

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance Amendment (2020 Measures No. 1) Regulations 2020

The *Health Insurance Act 1973* (the Act) sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

Subsection 133(1) of 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.

For the purposes of paragraph 10(2)(aa) of the Act, section 28 of the *Health Insurance Regulations 2018* (the HIR) provides the items that have a benefit equal to 100% of the fee in respect of the service.

Subsection 16B(2) of the Act provides a regulation making power to list the kinds of services which can be requested by dental practitioners, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a dental practitioner is prescribed in subsections 39(2), 39(3), 39(4), 39(5) and 39(6) of the HIR.

Subsection 16B(3) of the Act provides a regulation making power to list the kinds of services to which can be requested by chiropractors, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a chiropractor is prescribed in section 40 of the HIR.

Subsection 16B(3A) and 16B(3C) of the Act provides a regulation making power to list the kinds of services to which can be requested by physiotherapists and osteopaths, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a physiotherapist or an osteopath is prescribed in section 41 of the HIR.

Subsection 16B(3B) of the Act provides a regulation making power to list the kinds of services which can be requested by podiatrists, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a podiatrist is prescribed in section 42 of the HIR.

Subsection 16B(3D) of the Act provides a regulation making power to list the kinds of services which can be requested by participating midwives, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a participating midwife is prescribed in section 43 of the HIR.

Subsection 16B(3E) of the Act provides a regulation making power to list the kinds of services which can be requested by participating nurse practitioners, which are defined in subsection 3(1) of the Act. The list of diagnostic imaging services which can be requested by a participating nurse practitioner is prescribed in section 44 of the HIR.

Subsection 16B(11) of the Act provides an exemption to subsection 16B(1) of the Act, which is an exemption to the general diagnostic imaging request requirements for practitioners who rendered at least 50 services between 17 October 1988 and 16 October 1990. The list of diagnostic imaging services which are exempt from subsection 16B(1) of the Act to allow for the continued payment of benefits for the listed services are prescribed in section 45 of the HIR.

Subsection 23DZR(2) of the Act provides a regulation making power to prescribe types of diagnostic imaging equipment that is primary information. Section 74 of the HIR prescribes the types of diagnostic imaging equipment used for specific services listed in the diagnostic imaging services table.

Purpose

The purpose of the *Health Insurance Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations) is to amend the HIR from 1 May 2020 and 1 July 2020.

From 1 May 2020, the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) on diagnostic imaging services will be implemented by the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020* (DIST 2020). These changes were announced in the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

Subject to the changes made in the DIST 2020, Schedule 1, Part 1 of the Regulations will make consequential amendments to remove items that will cease and to insert new items to enable relevant allied health professionals to request the service. These changes will commence on 1 May 2020.

Schedule 1, Part 1 of the Regulations will also add cone beam computed tomography item 57362 to enable approved dental practitioners to request this service from 1 May 2020. This change was recommended by the Medical Services Advisory Committee (MSAC) and approved by Government.

From 1 July 2020, the Government's response to the recommendations of the Expert Advisory Group on Primary Care on voluntary patient enrolment will be implemented. These changes were announced in the 2019-20 Budget under the *Guaranteeing Medicare – strengthening primary care* measure, for a voluntary patient enrolment initiative to support patients aged 70 years and over to formalise their existing relationship with their general practitioner (GP).

In the 2019-20 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – strengthening primary care – expanding access to flexible models of care funding for Indigenous Australians* measure, the Government announced it will extend voluntary patient enrolment to Aboriginal and Torres Strait Islander people aged 50 years and over.

The voluntary patient enrolment is also consistent with the recommendations on enrolment made by the General Practice and Primary Care Clinical Committee of the Medicare Benefits Schedule Review Taskforce.

Six new Medicare Benefits Schedule (MBS) items will be established to provide an enrolment payment and a quarterly payment for patients aged 70 years and over, and for Aboriginal and Torres Strait Islander patients aged 50 years and over. These items will be implemented via an instrument made under section 3C of the Act, and will commence on 1 July 2020.

Schedule 1, Part 2 of the Regulations will add the six new voluntary patient enrolment items into section 28 of the HIR to enable the Medicare benefit to be set at 100% of the schedule fee for the items.

