

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2020 Measures No. 1) 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 4(1) of the Act provides that regulations may prescribe a table of general medical services which sets out items of general 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). The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*.

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. 2) 2020*.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations) is to remove nine Medicare Benefits Schedule (MBS) cardiac items from the DIST and to remove nine cardiac MBS items from the GMST from 1 August 2020. These amendments are part of the Government's response to changes recommended by the clinician-led MBS Review Taskforce (the MBS Review Taskforce).

In the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – strengthening primary care* measure, the Government agreed to a number of recommendations made by the MBS Review Taskforce to change cardiac service items.

The Government agreed that changes will be made to MBS items for cardiac imaging services to better clarify the clinical requirements and circumstances where this testing and repeat testing is appropriate, and to better align with clinical guidelines. New cardiac items to implement these changes will be introduced by a legislative instrument made under section 3C of the *Health Insurance Act 1973*.

The Regulations will remove five echocardiographic items (55113, 55114, 55115, 55116 and 55117), and four nuclear medicine items (61302, 61303, 61306 and 61307)

from the DIST. The Regulations will also remove nine cardiovascular items (11700, 11701, 11702, 11708, 11709, 11710, 11711, 11712 and 11722) from the GMST. Due to the introduction of new cardiac services, these items will no longer be applicable.

Consultation

Consultation was not undertaken on the Regulations as it is machinery in nature. However, extensive consultation was undertaken on the cardiac changes that were recommended by the MBS Review Taskforce, and announced in the 2018-19 MYEFO under the *Guaranteeing Medicare – strengthening primary care* measure.

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The Cardiac Services Clinical Committee (CSCC) report on changes to cardiac services was released for public comment and further consideration taken based on stakeholder feedback. The CSCC report was then presented to the MBS Taskforce for finalisation and endorsement of the recommendations, before being presented to Government.

The Department has also undertaken consultation with key stakeholders on the cardiac changes, including the Cardiac Society of Australia and New Zealand, the Australian Medical Association, the Rural Doctors Association of Australia, the Royal Australian College of General Practice, the Australian and New Zealand Society of Cardiac and Thoracic Surgeons, the Australian Private Hospitals Association, as well as individual practitioners.

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

The Regulations commence on 1 August 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 Legislation Amendment (2020 Measures No. 1) Regulations 2020*Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (2020 Measures No. 1) Regulations 2020*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 August 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 – Diagnostic imaging services table**

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

Item [1] – Schedule 1 (items 55113, 55114, 55115, 55116 and 55117)

Item 1 removes items 55113, 55114, 55115, 55116 and 55117 from Schedule 1 of the DIST.

Item [2] – Clause 2.4.1 of Schedule 1

Item 2 makes a consequential change to clause 2.4.1 by substituting item 61302 with item 61310. Clause 2.4.1 provides circumstances when nuclear imaging services (other than positron emission tomography) are applicable. Item 61302 will be removed from the DIST and will no longer be applicable to clause 2.4.1.

Item [3] – Schedule 1 (items 61302, 61303, 61306 and 61307)

Item 3 removes items 61302, 61303, 61306 and 61307 from Schedule 1 of the DIST.

Item [4] – Schedule 1 (item 61505, column 2, paragraph (c))

Item 4 makes a consequential change to the descriptor of item 61505 by substituting item 61302 with item 61310 in paragraph (c). Items 61302 to 61307 will be removed from the DIST and will no longer be required to be performed in association with item 61505.

Part 2 – General medical services table

Health Insurance (General Medical Services Table) Regulations (No. 2) 2020
(GMST)

Item [5] – Subclause 1.2.6(1) of Schedule 1

Item 5 makes a consequential change to subclause 1.2.6(1) by removing item 11701. Clause 1.2.6 of the GMST provides that medical practitioners must personally attend the service which must be performed on a single occasion. Subclause 1.2.6(1) lists items that apply to this clause. Item 11701 will be removed from the GMST and will no longer be required to be listed in subclause 1.2.6(1).

