

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) Regulations 2019

Subsection 133(1) of the *Health Insurance Act 1973* (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 4AA(1) of the Act provides that regulations may prescribe a table of diagnostic imaging services which sets out items of diagnostic imaging services, the fees applicable for each item, and rules for interpreting the table. The table made under this subsection is referred to as the diagnostic imaging services table (DIST).

Subsection 4AA(2) of the Act provides that, unless repealed earlier, the DIST will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is registered on the Federal Register of Legislation (FRL). The *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* (the 2018 Regulations) were registered on 25 June 2018.

Purpose

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2019* (the Regulations) is to repeal the 2018 Regulations and prescribe a new table of diagnostic imaging services from 1 July 2019. This will ensure that Medicare benefits continue to be payable for diagnostic imaging services.

The Regulations will also implement the Government's response to recommendations of the Medicare Benefits Schedule (MBS) Review Taskforce to modify the ultrasound services for acute venous thrombosis and chronic venous disease. This change will support appropriate clinical practice while ensuring patients maintain access to diagnostic services to diagnose a deep vein blood clot, which can cause a pulmonary embolism.

Consultation

Consultation was not undertaken for the remake of this instrument as it is machinery in nature and it does not alter existing arrangements. The change to ultrasound services for acute venous thrombosis and chronic venous disease was subject to consultation through the MBS Review Taskforce consultation framework, which included diagnostic imaging stakeholders.

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

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

The Regulations commence on 1 July 2019.

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

Details of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2019*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2019*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2019.

Section 3 – Authority

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

Section 4 – Diagnostic imaging services table

This section provides that the new table of diagnostic imaging services set out in Schedule 1 be prescribed for subsection 4AA(1) of the Act.

Section 5 – Dictionary

This section provides for a Dictionary in Part 3 of Schedule 1 at the end of the Regulations.

Section 6 – Schedule 2

This section provides that each instrument that is specified in Schedule 2 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 – Diagnostic imaging services table

This part of the Regulations remakes the existing diagnostic services table, which is currently prescribed by the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018*.

Clause 2.1.1 of the Regulations provides that items for the provision of ultrasound services (except items 55600, 55601, 55603 and 55604) are only applicable if the diagnostic imaging procedure (the ultrasound scan) is performed by either:

- a medical practitioner; or
- a person who is named on the Register of Sonographers that is kept by the Chief Executive Medicare, and who performs the procedure on behalf of the medical practitioner.

Under section 32 of the *Human Services (Medicare) Regulations 2017*, a prescribed function of the Chief Executive Medicare is to establish and maintain a register of sonographers. The note under clause 2.1.1 is to clarify that maintaining a register of sonographers is a statutory function of the Chief Executive Medicare. The Register of Sonographers can be accessed on the Australian Sonographer Accreditation Register website at www.asar.com.au/sonographer-info/find-a-sonographer/.

The Regulations will also make the following changes to the existing table.

Restrictions on ultrasound services

Items 55221 and 55244 are ultrasound services for acute venous thrombosis. Items 55222 and 55246 are ultrasound services for chronic venous disease. The Regulations will restrict an acute venous thrombosis from being co-claimed with a chronic venous disease item to reflect appropriate clinical practice.

Schedule 2 – Repeals

This section repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018*.

Statement of Compatibility with Human Rights

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

Health Insurance (Diagnostic Imaging Services Table) Regulations 2019

This Regulation 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

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The Regulations will also implement the Government's response to recommendations of the Medicare Benefits Schedule Review Taskforce to modify the ultrasound services for acute venous thrombosis and chronic venous disease. This change will support appropriate clinical practice while ensuring patients maintain access to diagnostic services to diagnosis a deep vein blood clot, which can cause a pulmonary embolism.

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 maintain rights to health and social security by ensuring access to publicly subsidised diagnostic imaging services which are clinically and cost-effective.

Conclusion

This instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

Greg Hunt

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