

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (Rural Bulk-billing Incentive) 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*.

Section 4AA 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 section 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*.

Section 4A of the Act provides that regulations may prescribe a table of pathology services which set out items of pathology services, the fees applicable for each item, and rules for interpreting the table. The table made under this section is referred to as the pathology services table (PST). The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 2020*.

### **Purpose**

The purpose of the *Health Insurance Legislation Amendment (Rural Bulk-billing Incentive) Regulations 2021* (the Regulations) is to amend the GMST, DIST and PST to make changes to the bulk-billing incentives to encourage medical practitioners, commonly general practitioners (GPs), to bulk-bill unreferred medical services performed on a Commonwealth concession card holder or a child under 16.

The Regulations will amend the GMST, DIST and PST to increase the bulk-billing incentive doctors working in rural and remote areas will receive. The Regulations will:

- Make no change to the bulk-billing incentive item (10990, 64990, 74990) for doctors in metropolitan areas.
- Amend the bulk-billing incentive items, which were previously for services rendered outside of metropolitan areas, to services rendered by doctors in

Modified Monash area 2 (10991, 64991, 74991). The fees for these items will remain at 150% of the fee for the relevant metropolitan area item.

- Amend the after hours bulk-billing incentive item 10992 to specify that the item applies to a service rendered in a Modified Monash 2 to 7 area if the medical practitioner has travelled from a practice location outside those areas (i.e. a metropolitan area).
- Create new items for doctors in Modified Monash areas 3 and 4 (75855, 64992, 75861) which is 160% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 5 (75856, 64993, 75862) which is 170% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 6 (75857, 64994, 75863) which is 180% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 7 (75858, 64995, 75864) which is 190% of the fee for the metropolitan area item.

These changes will encourage rural and remote medical practitioners to perform medical services that do not have additional out-of-pocket costs for certain patients. The change recognises the challenge in operating in these areas; including higher operating costs, smaller patient populations, and the increased scope of clinical practice.

These changes were announced in the 2021-22 Budget under the *Guaranteeing Medicare – strengthening the rural health workforce* measure.

### **Consultation**

The Department has undertaken consultation with key stakeholders on the changes, including the Rural Doctors Association of Australia.

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 will commence on 1 January 2022.

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

## ATTACHMENT

### ***Details of the Health Insurance Legislation Amendment (Rural Bulk-billing Incentive) Regulations 2021***

#### Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (Rural Bulk-billing Incentive) Regulations 2021*.

#### Section 2 – Commencement

This section provides for the Regulations to commence on 1 January 2022.

#### 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 – Rural bulk-billing incentive

Schedule 1 makes changes to the general medical services table (GMST), diagnostic imaging services table (DIST), and the pathology services table to implement changes to the rural and remote bulk-billing incentive (RBBI) items.

Under these changes, items 10991, 64991, 74991 of the GMST, DIST and PST respectively will each be amended to limit their use to bulk-billed services performed on certain patient in a Modified Monash 2 area only. Twelve RBBI items with a greater fee will be inserted into the DIST, GMST and PST (four in each table) to cater for bulk-billed services performed in a Modified Monash 3 or 4, 5, 6, or 7 area.

**Amendments items 1 to 8** make changes to the DIST, **amendment items 9 to 23** make changes to the GMST, and **amendment items 24 to 29** make changes to the PST.

**Amendment item 1** amends subclauses 1.2.20(3) and 1.2.21(10) of the DIST to clarify that these clauses do not apply to new RBBI items 64992, 64993, 64994 or 64995 (refer to **amendment item 8** of the Regulations) in addition to items 64990 and 64991.

Clause 1.2.20 specifies how schedule fees in the DIST apply to multiple vascular ultrasound services performed for the same patient on the same day.

Clause 1.2.21 specifies how schedule fees are to be discounted for multiple diagnostic imaging services and requested diagnostic imaging services and attendance services conducted for the same patient on the same day.

**Amendment item 2** repeals and replaces the heading for clause 2.6.1 of the DIST to change the heading from ‘Restriction on items 64990 and 64991’ to ‘Application of items 64900, 64991, 64992, 64993, 64994 or 64995’.

**Amendment item 3** repeals subclause 2.6.1(1) of the DIST, which provides a co-claiming restriction against 64990 and 64991 when claimed on the same service. These claiming restrictions will be moved to the item descriptors of items 64990 and 64991 (refer to **amendment items 5 and 6** of the Regulations).

**Amendment item 4** amends subclause 2.6.1(2) of the DIST to specify that if item 64990, 64991, 64992, 64993, 64994 or 64995 applies to a diagnostic imaging service, the fee mentioned in that item applies in addition to the fee mentioned in another item in the DIST.

**Amendment item 5** amends the metropolitan bulk-billing incentive item 64990 to apply a co-claiming restriction against new RBBI items 64992, 64993, 64994 or 64995 (refer to **amendment item 8** of the Regulations).

