EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2018 Measures No. 3) 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.

Subsections 4(1), 4A(1) and 4AA(1) of the Act provides that regulations may prescribe tables of medical, pathology and diagnostic imaging 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 2018* (GMST), the *Health Insurance (Pathology Service Table) Regulations 2018* (PST) and the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* (DIST) currently prescribe such tables.

For the purposes of paragraph 10(2)(aa) of the Act, section 28 of the *Health Insurance Regulations 2018* (the HIR) provides the items that have a benefit equal to 100% of the fee in respect of the service.

Subsection 16B(2) of the Act provides a regulation making power to list the kinds of services which can be requested by dental practitioners, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by any dental practitioner is prescribed in subsection 39(2) of the HIR.

Subsection 16B(3B) of the Act provides a regulation making power to list the kinds of services which can be requested by podiatrists, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by podiatrists is prescribed in section 42 of the HIR.

Subsection 16B(3E) of the Act provides a regulation making power to list the kinds of services which can be requested by participating nurse practitioners, which are defined in subsection 3(1). The list of diagnostic imaging services which can be requested by participating nurse practitioners is prescribed in section 44 of the HIR.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2018 Measures No. 3) Regulations 2018* (the Regulations) is to implement the Government's response to recommendations from the Medical Services Advisory Committee (MSAC) and the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce).

MSAC reviews new medical services or technology and the circumstances under which public funding should be supported by Medicare. The Taskforce is a clinician-led review of

all Medicare services to ensure that they reflect current best clinical practice, align with the latest evidence and promote the provision of health services that improve health outcomes.

The Regulations will amend the GMST, PST and the DIST to implement the changes to the Medicare Benefits Schedule (MBS) from 1 November 2018. Consequential amendments will also be made to the *Health Insurance Regulations 2018* from 1 November 2018.

New and amended listings recommended by MSAC

In the 2018-19 Budget, the Government agreed to support MSAC recommended changes to the MBS from 1 November 2018. The changes were announced in the *Guaranteeing Medicare – Medicare Benefits Schedule – New and Amended Listings* measure and included:

- a new medical service to treat patients with idiopathic overactive bladder by percutaneous tibial nerve stimulation neuromodulation therapy; and
- amendment to a pathology urine microscopy item to prohibit catalase and dipstick testing.

Government response to Taskforce recommendations

In the 2018-19 Budget, the Government announced its response to a number of recommendations from the clinician-led Taskforce. The changes, which will commence from 1 November 2018, were announced in the *Guaranteeing Medicare — Medicare Benefits Schedule Review — response to Taskforce recommendations* measure. The changes include:

- adding a new renal medical service to fund dialysis services in very remote regions and minor amendments to other renal services;
- realigning fees for two capsule endoscopy medical items;
- restructuring the spinal surgery medical items to reflect contemporary clinical practice;
- changes to improve the safety and quality of dermatology, allergy and immunology medical services;
- modernisation of endocrinology medical services;
- amending thoracic medicine services to improve access to clinically relevant spirometry and sleep study services;
- amending a range of items following dissolution of the Medicare Claims Review Panel (including items potentially used for cosmetic purposes) to ensure they can only be performed for therapeutic purposes;
- reforming access to knee imaging diagnostic imaging services, including removal of the requirement for plain radiography before performing magnetic resonance imaging (MRI) on children; and
- an increase to the service fee for electron microscopy pathology testing.

Other minor changes

The Regulations also make other minor policy changes and machinery amendments from 1 November 2018, including:

- allowing Dysport, an alternative to Botox, to be used in the treatment for moderate to severe focal spasticity;
- clarifying that Medicare services cannot be used to provide therapeutic treatment using non-haematopoietic stem cells. The treatment is not considered clinically appropriate as it lacks sufficient evidence on safety and efficacy;
- amending the trichiasis surgery item and adding a new item to distinguish if trichiasis was caused by trachoma or other causes;

- removing ophthalmology item 11219 from the GMST. This item will be continued via a ministerial determination under section 3C of the Act from 1 November 2018;
- removing two plain tomography items 60100 and 60101 which have been used to claim a benefit for three dimensional breast tomosynthesis (3DBT) services. These items are no longer required as two new items 59302 and 59305 for 3DBT services will be implemented via a ministerial determination under section 3C of the Act from 1 November 2018; and
- inserting four new items 371, 372, 2729 and 2731 into the table in the HIR to enable the Medicare benefit to be increased to 100% of the fee.

