

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Professional Services Review Scheme) 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 VAA of the Act provides for the Professional Services Review Scheme which can conduct reviews and make decisions on the appropriateness of practitioners' provision of services.

Purpose

The purpose of the *Health Insurance (Professional Services Review Scheme) Regulations 2019* (the Principal Regulations) is to repeal and remake the *Health Insurance (Professional Services Review) Regulations 1999* (the Previous Regulations). The Previous Regulations are required to be remade before 1 April 2019, which is when the instrument will sunset under the *Legislation Act 2003*.

The Principal Regulations support the function of the Professional Services Review Scheme through:

- setting out standards for adequate and contemporaneous records to be kept by practitioners in relation to patient records and rendering of services;
- setting out exceptional circumstances in relation to inappropriate practice with regard to unusual levels of relevant services;
- defining circumstances for medical practitioners for prescribed pattern of services;
- setting out allowance provisions for witnesses summoned to appear at a hearing before the Professional Services Review Committee; and
- specifying persons and bodies for the purposes of referral of professional issues to regulatory and other bodies.

The Principal Regulations have updated the Previous Regulations to reflect current drafting standards whilst maintaining the overarching policy framework. The amendments are administrative and do not make changes to the Professional Services Review Scheme.

Consultation

Consultation was undertaken with the Professional Services Review Agency, which agreed to the proposed amendments. Broad consultation was undertaken with the Australian Medical Association.

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

The Act specifies no conditions which need to be met before the power to make the Principal Regulations may be exercised. The Principal Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Principal Regulations commence the day after this instrument is registered.

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

ATTACHMENT

Details of the *Health Insurance (Professional Services Review Scheme) Regulations 2019***PART 1—PRELIMINARY****Section 1 – Name**

This section provides for the Principal Regulations to be referred to as the *Health Insurance (Professional Services Review Scheme) Regulations 2019*.

Section 2 – Commencement

This section provides that the Principal Regulations commence the day after registration.

Section 3 – Authority

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

Section 4 – Schedules

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.

Section 5 – Definitions

This section provides definitions used in the Principal Regulations.

Section 5 of the Principal Regulations omits the reference to Group A16 as a relevant service. This group of MBS items, which referred to Medical Practitioner Sport Physician attendances, no longer exists. Following the recognition of Sport and Exercise Medicine as a medical specialty, Sport Physicians were given access to specialist attendance items in Group A3. Group A16 items were removed from the MBS on 1 November 2010.

This was previously prescribed in section 7 of the Previous Regulations.

PART 2—PRESCRIBED MATTERS FOR DEFINITIONS**Section 6 – Standards for adequate and contemporaneous records**

Section 82 of the Act provides definitions of inappropriate practice by practitioners and includes matters to which Professional Services Review Committees must have regard to in determining inappropriate practice by a practitioner, including whether or not the practitioner kept adequate and contemporaneous records of the rendering or initiation of the services.

Section 6 of the Principal Regulations specifies the standards for adequate and contemporaneous records practitioners are required to keep.

However, the concepts of patient record and an entry for a service in the Previous Regulations presented some ambiguity as to whether one overarching patient record could relate to multiple services.

For the purposes of paragraph 82(1D)(3) of the Act, section 6 of the Principal Regulations updates the standards for records required to be kept by practitioners to more clearly distinguish between the patient record and entries for services within the record.

This was previously prescribed in sections 4, 5 and 6 of the Previous Regulations.

Section 7 – Exceptional circumstances in relation to inappropriate practice

Subsections 82(1B), 82(1C) and 82(1D) of the Act allow for exceptional circumstances in relation to inappropriate practice for a particular day for a practitioner.

This was previously prescribed within section 11 of the Previous Regulations.

Section 8 – Circumstances for medical practitioners for prescribed pattern of services

Subsection 82(1A) of the Act provides the circumstances in which services rendered or initiated by a medical practitioner constitute a prescribed pattern of services, being that the medical practitioner renders or initiates 80 or more relevant services on each of 20 or more days in a 12 month period.

This was previously prescribed within section 10 of the Previous Regulations.

PART 3—PROFESSIONAL SERVICES REVIEW COMMITTEES

Section 9 – Allowances for witnesses at hearings

Section 106C of the Act provides for allowances for expenses in respect of attendance by a person summoned to appear as a witness at a hearing before a Professional Services Review Committee.

