**EXPLANATORY STATEMENT**

**Health Insurance Act 1973**

*Health Insurance (Bonded Medical Program) Amendment Rule 2020*

This Rule (the Amendment Rule) amends the *Health Insurance (Bonded Medical Program) Rule 2020* (the Principal Rule). Both are made under Part VD of the *Health Insurance Act 1973* (the Act).

Part VD of theAct establishes the Bonded Medical Program, which is an Australian Government initiative designed to address the doctor shortage across regional, rural and remote areas. Participants receive a Commonwealth supported place in a medical course at an Australian university in return for completion of a return of service commitment to work in regional, rural and remote areas and areas of workforce shortage (referred to as the return of service obligation).

Under Part VD of the Act, the Minister has the power to make rules, known as the Bonded Medical Program rules, to ensure the Bonded Medical Program remains up-to-date, implements the objectives of the program and responds to workforce distribution requirements into the future. Subsection 124ZT(1) of the Act provides that the Minister may make rules about matters that are required or permitted to be dealt with under Part VD of the Act, or that are necessary or convenient for carrying out Part VD of the Act.

The purpose of the Principal Rule is to provide the details necessary to support the operation of the Bonded Medical Program by prescribing:

* the period of time in which a bonded participant must complete their course of study in medicine;
* the requirements for completing a return of service obligation;
* the eligible locations in which a bonded participant must work as a medical practitioner to complete their return of service obligation;
* the circumstances in which a bonded participant may apply for an extension of time to complete their return of service obligation, including the evidential requirements for applying for an extension;
* the circumstances in which work which qualifies for completing a return of service obligation may be scaled;
* the events that a bonded participant must notify to evidence compliance with conditions of the Bonded Medical Program;
* the form in which, and the way in which, information or documents are to be provided to the Department; and
* the interest on the repayment of education costs, where a bonded participant has breached certain conditions or withdraws from the Bonded Medical Program.

**Background**

Part VD of the Act provides for existing participants of the Bonded Medical Places (BMP) and Medical Rural Bonded Scholarship (MRBS) schemes to voluntarily opt in to the Bonded Medical Program. If the Secretary agrees to an existing participant opting in to the statutory scheme, the person is then subject to the provisions of the statutory scheme.

From 1 January 2020, new participants will be able to participate in the Bonded Medical Program. A new participant will enter the Bonded Medical Program as a first year student in a course of study in medicine at a participating Australian university.

To be eligible to participate, a person must have accepted a bonded Commonwealth supported place in a course of study in medicine at an Australian university, be an Australian citizen or permanent visa holder and agree to participate in the program using a web-portal maintained by the Department.

A participant is required to work as a medical practitioner in eligible locations for a total period of three (3) years. Former participants of the Bonded Medical Places (BMP) scheme who entered the scheme in the years 2016-2019 (inclusive) agreed to a 12 month return of service obligation. These participants will retain their 12 month return of service obligation under the Bonded Medical Program should they voluntarily opt in.

Under the Bonded Medical Program, the return of service obligation must be completed within 18 years from when the participant completes their course of study in medicine at an Australian university, but may be completed in a series of periods. The period of 18 years to complete the return of service obligation may be extended in limited circumstances only where the participant or a family member has a medical condition that prevents the participant from completing their return of service obligation within the 18 years provided.

A participant will be subject to a number of conditions including that they must complete their course of study in medicine at an Australian university; the return of service obligation must be completed in accordance with the Principal Rule and the participant must give information or documents to the Department in particular circumstances.

Where a participant withdraws from their course of study in medicine after the census date of the second year of study, the participant will be liable to pay the Commonwealth the cost of the participant’s course of study for the years or part year (semester) of study undertaken, plus interest.

Where a participant does not complete their return of service within 18 years from completion of their course of study (or an extended period), the person will be liable to pay the Commonwealth the cost of the person’s course of study that was funded by the Commonwealth, less a pro-rata proportion of the return of service obligation completed, plus interest; or, the cost of the Commonwealth funded scholarship plus interest, as applicable.

Medicare benefits will not be payable to a MRBS participant who opts in to the Bonded Medical Program and does not complete their return of service within 18 years. Medicare benefits will not be payable for six (6) years from the day the breach occurs.

Under the Bonded Medical Program, a participant who fails to comply with a condition to provide the Department with information or documents may be liable for an administrative penalty of $10,000. The participant will receive reminders and warnings over a reasonable period of time prior to the issuing of an administrative penalty.

A decision made under Part VD of the Act may be reviewed by the Secretary and certain specified decisions can be reviewed by the Administrative Appeals Tribunal.

**Commencement**

Sections 1 to 4 and items 1 to 2 of Schedule 1 of the Amendment Rule will commence on the day after the instrument is registered.

Item 3 of Schedule 1 is taken to have commenced retrospectively on 1 January 2020.

**Consultation**

Implementation of the new administrative arrangements continues to be informed by the program’s Implementation Working Group which meets regularly to ensure that key stakeholders are consulted and fully briefed on the reform and implementation process.

Formal consultation with key stakeholders is well established and active engagement with stakeholder groups will continue and is supported by an extensive communication strategy.

The Amendment Rule is supported by key stakeholders, including the Australian Medical Association, Australian Medical Students Association, and the National Rural Health Students Network.

**ATTACHMENT A**

***Health Insurance (Bonded Medical Program) Amendment Rule 2020***

**Section 1         Name**

Section 1 provides that the name of the instrument is the *Health Insurance (Bonded Medical Program) Amendment Rule 2020*.

