

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021*

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*. This regulation will be remade from 1 July 2021 and will be titled the *Health Insurance (General Medical Services Table) Regulations 2021*.

#### **Purpose**

The purpose of the *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021* (the Regulations) is to implement the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) relating to orthopaedic services.

The majority of these changes will be implemented by the *Health Insurance (General Medical Services Table) Regulations 2021* (the GMST remake). The Regulations will ensure that all recommendations approved by the Taskforce will commence from 1 July 2021 by increasing the fees of five orthopaedic items (47465, 47027, 47045, 47033 and 47465). The fees for these five items have been increased to accurately reflect the complexity and time required to perform the procedures.

The Regulations will also reinstate item 47960, which is for a tenotomy procedure to lengthen the Achilles tendon, which is currently not listed in the GMST remake. Reinstating the item is necessary to prevent service gaps for patients requiring tenotomy procedures not covered under other items in the Schedule.

The Regulations will also apply indexation to the agreed fee amounts to align with all 1 July 2021 orthopaedic changes. Indexation will be applied at a rate of 0.9 per cent. This change is administrative in nature and will reflect the Government's policy regarding indexation. It will also ensure that services are not inappropriately claimed.

### **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.

In the 2020-21 Budget, the Government announced its response to the Taskforce recommendations on orthopaedic services under the *Guaranteeing Medicare — Medicare Benefits Schedule review* measure.

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The clinical committee reports were released for public consultation to inform the final Taskforce reports and recommendations to Government.

The orthopaedic recommendations were informed through public consultation on the report of the Orthopaedic Clinical Committee. The Orthopaedic Implementation Liaison Groups (OSILG) involving professional bodies and clinical experts have also been consulted to inform development of the Regulations.

Further amendments arising from the OSILG recommendations were announced in Budget 2021-22 under the *Guaranteeing Medicare: Updating the MBS* measure.

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

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

The Regulations commence immediately after the commencement of the *Health Insurance (General Medical Services Table) Regulations 2021*.

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

## ATTACHMENT

### **Details of the *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021***

#### Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021*.

#### Section 2 – Commencement

This section provides for the Regulations to commence immediately after the commencement of the *Health Insurance (General Medical Services Table) Regulations 2021*.

#### 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 (General Medical Services Table) Regulations 2021***

**Item 1** amends the fee amount in paragraph 1.2.4(2)(c) of Schedule 1 of the general medical services table (the GMST) from \$309.35 to \$312.15.

**Item 2** amends the fee amount for item 47027 in the GMST from \$274.25 to \$676.05.

**Item 3** amends the fee amount for item 47033 in the GMST from \$274.25 to \$676.05.

**Item 4** amends the fee amount for item 47045 in the GMST from \$156.85 to \$438.55.

**Item 5** amends the fee amount for item 47465 in the GMST from \$235.15 to \$538.80.

**Item 6** inserts item 47960, which is for a tenotomy procedure, after item 47956 into the GMST.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021***

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 (General Medical Services Table) Amendment (2021 Measures No. 1) Regulations 2021* (the Regulations) is to implement the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) relating to orthopaedic services.

The majority of these changes will be implemented by the *Health Insurance (General Medical Services Table) Regulations 2021* (the GMST remake). The Regulations will ensure that all recommendations approved by the Taskforce will commence from 1 July 2021 by increasing the fees of five orthopaedic items (47465, 47027, 47045, 47033 and 47465). The fees for these five items have been increased to accurately reflect the complexity and time required to perform the procedures.

The Regulations will also reinstate item 47960, which is for a tenotomy procedure to lengthen the Achilles tendon, which is currently not listed in the GMST remake. Reinstating the item is necessary to prevent service gaps for patients requiring tenotomy procedures not covered under other items in the Schedule.

The Regulations will also apply indexation to the agreed fee amounts to align with all 1 July 2021 orthopaedic changes. Indexation will be applied at a rate of 0.9 per cent. This change is administrative in nature and will reflect the Government's policy regarding indexation. It will also ensure that services are not inappropriately claimed.

#### **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.

### *The right of equality and non-discrimination*

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Analysis

The Regulations maintain rights to health and social security by ensuring access to publicly subsidised general medical services 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 and Aged Care**