A summary of the changes in the Regulations is outlined below.

1 May 2020 commencement

Remove NK items that will cease

The use of modern diagnostic imaging equipment will be promoted by removing all NK items in the DIST 2020. Currently, items have two different schedule fees (i.e. ‘mirror items’) known as schedule K and schedule NK items. Schedule K items refer to services performed on newer/upgraded equipment and schedule NK items refer to services performed on older/aged equipment. NK items have a lower Medicare rebate than K items.

The removal of schedule NK items will mean that all equipment will need to meet the effective life age or maximum extended life age requirements for Medicare benefits to be payable. Providers will only be able to claim for services performed on newer/upgraded equipment unless they have an exemption. As all NK items will cease, the Regulations will remove all NK items that are listed in the HIR.

Enable podiatrists and participating nurse practitioners to request new unilateral and bilateral musculoskeletal ultrasound services

The current 20 musculoskeletal ultrasound items will be removed, and 40 new musculoskeletal ultrasound items for unilateral and bilateral services will be introduced in the DIST 2020.

The current musculoskeletal ultrasound items incorporate unilateral and bilateral scans in the same item with the same fee, irrespective of whether a unilateral or bilateral scan is undertaken. The new musculoskeletal ultrasound items will provide a service for a unilateral and bilateral scan of the relevant body part.

Subject to this change, the Regulations will amend section 42 of the HIR by removing two musculoskeletal ultrasound items that will cease (55836 and 55840), and by adding eight new musculoskeletal ultrasound items for the foot (55888 to 55895) to enable podiatrists to request the new services.

The Regulations will also amend section 44 of the HIR by removing nine musculoskeletal ultrasound items that will cease (55800, 55804, 55808, 55816, 55820, 55824, 55828, 55832, 55836 and 55840), and by adding the 40 new musculoskeletal ultrasound items (55856 to 55895) to enable nurse practitioners to request the new services.

Enable participating nurse practitioners to request new breast ultrasound services

Two new items (55066 and 55071) will be introduced in the DIST 2020 for a diagnostic ultrasound of the breast and subsequent ultrasound used to guide a biopsy within the one service. A service under these items will allow a diagnostic breast ultrasound to be immediately followed by an ultrasound-guided breast biopsy.

The Regulations will amend section 44 of the HIR by adding the two new breast ultrasound service items (55066 and 55071) to enable participating nurse practitioners to request a service under these items.

Enable dental practitioners to request cone beam computed tomography service

The Regulations will add current cone beam computed tomography (CBCT) item 57362 into subsection 39(3) of the HIR, to enable approved dental practitioners so request this service.

1 July 2020 commencement***Voluntary patient enrolment (VPE) initiative***

To implement voluntary patient enrolment, six new MBS items will be established:

- One enrolment item (90355) and one quarterly item (90365) for patients aged 70 years and over.
- One enrolment item (90350) and one quarterly item (90360) for Aboriginal and Torres Strait Islander patients aged 50 years and over.
- One withdrawal item (90361) when a patient aged 70 years and over ceases their enrolment with the provider.
- One withdrawal item (90362) when an Aboriginal and Torres Strait Islander patient aged 50 years and over ceases their enrolment with the provider.

The Regulations will amend section 28 of the HIR to enable the Medicare benefit to be set at 100% of the schedule fee for the items.

Consultation

Consultation was not undertaken on this instrument as it is machinery in nature. However, consultation was undertaken on the changes to diagnostic imaging 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. The Taskforce endorsed reports were released for public comment prior to finalisation of the recommendations to Government. This was undertaken through the public consultation process during consideration by the Taskforce.

Consultation was undertaken as part of the MSAC application to initially list the CBCT item 57362. MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through listing on the MBS.

The Primary Health Reform Steering Group (Steering Group) was established to provide advice on the development of the Primary Health Care 10 Year Plan, including the voluntary patient enrolment initiative. The Steering Group includes membership from medical practitioner associations and colleges, including the Australian Medical Association and the Royal Australian College of General Practitioners, as well as allied health, rural

health, Aboriginal and Torres Strait Islander and state and territory government representatives. The Steering Group undertook consultation on the development of voluntary patient enrolment as part of its processes.