Consultation
The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. 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.

As part of the MSAC process, consultation was undertaken with professional bodies, consumer groups, the public and clinical experts for applications put forward for consideration by the Committee.

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 November 2018.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2018 Measures No. 3) Regulations 2018*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (2018 Measures No. 3) Regulations 2018.*

Section 2 – Commencement

This section provides for the Regulations to commence on 1 November 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 (Diagnostic Imaging Services Table) Regulations 2018

Restricting non-haematopoietic stem cell treatments from Medicare benefits
Regulation amendment 1 inserts new subclause 1.2.14 to prevent a service in the diagnostic imaging services table applying if it is used at the same time as, or in connection with, the harvesting, storage, in vitro processing or injection of non-haematopoietic stem cells. An equivalent application has been included in the general medical services table (see regulation amendment 15) and the pathology services table (see regulation amendment 103) to apply this restriction to general medical and pathology services.

Reforming access to knee imaging diagnostic imaging services
Regulation amendments 2 to 7, 10 and 11 implement the Government's response to the Taskforce's recommendation to introduce changes to knee imaging items to ensure these services are aligned with best practice and are used appropriately.

This change amends current items 63513 and 63514 for knee imaging services so that patients under the age of 16 years will no longer be required to have a plain knee radiography service before a magnetic resonance imaging (MRI) service is provided, avoiding unnecessary doses of radiation. Items 63560 and 63561 will also be amended to limit GP-requested knee MRI to patients aged under 50 years. Specialists will still be able to request knee MRIs for any patient, regardless of the patient's age.

This change lists four new items (57522, 57523, 57537 and 57540) specifically for knee x-ray services. These services are currently listed in generic items that cover all extremities below the waist (57518, 57521, 57535 and 57536) which will be amended to exclude the knee.

Regulation amendments 111 to 113 make consequential changes to the *Health Insurance Regulations 2018* to allow certain allied health providers to request items 57523 and 57540.

A further four new items will be listed (56620, 56626, 56660 and 56666) specifically for knee computed tomography. These services are currently listed in generic items that cover all extremities (56619, 56625, 56659 and 56665) which will be amended to exclude scans of the knee, unless the knee is scanned in conjunction with another extremity.

Removing two plain tomography items
Regulation amendments 8 and 9 will remove plain tomography items 60100 and 60101. This change is part of the Government's response to the Taskforce's recommendation to introduce two new interim items 59302 and 59305 for three dimensional breast tomosynthesis (3DBT) services. These items will be implemented via a ministerial determination under section 3C of the Act from 1 November 2018.

Providers have been using a combination of existing items, including items for plain film tomography items 60100 and 60101, in order to enable patients to claim a benefit for providing a 3DBT service. As new items 59302 and 59305 for 3DBT will be introduced, items 60100 and 60101 will be removed.

Health Insurance (General Medical Services Table) Regulations 2018

Amending thoracic medicine services to improve access to clinically relevant spirometry and sleep study services
Regulation amendments 28, 32, 33, 34 and 35 implement the Government's response to the Taskforce's recommendation to amend thoracic medicine services to improve access to clinically relevant spirometry and sleep study services.

Spirometry and complex lung function tests
Regulation amendment 28 repeals the existing items for spirometry (a type of lung function test) and complex lung function tests, and substitutes them with new (11505, 11507, 11508) and amended items (11503, 11506, 11512). Item 11509 will be deleted.

The spirometry changes include enhanced quality requirements for spirometry and the introduction of a new spirometry item (11505) for the diagnosis of asthma, chronic obstructive pulmonary disease or other causes of airflow limitation. The new item will have double the fee of the existing item 11506 to encourage the use of well performed spirometry in general practice.

