

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2021 Measures No. 3) 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 (2021 Measures No. 3) Regulations 2021* (the Regulations) is to amend the GMST, DIST and PST to remove certain telehealth items, and make minor policy and administrative changes.

Changes to specialist and consultant physician telehealth services

Schedule 2 of the Regulations remove older, more limited specialist items which provide a 50% fee loading for video attendances provided to patients in certain geographical areas and specific settings. These services were introduced from 2011, with the loadings to support the higher cost of video calls and hardware for providing telehealth services. The removal of these items and associated fee loadings reflect technological advances since this time, broad adoption of telehealth under a range of new items, and encourage practitioners to use similar services on the MBS which more accurately reflect contemporary technologies with no change to service or patient access.

These changes also remove the associated patient-end support services by GPs that can be claimed in conjunction with the specialist telehealth items that attract the 50% fee loading.

Patient end support services continue to be available including those provided by a practice nurse, an Aboriginal health worker or an Aboriginal and Torres Strait Islander health practitioner on behalf of a medical practitioner. These support services will be retained for video consultations with a specialist, consultant physician or psychiatrist in a range of settings including residential aged care facilities.

Other policy changes

The Regulations amend the GMST to make other Government policy changes. This includes:

- increasing the schedule fee for a cardiac lead extraction service (item 38358) and amending the requirement of a cardio- thoracic attendance service (item 90300) to prevent it from being claimed by a cardiothoracic surgeon if they also performed the lead extraction service; and
- amending item 51071 to allow for the removal of an extradural lesion or tumour where the pathology is confirmed by histology.

Administrative changes

The Regulations amend the GMST, DIST and PST to make administrative changes to better align with the original policy intent of the service. This includes:

- inserting notes into the DIST and PST to clarify that items listed in the applicable groups were indexed as at 1 July 2021;
- amending diagnostic imaging item 61560 to clarify the service is an R-type diagnostic imaging service;
- updating references to the ‘Australian Defence Force Post-discharge GP Health Assessment’ tool in the GMST to the ‘Veteran’s Health Check’ tool to reflect the renaming of the tool by the Department of Veterans’ Affairs;
- amending orthopaedic item 49200 to remove the reference to bone grafting in alignment with recommendations from the MBS Review Taskforce Orthopaedic Clinical Committee, which reflects Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure;
- amending orthopaedic surgery item 49851 to clarify the service allows for an assistant by adding the term ‘Assist.’, which reflects Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure;
- amending the fee of three autologous fat grafting items (45534, 45535 and 45589) to ensure the 1 July 2021 indexation value is appropriately applied to these items, which reflects Government policy as announced in the 2017-18 Budget *Guaranteeing Medicare – Medicare Benefits Schedule – indexation* measure;
- amending right heart catheterisation item 38254 to clarify it can be performed in conjunction with percutaneous coronary intervention services 38307, 38308, 38310, 38311, 38313 or 38314 in certain instances, which reflects Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure;

- amending endoscopic mucosal reduction item 32230 to clarify the service is to be performed within a period of six months following a diagnostic colonoscopy service (items 32222, 32223, 32224, 32225, 32226 or 32228), which reflects Government policy as announced in the 2021-22 Budget under the *Guaranteeing Medicare – changes to the Medicare Benefit Schedule* measure;
- introducing a claiming frequency restriction which prescribes that item 66551 cannot be claimed by a patient if they have received a total of four glycated haemoglobin (HbA1c) testing items performed in the management of established diabetes (66551, 73812 or 73826) in the last 12 months and amending item 66551;
- amending cardiothoracic surgery item 38519 to ensure patients receive a Medicare benefit under all circumstances when an existing prosthetic heart valve is explanted immediately prior to a new valve being implanted; and
- amending cardiothoracic surgery item 38643 to ensure a Medicare benefit is available under all circumstances when a patient requires the division of thoracic cavity adhesions.

Consultation

The Department has consulted with peak medical specialist groups on the changes to the older specialist telehealth items. This included the Australian Medical Association, the Royal Australasian College of Physicians, Royal Australasian College of Surgeons and the Royal Australian and New Zealand College of Psychiatrists.

Consultation on the changes to cardiothoracic surgery items 38358 and 90300 was undertaken with the Australian and New Zealand Society of Cardiac and Thoracic Surgeons and Cardiac Society of Australia and New Zealand.

The change to item 51071 is being made in response to a 12 month post-implementation assessment of the MBS Review Taskforce recommended amendments to the spinal surgery schedule. During this assessment, it was agreed that the item descriptor for this service should be further clarified to support removal of primary extradural tumours or lesions.

