

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) Regulations 2018

Subsection 133(1) of the *Health Insurance Act 1973* (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 table made under this subsection is commonly referred to as the Diagnostic Imaging Services Table (DIST).

Subsection 4AA(2) of the Act provides that unless repealed earlier, a regulation made under subsection 4AA(1) will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is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 *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017* (the 2017 Regulations) was registered on the FRL on 16 June 2017.

Purpose

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* (the Regulations) is to repeal the 2017 Regulations and prescribe a new table of diagnostic imaging services. This will ensure that Medicare benefits continue to be payable for diagnostic imaging services as listed in the 2017 Regulations. The Regulations largely preserve the operation of the 2017 Regulations, except for a number of minor machinery and policy amendments.

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 1 July 2018.

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

ATTACHMENT

Details of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018*Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2018.

Section 3 – Authority

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

Section 4 – 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 5 – Dictionary

This section provides for a Dictionary in Part 3 of Schedule 1 at the end of the Regulations.

Section 6 – Schedule 2

This section provides that each instrument that is specified in Schedule 2 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 – Diagnostic imaging services table

This part of the Regulations substantively replicates the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017*, with the exception of following minor policy and machinery amendments:

Minor policy changes

- Changes to supervision requirements. This removes the requirement for a diagnostic imaging service to be provided by a person ‘who is employed by a medical practitioner’ in clauses 1.2.7 and 2.3.1. This change will align the Regulations with the Act, which requires that a diagnostic imaging service can be rendered on behalf of a medical practitioner.
- Changes to requirements for ultrasound transducers. This change adjusts for advancement in technology by removing references to specific ultrasound transducer frequencies in items 55600 to 55604, and removing clause 2.1.9 which sets ultrasound transducer frequency requirements for musculoskeletal

ultrasound. These ultrasound transducer requirements no longer reflect clinical best practice and so specifying them in the items is unnecessary.

Minor and machinery amendments

- Correcting a typographical error in the title of clause 2.2.6 by changing ‘bean’ to ‘beam’.
- Amending clause 1.2.9 to remove reference to item 61671. This is because the benefit payable through the bulk-billing incentive is higher than the benefit payable under the Greatest Permissible Gap. By removing the item from clause 1.2.9 the bulk-billing incentive is applicable to a service rendered under item 61671, providing the requirements of a bulk billed service have been met.

Incorporated documents

- The Regulations incorporate the *Requirements for PET Accreditation (Instrumentation & Radiation Safety) 3rd Edition (2017)*, as existing on 1 July 2018. This document can be viewed on the website of the Australian and New Zealand Society of Nuclear Medicine Inc at www.anzsnm.org.au.
- The Regulations reference 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 www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1216.0Main+Features1July%202010.

Schedule 2 – Repeals

This section repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017*.

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 2018

This Regulation 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

The *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* (the Regulations) repeal the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017* (the 2017 Regulations) and prescribe a new table of diagnostic imaging services. This will ensure that Medicare benefits continue to be payable for diagnostic imaging services as listed in the 2017 Regulations. The Regulations also make a number of minor machinery and policy amendments.

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 and cost-effective.

Conclusion

This Regulation is compatible with human rights because it maintains existing arrangements and promotes the right to health and social security.

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