The respiratory test item 11503 will be amended to clarify the complex lung function tests which can be performed under this item. Two new items (11507 and 11508) will be listed for tests previously performed under item 11503 to ensure best practice and reflect the level of complexity of these tests.

Sleep studies
The changes to sleep studies address concerns with existing practice models which have led to concerns with the quality and quantity of Medicare-eligible sleep study services. The changes aim to improve clinical practice by better identifying eligible patients with proven sleep disorders and clarifying the appropriate sleep study service to perform.

The new and amended items will ensure patients receive the most suitable test by:

- requiring an assessment by a consultant respiratory physician or qualified sleep medicine practitioner to determine the sleep studies service is necessary for diagnosis of the suspected sleep disorder; and
- amending the descriptor to include requirements consistent with contemporary Australian clinical guidelines.

Consistent with the existing sleep study services, only qualified adult sleep medicine practitioners will be able to perform these services.

Regulation amendments 32, 33 and 35 make changes to the existing sleep study services available to adults:

- regulation amendment 32 amends item 12203 and inserts new items 12204 and 12205;
- regulation amendment 33 amends item 12207 and inserts new item 12208; and
- regulation amendment 35 amends item 12250.

Regulation amendment 34 make changes to the existing sleep study services available to children by amending existing items 12210, 12213, 12215 and 12217.

Realigning fees for two capsule endoscopy items

Regulation amendment 30 implements the Government's response to the Taskforce's recommendation on capsule endoscopy.

Capsule endoscopy is a procedure used to record images of the gastrointestinal tract to either diagnose or monitor certain medical conditions. It involves the patient swallowing a capsule containing a small camera, which records and sends the images to a data recorder for the treating practitioner to analyse.

This change reduces the schedule fee for two capsule endoscopy items 11820 and 11823 from $2,039.20 to $1,229.35 to better reflect the current cost of providing the service. The new fee was chosen on an assessment of the cost of providing the services.

Amending items following dissolution of the Medicare Claims Review Panel (including items potentially used for cosmetic purposes)

A number of amendments in the Regulations implement the Government's response to the Taskforce's recommendation to dissolve the Medicare Claims Review Panel.

There are approximately 26 items which require assessment by the Medicare Claims Review Panel to determine if the service is clinically relevant as a pre-condition of paying Medicare benefits.

From 1 November 2018, the Medicare Claims Review Panel will be ceased and these items will be processed in the same manner as all other items under Medicare. These items cover a range of specialties including plastic surgery, ophthalmology, anaesthesia and sleep studies. The items will be amended to assist medical practitioners in understanding the appropriate use of items and to safeguard against misuse. The Government is also making changes to a number of related plastic and reconstructive surgery items to align them with appropriate clinical practice and ensure consistency with the Medicare Claims Review Panel changes.

Amendments will be made to the following Medicare items to ensure the services are claimed appropriately:

- 11221 (regulation amendment 24)
- 11224 (regulation amendment 26)
- 21965 (regulation amendment 43)
- 21997 (regulation amendment 45)
- 30176 (regulation amendment 48)
- 31346 (regulation amendment 59)
- 35533 (regulation amendment 62)
- 35534 (regulation amendment 63)
- 42785 (regulation amendment 70)
- 42791 (regulation amendment 72)
- 42872 (regulation amendment 74)
- 45019 (regulation amendment 78)
- 45051 (regulation amendment 80)
- 45520 (regulation amendment 83). Regulation amendment 84 will insert new item 45523 for a bilateral reduction mammoplasty. Item 45520 will remain for unilateral reduction mammoplasty procedures.
- 45522, 45524, 45527 and 45528 (regulation amendment 84)
- 45551 (regulation amendment 85)
- 45553, 45554,45556 and 45558 (regulation amendment 86)
- 45584, 45585, 45587 and 45588 (regulation amendment 87)
- 45617, 45620, 45623 and 45624 (regulation amendment 88)
- 45632, 45635, 45641 and 45644 (regulation amendment 89). Regulation amendment 76 inserts a definition of 'NOSE Scale', which is part of the amended item descriptors.
- 45650 (regulation amendment 90). Regulation amendment 76 inserts a definition of 'NOSE Scale', which is part of the amended item descriptor.
- 45659 (regulation amendment 92)

