

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) 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 sets out items of medical services, the fees applicable for each item, and rules for interpreting the table. The table made under this subsection is referred to as the general medical services table (GMST).

Subsection 4(2) of the Act provides that, unless repealed earlier, the GMST will cease to be in force and will be taken to have been repealed on the day following the 15<sup>th</sup> 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 (General Medical Services Table) Regulations 2018* (the 2018 Regulations) were registered on 13 June 2018.

#### **Purpose**

The purpose of the *Health Insurance (General Medical Services Table) Regulations 2019* (the Regulations) is to repeal the 2018 Regulations and prescribe a new table of medical services from 1 July 2019. This will ensure that Medicare benefits continue to be payable for medical services performed by general practitioners (GPs), specialists and consultant physicians.

The Regulations will also implement Government policy regarding Medicare indexation. In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. The Regulations will commence the third phase of this measure by implementing indexation of procedural and therapeutic items from 1 July 2019. Indexation of items which had re-commenced in earlier phases will also be continued. This includes the GP bulk-billing incentive items, standard GP consultations (attendances in group A1) and specialist attendances.

#### **Consultation**

Consultation was not undertaken for the remake of this instrument as it is machinery in nature and it does not alter existing arrangements. Consultation was undertaken on indexation as part of the compacts Government negotiated with the Australian Medical Association and the Royal Australian College of General Practitioners.

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*

## ATTACHMENT

**Details of the *Health Insurance (General Medical Services Table) Regulations 2019***Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (General Medical 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 – General medical services table

This section provides that the new table of medical services set out in Schedule 1 be prescribed for subsection 4(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 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 – General medical services table

This part of the Regulations remakes the existing general medical services table, which is currently prescribed by the *Health Insurance (General Medical Services Table) Regulations 2018*.

In addition, the Regulations will commence the third phase of the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure by indexing almost 4,000 items across procedural and therapeutic services, standard GP consultations (attendances in group A1), specialist attendances and the GP bulk billing incentive items.

**Application of items 16590, 16591 and 16407**

As part of an antenatal (items 16590 and 16591) or a postnatal (item 16407) service, it is expected that a medical practitioner is required to enquire about the mental wellbeing of the patient and undertake a more comprehensive assessment where agreed to by the patient. This would include a discussion about factors that pose a significant risk to mental health, such as drug and alcohol use and domestic violence.

This would then enable monitoring or referral for appropriate assessment, support and treatment, and facilitate education about the inherent risks of drug and alcohol misuse in pregnancy.

It is not intended that the screening for drug and alcohol use would require diagnostic testing of the patient. It is also not intended that a patient would be ineligible for Medicare benefits if the patient declines to receive a comprehensive mental health assessment. In that scenario, a Medicare benefit would still be payable providing the medical practitioner had enquired about the patient's mental wellbeing.

Further guidance around the claiming of items under Medicare can be obtained in the explanatory notes that are available at [www.mbsonline.gov.au](http://www.mbsonline.gov.au).

### Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical 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 (General Medical 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**

The purpose of the *Health Insurance (General Medical Services Table) Regulations 2019* (the Regulations) is to repeal the *Health Insurance (General Medical Services Table) Regulations 2018* and prescribe a new table of medical services from 1 July 2019. This will ensure that Medicare benefits continue to be payable for medical services performed by GPs, specialists and consultant physicians.

The Regulations will also implement Government policy regarding Medicare indexation. In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. The Regulations will commence the third phase of this measure by implementing indexation of procedural and therapeutic items from 1 July 2019. Indexation of items which had re-commenced in earlier phases will also be continued. This includes the GP bulk-billing incentive items, standard GP consultations (attendances in group A1) and specialist attendances.

#### **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 medical 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**

**Minister for Health**