The Department consulted with the Australian and New Zealand Society of Cardiac and Thoracic Surgeons and a representative from the Cardiac Services Clinical Committee on the changes to cardiothoracic surgery items 38519 and 38643.

The Department consulted with the Royal College of Pathologists of Australasia, Australian Pathology and Public Pathology Australia, regarding the change to glycated haemoglobin testing item 66551.

No consultation was undertaken on the remaining changes made to the DIST and GMST in Schedule 1, as the changes described are considered minor and administrative in nature and reflect the original 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 will commence on 1 January 2022.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2021 Measures No. 3) Regulations 2021*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (2021 Measures No. 3) 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 – Amendments

Schedule 1 – Miscellaneous amendments

Schedule 1 makes changes to the general medical services table (GMST), diagnostic imaging services table (DIST) and pathology services table (PST) to make minor Government policy and administrative changes. **Amendment items 1 to 5** make changes to the DIST, **Amendment items 6 to 24** make changes to the GMST and **amendment items 25 to 27** make changes to the PST.

Amendment items 1 to 3 and 5 insert a note into multiple clauses of the DIST to clarify that the fees of items in groups to which the clause applies were indexed as at 1 July 2021. This change is considered minor and administrative in nature.

Amendment item 4 amends diagnostic imaging item 61560 to clarify the service is an R-type diagnostic imaging service. This change will clarify the policy intent of the service and is considered minor and administrative in nature.

Amendment items 6 to 11 make consequential amendments to the GMST to update references to the Australian Defence Force Post-Discharge GP Health Assessment to instead refer to the Veteran Health Check tool. This change aligns with administrative changes by the Department of Veterans' Affairs and is considered minor and administrative in nature.

The Veteran Health Check tool can be viewed on the Department of Veterans' Affairs website at <http://dva.gov.au>, as at 1 January 2022.

Amendment item 12 amends endoscopic mucosal reduction item 32230 to clarify the policy intent of the service. The intent for item 32230 is that a service under this item is to occur within a six-month period following a service to which a diagnostic colonoscopy item (32222, 32223, 32224, 32225, 32226 or 32228) applies.

This reflects current medical practice as there is often a gap in time between the diagnostic colonoscopy and the endoscopic mucosal reduction. The gap is common as a patient cannot give informed consent to the subsequent procedure if the patient is under neurolept anaesthesia.

Amendment item 13 amends cardiothoracic surgery item 38254, which is for right heart catheterisation, to allow it to be claimed in association with a percutaneous coronary intervention service under items 38307, 38308, 38310, 38311, 38313 or 38314.

This change will allow a Medicare benefit to be paid for certain instances of clinical practice where right heart catheterisation is required to be performed in conjunction with percutaneous coronary interventions that include selective (diagnostic) angiography.

Amendment items 14, 23 and 24 make minor policy changes to increase the schedule fee for a cardiac lead extraction service (item 38358) and amend the requirement of cardio-thoracic attendance service (item 90300) to prevent it from being claimed by a cardiothoracic surgeon if they also performed the lead extraction service.

Amendment item 14 will increase the fee for item 38358 from \$2,089 to \$2,984.25 as cardiothoracic surgeons will no longer be able to co-claim the attendance fee if they perform the lead extraction procedure. **Amendments 23 and 24** will correct typographical errors in the item descriptor of item 90300 and clarify that an attendance cannot be claimed by a cardiothoracic surgeon if they are the principal surgeon for the cardiothoracic surgery (38358).

If an interventional cardiologist performs a service under item 38358 and the service is attended by a cardiothoracic surgeon for safety reasons, the attending cardiothoracic surgeon may continue to claim a service under item 90300.

Amendment item 15 amends cardiothoracic surgery item 38519 to clarify the policy intent of the service. Under this change, item 38519 has been amended to allow the service to apply to a valve explant of a previous prosthesis if performed during open cardiac surgery. This change will ensure patients receive a rebate under all circumstances when an existing prosthetic heart valve is explanted immediately prior to a new valve being inserted.

Amendment item 16 amends cardiothoracic surgery item 38643 to remove the requirement that the service must apply to a re-operation via thoracotomy or sternotomy. Under this change, a service under 38643 is not required to be a re-operation. This change will ensure that a rebate is available under all circumstances when a patient requires the division of thoracic cavity adhesions.