In addition, the changes will remove a number of items relating to ophthalmology, plastic surgery, surgical vascular services. These items will be repealed as they are no longer relevant to current clinical practice or will be covered by amendments to other items:

- 11222 (regulation amendment 25)
- 11225 (regulation amendment 27)
- 32501(regulation amendment 60)
- 42783 (regulation amendment 69)
- 42786 and 42789 (regulation amendment 71)
- 42792 (regulation amendment 73)
- 45020 (regulation amendment 79)
- 45552, 45555, 45557 and 45559 (regulation amendment 86). Regulation amendment 81 will insert three new items 45060, 45061 and 45062 which will replace item 45559. The new items more accurately describe current clinical practice.
- 45586 (regulation amendment 87)
- 45638 and 45639 (regulation amendment 89)

Regulation amendments 16, 29 and 61 make consequential changes to remove references to repealed items.

Changes to improve the safety and quality of dermatology, allergy and immunology medical services

A number of amendments in the Regulations implement the Government's response to the Taskforce's recommendations to improve the safety and quality of dermatology and allergy services.

Allergy testing services

Regulation amendment 31 amends existing items 12000 and 12003 and inserts new items 12001, 12002, 12004 and 12005. The amendments to items 12000 and 12003 will introduce new restrictions on allergen testing to discourage testing for more than 20 allergens at a time. This aligns with clinical guidelines, which recommend testing for specifically chosen allergens.

Allergen testing items will also be restructured into specifically chosen allergens, in line with clinical guidelines, to provide clarity and encourage the provision of the most appropriate test. The structure includes:

- environmental aeroallergen skin prick testing (12000) by a specialist or consultant physician;
- initial (12001) and repeat test (12002) environmental aeroallergen skin prick testing by a medical practitioner;
- food and latex (item 12003) skin prick testing;
- medication and venoms skin testing (item 12004), including prick testing and intradermal testing with a number of dilutions; and
- skin testing for anaesthetic-related allergies in preparation for a procedure (12005).

Regulation amendment 44 will repeal anaesthetic allergy-testing item 21981, which can be performed under new item 12005. Regulation amendment 101 will repeal item 53600 as all skin prick testing services are now covered by items 12000 to 12005.

Skin services

Regulation amendment 39 will amend item 14050 to include UVA or UVA phototherapy services administered in a whole body cabinet or hand and foot cabinet. The amended item 14050 will also limit the maximum number of phototherapy services to 150 treatments per patient over a 12-month period to limit patient exposure to UV radiation. Treatment must be initiated and supervised by a dermatologist. Item 14053 will be repealed as patients can access the localised administration under amended item 14050.

Regulation amendment 40 will repeal existing items for laser photocoagulation and replace with new and amended items 14100, 14106, 14115, 14118 and 14124. Item 14109 and 14112 will be removed. The new and amended items will simplify claiming by reducing the number of items based on the area of treatment from five (5) to three (3).

Regulation amendment 49 will repeal items 30185 and 30186. These items, which are for wart removal, will be repealed as they provide sub-optimal treatment compared with other treatment methods such as cryotherapy.

Regulation amendment 50 will amend item 30190 to require that it can only be performed for the laser ablation of severely disfiguring tumours. Item 30190 will still only be able to be claimed where ten (10) or more tumours are removed. New item 30191 will be listed for the laser ablation of one or more tumours and will be claimable for the conditions listed in item 30190 as well as epidermal naevi, xanthelasma, pyogenic granuloma, genital angiokeratomas, hereditary haemorrhagic telangiectasia and other severely disfiguring or recurrently bleeding tumours. Both items will require the tumour/s to be considered suitable for treatment by laser ablation by a dermatologist.