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*.

Schedule 1, Part 1 of the Regulations commences on 1 May 2020 and Schedule 1, Part 2 of the Regulations commences on 1 July 2020.

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

Details of the *Health Insurance Amendment (2020 Measures No. 1) Regulations 2020*

Section 1 – Name

This section provides that the instrument is the *Health Insurance Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section provides that Schedule 1, Part 1 of the Regulations commences on 1 May 2020 and Schedule 1, Part 2 of the Regulations commences on 1 July 2020.

Section 3 – Authority

This section provides that the 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.

Schedule 1 – Amendments

Part 1 – Amendments commencing 1 May 2020

Health Insurance Regulations 2018 (HIR)

Item [1] – Paragraph 11(b)

Item 1 makes a consequential amendment by omitting reference to group T5 in paragraph 11(b) of section 11, as this group no longer exists in the general medical services table.

Section 11 prescribes services which can be requested by specialist trainees.

Item [2] – Subsection 28(2)

Item 2 makes a consequential amendment by replacing the reference to clause 1.2.9 or 1.2.10 of the diagnostic imaging services table (DIST), to clause 1.2.18 or 1.2.19 in subsection 28(2). The clauses in the DIST have been re-structured to reflect current drafting standards and formatting.

Paragraph 10(2)(aa) of the Act provides a regulation making power to prescribe items as having a benefit equal to 100% of the fee in respect of the service. Diagnostic imaging services are specified subsection 28(2) of the HIR.

Item [3] – Subsection 39(2) (cell at table item 1, column 2)

Item 3 makes a consequential amendment to the table under subsection 39(2) by removing NK items 57530, 57533, 57536, 57539, 57540, 58102, 58302, 58505, 58905, 59734, 59740,

57952, 60501 and 60504. Items 60100 and 60101 are also removed as these items have ceased.

Subsection 39(2) of the HIR lists diagnostic imaging services which can be requested by any dental practitioner, which is defined in subsection 3(1) of the *Health Insurance Act 1973* (the Act).

Item [4] – Subsection 39(3) table

Item 4 repeals and replaces the table in subsection 39(3) of the HIR. The new table in subsection 39(3) makes the following changes:

- In the row that lists group I1 items, NK items 55005, 55008 and 55011 are removed.
- In the row that lists group I2 items, NK items 56227, 56230, 56259, 56541, 56547, 57041, 57047 and 57345 are removed. Cone beam computed tomography item 57362 is added to enable approved dental practitioners so request this service.
- In the row that lists group I3 items, NK items 57705, 57711, 55714, 55717, 58117, 58123, 58124, 58308, 58508, 58529, 58911, 59104, 59704, 60507, 60510 and 61110 are removed. Reference of “60000 to 60010” is amended to “60000 to 60009” to remove NK item 60010.
- In the row that lists group I4 items, NK items 61672, 61690, 61691, 61693, 61694, 61695, 61696, 61702, 61703, 61704, 61705, 61706, 61707 and 61710 are removed.
- In the row that lists group I5 items, NK items 63016 and 63346 are removed. Items 63008 and 63329 are also removed as these items have ceased.

Certain dental practitioners are approved by the Minister under paragraph (b) of the definition of “professional service” in subsection 3(1) of the Act. These approved dental practitioners can request the prescribed diagnostic imaging services in subsection 39(3) of the HIR.

Item [5] – Subsection 39(4) (table item 1, column 2)

Item 5 makes a consequential amendment to the table in subsection 39(4) of the HIR by removing NK item 55005 from the row that lists Group I1 items.

Certain dental practitioners are registered or licensed as prosthodontists under a law of a State or Territory, or recognised by the registering or licensing authority as a specialist of prosthodontics. Subsection 39(4) of the HIR prescribes the diagnostic imaging services which can be requested by these prosthodontists.

Item [6] – Subsection 39(4) (cell at table item 2, column 2)

Item 6 makes a consequential amendment to the table in subsection 39(4) of the HIR by removing NK items 56053, 56056, 56062, 56068 and 57363 from the row that lists group I2 items.

