

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance Legislation Amendment (2018 Measures No. 4) Instrument 2018

The *Health Insurance Act 1973* (the Act) sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

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.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2018 Measures No. 4) Regulations 2018* is to implement various activities under a 2018-19 Budget measure, the *Stronger Rural Health Strategy*. The Strategy seeks to streamline and reform the pathways to General Practice specialisation under the two General Practice Colleges, and introduce a new rural focused workforce experience program for medical practitioners seeking to work in General Practice.

The proposed regulations would make three changes to the schedule of general practice programs under Division 6, Part 2 of the *Health Insurance Regulations 2018*:

1. introduce two new programs that are linked to the respective Fellowship pathways of the Royal Australian College of General Practitioners (RACGP) and the Australian College of Rural and Remote Medicine (ACRRM).
2. add both the RACGP and the ACRRM to the list of Specified Bodies for the current general practice training programs:
 - the Australian General Practice Training Program; and
 - the Remote Vocational Training Scheme.
3. introduce the More Doctors for Rural Australia Program (MDRAP) and list the relevant Specified Body for the program.

The proposed regulations also modify the definition of a general practitioner at 1.1.2 of the *Health Insurance (General Medical Services Table) Regulations 2018*. The definition is being modified to confirm that general practice trainees with the ACRRM receive the same type of Medicare Benefits Schedule (MBS) access as trainees with RACGP.

The change to the definition would confirm that doctors participating in the College led training pathways would have access to the) MBS items that are listed in the Table for general practitioners, including the non-referred attendance items. The change to the definition also provides the basis for ensuring that participants in the new experience program (the MDRAP) will be eligible to claim the lower MBS fees for medical practitioners as set out in Group A7 of the Table.

Consultation

As part of the Stronger Rural Health Strategy implementation, extensive consultation has been undertaken with the RACGP and the ACRRM), as well as the Rural Workforce Agencies that will be administering the MDRAP.

Details of the Amending Instrument are set out in the Attachment

The Amending Instrument commences on 1 January 2019.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2018 Measures No. 4) Regulations 2018*

Section 1 – Name

Section 1 provides for the proposed regulations to be referred to as the *Health Insurance Legislation Amendment (2018 Measures No. 4) Regulations 2018*.

Section 2 – Commencement

Section 2 provides that the proposed regulations to commence on 1 January 2019.

Section 3 – Authority

Section 3 provides that the proposed regulations are made under the *Health Insurance Act 1973*.

Section 4 – Schedule(s)

Section 4 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 Regulations 2018

Amending the Programs and Specified Bodies in Register of Approved Placements

Item 1 lists the Australian College of Rural and Remote Medicine and the Royal Australian College of General Practitioners as specified bodies for the Australian General Practice Training Program and the Remote Vocational Training Scheme, as well as for their own identified College Fellowship Programs (under Division 6, Part 2 of these regulations).

Item 1 also lists the new More Doctors for Rural Australia Program as a Specified Program, and list the Department of Health and the Rural Workforce Agencies in each State and the Northern Territory as the relevant Specified Bodies (under Division 6, Part 2 of these regulations).

Health Insurance (General Medical Services Table) Regulations 2018

Amending the definition of general practitioner

Item 2 updates paragraph 1.1.2(c) of Schedule 1 to ensure that medical practitioners undertaking an approved training placement with the Australian College of Rural and Remote Medicine will be recognised as a ‘general practitioner’ and have access to the higher value Medicare Benefits Schedule (MBS) items reserved for general practitioners. This is consistent with the treatment of medical practitioners undertaking an approved training placement with the Royal Australian College of General Practitioners. This change supports the *Stronger Rural Health Strategy* measures that seek to differentiate (for the purpose of claiming MBS items) Specialist General Practitioners and approved trainees on College led programs from other medical practitioners who provide services in general practice settings.

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. 4) 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. 4) Regulations 2018* (the Regulations) is to implement the Government's reforms to General Practice training and experience programs under the *Stronger Rural Health Strategy*.

The Strategy seeks to rationalise and streamline training pathways under the General Practice Colleges, as well as create a new rural workforce experience program for medical practitioners to gain clinical experience outside of the capital cities.

The Regulations will amend *Health Insurance Regulations 2018* and the *Health Insurance (General Medical Services Table) Regulations 2018* from 1 January 2019.

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