

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 2) 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 2021*.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 2) Regulations 2021* (the Regulations) is to amend the general medical services table to make minor amendments to orthopaedic services to reflect the policy intent of these services, which were recommended by the MBS Review Taskforce (the Taskforce).

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 changes included restructuring the existing items to reflect contemporary practice, ensuring services are clinically appropriate and improving quality of care and safety for patients. These changes were implemented on 1 July 2021 by the *Health Insurance (General Medical Services Table) Regulations 2021*.

The Regulations will ensure that all Tasforce recommendations approved by Government are implemented by making the following minor amendments:

- Removing the reference to item 50303 from clause 5.10.25, as a 12 month restriction no longer applies to a service under this item, which is for limb lengthening by gradual distraction.
- Amending item 47069, which is for the treatment of a dislocated toe, to clarify that the service is to be performed by a closed reduction, as opposed to an open reduction.
- Amending item 49730, which is for joint surgery, to clarify that the service includes arthroscopy of the hindfoot and the first metatarsophalangeal joint, and that the ankle is excluded.

Consultation

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the Medicare Benefits Schedule (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.

Consultation on the Regulations was not undertaken as these changes are administrative in nature, as they will reflect the policy intent of the services.

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 the day after the instrument is registered.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Amendment (2021 Measures No. 2) 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. 2) Regulations 2021*.

Section 2 – Commencement

This section provides for the Regulations to commence the day after the instrument is registered.

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 repeals and replaces clause 5.10.25 to remove the restriction that a service under item 50303 is applicable once in a 12 month period for each limb. The updated clause continues the restriction that items 50200 and 50201 do not apply if the same provider has provided the same service to a patient more than once in the previous 12 months.

Item 2 amends the item descriptor of item 47069 to provide that the service is performed by a closed reduction, instead of an open reduction.

Item 3 amends the item descriptor of item 49730 to provide that the service includes arthroscopy of the hindfoot and the first metatarsophalangeal joint, and that the ankle is excluded.

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. 2) 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

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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.

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