Amendment items 17 to 19 amend the fees of autologous fat grafting items 45534, 45535 and 45589 which were introduced by the *Health Insurance Legislation Amendment (2021 Measures No. 2) Regulations 2021*. This change ensures the fees of the items are increased to reflect the annual indexation of procedural items, which did not occur for these particular items when indexation was applied on 1 July 2021.

Amendment item 20 amends orthopaedic item 49200 to remove the reference to bone grafting. If a bone graft is required for a wrist arthrodesis procedure, then items 48245, 48248, 48251, 48254 or 48257 should be undertaken to better reflect the range of complexity with bone grafting. This change will provide a more accurate and complete description of the procedure, as recommended by Orthopaedic Clinical Committee of the MBS Review Taskforce.

Amendment item 21 amends orthopaedic item 49851 to clarify the service may be performed with a surgical assistant by adding the term ‘Assist.’.

Amendment item 22 amends item 51071 to allow for the removal of an extradural tumour or lesion where the pathology is confirmed by histology. This change clarifies the clinical intent of the service and addresses a patient service gap.

Amendment item 25 inserts clause 1.2.13 into the PST, which introduces a claiming frequency restriction which prevents item 66551 from being claimed by a patient if they have received a total of four glycated haemoglobin testing (HbA1c) items performed in the management of established diabetes (items 66551, 73812 or 73826) in the last 12 months. This change was supported by the Medical Services Advisory Committee (MSAC) and is required following the introduction of new items for HbA1c point of care testing (items 73812 and 73826) in determinations under subsection 3C(1) of the *Health Insurance Act 1973*.

This change is also in line with Government policy announced under the 2021-22 Budget *Guaranteeing Medicare – changes to the Medicare Benefits Schedule* measure.

Amendment item 26 amends PST HbA1c testing item 66551 to remove the frequency limitation that prevented the service from being claimed if a patient had that particular service four times in the past 12 months. This restriction will be continued under clause 1.2.13 (refer to **amendment item 25 of Schedule 1** of the Regulations). This change is administrative in nature and does not represent a change to the service.

Amendment item 27 inserts a note into clause 2.12.2 of the PST to clarify that the fees for existing items in that group were indexed as at 1 July 2021. This change is considered minor and administrative in nature.

Schedule 2 – Telehealth services

Changes to specialist telehealth services in the general medical services table

Part 1 – Telehealth services

Part 1 of Schedule 2 makes changes to the GMST by removing specialist telehealth items introduced from 2011, including items with a 50% fee loading.

Amendment item 1 amends item 10983, which is for a video conferencing support service provided by a practice nurse, an Aboriginal health worker or an Aboriginal and Torres Strait Islander health practitioner on behalf of a medical practitioner, to remove the geographic requirements for the service. This change will ensure eligible patients, no matter their geographic location, will be able to access a service rendered under item 10983.

Medical services rendered under item 10983 may still be claimed where the patient is participating in a video consultation with a specialist, consultant physician or psychiatrist as listed in Group A40 of the MBS.

Amendment item 2 repeals item 10984, which is for a video conferencing consultation support service provided at a residential aged care facility by a practice nurse, an Aboriginal health worker or an Aboriginal and Torres Strait Islander health practitioner on behalf of a medical practitioner, as this item will be obsolete. Services which were previously rendered under item 10984 may be rendered under amended item 10983 (refer to **amendment item 1 of Schedule 2** of the Regulations).

Amendment item 3 repeals four general practitioner telehealth attendance items (items 2461, 2463, 2464 and 2465) as these items will be obsolete.

Amendment item 4 repeals four medical practitioner telehealth attendance items (items 2471, 2472, 2475 and 2478) as these items will be obsolete.

Amendment item 5 repeals:

- two general practitioner telehealth attendance items (items 2729 and 2731);
- four general practitioner, specialist and consultant physician telehealth attendance items (items 2125, 2138, 2179, 2220);
- four telehealth consultation items for the treatment of eating disorders (items 90262, 90263, 90268 and 90269);
- eight specialist telehealth attendance items (items 113, 114, 384, 2799, 3003, 6004, 6025 and 6059);
- eight medical practitioner telehealth attendance items (items 2100, 2122, 2126, 2137, 2143, 2147, 2195 and 2199);
- twelve consultant physician telehealth attendance items (items 353, 355, 356, 357, 358, 359, 361, 364, 366, 367, 369 and 370); and
- repeals thirteen items for 50% geographic loading for specialist telehealth services (items 99, 112, 149, 288, 389, 2820, 3015, 6016, 6026, 6060, 13210, 16399 and 17609).

