

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019*

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 2018* (GMST Regulations) currently prescribe 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. Section 28 of the *Health Insurance Regulations 2018* (HIR) specifies such a table of services.

### **Purpose**

The purpose of the *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019* (the Regulations) is to simplify and improve patient rebates for general practice attendances at residential aged care facilities.

The Regulations amend the GMST Regulations and the HIR from 1 March 2019 to increase the MBS fees for the most commonly claimed general practice services in residential aged care facilities. The changes also simplify the item structure for doctors and patients.

Currently, the Medicare benefit is calculated from the type of service provided and the number of patients seen at the residential aged care facility. This complex arrangement, known as a 'ready reckoner', requires doctors and patients to calculate the total benefit based on a nominal amount plus a modifier. The modifier must be divided or multiplied (6 or fewer patients is divided, 7 or more patients is multiplied) by the number of patients seen by the doctor at the residential aged care facility.

This arrangement will be replaced with a flag fall amount plus the standard attendance structure for each patient attendance at the residential aged care facility. The new arrangement will apply to services provided by vocationally registered general practitioners (GPs) and other medical practitioners (OMPs).

The Government announced this change as part of *Guaranteeing Medicare — strengthening primary care* package in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO).

**Consultation**

The Medicare Benefits Schedule (MBS) Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The Taskforce considered general practice items for services provided at residential aged care facilities in 2018. Its draft report and recommendations, which included a flag fall approach, was provided to general practice stakeholders for targeted consultation in 2018.

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 2019.

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

## ATTACHMENT

**Details of the *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019***Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 March 2019.

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 2018*****Amendments 1 to 6**

These amendments make consequential changes as a result of simplifying the item structure for doctors and patients. Amendments 1 to 5 apply the general requirements for the new attendance items (see amendment 9) which applied to the deleted attendance items (see amendment 8):

- Amendments 1 and 2 will apply the requirements for professional attendance services.
- Amendments 3 and 4 require the doctor to personally attend the service on a single patient on a single occasion. A benefit is not payable for a group attendance.
- Amendment 5 provides that service does not apply if it is provided at the same time, or in connection with, a ‘non-medicare service’. A non-medicare service is defined in Part 3 of the GMST Regulations.

Amendment 6 makes a consequential change to the name of Division 2.1 to be inclusive of the group name of the new attendance items (see amendment 9).

**Amendment 7 - Clause 2.1.1 of Schedule 1 (table items 2, 4, 6, 8 and 13 to 16)**

Clause 2.1.1 of the GMST Regulations is the legal basis for applying the ready reckoner calculation. This calculation determines the total amount for a service based on the type of service provided and the number of patients seen at a residential aged care facility.

Amendment 7 repeals the the old attendance items (20, 35, 43, 51, 92, 93, 95 and 96) from this clause. These items are the most commonly claimed general practice services provided in residential aged care facilities.

**Amendment 8 - Schedule 1 (items 20, 35, 43, 51, 92, 93, 95 and 96)**

Amendment 8 repeals the old residential aged care facility attendance items for GPs (20, 35, 43 and 51) and OMPs (92, 93, 95 and 96). These services will be replaced with the new attendance items (see amendment 9).

**Amendment 9 – After Division 2.30 of Schedule 1**

Amendment 9 inserts Division 2.30A which creates the new arrangements for the most commonly claimed general practice services in residential aged care facilities.

Subclauses 2.30A.1(1) and (2) will increase the fee for the first patient attendance during the residential aged care facility visit. This amount is intended to reflect the costs doctors incur when providing professional services in residential aged care facilities. Subclauses 2.30A.1(1) and (2) only apply to the attendance for the first patient seen at the residential aged care facility.

Subclause 2.30A.1(1) will increase the fee for the relevant attendance item (90020, 90035, 90043 or 90051) by \$55 for services rendered by GPs. Subclause 2.30A.1(2) will increase the fee for the relevant attendance item (90092, 90093, 90095 and 90096) by \$40 for services rendered by OMPs.

Division 2.30A also creates the new attendance items for GPs and OMPs. These items have the same requirements as the deleted attendance items (see amendment 8), but have a nominal fee amount like other standard attendances. The new attendance items can be claimed for each patient attended during a residential aged care facility visit.

***Health Insurance Regulations 2018***

**Amendments 10 to 14**

These amendments add the new attendance items to section 28 of the HIR for GPs (90020, 90035, 90043 and 90051) and OMPs (90092, 90093, 90095 and 90096) to allow Medicare benefits to be paid at 100% of the fee. The amendments will also remove the redundant attendance items from section 28 of the HIR.

Amendment 14 will also insert items 90183, 90188, 90202 and 90212 to allow Medicare benefits to be paid at 100% of the fee. These items are the new OMP attendance items for residential aged care facility services provided to patients in regional areas (Modified Monash areas 2 to 7). These items, which are made under the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, commenced on 1 March 2019. Amendment 13 makes a consequential amendment to section 28 to delete redundant attendance items (183, 188, 202 and 212).

## Statement of Compatibility with Human Rights

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

*Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019*

The Regulations are 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 Regulations

The purpose of the *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019* (the Regulations) is to improve and boost general practice services in residential aged care facilities.

The Regulations amend the *Health Insurance (General Medical Services Table) Regulations 2018* and the *Health Insurance Regulations 2018* from 1 March 2019 to increase the MBS fees for the most commonly claimed general practice services in residential aged care facilities. The changes also simplify the item structure for doctors and patients.

The Government announced this change as part of *Guaranteeing Medicare — strengthening primary care* package in the 2018-19 Mid-Year Economic and Fiscal Outlook.

### 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 advance rights to health and social security by increasing the patient subsidy (the Medicare benefit) for the most commonly claimed general practice services in residential aged care facilities. This investment will incentivise doctors to provide clinically effective medical services in residential aged care facilities.

#### **Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.

**Greg Hunt**

**Minister for Health**