

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (Pathology Services Table) Amendment (Indexation) Regulations 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 4A(1) of the Act provides that regulations may prescribe a table of pathology services which set out items of pathology services, the fees applicable for each item, and rules for interpreting the table. The table made under this subsection is referred to as the pathology services table (PST). The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 2020*.

#### **Purpose**

The purpose of the *Health Insurance (Pathology Services Table) Amendment (Indexation) Regulations 2020* (the Amendment Regulations) is to amend the *Health Insurance (Pathology Services Table) Regulations 2020* to index the schedule fees of two items for the management of bulk-billing pathology services for patients who are either under 16 years old, or who are a Commonwealth concessional beneficiary, to implement Government policy regarding indexation from 1 July 2020.

The Amendment Regulations will increase the fees of two Medicare Benefits Schedule items (74990 and 74991) by 1.5 per cent. The Amendment Regulations will also make an editorial amendment to item 69319 to clarify that two tests or more under item 69494 for a detection of a virus, microbial antigen or microbial nucleic acid are required.

#### **Consultation**

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 continue the Government's policy regarding indexation by indexing the schedule fees of the management of bulk-billing pathology 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*

## ATTACHMENT

**Details of the *Health Insurance (Pathology Services Table) Amendment (Indexation) Regulations 2020*.**Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Pathology Services Table) Amendment (Indexation) Regulations 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 – 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***Health Insurance (Pathology Services Table) Regulations 2020***Item [1] – Clause 2.3.4 of Schedule 1 (item 69319, column 2, paragraph (b))**

Item 1 amends the item descriptor of item 69319 to clarify that 2 or more tests are to be performed under item 69494 for a detection of a virus, microbial antigen or microbial nucleic acid are required.

**Item [2] – Clause 2.12.2 of Schedule 1 (item 74990, column 3)**

Item 2 increases the schedule fee of item 74990 from \$14.10 to \$14.30.

**Item [3] – Clause 2.12.2 of Schedule 1 (item 74991, column 3)**

Item 3 increases the schedule fee of item 74991 from \$21.30 to \$21.60.

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 Regulations apply a 1.5 per cent increase to the temporarily increased bulk-billing incentive items 74990 and 74991. 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.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (Pathology Services Table) Amendment (Indexation) Regulations 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 (Pathology Services Table) Amendment (Indexation) Regulations 2020* (the Amendment Regulations) is to amend the *Health Insurance (Pathology Services Table) Regulations 2020* to index the schedule fees of two items for the management of bulk-billing pathology services for patients who are either under 16 years old, or who are a Commonwealth concessional beneficiary, to implement Government policy regarding indexation from 1 July 2020.

The Amendment Regulations will increase the fees of two Medicare Benefits Schedule items (74990 and 74991) by 1.5 per cent. The Amendment Regulations will also make an editorial amendment to item 69319 to clarify that two tests or more under item 64949 for a detection of a virus, microbial antigen or microbial nucleic acid are required.

#### **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 furthers the right to health and the right to social security because it will increase the Medicare benefit for two items for the management of bulk-billing pathology services for patients who are either under 16 years old, or who are a Commonwealth concessional beneficiary. This will assist patients to continue accessing clinically relevant health services, consistent with the rights to health and social security.

#### **Conclusion**

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

**Greg Hunt**

**Minister for Health**