Part 2 – Consequential amendments

Part 2 of Schedule 2 makes consequential amendments to the GMST to remove references to items which will be repealed.

Amendment items 6 to 28 make consequential changes to repeal the items which will be repealed in Part 1 of Schedule 2.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation 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

The purpose of the *Health Insurance Legislation Amendment (2021 Measures No. 3) Regulations 2021* (the Regulations) is to amend the GMST, DIST and PST to remove certain telehealth items, and make minor policy and administrative changes.

Changes to specialist and consultant physician telehealth services

Schedule 2 of the Regulations will remove older, more limited specialist telehealth items and select general practitioner and medical practitioner telehealth items in the GMST. This change includes the removal of items which provide a 50% fee loading for video attendances provided to patients in certain geographical areas and specific settings. These services were introduced from 2011 to support the higher cost of video calls and hardware for providing telehealth services. The removal of these items and associated fee loading reflects the technological advances since this time, and the broad adoption of telehealth under a range of new items.

These changes will also remove the associated patient-end support services by GPs that can be claimed in conjunction with the specialist telehealth items that attract the 50% fee loading.

The practice nurse and Aboriginal health worker patient-end support items will be retained and will provide assistance for residents of aged care facilities and Indigenous patients. Optometrist support for remote ophthalmology services has specific patient benefits, reducing the need for patients to travel to urban specialists and will also be retained.

Removal of certain telehealth items will not limit patient access to telehealth, as the older, more limited items are being replaced as part of the Government's ongoing telehealth package, announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO). This introduces permanent items to support broad-based use of telehealth for the delivery of medical, nursing and allied health services to the population, without geographic or setting limitations.

Other Policy changes

The Regulations will amend the GMST to make other Government policy changes. This includes:

- increasing the schedule fee for a cardiac lead extraction service (item 38358) and amending the requirement of a cardio- thoracic attendance service (item 90300) to prevent it from being claimed by a cardiothoracic surgeon if they also performed the lead extraction service; and
- amend item 51071 to allow for the removal of an extradural lesion or tumour where the pathology is confirmed by histology.

Administrative changes

The Regulations will amend the GMST, DIST and PST to make administrative changes to better align with the original policy intent of the service. This includes:

- inserting notes into the DIST and PST to clarify that items listed in the applicable groups were indexed as at 1 July 2021;
- amending diagnostic imaging item 61560 to clarify the service is an R-type diagnostic imaging service;
- updating references to the ‘Australian Defence Force Post-discharge GP Health Assessment’ tool in the GMST to the ‘Veteran’s Health Check’ tool to reflect the renaming of the tool by the Department of Veterans’ Affairs;
- amending orthopaedic item 49200 to remove the reference to bone grafting in alignment with recommendations from the MBS Review Taskforce Orthopaedic Clinical Committee, which reflects the Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure
- amending orthopaedic surgery item 49851 to clarify the service allows for an assistant by adding the term ‘Assist.’, which reflects the Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure;
- amending the fee of three autologous fat grafting items (45534, 45535 and 45589) to ensure the 1 July 2021 indexation value is appropriately applied to these items, which reflects the Government policy as announced in the 2017-18 Budget *Guaranteeing Medicare – Medicare Benefits Schedule – indexation* measure;
- amending right heart catheterisation item 38254 to clarify it can be performed in conjunction with percutaneous coronary intervention services 38307, 38308, 38310, 38311, 38313 or 38314 in certain instances, which reflects the Government policy as announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews* measure;
- amending endoscopic mucosal reduction item 32230 to clarify the service is to be performed within a period of six months following a diagnostic colonoscopy service (items 32222, 32223, 32224, 32225, 32226 or 32228), which reflects the Government policy as announced in the 2021-22 Budget under the *Guaranteeing Medicare – changes to the Medicare Benefit Schedule* measure; and
- introducing a claiming frequency restriction which prescribes that item 66551 cannot be claimed by a patient if they have received a total of four glycated haemoglobin (HbA1c) testing items performed in the management of established diabetes (66551, 73812 or 73826) in the last 12 months and amending item 66551;
- amending cardiothoracic surgery item 38519 to ensure patients receive a Medicare benefit under all circumstances when an existing prosthetic heart valve is explanted immediately prior to a new valve being implanted; and
- amending cardiothoracic surgery item 38643 to ensure a Medicare benefit is available under all circumstances when a patient requires the division of thoracic cavity adhesions.

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. The removal of telehealth items does not retrogressively affect patient access to telehealth

services as these will be performed under the services listed in Group A40 of the MBS.

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