Regulation amendment 51 will introduce a requirement on services for the removal of malignant skin or mucous membrane neoplasms. Amended item 30196 will require the malignancy to be confirmed by histopathology or confirmed by a specialist in the specialty of dermatology where a specimen has been sent for histological confirmation, and amended item 30202 will require the malignancy to be confirmed by histopathology or an expert opinion by a dermatologist. Regulation amendment 51 will also:

- repeal items 30197 and 30203 for the removal of 10 or more neoplasms. Patients will be able to access these services through items 30196 and 30202;
- repeal item 30195 which can be performed under item 30071; and
- repeal item 30205 which no longer reflects best clinical practice.

Regulation amendment 52 will amend skin lesion item 30207 to more accurately describe the treatment. Item 30207 is for older patients to access skin lesion services and can be performed without the requirement for the use of an operating theatre.

Regulation amendment 53 will amend the skin lesion item 30210 to restrict its use to patients under the age of 16 years. Item 30213 and 30214 will be repealed.

Regulation amendment 57 will repeal and substitute existing Mohs surgery items (31000 to 31002) and list new items 31003 to 31005. As part of the dermatology changes, Mohs surgery items 31000 to 31002 will be amended to include the head, neck, genitalia, hand, digits, leg [below knee] or foot, and new Mohs surgery items 31003 to 31005 will be inserted for all other areas of the body. The new and amended items will also be restricted to specialists recognised by the Australasian College of Dermatologists as an approved Mohs surgeon. Regulation amendments 58 and 82 will make a consequential amendment to the descriptor of item 31340 and 45201 respectively, by inserting references to the new Mohs surgery items.

Regulation amendment 91 will amend item 45652, which is for the treatment of rhinophyma by ablation, to a treatment of rhinophyma of a moderate or severe degree. Regulation amendment 93 will amend item 45669, which is for a vermilionectomy by ablation procedure, to require the atypical cell to be confirmed by a biopsy. These changes align with best clinical practice.

Regulation amendments 18, 42 and 46 make consequential changes as a result of these changes.

New renal dialysis services in very remote regions

Regulation amendments 36 to 38 implement the Government's response to the Taskforce's recommendation on reforming access to renal dialysis services in very remote areas.

Regulation amendment 36 lists new item 13105 for the management of haemo-dialysis to a person with end-stage kidney disease. The service must be rendered in very remote areas (defined as Modified Monash area 7) by a medical practitioner or by a certain health professionals (nurse or Aboriginal and Torres Strait Islander primary health care worker) on behalf of the medical practitioner.

If the service is provided on behalf of the medical practitioner, the medical practitioner can supervise the service remotely. As a condition of receiving the Medicare-funded dialysis treatment, the patient must be treated or reviewed by a nephrologist.

Having dialysis funding available for services in very remote areas will provide greater access for patients, leading to better attendance for dialysis and improved health outcomes. This change will also help address the economic, cultural and social impacts on Aboriginal and Torres Strait Islander renal patients by providing greater access for these services.

Regulation amendment 37 amends existing item 13110 to clarify that the intent of the service is the removal of Tenckhoff peritoneal dialysis catheters, including catheter cuffs. Regulation amendment 38 repeals existing item 13112 as the procedure is no longer part of contemporary clinical practice.

Regulation amendments 13 and 14 make consequential changes as a result of the renal dialysis changes.

Modernisation of endocrinology medical services

Regulation amendments 47, 54 to 56 and 64 implement the Government's response to the Taskforce's recommendation on modernising endocrinology services.

Regulation amendment 47 amends item 30097 to include a requirement that the patient must have had a basal cortisol quantitation test in the previous month as a condition of receiving a service under this item. This is considered appropriate clinical practice and aims to minimise unnecessary over-testing.

Regulation amendment 54 repeals items 30308 and 30309 and amends item 30310. The intent of these changes is to amend item 30310 for partial and subtotal thyroidectomies and to retain item 30396 for total thyroidectomies. Items 30308 and 30309 will be removed as they can be performed within the retained items.

