

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*

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Subsection 4(2) of the Act provides that, unless repealed earlier, the GMST will cease to be in force and will be taken to have been repealed on the day following the 15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 2019* (the 2019 Regulations) were registered on 9 April 2019.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose**

The purpose of the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020* (the Regulations) is to repeal the 2019 Regulations and prescribe a new table of medical services from 1 May 2020. 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 changes to Government policy and make a number of editorial drafting improvements and machinery amendments. The changes to Government policy include:

- removing obsolete nuclear medicine items, preventing radiologists co-claiming certain attendance items with specified diagnostic imaging services, and changing breast biopsy items; as recommended by the Medicare Benefits Schedule (MBS) Review Taskforce;
- increasing the fee for prostate ablation, as recommended by the Medical Services Advisory Committee (MSAC);
- listing a new MRI-guided biopsy of the prostate service, as recommended by MSAC executive;

- listing a new glaucoma surgery service for insertion of micro-stents in the eye, as recommended by MSAC; and
- including eye movement desensitisation and reprocessing as a psychological therapy under items 2721, 2723, 2725 and 2727, as recommended by MSAC.

### **Consultation**

Consultation was not undertaken in relation to the remake of the GMST as this exercise is machinery in nature and does not alter existing arrangements.

Consultation was undertaken on the changes to diagnostic services that were recommended by the MBS Review Taskforce, and announced in the 2019-20 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule – new and amended listings* measure.

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. Clinical committee reports are released for public consultation to inform the final Taskforce reports and recommendations to Government.

Consultation was undertaken on MSAC recommended changes as part of the application process. MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through listing on the MBS. As part of the MSAC process, consultation is undertaken with professional bodies, consumer groups, the public and clinical experts for applications put forward for consideration.

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 May 2020.

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

## ATTACHMENT

**Details of the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020***Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 May 2020.

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 Schedule 1 to the Regulations sets out the table of medical services for the purposes of subsection 4(1) of the Act.

Section 5 – Schedule 2

This section provides that instruments set out in Schedule 2 are amended or repealed as detailed in that Schedule.

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 2019*.

The Regulations will also implement changes to Government policy and make a number of editorial drafting improvements and machinery amendments. These are outlined in detailed below.

**1. POLICY CHANGES*****Diagnostic changes***

In the 2019-20 Budget, the Government accepted recommendations from the MBS Review Taskforce regarding diagnostic imaging services listed in both the Diagnostic Imaging Services Table (DIST) and the GMST. The changes were announced in the *Guaranteeing Medicare – improved access to diagnostics* measure. The Regulations will make the following changes to implement the GMST component of the measure:

- The removal of eight obsolete nuclear medicine items (12503, 12506, 12509, 12512, 12515, 12518, 12521 and 12530) as they no longer reflect clinical practice.
- Insertion of clause 1.2.3 to prevent specialist radiologists from co-claim consultation items 52, 53, 54, 57, 104 and 105 in the GMST with specified

musculoskeletal ultrasound and diagnostic radiology items in the DIST. Where an attendance is necessary for, and intrinsic to, a procedure (the scan), the attendance should not be co-claimed as a separate service to the diagnostic imaging item. The restriction does not apply to other doctors (such as cardiologists or obstetricians) who may perform diagnostic imaging services.

- The removal of three bore-embloc stereotactic biopsy breast biopsy items (31539, 31542 and 31545) as they no longer reflect clinical practice.
- An increase in the schedule fee for mechanical breast biopsy item 31548 (from \$140.10 to \$200.00) to reflect the higher costs, clinical superiority and technical difficulty of mechanical breast biopsy compared to fine needle aspiration biopsy. This will increase the Medicare benefit for patients requiring this service.

### ***Prostate ablation***

This change is the result of an MSAC recommendation (application 1518) to Government. MSAC recommended that the fees for visual laser ablation of the prostate should be aligned with the fees for transurethral resection of the prostate, due to the similar complexity and technique of the procedures.