Item [7] – Subsection 39(4) (table item 3, column 2)

Item 7 makes a consequential amendment to the table in subsection 39(4) of the HIR by removing NK item 58308 from the row that lists group I3 items.

Item [8] – Subsection 39(4) (cell at table item 4, column 2)

Item 8 makes a consequential amendment to the table in subsection 39(4) of the HIR by removing NK items 61690, 61691, 61693, 61694, 61695, 61696, 61702, 61703, 61704, 61705, 61706, 61707 and 61710 from the row that lists group I4 items.

Item [9] – Subsection 39(4) (cell at table item 5, column 2)

Item 9 makes a consequential amendment to the table in subsection 39(4) of the HIR by removing NK item 63346 from the row that lists group I5 items. Item 63329 is also removed as this item has ceased.

Item [10] – Subsection 39(4) (note)

Item 10 makes a consequential amendment to subsection 39(4) of the HIR by repealing the note under the table that stipulates that item 63329 is specified in a determination made under subsection 3C(1) of the Act. Item 63329 has ceased and therefore this note is no longer required.

Item [11] – Subsection 39(5) (cell at table item 1, column 2)

Item 11 makes a consequential amendment to subsection 39(5) of the HIR by removing NK items 56062 and 57363 from the row that lists group I2 items.

Certain dental practitioners are registered or licensed as periodontists, endodontists, pedeodontists or orthodontists under a law of a State or Territory, or recognised by the registering or licensing authority as a specialist of periodontics, endodontics, pedoedontics or orthodontics. Subsection 39(5) of the HIR prescribes the diagnostic imaging services which can be requested by these dental practitioners.

Item [12] – Subsection 39(5) (table item 2, column 2)

Item 12 makes a consequential amendment to subsection 39(5) of the HIR by removing NK item 58308 from the row that lists group I3 items.

Item [13] – Subsection 39(5) (table item 3, column 2)

Item 13 makes a consequential amendment to subsection 39(5) of the HIR by removing NK items 61690, 61706 and 61707 from the row that lists group I4 items.

Item [14] – Subsection 39(5) (cell at table item 4, column 2)

Item 14 makes a consequential amendment to subsection 39(5) of the HIR by removing NK item 63346 from the row that lists group I5 items. Item 63329 is also removed as this item has ceased.

Item [15] – Subsection 39(5) (note)

Item 15 makes a consequential amendment to subsection 39(5) of the HIR by repealing the note under the table that stipulates that item 63329 is specified in a determination made under subsection 3C(1) of the Act. Item 63329 has ceased and therefore this note is no longer required.

Item [16] – Subsection 39(6) (table item 1, column 2)

Item 16 makes a consequential amendment to subsection 39(6) of the HIR by removing NK items 55005, 55008 and 55011 from the row that lists group I1 items.

Certain dental practitioners are registered or licensed as oral medicine specialists or oral pathology specialists under a law of a State or Territory, or recognised by the registering or licensing authority as a specialist of oral medicine or oral pathology. Subsection 39(6) of the HIR prescribes the diagnostic imaging services which can be requested by these dental practitioners.

Item [17] – Subsection 39(6) (cell at table item 2, column 2)

Item 17 makes a consequential amendment to subsection 39(6) of the HIR by removing NK items 56041, 56047, 56050, 56053, 56056, 56062, 56068, 56141, 56147, 56341, 56347, 56441, 56447, 57345 and 57363 from the row that lists group I2 items.

Item [18] – Subsection 39(6) (cell at table item 3, column 2)

Item 18 makes a consequential amendment to subsection 39(6) of the HIR by removing NK items 58308, 58508, 58911, 59104, 59704, 60507, 60510 and 61110 from the row that lists group I3 items. Reference of “60000 to 60010” is amended to “60000 to 60009” to remove NK item 60010.

Item [19] – Subsection 39(6) (cell at table item 4, column 2)

Item 19 makes a consequential amendment to subsection 39(6) of the HIR by removing NK items 61672, 61690, 61691, 61693, 61694, 61695, 61696, 61702, 61703, 61704, 61705, 61706, 61707 and 61710 from the row that lists group I4 items.