**Amendment items 6 and 7** amend bulk-billing incentive item 64991 to specify that the item applies where a service is provided at, or from, a practice location in a Modified Monash 2 area and applies a co-claiming restriction against new RBBI items 64992, 64993, 64994 or 64995 (refer to **amendment item 8** of the Regulations).

**Amendment item 8** inserts new RBBI items 64992, 64993, 64994 and 64995 into Group I6 of the DIST. Under the new items, medical practitioners providing unreferral diagnostic imaging services in rural towns and remote areas will have access to a higher bulk-billing incentive as compared to their metropolitan counterparts. The bulk-billing incentive is only payable for a service rendered to a Commonwealth concession card holder or a child under 16 that is bulk billed.

New RBBI item 64992 will apply to a service provided at, or from, a practice location in a Modified Monash 3 or 4 area with a schedule fee of \$11.55. Item 64992 will not apply where items 64990, 64991, 64993, 64994 or 64995 apply.

New RBBI item 64993 will apply to a service provided at, or from, a practice location in a Modified Monash 5 area with a schedule fee of \$12.25. Item 64993 will not apply where items 64990, 64991, 64992, 64994 or 64995 apply.

New RBBI item 64994 will apply to a service provided at, or from, a practice location in a Modified Monash 6 area with a schedule fee of \$13.00. Item 64994 will not apply where items 64990, 64991, 64992, 64993 or 64995 apply.

New RBBI item 64995 will apply to a service provided at, or from, a practice location in a Modified Monash 7 area with a schedule fee of \$14.25. Item 64995 will not apply where items 64990, 64991, 64992, 64993 or 64994 also apply.

**Amendment item 9** repeals the definitions of ‘ASGC’, ‘designated area’, ‘SLA’ and ‘SSD’ from clause 3.2.1 of the GMST as these definitions will be obsolete (refer to **amendment item 23** of the Regulations).

**Amendment item 10** repeals and replaces clause 3.2.2 of the GMST, which currently provides restrictions on items 10990, 10991 and 10992, to instead provide for the application of items 10990, 10991, 10992, 75855, 75856, 75857 and 75858. Under the amended clause, if item 10990, 10991, 10992, 75855, 75856, 75857 or 75858 applies to a medical service, the fee mentioned in that item applies in addition to the fee mentioned in another item in the GMST.

The claiming restrictions described under subclauses 3.2.2(1) and 3.2.2(2) will be moved to the item descriptors of those items (refer to **amendment items 11 and 14** of the Regulations).

**Amendment items 11, 12 and 13** amend the metropolitan bulk-billing incentive item 10990 to apply a co-claiming restriction against new GMST RBBI items 75855, 75856, 75857 or 75858 (refer to **amendment item 21** of the Regulations), and make administrative changes to the item descriptor.

**Amendment items 14, 15, 16 and 17** amend bulk-billing incentive item 10991 to specify that the item applies where a service is provided at, or from, a practice location in a Modified Monash 2 area and apply a co-claiming restriction against new RBBI items 75855, 75856, 75857 or 75858 (refer to **amendment item 21** of the Regulations), and make administrative changes to the item descriptor.

**Amendment items 18, 19 and 20** amend the after hours bulk-billing item (10992) to specify that the item applies to a service rendered in a Modified Monash 2 to 7 area if the medical practitioner has travelled from a practice location outside those areas (i.e. a metropolitan area), and make administrative changes to the item descriptor.

Item 10992 currently uses designated areas to describe prescribed locations. This amendment will align item 10992 with the other bulk-billing incentive items which use a location requirement.

**Amendment item 21** inserts new RBBI items 75855, 75856, 75857 and 75858 into Group M1 of the GMST. Under the new items, medical practitioners providing unreferral medical services working in rural towns and remote areas will have access to a higher bulk-billing incentive as compared to their metropolitan counterparts. The bulk-billing incentive is only payable for a service rendered to a Commonwealth concession card holder or a child under 16 that is bulk billed.

New RBBI item 75855 will apply to a service provided at, or from, a practice location in a Modified Monash 3 or 4 area with a schedule fee of \$12.30. Item 75855 will not apply where items 10990, 10991, 10992, 75856, 75857 or 75858 apply.

New RBBI item 75856 will apply to a service provided at, or from, a practice location in a Modified Monash 5 area with a schedule fee of \$13.10. Item 75856 will not apply where items 10990, 10991, 10992, 75855, 75857 or 75858 apply.

New RBBI item 75857 will apply to a service provided at, or from, a practice location in a Modified Monash 6 area with a schedule fee of \$13.85. Item 75857 will not apply where items 10990, 10991, 10992, 75855, 75856 or 75858 apply.

New RBBI item 75858 will apply to a service provided at, or from, a practice location in a Modified Monash 7 area with a schedule fee of \$14.65. Item 75858 will not apply where items 10990, 10991, 10992, 75855, 75856 or 75857 apply.

**Amendment item 22** amends clause 5.5.3 of the GMST, which provides timing and provider restrictions on item 16400, to clarify provide that item 16400 does not apply in conjunction with new RBBI items 75855, 75856, 75857 or 75858 (refer to **amendment item 21** of the Regulations) in addition to 10990, 10991 and 10992.