The change will increase the fees for prostate ablation items 37207 (from \$880.30 to \$1,058.80) and 37208 (from \$422.70 to \$567.05). This will increase the Medicare benefit for patients requiring these services.

Government announced this change in the 2019-20 Mid-Year Economic and Fiscal Outlook as part of the *Guaranteeing Medicare — Medicare Benefits Schedule — new and amended listings* measure.

### ***MRI-guided biopsy of prostate***

The change adds a new item for biopsy of the prostate when guided by magnetic resonance imaging (item 37226). The fee of \$285.35 is equivalent to the existing ultrasound-guided prostate biopsy item in the GMST (item 37219). The new MRI-guided prostate biopsy item will provide doctors with flexibility to choose the most appropriate image modality to guide biopsy. This change is the result of an MSAC executive recommendation to Government.

Government announced this change in the 2019-20 Mid-Year Economic and Fiscal Outlook as part of the *Guaranteeing Medicare — Medicare Benefits Schedule — new and amended listings* measure.

### ***New glaucoma surgery for insertion of micro-stents in the eye***

This change inserts a new glaucoma item (42504) for the insertion of micro-stents in the eye. The new item is for patients with open angle glaucoma for whom conservative treatment has failed or is contraindicated. This change is the result of an MSAC recommendation (application 1541) to Government. MSAC determined that the micro-bypass glaucoma surgery procedure has an acceptable safety profile and may delay or avoid the need for trabeculectomy (a more invasive procedure) in some patients not adequately controlled with medical therapy.

The new item can be performed by specialists and consultant physicians who have certification and training recognised by the Conjoint Committee for the Recognition of Training in Micro-Bypass Glaucoma Surgery. The Conjoint Committee comprises

representatives from the Australian and New Zealand Glaucoma Society and the Royal Australian and New Zealand College of Ophthalmologists.

Government announced this change in the 2019-20 Mid-Year Economic and Fiscal Outlook as part of the *Guaranteeing Medicare — Medicare Benefits Schedule — new and amended listings* measure.

***Amendment to the definition of focussed psychological strategies***

This change amends the definition of *focussed psychological strategies* to include eye movement desensitisation and reprocessing (a therapy used to treat post-traumatic stress disorder). The addition of eye movement desensitisation and reprocessing (EMDR) to this definition will clarify that eligible patients can access EMDR therapy under items 2721, 2723, 2725 and 2727 in the GMST.

This change will also be applied to the *focussed psychological strategies* Medicare items 80100 to 80170 (allied health services) and items 283, 285, 286, 287, 371 and 372 (other medical practitioner services) which are listed in determinations made under section 3C of the Act.

## **2. EDITORIAL AND MACHINERY CHANGES**

***Removal of item 18365***

This machinery change removes the duplication of the item for the treatment of severe spasticity of the upper limb following a stroke (18365) from the GMST. Patients can continue to access the service under Medicare as the item will be listed in a determination made under section 3C of the Act from 1 May 2020.

***Anaesthesia items***

This machinery change removes item 25015 and replaces it with two new anaesthesia items 25013 and 25014 to clarify the ages of eligible patients.

Item 25015 was amended on 1 November 2019 to expand the eligible age group from patients who are less than 12 months or 70 years and older, to patients who are aged 3 years or less or at least 75 years old. It was intended that this item would cover patients up to and including the day before their fourth birthday.

Following implementation, an ambiguity emerged concerning the item's coverage of patients aged between three and four years. As an interim measure, item 25012 was created through the *Health Insurance (Section 3C General Medical Services – Childhood Access to Anaesthesia) Determination 2019* to provide for coverage for three to four year olds. This determination ceased on 30 April 2020.

To clarify the eligible age cohorts, the Regulations remove item 25015 and list item 25013 for patients under 4 years and item 25014 for patients 75 years or over.

***Colonoscopy items***

In November 2019, changes were made to colonoscopy items to distinguish eligible patient cohorts by appropriate interval screenings, as recommended by the MBS Review Taskforce.

