

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Repeal and Consequential Amendments) 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.

Purpose

From 1 October 2018 the *Health Insurance Regulations 1975* (the Previous Regulations) will be repealed and replaced by the *Health Insurance Regulations 2018* (the Principal Regulations). The Previous Regulations have been remade due to the sunset provisions in section 50 of the *Legislation Act 2003*.

A number of consequential amendments are required to other instruments to reflect changes in the Principal Regulations. These amendments have been made through the *Health Insurance (Repeal and Consequential Amendments) Regulations 2018* (the Consequential Regulations), and include:

- consequential amendments to reflect the change in the name and the reordering of sections;
- the repeal of instruments, where the purpose of that instrument has been incorporated into the Principal Regulations; and
- the removal of clauses which are duplicated in the Principal Regulations.

Consultation

No consultation was undertaken on the making of this instrument as the nature of these changes are consequential.

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

The Act specifies no conditions which need to be met before the power to make the Consequential Regulations may be exercised.

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

The Consequential Regulations commence on 1 October 2018.

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

ATTACHMENT

Details of the *Health Insurance (Repeal and Consequential Amendments) Regulations 2018*Section 1 – Name

This section provides for the Consequential Regulations to be referred to as the *Health Insurance (Repeal and Consequential Amendments) Regulations 2018*.

Section 2 – Commencement

This section provides that the Consequential Regulations commence on 1 October 2018.

Section 3 – Authority

This section provides that the Consequential 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 (Diagnostic Imaging Services Table) Regulations 2018*****Items 1 to 4**

Items 1 to 4 of the Consequential Regulations make consequential changes to clauses 1.2.9 and 1.2.10 of the diagnostic imaging services table. There is no change to the purpose of these clauses.

Clauses 1.2.9 and 1.2.10 of the diagnostic imaging services table set the fee for bulk-billed diagnostic imaging services provided out-of-hospital. Section 28 of the Principal Regulations sets the benefit payable as 100% of the fee for these services. The purpose these clauses is to provide a bulk-billing incentive for diagnostic imaging services provided out-of-hospital.

Health Insurance (General Medical Services Table) Regulations 2018**Item 5 - Clause 1.1.2 of Schedule 1**

Section 3 of the Act defines ‘general practitioner’ as:

- a) a medical practitioner to whom there is a determination under section 3EA;
- b) a medical practitioner who is vocationally registered under section 3F; or
- c) a medical practitioner of a kind specified in the regulations.

Clause 1.1.2 of the general medical services table is made for the purpose of paragraph (c) of the meaning of ‘general practitioner’ in the Act. Currently, paragraphs (a) to (c) of this clause duplicate types of medical practitioners who are general practitioners under the Act (Royal

Australian College of General Practitioner fellows) or the Principal Regulations (Australian College of Rural and Remote fellows).

The Consequential Regulations repeal and substitute clause 1.1.2 of the general medical services table to remove the duplication. There is no change to the kind of medical practitioner who is a general practitioner under Medicare.

Item 6 – Subparagraph 1.1.5(2)(b)(ii) of Schedule 1

This item makes a consequential amendment to reflect the change in the name and the reordering of sections.

Item 7 - At the end of subclause 1.1.5(2) of Schedule 1

This item makes a minor amendment by adding a note at the end of subclause 1.1.5(2). The note is to point readers to where in the Principal Regulations information on the manner in which patients are to be referred can be found.

Item 8 - Subclauses 1.2.2(2) and (3) of Schedule 1

This item repeals subclauses 1.2.2(2) and (3) which duplicate the referral requirements in the Principal Regulations.

The substituted text, which is currently contained within 1.2.2(2)(b) of the general medical services table, has been revised to make it easier to read and to reflect current drafting standards whilst maintaining the original overarching policy framework.

Item 9 - Clause 1.2.8 of Schedule 1

This item makes a consequential amendment by repealing and substituting clause 1.2.8 to insert a complete list of services that are ineligible for Medicare benefits. The list of services in the substituted clause is taken from:

- section 14 of the Previous Regulations; and
- clause 1.2.8 in the general medical services table.

These services were previously identified as not being appropriate to be claimed through Medicare. This decision was taken through a consultative review mechanism.

It is appropriate to list these services in the general medical services table as they are likely to be claimed as part of an attendance or procedural item.

Item 10 - Clause 3.1 of Schedule 1 (definition of *ACRRM*)

This item makes a minor editorial amendment by repealing the definition of ‘ACRRM’. This definition is not required as there is no longer any reference to ACRRM in the general medical services table.