Regulation amendment 55 repeals item 30313 because it is obsolete as it has a higher cyst recurrence rate than when removing a cyst/tract and body of the hyoid bone (item 30314). The change focuses on removing obsolete items that encourage sub-optimal clinical practice.

Regulation amendment 56 amends parathyroid surgery items 30315 to 30320 to clarify the purpose of services performed under each item, to promote best clinical practice and to prevent the inappropriate co-claiming of multiple parathyroid surgery items.

Regulation amendment 56 will also amend adrenal gland surgery items 30323 and 30324. The intent of these changes, along with regulation amendment 64 which will remove item 36500, will reduce the number of items for adrenal gland surgery to make it simpler for doctors to differentiate between the items. Regulation amendment 56 will also remove item

30321 as it can be performed within the retained items.

Restructuring spinal surgery services medical items
A number of amendments in the Regulations implement the Government's response to the Taskforce's recommendations to restructure spinal surgery services to reflect contemporary clinical practice.

Regulation amendments 66 (40300 to 40351), 95 (47681 to 47723) and 96 (48600 to 48694) will repeal the existing 76 items for spinal services.

Regulation amendment 100 will list approximately 60 new spinal surgery items (51011 to 51171) to replace the repealed services. The new services will be listed under subgroup 17 of group T8. The revised spinal surgery listings better describe the procedures being performed by spinal surgeons, reflecting the contemporary practice of spinal surgery.

Regulation amendment 98 introduces new provisions for the new spinal surgery items to ensure that claiming is consistent and appropriate. This includes provision which:

- restrict items in subgroup 17 from being performed in conjunction with an item in group T8 (other than subgroup 17), if the purpose of the other procedural item is to perform spinal surgery; and
- restrict anterior and posterior combined spinal fusion procedures (51061 to 51066) from being performed in conjunction with items for spinal instrumentation services (51020 to 51026), posterior and/or posterolateral bone graft spinal services (51031 to 51036) or anterior column spinal fusion services (51041 to 51045).

Regulations amendments 77, 97 and 99 make consequential changes as a result of the spinal changes.

Percutaneous tibial nerve stimulation neuromodulation therapy for patients with idiopathic overactive bladder
Regulation amendment 65 implements the Government's response to MSAC's recommendation on the treatment of patients with idiopathic overactive bladder. The change will list three new items 36671, 36672 and 36673 to treat patients suffering idiopathic overactive bladder by percutaneous tibial nerve stimulation (PTNS) neuromodulation therapy.

PTNS delivers electrical stimulation to the sacral nerve complex via the tibial nerve producing an inhibitory effect on overactive bladder activity. The new medical service is specific to treatment which will be delivered in the three treatment phases – initial (36671), tapering (36672) and maintenance (36673).

Allowing Dysport to be used in the treatment of moderate to severe focal spasticity
Regulation amendment 41 amends item 18360 to allow Dysport to be used in the treatment of moderate to severe focal spasticity. Dysport is an alternative to Botox which can currently be used under item 18360.

Amending the trichiasis surgery item 42587 and inserting a new item 42588 to distinguish the cause of trichiasis
Regulation amendment 67 amends trichiasis surgery item 42587 to distinguish whether the cause of the trichiasis is due to causes other than trachoma. Regulation amendment 68 inserts

a new trichiasis surgery item 42588 to distinguish whether the cause of the trichiasis is due to trachoma. This change will allow more accurate data to be captured on trachoma-related trichiasis surgery.

Removal of ophthalmology item 11219
Regulation amendment 23 repeals ophthalmology item 11219. This item will continue to be listed via a ministerial determination under section 3C of the Act from 1 November 2018.

Diabetes Risk Assessment Tool
Regulation amendment 102 incorporates the Australian Type 2 Diabetes Risk Assessment Tool as existing on 1 November 2018. The Type 2 Diabetes Risk Assessment Tool is part of the eligibility criteria for determining a patient's eligibility for a Type 2 Diabetes Risk Evaluation service in Group A14 of the GMST.

Consequential changes
Regulation amendments 12, 13, 14, 17 to 22, 42, 46, 75 and 94 make consequential changes.