The following machinery changes have been made to items 32084, 32087 and 32224 to clarify their intended purpose and to remove redundant terminology:

- amendment to items 32084 and 32087 to remove the requirement that sigmoidoscopies and colonoscopies must be ‘flexible’ or ‘fibreoptic’. These terms are redundant as all contemporary colonoscopies and sigmoidoscopy use flexible endoscopes with digital technology;
- item 32087 is further amended by deleting “the treatment of radiation proctitis, angiodysplasia or post-polypectomy bleeding by argon plasma coagulation” in the descriptor. This change will clarify that doctors should generally be claiming item 32227 for therapeutic colonoscopy service for the treatment of radiation proctitis, angiodysplasia or post-polypectomy bleeding; and
- amendment to item 32224 to ensure patient entitlement where a certain adenoma is exactly 10 mm in diameter.

### ***Integration of section 3C instruments***

Section 3C of the Act provides that the Minister may, by legislative instrument, determine that a health service not specified in an item in the GMST shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST. As a machinery change, the contents of the following section 3C determinations are integrated into the GMST:

- [\*Health Insurance \(Section 3C General Medical Services – Blue Light Cystoscopy\) Determination 2019\*](#)
- [\*Health Insurance \(Section 3C General Medical Services – Cryopreservation of Semen\) Determination 2018\*](#)
- [\*Health Insurance \(Section 3C General Medical Services – MIGS Stent Implantation\) Determination 2018\*](#)
- [\*Health Insurance \(Section 3C General Medical Services – Unscheduled specialist attendance\) Determination 2019\*](#)
- [\*Health Insurance \(Section 3C General Medical Services – Vigilance Testing\) Determination 2018\*](#)

### ***Removal of subclause 2.22.6(6) and amend item 2713***

This editorial change deletes subclause 2.22.6(6) and amends the descriptor of item 2713 to remove duplication and outdated terminology. There is no change to the requirements of the item. This includes the time requirement (the service must last at least 20 minutes) and the location of the service (consulting rooms).

### **General formatting changes**

A general editorial change has been made to restructure the GMST to improve the legal effectiveness, clarity, and intelligibility to anticipated users.

In the 2019 Regulations, all items in the GMST (approximately 4,000 in total) were included in Part 2. This has been restructured in to six difference parts:

- Part 2 (Attendances).
- Part 3 (Miscellaneous services).
- Part 4 (Diagnostic procedures and investigations).
- Part 5 (Therapeutic procedures).
- Part 6 (Oral and maxillofacial services).

Part 7 of the Regulations is the Dictionary (was Part 3 in the 2019 Regulations). Clauses have been renumbered to reflect the restructure.

### **Editorial changes to attendance descriptors**

Minor editorial changes have been made to the descriptors of most attendance items in the GMST to improve the legal effectiveness, clarity, and intelligibility to anticipated users. This includes:

- standardising the way residential aged care facilities and a person in a residential aged care facility are described in the GMST. The terms “residential aged care facility” and “care recipient” are to replace the multiple expressions used in the 2019 Regulations to describe a person residing in a residential aged care facility. This change will also align the terms used in the GMST with the definition contained in section 41-3 of the *Aged Care Act 1997*;
- replacing the phrasing used to describe the length of a consultation (replacing “duration” with “lasting”);
- removing redundant language, including:
  - removing “each attendance” in items where “attendance” is already specified;
  - deleting “following an initial attendance” after “minor attendance”, which already forms part of the definition of a minor attendance in Part 7 of the GMST; and
- clarifying language (replacing “first”, “second” or “subsequent” attendance with “initial” or “other than initial” attendance).

The minor textual changes apply to general practice attendance items in Groups A1, A2, A6, A17, A30, A19, A20, A27, A22, A23 and A35, and specialist and consultant physician attendance items in Groups A3, A4, A29, A28, A6, A8, A12, A24, A26, A31 and A32.

#### *Incorporation of documents by reference*

Paragraph 15J(2)(c) of the *Legislation Act 2003* provides that all documents referred to in instruments must be described, and an indication given as to how they can be obtained. The following documents have been incorporated by reference into the Regulations, and brief descriptions and access details follow.