Item 11 - Clause 3.1 of Schedule 1 (definition of general practitioner)

This item makes a minor editorial amendment by omitting “the meaning given”, and substituting with “a meaning affected” in the definition of ‘general practitioner’. This clarifies that the meaning of ‘general practitioner’ is in section 3 of the Act, and the purpose of clause 1.1.2 in the general medical services table is to affect that meaning by adding specified kinds of medical practitioners.

Item 12 - Clause 3.1 of Schedule 1 (definition of referral)

This item repeals the definition of ‘referral’. This definition is not required as it duplicates terms in section 132A of the Act and the Principal Regulations.

Item 13 - Clause 3.1 of Schedule 1 (definition of referring practitioner)

This item repeals and substitutes the definition of referring practitioner. This change is to simplify the definition and add a note that points readers to where in the remade HIR information on the manner in which patients are to be referred can be found.

Health Insurance (Pathology Services Table) Regulations 2018**Items 14, 15 and 16**

Section 3 of the Act defines ‘general practitioner’ as:

- a) a medical practitioner to whom there is a determination under section 3EA;
- b) a medical practitioner who is vocationally registered under section 3F; or
- c) a medical practitioner of a kind specified in the regulations.

Subclause 1.2.6(1) of the pathology services table is made for the purpose of paragraph (c) of the meaning of ‘general practitioner’ in the Act. The meaning of ‘general practitioner’ for the purpose of 1.2.6 of the pathology services table is:

a medical practitioner who:

- (a) is not a consultant physician in any specialty; and
- (b) is not a specialist in any specialty.

Items 14 and 15 move the meaning of ‘general practitioner’ for the purpose of clause 1.2.6 from subclause 1.2.6(1) to subclause 1.2.6(2) by omitting ‘general practitioner’ and inserting “medical practitioner (other than a specialist or consultant physician)” meaning subclause 1.2.6(1) is obsolete so it has been removed.

There is no change to the kind of medical practitioner who is a general practitioner under Medicare.

Item 16 makes a consequential change by amending the item descriptor of item 66836 to omit ‘general practitioner’ and insert “medical practitioner (other than a specialist or consultant physician)” to align with the changes made in items 14 and 15.

Item 17 - Subclause 2.12.1(2) of Schedule 1 (paragraph (a) of the definition of *unreferred service*)

This item makes a minor editorial amendment by repealing and substituting paragraph (a) of the definition of *unreferred service*. This change is to simplify the definition to make it easier for a reader to understand but maintains the current intent.

Item 18 - Clause 5.1 of Schedule 1 (definition of *general practitioner*)

This item makes a minor editorial amendment by repealing the definition of general practitioner in clause 5.1. This change has been made as the definition of general practitioner is contained in subsection 3(1) of the Act and there is no longer a definition in clause 1.2.6 of the pathology service table.

Health Insurance (Professional Services Review) Regulations 1999

Item 19 - After Part 3

This item makes a consequential amendment to the *Health Insurance (Professional Services Review) Regulations 1999* (PSR Regulations) by inserting the allowances for witnesses at Professional Services Review Committees. The provisions around allowances for witnesses at hearings before a Professional Services Review Committee were removed from:

- section 24 of the Previous Regulations; and
- Schedule 2 of the Previous Regulations.

This change has been made because the provisions around witness fees more appropriately sit within the PSR Regulations.

Schedule 2 – Repeals**Item 1 - Repeals of instruments**

This item repeals the *Health Insurance (Pathology Services) Regulations 2018* and the *Health Insurance (Vocational Registration of General Practitioners) Regulations 1989*. These instruments have been incorporated into the Principal Regulations.

This item also repeals the *Health Insurance Regulations 1975* which has been remade and is now referred to as the *Health Insurance Regulations 2018*.

Statement of Compatibility with Human Rights

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

Health Insurance (Repeal and Consequential Amendments) 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

From 1 October 2018 the *Health Insurance Regulations 1975* (the Previous Regulations) will be repealed and replaced by the *Health Insurance Regulations 2018* (the Principal Regulations). The Previous Regulations have been remade due to the sunset provisions in section 50 of the *Legislation Act 2003*.

A number of consequential amendments are required to other instruments to reflect changes in the Principal Regulations. These amendments have been made through the *Health Insurance (Repeal and Consequential Amendments) Regulations 2018* (the Consequential Regulations), and include:

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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 Regulations are compatible with human rights as it does not raise any human rights issues.

Greg Hunt

Minister for Health