Item 19 of the *Health Insurance (Repeal and Consequential Amendments) Regulation 2018* makes a consequential amendment to the Previous Regulations by inserting allowances for witnesses at Professional Services Review Committees. This amendment has been made because the provisions around witness fees more appropriately sit within the Professional Services Review Regulations.

For the purposes of section 106C of the Act, Section 9 of the Principal Regulations provides allowances for witnesses for travel costs determined by the Professional Services Review Committee to be a reasonable amount, taking into account the particular circumstances of the witness. Section 9 also provides an attendance allowance for lost salary or wages consequent upon a witnesses' appearance at a Professional Services Review Committee hearing.

Section 10 – Specified persons and bodies—significant threat to life or health

Section 106XA of the Act provides for the referral of professional issues to regulatory and other bodies.

Subsection 10(2) specifies persons and bodies for the referral of persons who are general practitioners who render professional services that could cause significant threat to life or health.

For the purposes of paragraph 106XA(4)(a) of the Act, subsection 10(2) of the Principal Regulations removes the following entities:

- General Practice Recognition Appeal Committee
- General Practice Recognition Eligibility Committee

For the purposes of paragraph 106XA(4)(a) of the Act, subsection 10(2) of the Principal Regulations adds the following entities:

- Australian College of Rural and Remote Medicine
- Australian Health Practitioner Regulation Agency
- Health Care Complaints Commission of New South Wales
- Health Ombudsman of Queensland
- Medical Council of New South Wales

Subsection 10(3) specifies persons and bodies for the referral of persons who are not general practitioners who render professional services that could cause significant threat to life or health.

For the purposes of paragraph 106XA(4)(a) of the Act, subsection 10(3) of the Principal Regulations adds the following entities:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Australian Health Practitioner Regulation Agency
- Chinese Medicine Board of Australia
- Department of Health
- Health Ombudsman of Queensland
- Human Services Department
- Medical Council of New South Wales
- Medical Radiation Practice Board of Australia
- Paramedicine Board of Australia
- Pharmacy Board of Australia
- Psychology Board of Australia

Section 10 was previously prescribed in section 12, Part 4 and Parts 1 and 2 of Schedule 1 of the Previous Regulations.

Section 11 – Specified bodies—non-compliance with professional standards

Section 106XB of the Act provides for bodies specified in subsections 10(2) and 10(3) of the Principal Regulations to commence action against persons who render professional services that are not compliant with professional standards.

However, in some cases a person (for example, a person occupying the position of the Ombudsman) is specified in the list of bodies under subsections 10(2) and 10(3) of the Principal Regulations, as it is the person who has the power to take action against a non-compliant practitioner and the relevant office (for example, the Office of the Ombudsman) assists the person in performing those functions. To enable such a person to be specified as a body for the purposes of section 11, the Principal Regulations have been amended to cover a body that has the function of assisting a person that has the power to take action against a non-compliant practitioner.

For the purposes of paragraph 106XB(3)(a) of the Act, subsection 11(1)(b) provides for a body that has the function of assisting a person specified in subsection 10(2) of the Principal Regulations.

For the purposes of paragraph 106XB(3)(b) of the Act, subsection 11(2)(b) provides for a body that has the function of assisting a person specified in subsection 10(3) of the Principal Regulations.

Section 11 was previously prescribed in section 13 of the Previous Regulations.

Schedule 1 – Repeals

The Schedule repeals the *Health Insurance (Professional Services Review) Regulations 1999*.

Statement of Compatibility with Human Rights

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

Health Insurance (Professional Services Review Scheme) Regulations 2019

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 (Professional Services Review Scheme) Regulations 2019* (the Principal Regulations) is to repeal and remake the *Health Insurance (Professional Services Review) Regulations 1999* (the Previous Regulations). The Previous Regulations are required to be remade before 1 April 2019, which is when the instrument will sunset under the *Legislation Act 2003*.

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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 Principal Regulations will maintain or advance rights to health and social security by protecting the integrity of Commonwealth Medicare benefits, dental benefits and pharmaceutical benefits programs and protecting patients and the community in general from the risks associated with inappropriate practice.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Greg Hunt

Minister for Health