- Health assessment incorporated documents (Group A14)

The following screening tools and clinical documents are relevant for the health assessment attendance items in Group A14.

The ‘Australian Type 2 Diabetes Risk Assessment Tool’ as defined in Part 7 of the Regulations. It is a tool developed by the Baker Heart and Diabetes Institute, as existing on 1 May 2020, to identify patients at high risk of type 2 diabetes. It can be viewed at [www.health.gov.au](http://www.health.gov.au).

The ‘ADF Post-discharge GP Health Assessment Tool’ as described in clause 2.15.10 of the Regulations. This document, as existing at 1 May 2020, is a post-discharge health assessment tool designed to assist GPs to identify and diagnose the early onset of physical and/or mental health problems among former serving Australian Defence Force members. It can be viewed at <http://at-ease.dva.gov.au>.

The ‘Mental Health Advice Book’ as described in clause 2.15.10 of the Regulations. This document can be used by GPs undertaking health assessments to assist them to deliver the most effective mental health treatments for former serving Australian Defence Force members. It can be viewed at <http://at-ease.dva.gov.au>.

- Geographical classifications

The ‘Australian Standard Geographical Classification’ as defined in clause 3.2.1 of the Regulations. The July 2011 edition of the publication, as existing on 1 May 2020, can be accessed at the Australian Bureau of Statistics’ website at [https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Standard+Geographical+Classification+\(ASGC\)](https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Standard+Geographical+Classification+(ASGC)). It is used to determine eligibility for bulk billing item 10992.

‘ASGS’, as defined in Part 7 of the Regulations, is the Australian Statistical Geography Standard. The July 2016 edition of the publication, as existing on 1 May 2020, can be accessed at the Australian Bureau of Statistics’ website at [https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Statistical+Geography+Standard+\(ASGS\)](https://www.abs.gov.au/websitedbs/D3310114.nsf/home/Australian+Statistical+Geography+Standard+(ASGS)). The ASGS-RA structure is used as part of the determination of a Modified Monash area, per the definition in the GMST.

The ‘Rural, Remote and Metropolitan Areas Classification’ as defined in Part 7 of the Regulations, as existing on 1 May 2020. RRMA may be accessed at the Department of Health’s website at: <https://www.health.gov.au/health-workforce/health-workforce-classifications/rural-remote-and-metropolitan-area>. It is used to determine eligibility for items 10992, 16400 and telehealth items in Group A8.

‘Telehealth eligible area’, as defined in Part 7 of the Regulations, means an area classified as a telehealth eligible area by the Minister and identified on the Department’s website on 1 May 2020. Telehealth eligible areas can be viewed at [www.health.gov.au](http://www.health.gov.au).

- NOSE scale

‘NOSE scale’, as defined in Part 7 of the Regulations, has the meaning given by clause 5.10.21. The Nasal Obstruction Symptom Evaluation Scale is an assessment tool developed by Stewart et al, as published in *Otolaryngology-Head and Neck Surgery*, 130: 2. It may be accessed at <https://www.entnet.org/sites/default/files/NOSE-Instrument.pdf>

## Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical Services Table) Regulations 2019*.



## ATTACHMENT

**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 (No. 1) 2020***

This 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 Regulations**

The purpose of the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020* (the Regulations) is to repeal the *Health Insurance (General Medical Services Table) Regulations 2019* and prescribe a new table of medical services from 1 May 2020. 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 changes to Government policy and make a number of editorial drafting improvements and machinery amendments. The changes to Government policy include:

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- including eye movement desensitisation and reprocessing as a psychological therapy under items 2721, 2723, 2725 and 2727, as recommended by MSAC.

**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 existing 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 and freedoms recognised or declared in the international instruments in section 3 of the *Human Rights (Parliamentary Scrutiny) Act* 2011 as it maintains existing rights to health and social security.

**Greg Hunt**  
**Minister for Health**