

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Amendment (General Practitioners) Regulations 2020*

#### **Authority**

The *Health Insurance Amendment (General Practitioners) Regulations 2020* (the Amendment Regulations) are made in accordance with subsection 133(1) of the *Health Insurance Act 1973* (the Act). 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.

The Amendment Regulations are also made in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA 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.

Part 2 of Schedule 1 of the Amendment Regulations will commence at the time Schedule 1 of the *Health Insurance Amendment (General Practitioners and Quality Assurance) Act 2020* (the Amendment Act) commences. Part 2 of Schedule 1 of the Amendment Regulations is enabled by section 4 of the AIA, which provides for a regulation-making power to be exercised prior to the commencement of that power under an Act.

#### **Purpose**

The Amendment Regulations amend the *Health Insurance Regulations 2018* (the Principal Regulations) to remove duplicative requirements for medical practitioners to demonstrate they are a general practitioner in order to gain access to higher Medicare rebates. The Amendment Regulations introduce a streamlined process for Medicare recognition of general practitioners using existing reporting to the Medical Board of Australia (MBA) under the *Health Practitioner Regulation National Law* (National Law) as enacted in each state and territory.

By removing the additional administrative process for recognition under Medicare, general practitioners will be eligible to receive higher Medicare rebates as soon as they are registered under the National Law; and would no longer be reliant on information provided by the Royal Australian College of General Practitioners or Australian College of Rural and Remote Medicine every three years to continue to access higher Medicare rebates. This means that general practitioners will be able to access higher Medicare rebates more simply and efficiently through a single process.

The Amendment Regulations include consequential amendments to the Principal Regulations to provide for a 12 month transitional period for affected medical practitioners to return to the Vocational Register of General Practitioners (VR). The Amendment Regulations provide for

continued recognition of all practitioners whose names are entered in the VR as long as they remain registered appropriately under the National Law.

The Amendment Regulations also provide arrangements to support the commencement of amendments contained in Schedule 1 of the Amendment Act. Part 2 of Schedule 1 of the Amendment Regulations is scheduled to commence after Schedule 1 of the Amendment Act to support the new arrangements for the recognition of general practitioners.

The Amendment Regulations are required to be made before 30 June 2020 in order to support the transition of regulatory arrangements for general practitioners to new arrangements described in the Amendment Act.

## **Background**

The Principal Regulations support the provision of appropriate Medicare services through:

- setting out the mechanisms to support recognition of medical practitioners for the purposes of eligibility for participation in the Medicare Benefits Scheme;
- setting out the calculation of benefits in relation to certain general practitioner, pathology and diagnostic imaging services;
- providing administrative rules about electronic requests for pathology services;
- providing restrictions on practitioners that request diagnostic imaging services;
- setting out applicable processes and registration rules regarding diagnostic imaging premises and radiation oncology equipment;
- setting out administrative rules for the submission of claims for payment of Medicare benefits; and
- providing information on quality assurance activities.

Schedule 1 of the Amendment Act introduces a revised definition of *general practitioner* and removes processes requiring medical practitioners to seek a determination from the Chief Executive Medicare to be recognised as a general practitioner for Medicare Purposes.

## **Consultation**

The Amendment Regulations were developed in-line with the outcomes of consultation undertaken by the Department during the drafting of the *Health Insurance Amendment (General Practitioners and Quality Assurance) Bill 2020* for the Amendment Act. This included consultation with the following key stakeholder groups:

- the Australian Medical Association;
- the Royal Australian College of General Practitioners;
- the Australian College of Rural and Remote Medicine;
- Services Australia,
- the Medical Board of Australia; and
- the Australian Health Practitioner Regulation Agency.

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

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

Part 1 of Schedule 1 of the Amendment Regulations commence on the day the Instrument is registered. Part 2 of Schedule 1 will commence on the same day as Schedule 1 of the Amendment Act.

**Details of the proposed *Health Insurance Amendment (General Practitioners) Regulations 2020***

Section 1 – Name

This section provides that the name of this instrument is the *Health Insurance Amendment (General Practitioners) Regulations 2020* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the entire instrument (except for Part 2 of Schedule 1 of the Amendment Regulations) commences on the day after the instrument is registered.

