.

In response to the review, the Taskforce recommended a number of changes to encourage the provision of after-hours services through a patient's usual general practice. This was in recognition of the benefits of providing continuity of care to patients through a general practice.

The Taskforce recommendations were based on significant concerns that were raised by professional medical bodies in relation to the urgent after-hours items. A key consideration in the development of the Government's response has been to balance the interest of the

Taskforce recommendations with the need to continue genuine after-hours service delivery and not adversely impact rural areas.

The purpose of the *Health Insurance Legislation Amendment (After Hours Services) Regulations 2018* (the Regulations) is to amend the GMST and the HIR from 1 March 2018. The Regulations implement the first phase of the Government's response to the Taskforce recommendations on urgent after-hours items, as announced in the 2017-18 Mid-Year Economic and Fiscal Outlook.

The Regulations amend the existing Medicare urgent after-hours items to improve the quality of after-hours services and incentivise better value care through targeted benefits. These changes have been carefully developed through close collaboration with the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP).

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.

There are 28 Medicare items for after-hours services. Only four items (for urgent after-hours services) have been amended to improve the quality of after-hours services and incentivise better value care through targeted benefits. Patients will continue to have access to clinically necessary after-hours services, including urgent after-hours services, under Medicare.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Greg Hunt

Minister for Health