

## **EXPLANATORY STATEMENT**

### *Health Insurance Act 1973*

#### *Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) 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.

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*.

#### **Purpose**

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2021* (the Regulations) is to amend the DIST from 1 May 2022. The Regulations will repeal the exemptions for rural and remote areas from the diagnostic imaging equipment and capital sensitivity provisions within the DIST.

The Regulations align with recommendations from the Diagnostic Imaging Clinical Committee (DICC) of the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) in 2019 that Medicare benefits no longer be paid for diagnostic imaging services rendered on equipment that has exceeded its prescribed life age. This ensures patients in rural and remote areas will have access to the same quality diagnostic imaging services as patients in metropolitan areas.

The capital sensitivity recommendations were announced by Government in the 2019-20 Budget under the *Guaranteeing Medicare – improved access to diagnostic imaging* measure.

The majority of changes announced under this measure were implemented on 1 May 2020. The changes to the rural and remote area diagnostic imaging equipment and capital sensitivity requirements, initially scheduled to commence on 1 May 2021, were deferred to 1 May 2022 due to impacts arising from the COVID-19 pandemic.

#### **Consultation**

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The DICC report was released for consultation between

14 September 2018 and 23 November 2018 to inform the Taskforce recommendations to Government.

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 May 2022.

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

## ATTACHMENT

### ***Details of the Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2021***

#### Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2021*.

#### Section 2 – Commencement

This section provides for the Regulations to commence on 1 May 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 – Amendments

Schedule 1 makes changes to the diagnostic imaging services table (DIST) to remove the exemptions from the diagnostic imaging equipment capital sensitivity requirements for rural and remote areas.

These changes were recommended by the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) and announced by Government in the 2019-20 Budget under the *Guaranteeing Medicare – improved access to diagnostic imaging* measure.

**Amendment Item 1** repeals clauses 1.2.3, 1.2.5 and 1.2.6 of the DIST. This change will remove the exemptions from the diagnostic imaging capital sensitivity requirements for rural and remote areas.

Clause 1.2.1 places restrictions on items for services performed on aged equipment, for outer regional, remote and very remote areas and Norfolk Island. Clause 1.2.3 provides for circumstances where an exemption to clause 1.2.1 may be provided.

Clause 1.2.5 provides the requirements for diagnostic imaging proprietors to apply for an exemption to capital sensitivity requirements in inner regional areas.

Clause 1.2.6 provides the requirements for considering exemptions to capital sensitivity if the Secretary has received an application under clause 1.2.5.

**Amendment Item 2** amends paragraph 1.2.11(1)(a) to remove a consequential reference to clause 1.2.6 which will be repealed (refer to **amendment item 1** of the Regulations).

**Amendment Item 3** amends the definition of ‘exemption period’ to remove a reference to clause 1.5.5B, which no longer exists in the DIST. Under this change, an exemption period means the period mentioned in paragraph 1.2.8(2)(a) (as extended under clause 1.2.10 if applicable). This change is minor and administrative in nature.

**Amendment Item 4** repeals Part 4 of Schedule 1 which provides application, saving and transitional provisions for the DIST. Part 4 of Schedule 1 only includes transitional provisions for capital sensitivity requirements. The transitional provisions preserve a right where a valid application for exemption from capital sensitivity requirements was made. As the exemptions from capital sensitivity requirements will be repealed transitional provisions are no longer required, and Part 4 of Schedule 1 will also be repealed.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) 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 (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2021* (the Regulations) is to amend the DIST from 1 May 2022. The Regulations will repeal the exemptions for rural and remote areas from the diagnostic imaging equipment and capital sensitivity provisions within the DIST.

The Regulations align with recommendations from the Diagnostic Imaging Clinical Committee (DICC) of the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) in 2019 that Medicare benefits no longer be paid for diagnostic imaging services rendered on equipment that has exceeded its prescribed life age. This ensures patients in rural and remote areas will have access to the same quality diagnostic imaging services as patients in metropolitan areas.

The capital sensitivity recommendations were announced by Government in the 2019-20 Budget under the *Guaranteeing Medicare – improved access to diagnostic imaging* measure.

The majority of changes announced under this measure were implemented on 1 May 2020. The changes to the rural and remote area diagnostic imaging equipment and capital sensitivity requirements, initially scheduled to commence on 1 May 2021, were deferred to 1 May 2022 due to impacts arising from the COVID-19 pandemic.

#### **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 to be understood as 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 patients in rural and remote areas will have access to the same quality diagnostic imaging services as patients in metropolitan areas.

#### **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**