Part 2 of Schedule 1 of the Amendment Regulations commences at the same time as Schedule 1 of the *Health Insurance Amendment (General Practitioners and Quality Assurance) Act 2020* (the Amendment Act). Schedule 1 of the Amendment Act will commence 12 months after Royal Assent, unless an earlier date is fixed by proclamation. Delayed commencement provides time for affected medical practitioners to comply with new arrangements to maintain their access to higher Medicare rebates.

Section 3 – Authority

This section provides that the Amendment Regulations are made under subsection 133(1) of the *Health Insurance Act 1973* (the Act).

Section 4 – Schedules

Each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Regulations has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Initial amendments

Amendments outlined in Items 1 through 4 of Part 1 of Schedule 1 of the Amendment Regulations commence on the day after the Amendment Regulations are registered. These amendments provide transitional arrangements for medical practitioners to be recognised as general practitioners for Medicare purposes until the commencement of Schedule 1 of the Amendment Act.

**Item 1 – Section 4**

This item repeals the definitions of *predominately in general practice* and *quarter* from section 4 of the *Health Insurance Regulations 2018* (the Principal Regulations).

## Item 2 – Subdivision B of Division 5 of Part 2

Subdivision B of Division 5 of Part 2 of the Principal Regulations provides the criteria for the recognition of vocationally registered general practitioners. This item repeals and replaces sections 19 to 21 of the Principal Regulations. The revised provisions are provided to support the reinstatement of medical practitioners' names in the Vocational Register of General Practitioners (VR) prior to the commencement of Schedule 1 of the Amendment Act.

Section 19 provides for the Australian College of Rural and Remote Medicine (ACRRM) to give the Chief Executive Medicare written notice that an applicant is eligible for recognition as a general practitioner under section 3F(6) of the Act.

Section 19A provides the mechanism and criteria for the Royal Australian College of General Practitioners (RACGP) or ACRRM to advise the Chief Executive Medicare that a medical practitioner is eligible have their name reinstated in the VR under section 3F(6) of the Act. A medical practitioner who wishes to have their name reinstated in the VR must:

- hold general registration as a medical practitioner under the *Health Practitioner Regulation National Law* (National Law) as enacted in each state and territory; and
- meet the continuing professional development (CPD) requirements of the RACGP or ACRRM for the 2017-2019 triennium.

The phrase 'hold general registration' has the meaning intended by Division 1 of Part 7 of the National Law as enacted in each state and territory.

Section 20 provides that, where either the RACGP or ACCRM does not consider a medical practitioner eligible to have their name reinstated in the VR under section 3F(6) of the Act, notice must be given in writing to the Chief Executive Medicare. The Chief Executive Medicare will then be required to inform the applicant of this notice.

There is no appeal mechanism for notices given under section 20 of the Amendment Regulations as the criteria on which a decision is made under subsection 19A(b) are objective. A medical practitioner will be able to make further applications for recognition if they believe they meet the requirements for recognition under section 19A.

Section 21 provides for the Medical Board of Australia (MBA) and ACRRM to give the Chief Executive Medicare written notice that a medical practitioner's name must be removed from the VR under paragraph 3G(1)(b) of the Act.

Section 21A provides the criteria for the MBA, RACGP or ACRRM give notice to the Chief Executive Medicare that a medical practitioner's name must be removed from the VR under paragraphs 3G(1)(b) and (c) of the Act. A medical practitioner's name must be removed from the VR if:

- the medical practitioner ceases to hold general registration under the National Law;
- the medical practitioner's name was entered in the VR because the RACGP had given notice under subsection 3F(6) of the Act and is satisfied that the medical practitioner did not meet its CPD requirements for the 2017-2019 triennium; or
- the medical practitioner's name was entered in the VR because the ACRRM had given notice under subsection 3F(6) of the Act and is satisfied that the medical practitioner did not meet its CPD requirements for the 2017-2019 triennium.

The phrase ‘hold general registration’ has the meaning intended by Division 1 of Part 7 of the National Law as enacted in each state and territory.