Health Insurance (Pathology Services Table) Regulations 2018

Increase to the service fee for electron microscopy pathology testing
Regulation amendments 104 and 105 implement the Government's response to the Taskforce's recommendations to increase the fees for electron microscopy pathology testing items 72851 and 72852. The fee increases will commensurate with the work involved in providing these services.

Amendment to a urine microscopy item to prohibit catalase and dipstick testing
Regulation amendments 106 and 107 implement the Government's response to MSAC's recommendation on pathology urine microscopy testing.

Regulation amendment 106 amends pathology item 73805 to delete the reference to catalase testing and adds the exclusion of dipstick (test strip) testing. This amendment will bring the item into line with contemporary clinical practice and clarify the intent of the item descriptor claiming. Catalase testing is outmoded and unreliable. The exclusion of dipstick testing is to clarify the service is for urine microscopy testing. Regulation amendment 107 makes a consequential amendment as a result of this change.

Health Insurance Regulations 2018

New renal dialysis services in very remote regions
Paragraph 10(2)(aa) of the Act provides a regulation making power to prescribe items as having a benefit equal to 100% of the fee in respect of the service. The general practice attendance items are specified in a table at subsection 28(1) of the *Health Insurance Regulations 2018*. Regulation amendment 110 inserts new renal dialysis 13105 into that table to enable the Medicare benefit to be increased to 100% of the fee.

Medicare beneftis to be claimed at 100% of the fee for four new telehealth items
Four new telehealth items 371, 372, 2729 and 2731will be introduced from 1 November 2018 for the provision of focussed psychological strategies for assessed mental disorders, delivered by video conference. These items will be introduced via a ministerial determination under section 3C of the Act.

Paragraph 10(2)(aa) of the Act provides a regulation making power to prescribe items as having a benefit equal to 100% of the fee in respect of the service. These items are specified in a table at subsection 28(1) of the HIR. Regulation amendments 108 and 109 will insert new items 371, 372, 2729 and 2731 into that table to enable the Medicare benefit to be increased to 100% of the fee.

Reforming access to knee imaging diagnostic imaging services

Subsection 16B(2) of the Act provides a regulation making power to list the kinds of services which can be requested by dental practitioners, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by any dental practitioner is prescribed in subsection 39(2) of the *Health Insurance Regulations 2018*. Regulation amendment 111 inserts the two new r-type (requested) knee x-ray services into subsection 39(2) of the *Health Insurance Regulations 2018*.

Subsection 16B(3B) of the Act provides a regulation making power to list the kinds of services which can be requested by podiatrists, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by podiatrists is prescribed in section 42 of the *Health Insurance Regulations 2018*. Regulation amendment 112 inserts the two new r-type (requested) knee x-ray services into subsection 39(2) of the *Health Insurance Regulations 2018*.

Subsection 16B(3E) of the Act provides a regulation making power to list the kinds of services which can be requested by participating nurse practitioners, which are defined in subsection 3(1). The list of diagnostic imaging services which can be requested by participating nurse practitioners is prescribed in section 44 of the *Health Insurance Regulations 2018*. Regulation amendment 113 inserts the two new r-type (requested) knee x-ray services into subsection 39(2) of 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 Legislation Amendment (2018 Measures No. 3) 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

The purpose of the *Health Insurance Legislation Amendment (2018 Measures No. 3) Regulations 2018* (the Regulations) is to implement the Government's response to recommendations from the Medical Services Advisory Committee (MSAC) or the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce).

MSAC reviews new medical services or technology and the circumstances under which public funding should be supported by Medicare. The Taskforce is a clinician-led review of all Medicare services to ensure that they reflect current best clinical practice, align with the latest evidence and promote the provision of health services that improve health outcomes.

The Regulations will amend the GMST, PST and the DIST to implement the changes to the Medicare Benefits Schedule (MBS) from 1 November 2018. Consequential amendments will also be made to the *Health Insurance Regulations 2018* from 1 November 2018.

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

Greg Hunt

Minister for Health