Item [20] – Subsection 39(6) (cell at table item 5, column 2)

Item 20 makes a consequential amendment to subsection 39(6) of the HIR by removing NK items 63016 and 63346 from the row that lists group I5 items. Items 63308 and 63329 are also removed as these items have ceased.

Item [21] – Subsection 39(6) (note)

Item 21 makes a consequential amendment to subsection 39(6) of the HIR by repealing the note under the table that stipulates that items 63008 and 63329 are specified in a determination made under subsection 3C(1) of the Act. Items 63008 and 63329 have ceased and therefore this note is no longer required.

Item [22] – Section 40 (cell at table item 1, column 2)

Item 22 makes a consequential amendment to section 40 of the HIR by removing NK items 57714, 57717, 58111, 58117 and 58123.

Section 40 of the HIR prescribes diagnostic imaging services which can be requested by a chiropractor, which is defined in subsection 3(1) of the Act.

Item [23] – Section 41 (cell at table item 1, column 2)

Item 23 makes a consequential amendment to section 41 of the HIR by removing NK item 57714, 57717, 58111, 58117, 58123, 58126 and 58127.

Section 41 of the HIR prescribes diagnostic imaging services which can be requested by a physiotherapist or an osteopath, which are defined in subsection 3(1) of the Act.

Item [24] – Section 42 (cell at table item 1, column 2)

Item 24 makes a consequential amendment to section 42 of the HIR by removing NK items 55837, 55841 and 55845 from the row that lists group I1 items. Items 55836 and 55840 will also be removed as these items will cease on 1 May 2020.

Six new items for an ultrasound of the foot (items 55888, 55889, 55890, 55891, 55892, 55893, 55894 and 55895) will be added, as these items will commence on 1 May 2020.

Section 42 of the HIR prescribes diagnostic imaging services which can be requested by a podiatrist, which is defined in subsection 3(1) of the Act.

Item [25] – Section 42 (table item 2, column 2)

Item 25 makes a consequential amendment to section 42 of the HIR by removing NK items 57536, 57539 and 57540 from the row that lists group I3 items.

Item [26] – Section 43 (cell at table item 1, column 2)

Item 26 makes a consequential amendment to section 43 of the HIR by removing NK items 55701, 55710, 55713, 55714 and 55722.

Section 43 of the HIR prescribes diagnostic imaging services which can be requested by a participating midwife, which is defined in subsection 3(1) of the Act.

Item [27] – Section 44 (table)

Item 27 makes an amendment to section 44 of the HIR by repealing and substituting the table that removes items that will cease and includes new items that will commence on 1 May 2020.

The new table makes the following changes:

- In the row that list group I1 items:
 - NK items 55014, 55059, 55061, 55601, 55769, 55801, 55805, 55809, 55813, 55817, 55821, 55825, 55829, 55833, 55837, 55841, 55845, 55849, 55851 and 55853 are removed.
 - Ultrasound items 55800, 55804, 55808, 55816, 55820, 55824, 55828, 55832, 55836 and 55840 are removed as these items will cease on 1 May 2020.
 - Two new ultrasound-guided breast biopsy items 55066 and 55071 are added, as these items will commence on 1 May 2020.
 - Forty new musculoskeletal ultrasound items 55856, 55857, 55858, 55859, 55860, 55861, 55862, 55863, 55864, 55865, 55866, 55867, 55868, 55869, 55870, 55871, 55872, 55873, 55874, 55875, 55876, 55877, 55878, 55879, 55880, 55881, 55882, 55883, 55884, 55885, 55886, 55887, 55888, 55889, 55890, 55891, 55892, 55893, 55894, 55895 are added, as these items will commence on 1 May 2020.
- In the row that lists group I3 items, NK items 57530, 57533, 57536, 57540, 57705, 57711, 57714, 57717 and 58529 will be removed.

Section 44 of the HIR prescribes diagnostic imaging services which can be requested by a participating nurse practitioner, which is defined in subsection 3(1) of the Act.

Item [28] – Section 45 (cell at table item 1, column 2)

Item 28 makes a consequential amendment to section 45 of the HIR by removing NK items 57714, 57717, 57911, 57914, 57917, 57926, 57929, 57935, 58117, 58123, 58124, 58523, 58526, 58529, 58702 and 59104.