### **Item 3 – Part 12 (Heading)**

Part 12 of the Principal Regulations provides for transitional arrangements to be made for parts of the *Health Insurance Regulations 1975* that have been repealed. The Amendment Regulations amend the title of this Part to provide scope to include application and saving provisions to support the transition of Medicare recognition for general practitioners.

### **Item 4 – In the appropriate position in Part 12**

The Amendment Regulations insert a new Division under Part 12 to provide guidance on the application of section 21A described in Item 2. Section 104 makes explicit the intent for section 21A to apply to all practitioners whose names have been entered in the VR regardless of when their name was entered into the VR or any other factor influencing that entry.

### **Part 2 – Later amendments**

Amendments described in Items 5 through 12 of Part 2 of Schedule 2 of the Amendment Regulations will commence at the time Schedule 1 of the Amendment Act commences. These amendments give effect to the policy and legislative intent of the Amendment Act, providing the ongoing mechanism for the recognition of general practitioners for the purposes of the Act.

### **Item 5 – Section 4**

Section 4 of the Principal Regulations provides the definitions of terms used throughout the Principal Regulations. This item repeals the definitions of *accredited training*, *ACRRM* and *authorised officer* from section 4.

### **Item 6 – Division 5 of Part 2**

Division 5 of part 2 of the Principal Regulations provides for the recognition of a medical practitioner as a general practitioner in line with the definition of *general practitioner* in subsection 3(1) of the Act. On commencement of Schedule 1 of the Amendment Act, the definition of *general practitioner* will be amended to be a medical practitioner who is:

- registered under the National Law in the specialty of General Practice; or
- of a kind prescribed by the Regulations.

This Division is repealed and replaced with provisions to maintain access to higher Medicare rebates for medical practitioners whose names were entered in the VR immediately prior to the commencement of Schedule 1 of the Amendment Act.

Section 16 provides for any medical practitioner whose name was entered in the VR and held general registration under the National Law prior to the commencement of Schedule 1 of the Amendment Act to continue to be recognised as a general practitioner within the

definition given in section 3 of the Act; as long as they continue to hold general registration as a medical practitioner under the National Law.

The phrase ‘name was entered in the Vocational Register of General Practitioners’ is used to maintain consistency with previous provisions included in the Principal Regulations in reference to the operation of the VR.

The phrase ‘held general registration’ has the meaning intended by Division 1 of Part 7 of the National Law as enacted in each state and territory.

#### **Items 7 and 9 – Paragraphs 27(b), (d) and (e)**

Section 27 of the Principal Regulations provides the mechanism and criteria for the removal of a medical practitioner’s name from the VR. This item repeals paragraphs 27(b), (d) and (e) from the Principal Regulations.

Paragraph 27(b) is repealed to reflect the removal of section 3D of the Act by the Amendment Act. Paragraphs 27(d) and (e) are repealed to reflect the removal of 17 and 22 of the Principal Regulations by Item 4 of the Amendment Regulations.

#### **Item 8 – Paragraph 27(c)**

This item amends paragraph 27(c) of the Principal Regulations to reflect the removal of paragraphs (d) and (e) by Item 7 of the Amendment Regulations.

#### **Items 10 and 11 – Subsection 63(1) (note 1) and (note 2)**

Subsection 63(1) of the Principal Regulations provides for electronic payments to be made to medical practitioners for provision of Medicare services in certain circumstances.

Note 1 refers to the expanded definition of *general practitioner* provided in section 25 of the Principal Regulations for the purposes of Section 20 of the Act. Schedule 1 of the Amendment Act inserted this expanded definition as subsection 20(7) of the Act. The duplicate reference in section 25 of the Principal Regulations is repealed by Item 6 of the Amendment Regulations.

Note 1 is repealed as it is no longer required for the interpretation of section 20 of the Act.

Note 2 is amended to reflect the removal of Note 1.

#### **Item 12 – Division 2 of Part 12**

Items 1 through 4 of the Amendment Regulations provide transitional arrangements for medical practitioners to be recognised as general practitioners for Medicare purposes until the commencement of Schedule 1 of the Amendment Act. These amendments include section 21A and Division 2 of Part 12.

On commencement of Schedule 1 of the Amendment Act, Item 6 of the proposed Regulations will commence and repeal all provisions contained in Item 2, including section 21A. This Item would repeal Division 2 of Part 12 to reflect the removal of section 21A.