Item [6] – Subclause 1.2.7(1) of Schedule 1

Item 6 makes a consequential change to subclause 1.2.7(1) by removing items 11701 and 11722. Clause 1.2.7 of the GMST provides that medical practitioners must personally attend the service. This applies regardless if the medical practitioner, or a person on behalf of the medical practitioner, performs the service. Subclause 1.2.7(1) lists items that apply to this clause. Items 11701 and 11722 will be removed from the GMST and will no longer be required to be listed in subclause 1.2.7(1).

Item [7] – Subclause 1.2.11(1) of Schedule 1

Item 7 makes a consequential change to subclause 1.2.11(1) by removing items 11700, 11702, 11708, 11709, 11710, 11711 and 11712. Clause 1.2.11 of the GMST provides services that may be provided by a person other than a medical practitioner. Subclause 1.2.11(1) lists items that apply to this clause. Items 11700, 11702, 11708, 11709, 11710, 11711 and 11712 will be removed from the GMST and will no longer be required to be listed in subclause 1.2.11(1).

Item [8] – Schedule 1 (items 11700, 11701, 11702, 11708, 11709, 11710, 11711 and 11712)

Item 8 removes items 11700, 11701, 11702, 11708, 11709, 11710, 11711 and 11712 from Schedule 1 of the GMST.

Item [9] – Schedule 1 (items 11718 and 11721)

Item 9 makes a consequential change by removing item 11700 from the descriptor of items 11718 and 11721. Item 11700 will be removed from the GMST and the restriction in the provision of a service under item 11700 with item 11718 or 11721 will no longer be applicable.

Item [10] – Schedule 1 (item 11722)

Item 10 removes item 11722 from Schedule 1 of the GMST.

Item [11] – Schedule 1 (item 11727)

Item 11 makes a consequential change by removing item 11700 from the descriptor of item 11727. Item 11700 will be removed and the restriction in the provision of a service under item 11700 with item 11727 will no longer be applicable.

Item [12] – Schedule 1 (item 12203, column 2, paragraph (g))

Item 12 makes a consequential change by removing items 11700 to 11709 from paragraph (g) of the descriptor of item 12203. The restriction for item 12203 that an

overnight diagnostic assessment is not provided to the patient on the same occasion as a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Item [13] – Schedule 1 (item 12204, column 2, paragraph (h))

Item 13 makes a consequential change by removing items 11700 to 11709 from paragraph (h) of the descriptor of item 12204. The restriction for item 12204 that an overnight assessment is not provided to the patient on the same occasion that a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Item [14] – Schedule 1 (item 12205, column 2, paragraph (f))

Item 14 makes a consequential change by removing items 11700 to 11709 from paragraph (f) of the descriptor of item 12205. The restriction for item 12205 that a follow-up study is not provided to the patient on the same occasion as a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Item [15] – Schedule 1 (item 12207, column 2, paragraph (g))

Item 15 makes a consequential change by removing items 11700 to 11709 from paragraph (g) of the descriptor of item 12207. The restriction for item 12207 that the investigation is not provided to the patient on the same occasion as a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Item [16] – Schedule 1 (item 12208, column 2, paragraph (g))

Item 16 makes a consequential change by removing items 11700 to 11709 from paragraph (g) of the descriptor of item 12208. The restriction for item 12208 that the investigation is not provided to the patient on the same occasion as a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Item [17] – Schedule 1 (item 12250, column 2, paragraph (g))

Item 17 makes a consequential change by removing items 11700 to 11709 from paragraph (g) of the descriptor of item 12250. The restriction for item 12250 that the investigation is not provided to the patient on the same occasion as a service under item 11700 to 11709 is provided will no longer be applicable, as these items will be removed.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (2020 Measures No. 1) 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

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In the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – strengthening primary care* measure, the Government agreed to a number of recommendations made by the MBS Review Taskforce to cardiac services.

The Government agreed that changes will be made to MBS items for cardiac imaging services to better clarify the clinical requirements and circumstances where this testing and repeat testing is appropriate, and to better align with clinical guidelines. New cardiac items to implement these changes will be introduced by a legislative instrument made under section 3C of the *Health Insurance Act 1973*.

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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

This instrument maintains rights to health and social security by ensuring access to publicly subsidised health services, which are clinically effective and cost-effective.

Conclusion

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

Greg Hunt

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