X-ray sinus item 57903 and x-ray facial bone item 57912 are removed as these items will cease on 1 May 2020. New x-ray item of the sinuses and facial bone 57907 is added as this item will commence on 1 May 2020.

Section 45 of the HIR provides a list of specified Medicare items that are exempt from subsection 16B(1) of the Act to allow for the continued payment of benefits for the listed services.

Item [29] – Subsection 60(5) (definition of *service time*)

Item 29 makes a consequential amendment to the definition of *service time* in subsection 60(5) by replacing the reference to clause 2.44.4 of the general medical services table to clause 5.9.3. The clauses in the GMST have been re-structured to reflect current drafting standards and formatting.

Item [30] – Section 74 (table items 3 and 4, column 2)

Item 30 makes a consequential amendment to section 74 of the HIR by substituting NK item 57959 with item 57960. This amendment is machinery in nature and will prescribe that:

- diagnostic radiology equipment (x-ray) is used for a service provided under items in subgroups 1, 2, 3 (except items 57960 to 57969), 4 to 9, 12 and 14 of Group I3; and
- diagnostic radiology equipment for orthopantomography is used for a service provided under item 57960 to 57969.

Section 74 of the HIR prescribes the types of diagnostic imaging equipment used for specific services listed in the diagnostic imaging services table. The purpose of recording equipment by type is to ensure that a practice has equipment that is appropriate for use in the rendering of particular diagnostic imaging services.

Part 2 – Amendments commencing 1 July 2020

Health Insurance Regulations 2018 (HIR)

Item [31] – Subsection 28(1) (after table item 28B)

Item 31 inserts a six items 90350, 90355, 90360, 90361, 90362, 90365 into subsection 28(1) of the HIR.

Paragraph 10(2)(aa) of the Act provides a regulation making power to prescribe items as having a benefit equal to 100% of the fee in respect of the service. These items are specified in a table at subsection 28(1) of the HIR.

Statement of Compatibility with Human Rights

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

Health Insurance Amendment (2020 Measure No. 1) Regulations 2020

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 Determination

The purpose of the *Health Insurance Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations) is to amend the HIR from 1 May 2020 and 1 July 2020.

From 1 May 2020, the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) on diagnostic imaging services will be implemented by the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020* (DIST 2020). These changes were announced in the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

Subject to the changes made in the DIST 2020, Schedule 1, Part 1 of the Regulations will make consequential amendments to remove items that will cease and to insert new items to enable relevant allied health professionals to request the service, from 1 May 2020.

Schedule 1, Part 1 of the Regulations will also add cone beam computed tomography item 57362 to enable approved dental practitioners to request this service. This change was recommended by the Medical Services Advisory Committee (MSAC) and approved by Government.

From 1 July 2020, the Government's response to the recommendations of the Expert Advisory Group on Primary Care on voluntary patient enrolment will be implemented. These changes were announced in the 2019-20 Budget under the *Guaranteeing Medicare – strengthening primary care* measure, for a voluntary patient enrolment initiative to support patients aged 70 years and over to formalise their existing relationship with their general practitioner (GP).

In the 2019-20 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – strengthening primary care – expanding access to flexible models of care funding for Indigenous Australians* measure, the Government announced it will extend voluntary patient enrolment to Aboriginal and Torres Strait Islander people aged 50 years and over.

The voluntary patient enrolment is also consistent with the recommendations on enrolment made by the General Practice and Primary Care Clinical Committee of the Medicare Benefits Schedule Review Taskforce.

Six new Medicare Benefits Schedule (MBS) items will be established to provide an enrolment payment and a quarterly payment for patients aged 70 years and over, and for Aboriginal and Torres Strait Islander patients aged 50 years and over. These items will be

implemented via an instrument made under section 3C of the Act, and will commence on 1 July 2020.

Schedule 1, Part 2 of the Regulations will add the six new voluntary patient enrolment items into section 28 of the HIR to enable the Medicare benefit to be set at 100% of the schedule fee for the items.

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

Conclusion

The Regulations are compatible with human rights as they maintain the right to health and the right to social security.

Greg Hunt
Minister for Health