## Statement of Compatibility with Human Rights

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

### **HEALTH INSURANCE AMENDMENT (GENERAL PRACTITIONERS) REGULATIONS 2020 (Amendment Regulations)**

These Amendment Regulations are 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 Amendment Regulations**

The *Health Insurance Amendment (General Practitioners and Quality Assurance) Act 2020* (Amendment Act) simplifies administrative processes for recognition as a specialist general practitioner for purposes of the Medicare Benefits Scheme under the *Health Insurance Act 1973* (the Act) and aligns Medicare eligibility for general practitioners with the National Registration and Accreditation Scheme requirements under the *Health Practitioner Regulation National Law* (the National Law) as enacted in each state and territory.

The Amendment Act provides for a new definition of general practitioner as a medical practitioner who is registered under the National Law in the speciality of general practice or a medical practitioner prescribed by the *Health Insurance Regulations 2018* (the Principal Regulations). The Amendment Regulations introduce a transitional arrangement, providing for the Royal Australian College of General Practitioners (RACGP) or the Australian College of Rural and Remote Medicine (ACRRM) to confirm a medical practitioner's status as a general practitioner to the Chief Executive Medicare if the medical practitioner meets specific requirements. The Amendment Regulations introduce further amendments, timed to commence after Schedule 1 of the Amendment Act that will provide for the ongoing recognition of a medical practitioner as a general practitioner through the registration requirements under the National Law.

The Amendment Regulations also make amendments to the Principal Regulations to remove repetition of legislative provisions in the Act introduced by the Amendment Act.

#### **Human rights implications**

The Amendment Regulations support the Amendment Act to promote the following articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- The right of individuals to the enjoyment of the highest attainable standard of physical and mental health (Article 12);
- The right to work, including the right of everyone to the opportunity to gain a living by work which he/she freely chooses or accepts, and will take appropriate steps to safeguard this right (Article 6)
- The right to of everyone to the enjoyment of just and favourable conditions of work, including equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence (Article 7(c))

#### **Article 12 of the ICESCR**



The right to health includes the obligation to provide timely and appropriate health care, which is ‘available, accessible, acceptable and of a high quality’. Furthermore, accessibility includes both physical accessibility to health services and economic accessibility, namely the provision of health services which are affordable to all.

The Amendment Regulations support the removal of administrative processes in the Act that may impede or delay general practitioner access to higher Medicare rebates, which in turn limits patients’ access to full Medicare benefits for health services available under the Act.

By removing the additional administrative process for recognition under Medicare, general practitioners will be eligible to receive higher Medicare rebates as soon as they are registered under the National Law; and would no longer be reliant on information provided by the RACGP or ACRRM every three years to continue to access higher Medicare rebates. This means that general practitioners anywhere in Australia will be able to access higher Medicare rebates more simply and efficiently through a single process.

### **Articles 6 and 7 of the ICESCR**

The Amendment Regulations support the right to work under Articles 6 and 7(c) of the ICESCR by supporting the rights of general practitioners to gain equitable and timely access to Medicare rebates, which directly affects their employability in private practice. Many practices seek general practitioners who hold and maintain access to higher Medicare rebates as their patients are unable or unwilling to pay out of pocket costs for eligible health services. Previously, access to higher Medicare rebates was conditional on completing duplicative administrative processes. Additionally, such processes could result in delays in accessing rebates, which can impact a general practitioner’s ability to gain and retain work.

The Amendment Regulations support the intent of the Amendment Act to remove the duplicate process and streamline access to higher Medicare rebates for all medical practitioners registered as specialist general practitioners under the National Law. This information is electronically transferred to Services Australia on a routine basis and ensures that general practitioners are able to access and maintain Medicare rebates more simply.

The Amendment Regulations also provide simplified administrative arrangements for those general practitioners who are currently recognised through the Vocational Register of General Practitioners. These practitioners will be able to continue accessing higher Medicare rebates subject to their ability to maintain their general registration as a medical practitioner under the National Law.

### **Conclusion**

The Amendment Regulations promote Articles 6, 7(c) and 12 of the ICESCR and are compatible with human rights.