**Amendment item 23** repeals the definitions of ASGC, designated area, SLA, and SSD from clause 7.1.1 of the GMST, which is the Dictionary, as these definitions will be obsolete (refer to **amendment items 9 and 20** of the Regulations).

**Amendment item 24** amends clause 1.2.2 of the PST, which specifies requirements for when services rendered following multiple requests are to be taken to have been rendered following a single request, to provide that items 74990, 74991, 75861, 75862, 75863 and 75864 do not apply to this provision.

**Amendment item 25** repeals and replaces clause 2.12.1 of the PST to provide that if item 74990, 74991, 75861, 75862, 75863 or 75864 applies to a pathology service, the fee mentioned in that item applies in addition to the fee mentioned in another item in the PST that applies to the service.

The claiming restrictions described under paragraph 2.12.1(a) will be moved to the item descriptors of those items (refer to **amendment items 26 and 27** of the Regulations).

**Amendment item 26** amends the metropolitan bulk-billing incentive item 74990 to apply a co-claiming restriction against new RBBI items 75861, 75862, 75863 or 75864 (refer to **amendment item 29** of the Regulations).

**Amendment items 27 and 28** amend bulk-billing incentive item 74991 to specify that the item applies where a service is provided at, or from, a practice location in a Modified Monash 2 area and apply a co-claiming restriction against new RBBI items 75861, 75862, 75863 or 75864 (refer to **amendment item 29** of the Regulations).

**Amendment item 29** inserts new RBBI items 75861, 75862, 75863 and 75864 into Group P12 of the PST. Under the new items, medical practitioners providing point-of-care pathology services working in rural towns and remote areas will have access to a higher bulk-billing incentive as compared to their metropolitan counterparts. The bulk-billing incentive is only payable for a service rendered to a Commonwealth concession card holder or a child under 16 that is bulk billed.

New RBBI item 75861 will apply to a service provided at, or from, a practice location in a Modified Monash 3 or 4 area with a schedule fee of \$11.55. Item 75861 will not apply where items 74990, 74991, 75862, 75863 or 75864 apply.

New RBBI item 75862 will apply to a service provided at, or from, a practice location in a Modified Monash 5 area with a schedule fee of \$12.25. Item 75862 will not apply where items 74990, 74991, 75861, 75863 or 75864 apply.

New RBBI item 75863 will apply to a service provided at, or from, a practice location in a Modified Monash 6 area with a schedule fee of \$13.00. Item 75863 will not apply where items 74990, 74991, 75861, 75862 or 75864 apply.

New RBBI item 75864 will apply to a service provided at, or from, a practice location in a Modified Monash 7 area with a schedule fee of \$14.25. Item 75864 will not apply where items 74990, 74991, 75861, 75862 or 75863 apply.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance Legislation Amendment (Rural Bulk Billing Incentive) 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 Legislation Amendment (Rural Bulk Billing Incentive) Regulations 2021* (the Regulations) is to amend the GMST, DIST and PST to make changes to the bulk-billing incentives to encourage medical practitioners, commonly general practitioners (GPs), to bulk-bill unreferred medical services performed on a Commonwealth concession card holder or a child under 16.

The Regulations will amend the GMST, DIST and PST to increase the bulk-billing incentive doctors working in rural and remote areas will receive. The Regulations will:

- Make no change to the bulk-billing incentive item (10990, 64990, 74990) for doctors in metropolitan areas.
- Amend the bulk-billing incentive items, which were previously for services rendered outside of metropolitan service, to services rendered by doctors in Modified Monash area 2 (10991, 64991, 74991). The fees for these items will remain at 150% of the fee for the relevant metropolitan area item.
- Amend the after hours bulk-billing incentive item 10992 to specify that the item applies to a service rendered in a Modified Monash 2 to 7 area if the medical practitioner has travelled from a practice location outside those areas (i.e. a metropolitan area).
- Create new items for doctors in Modified Monash areas 3 and 4 (75855, 64992, 75861) which is 160% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 5 (75856, 64993, 75862) which is 170% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 6 (75857, 64994, 75863) which is 180% of the fee for the relevant metropolitan area item.
- Create new items for doctors in Modified Monash area 7 (75858, 64995, 75864) which is 190% of the fee for the metropolitan area item.

These changes will encourage rural and remote medical practitioners to perform medical services that do not have additional out-of-pocket costs for certain patients. The change recognises the challenge in operating in these areas; including higher operating costs, smaller patient populations, and the increased scope of clinical practice.

These changes were announced in the 2021-22 Budget under the *Guaranteeing Medicare – strengthening the rural health workforce* measure.



## **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 positively affect rights to health and social security by encouraging medical practitioners in remote and rural areas to bulk-bill unreferral medical services performed on a Commonwealth concession card holder or a child under 16.

**Conclusion**

This instrument is compatible with human rights because it advances arrangements and the protection of human rights by increasing the investment in the existing arrangements.

**Greg Hunt**

**Minister for Health and Aged Care**