

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Aged Care

*Health Insurance Act 1973*

*Health Insurance Amendment (Fees) 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.

The *Health Insurance Amendment (Fees) Regulations 2020* (Amendment Regulations) are made in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA) to amend the *Health Insurance Regulations 2018* (Principal Regulations). This part of the AIA provides for a power to make a legislative instrument in an Act of parliament to be taken to refer to a power to modify, amend, repeal or otherwise vary any such instrument.

The Amendment Regulations commence on 1 July 2021.

### **Purpose**

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 Medicare;
- setting out the calculation of benefits in relation to certain general practitioner, pathology and diagnostic imaging services;
- providing administrative rules for clarity around 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.

The Amendment Regulations include consequential amendments to the Principal Regulations to repeal the \$30 fee prescribed in Sections 14 and 15. The fee is paid by specialists and consultant physicians when they attain fellowship of a specialist medical college and apply for access to higher Medicare rebates. Under the current process the medical practitioner is required to pay the fee by cheque or money order.

During the COVID-19 pandemic it became evident that this outdated method of payment was impractical during periods of restricted movement in the community.

Removing the fee removes the cost for specialists and consultant physicians and reduces the administrative burden for Services Australia.

The Amendment Regulations commence on 1 July 2021 in order to support the removal of the prescribed fee contained in the *Health Insurance Amendment (Prescribed Fee) Act 2021*.

### **Consultation**

The Amendment Regulations were developed consistently with the outcomes of consultation during the drafting of the Bill for the Amendment Act. The Council of Presidents of Medical Colleges and the Australian Medical Association were consulted on the Bill for the Amendment Act.

Details of the Amendment Regulations are set out in the Attachment.

The Act specifies no conditions which need to be met before the power to make the Amendment Regulations may be exercised.

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

The Amendment Regulations commence at the same time as the *Health Insurance Amendment (Prescribed Fee) Act 2021*.

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

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

Section 1 - Name of Regulations

This section provides that the Regulations may be cited as the *Health Insurance Amendment (Fees) Regulations 2021* (Amendment Regulations).

Section 2 - Commencement

This section provides for Sections 1 to 3 of the Amendment Regulations to commence 1 July 2021 at the same time as the *Health Insurance Amendment (Prescribed Fee) Act 2021*.

Section 3 - Authority

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

Making of the Amendment Regulations under the Act is consistent with subsection 33(3) of the *Acts Interpretation Act 1901* which provides that a reference to a power to make a legislative instrument is to be interpreted as a power to modify, amend, repeal or otherwise vary any such instrument.

Section 4 - Schedule(s)

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

Section 14 and 15 of the *Health Insurance Regulations 2018* specifies the application fee (\$30) that is required to be paid by medical practitioners who apply to be recognised as a specialist or a consultant physician for the purposes of access to higher Medicare rebates. These sections are now repealed as a result of the prescribed fee being removed from the Act.

### **Item 1 – Division 4 – Recognition of medical practitioners as specialists and consultant physicians - Sections 14 and 15**

This item repealed Section 14 and 15 removing reference to the amount of the prescribed fee.

## Statement of Compatibility with Human Rights

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

### HEALTH INSURANCE AMENDMENT (PRESCRIBED FEES) BILL 2021

The Health Insurance Amendment (Prescribed Fees) Bill 2021 (the Bill) 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 Bill

The Bill removes references to the prescribed fee from the *Health Insurance Act 1973* (the Act) to simplify recognition of specialists and consultant physicians for access to Medicare Benefit Schedule items.

#### Human rights implications

This Bill promotes 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 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 Bill amends the Act to remove administrative processes that may impede or delay specialist and consultant physician access to higher Medicare rebates, which in turn limits patients’ accessibility to full Medicare benefits for health services available under the Act. By removing the additional administrative process for the prescribed fee for recognition as a specialist or consultant physician, these practitioners can be registered for higher Medicare benefits more efficiently. This means that the patients of specialists or consultant physicians anywhere in Australia can access higher Medicare rebates more simply.

Access to higher Medicare rebates assists in reducing the out of pocket costs for patients by maximising the patient rebate available through Medicare.

#### Articles 6 and 7 of the ICESCR

The Bill supports the right to work under Articles 6 and 7(c) of the ICESCR by supporting the rights of specialists and consultant physicians to gain equitable and timely access to Medicare rebates, which directly affects their employability in private practice.

The Bill streamlines access to higher Medicare rebates for all specialists and consultant physicians by removing the prescribed fee. The Bill also provides simplified and clearer administrative arrangements for medical practitioners who wish to pursue higher qualifications, specifically the attainment of Fellowship, and to access Medicare rebates commensurate to this additional qualification.

**Conclusion**

This Bill promotes Articles 6, 7(c) and 12 of the ICESCR and limits the rights in Article 17(2) of the ICCPR. The Bill is compatible with human rights.

**The Hon Greg Hunt MP, Minister for Health and Aged Care**