

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020

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). The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020*.

Purpose

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (the Regulations) is to repeal and remake the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020* to prescribe a new table of diagnostic imaging services. The Regulations will also implement Government policy by increasing the schedule fee by 1.5 percent for some diagnostic imaging services. This means that patients will receive a higher Medicare benefit for these services from 1 July 2020.

Consultation

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits for computed tomography, mammography, fluoroscopy and interventional radiology under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure.

In the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure, the Government announced that it would expand indexation to ultrasound and x-ray diagnostic imaging services from 1 July 2020.

The Regulations will continue the Government's policy regarding indexation by indexing the schedule fees for these diagnostic imaging services.

No consultation was undertaken on this instrument as it continues the business-as-usual implementation of the Government's policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year. The complete list of all indexed schedule fees will be distributed to stakeholders through the Medicare Benefits Schedule xml data file.

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

The Regulations commence on 1 July 2020.

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

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

Details of the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

Section 2 – Commencement

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

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 – 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 (No. 1) 2020*.

Clause 1.2.13 of the Regulations, which provides for a review by the Administrative Appeals Tribunal (AAT) regarding reconsideration of decisions made by the Secretary in relation to exemptions on diagnostic imaging equipment, has been amended to ensure proprietors of diagnostic imaging practices can also apply to the AAT if they are not satisfied with a reconsideration decision to set aside and substitute a decision by the Secretary.

Currently, recourse to the AAT is only available where the Secretary has reaffirmed the previous decision. That is, if the Secretary refuses to grant an exemption in respect of diagnostic imaging equipment, or refuses to extend the exemption period of an exemption in respect of diagnostic imaging equipment.

The additional pathway to the AAT ensures that proprietors have appeal rights for any adverse reconsideration decision made by the Secretary.

The Regulations also amend computed tomography (CT) spiral angiography item 57351 to clarify the policy intent of the item that a general practitioner does not need to discuss the case with the specialist or consultant physician in order to request the service.

The requesting requirements will continue for the three CT spiral angiography items for different anatomical areas (57352, 57353 and 57354), as this was recommended by the clinician-led Medicare Benefits Schedule (MBS) Review Taskforce and announced in the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

Part 4 of the Regulations provides that exemptions that were granted prior to 1 July 2020 under the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020* will continue to apply, and exemptions that were granted prior to 1 May 2020 under the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2019* will continue to apply.

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

Indexation

The Regulations also continue the Government's indexation measure by indexing the schedule fee for all diagnostic imaging services, except nuclear medicine imaging and MRI, by 1.5 per cent.

As part of stage four of the Government's health care package to protect all Australians from the coronavirus (COVID-19), the schedule fees for the bulk-billing incentive items were temporarily increased, in line with the other measures for COVID-19 Medicare services, to encourage medical practitioners to provide bulk-billed services.

The proposed Regulations apply a 1.5 per cent increase to the temporarily increased bulk-billing incentive items 64990 and 64991. The temporary increase ceases on 30 September 2020, unless earlier revoked. Once the temporary increase is removed from these items the 1.5 per cent increase will be added to the 2019 scheduled fee amount for these items.

Schedule 2 – Repeals

This section repeals the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020*.

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 (No. 2) 2020

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 (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (the Regulations) is to repeal the 2020 Regulations and prescribe a new table of diagnostic imaging services to implement Government policy regarding indexation from 1 July 2020.

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits for computed tomography, mammography, fluoroscopy and interventional radiology under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure.

In the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure, the Government announced that it would expand indexation to ultrasound and x-ray diagnostic imaging services from 1 July 2020.

The Regulations will increase the fees of Medicare Benefits Schedule (MBS) items for all ultrasound, computed tomography and other diagnostic imaging services, except nuclear medicine imaging and magnetic resonance imaging (MRI), by 1.5 per cent. This is part of the Government's policy regarding Medicare indexation.

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

Minister for Health