**Section 2         Commencement**

Section 2 provides that sections 1 to 4 and items 1 to 2 of Schedule 1 commence on the day after the instrument is registered.

Item 3 of Schedule 1 is taken to have commenced retrospectively on 1 January 2020.

**Section 3         Authority**

Section 3 provides that the instrument is made under subsection 124ZT(1) of the Act.

**Section 4** **Schedule**

Section 4 provides that the Amendment Rule amends the Principal Rule in the manner set out in the Schedule.

**SCHEDULE 1 - AMENDMENTS**

**Item 1 – Paragraph 12(1)(b)**

This item amends paragraph 12(1)(b) of the Principal Rule. This item removes the discretion that was previously conferred on the Secretary to determine whether a person satisfies the criteria in paragraph 12(1)(b) of the Principal Rule.

**Item 2 – Subsection 12(2)**

This item amends subsection 12(2) of the Principal Rule. In order to establish that a person is a member of a bonded participant’s family, the bonded participant must provide evidence that the requirements in subsection 12(1) are satisfied.

**Item 3 – Transitional Provisions**

This item inserts new transitional provisions into the Principal Rule.

The new transitional provisions apply while elements of the Department’s web portal, the Bonded Return of Service System (BRoSS), are not yet functional so that a bonded participant cannot enter information or upload evidence into BRoSS.

Under paragraph 124ZG(1)(d) of the Act, bonded participants are required to give information or documents to the Department in accordance with the Principal Rule. Sections 15 and 16 of the Principal Rule set out the various reporting requirements and relevant reporting timeframes.

Under paragraph 124ZK(1)(b) of the Act, a person is liable for an administrative penalty if they fail to give information or documents to the Department, in accordance with the Principal Rule. The transitional provisions apply retrospectively to suspend the operation of a particular reporting requirement until BRoSS has the functionality needed for a bonded participant to comply with it and they are therefore for the benefit of bonded participants.

The transitional provisions cease to operate at the end of 30 June 2021. By this date, it is intended that BRoSS will be fully functional.

## **Statement of Compatibility with Human Rights**

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

**HEALTH INSURANCE (BONDED MEDICAL PROGRAM) AMENDMENT RULE 2020**

This 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 Legislative Instrument**

This legislative instrument, the *Health Insurance (Bonded Medical Program) Amendment Rule 2020*, is made under subsection 124ZT(1) of the *Health Insurance Act 1973* (the Act).

This legislative instrument amends the *Health Insurance (Bonded Medical Program) Rule 2020* (the Principal Rule).

This legislative instrument deals with two matters:

1. It amends paragraph 12(1)(b) to remove the discretion previously conferred on the Secretary to determine whether a person satisfies the criteria in paragraph 12(1)(b) of the Principal Rule. The Amendment Rule additionally amends subsection 12(2) of the Principal Rule so that in order to establish that a person is a member of a bonded participant’s family, the bonded participant must provide evidence that the requirements in subsection 12(1) are satisfied.
2. It introduces new transitional provisions that are intended to provide additional time for bonded participants to meet their reporting obligations, while elements of the Department’s web portal (the Bonded Return of Service System (BRoSS)) are not yet functional. The transitional provisions cease to operate at the end of 30 June 2021. By this date, it is intended that BRoSS will be fully functional.

**Human rights implications**

This legislative instrument engages the following Articles of the International Covenant on Economic Social and Cultural Rights (ICESCR):

* Article 6 (1 and 2) – the right to work; and
* Article 10 (1 and 3) – the right to protection and assistance.

*The Right to Work*

The right to work is contained in Part III, Article 6 (1 and 2) of the ICESCR. There is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Analysis

New participants to the program agree to participate voluntarily and receive a Commonwealth supported place at university in return for fulfilment of a commitment to complete their return of service obligation, that is, to work in regional, rural or remote locations or areas of workforce shortage**.** The Bonded Medical Program allows participants to complete their return of service obligation over a total of 18 years.

Participants can apply to the Secretary for an extension of the 18 year period in which to complete their return of service obligations if a participant or a participants’ family member has a medical condition that prevents the bonded participant from completing their return of service obligation within the 18 year period.

The Principal Rule provides that a member of a participant’s family means a partner, child, grandchild, grandparent or sibling of a participant, or a person determined by the Secretary to satisfy a list of prescribed criteria.

This legislative instrument removes the Secretary’s ability to determine who may constitute a member of the participant’s family, and instead requires a bonded participant to provide evidence that a person is the participant’s family member. The amendments provide greater certainty around which individuals would be recognised as family members of the bonded participant.

The changes simplify the process to seek an extension of time and may positively impact a participant’s right to work as an extension affords the participant greater flexibility and freedom with respect to where they may work. Additionally, a participant may more easily remain working in a location where they are able to provide care to a family member who has a serious illness.

*The Right to Protection and Assistance*

The right to protection and assistance, in particular for families, children and young people, is contained in Part III, Article 10 (1 and 3) of the ICESCR. There is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Analysis

The changes may positively impact the right to protection and assistance, especially in relation to families, children and young people. In particular, an extension of time may place a bonded participant in a stronger position to provide protection and assistance to a family member who has a serious illness.

**Conclusion**

The legislative instrument is compatible with human rights, noting that the limitations placed on voluntary participants of the Bonded Medical Program are considered reasonable, necessary and proportionate to the objectives of the program and benefits to the participant and the Australian public.

**The Hon Greg Hunt MP, Minister for Health**