

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022

Subsection 133(1) of the *Health Insurance Act 1973* (the 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 VAA of the Act provides for the Professional Services Review (PSR) Scheme which can review and investigate the provision of services by a person to determine whether the person has engaged in inappropriate practice.

Section 82 of the Act provides definitions of inappropriate practice by practitioners. Subsection 82(1A) provides that a practitioner engages in inappropriate practice in rendering or initiating services during a particular period (the relevant period) if the circumstances in which some or all of the services were rendered or initiated constitute a prescribed pattern of services.

Subsection 82(1B) of the Act provides practitioners a defence that certain prescribed pattern of services do not constitute inappropriate practice if a PSR Committee could reasonably conclude exceptional circumstances existed that affected the rendering or initiating of the services.

Section 82A of the Act provides that regulations may prescribe circumstances in which services rendered or initiated by a medical practitioner constitute a prescribed pattern of services. These circumstances are prescribed in the *Health Insurance (Professional Services Review Scheme) Regulations 2019* (Principal Regulations).

Purpose

On 1 July 2022, the *Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 3) Regulations 2022* amended the PSR Regulations to temporarily remove the 30/20 rule from the prescribed pattern of services rules due to the continued number of COVID-19 infections in the community. The Government deferred commencement of the 30/20 rule in recognition that practitioners may be required to provide more phone services to support the community in anticipation of COVID-19 infections increasing during winter.

The *Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022* (the proposed Regulations) would amend the PSR Regulations to reintroduce the 30/20 rule for relevant phone services. Relevant phone service would be defined in section 5 of the PSR Regulations and include phone services performed by GPs, other medical practitioners in general practice, and consultant physicians. The proposed Regulations would commence on 1 October 2022 per the Government decision to defer the commencement of the 30/20 rule from 1 July 2022 to 1 October 2022.

Under the 30/20 rule, a medical practitioner is taken to have engaged in inappropriate practice if they have rendered or initiated 30 or more ‘relevant phone services’ on each of 20 or more days in a 12 month period.

Consultation

No consultation was undertaken regarding the Regulations as the removal of the 30/20 rule from the prescribed pattern of services rules was a temporary measure in response to the continued number of COVID-19 infections in the community.

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 October 2022.

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

ATTACHMENT

Details of the Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 October 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

Health Insurance (Professional Services Review Scheme) Regulations 2019 (PSR Regulations)

Item [1] – section 5

Section 5 provides definitions in the PSR Regulations. This item would insert the definition for a ‘relevant phone service’, which would be used to prescribe the services that have application to the 30/20 rule. The 30/20 rule would be made under Item 2 of the proposed Regulations. The prescribed services would include all phone services attendances performed by general practitioners or other medical practitioners in general practice. It would also include consultant physician items in Subgroup 8 of Group A40.

Item [2] – section 8

Section 8 of the PSR Regulations provides the circumstances for medical practitioners for prescribed pattern of services. Circumstances in which services rendered or initiated by a medical practitioner constitute a prescribed pattern of services are that the medical practitioner renders or initiates 80 or more relevant services on each of 20 or more days in a 12-month period.

This item would repeal and replace section 8 to prescribe that medical practitioners who render or initiate 30 or more relevant phone services on each of 20 or more days in a 12-month period have met the relevant circumstances to constitute a prescribed pattern of services. Like the 80/20 rule, practitioners would have a defence that certain prescribed patterns of services do not constitute inappropriate practice if a Professional Services Review Committee could reasonably conclude exceptional circumstances existed that affected the rendering or initiating of the services.

The substituted section would also retain the existing 80/20 rule. There would be no change to this rule.

Item [3] – Section 12 – Transitional arrangements

This item would provide that the proposed amendments in relation to the 30/20 rule would apply to relevant phone services rendered on or after 1 October 2022.

Statement of Compatibility with Human Rights

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

Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022

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

On 1 July 2022, the *Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 3) Regulations 2022* amended the PSR Regulations to temporarily remove the 30/20 rule from the prescribed pattern of services rules due to the continued number of COVID-19 infections in the community. The Government deferred commencement of the 30/20 rule in recognition that practitioners may be required to provide more phone services to support the community in anticipation of COVID-19 infections increasing during winter.

The *Health Insurance (Professional Services Review Scheme) Amendment (2022 Measures No. 4) Regulations 2022* (the proposed Regulations) would amend the PSR Regulations to reintroduce the 30/20 rule for relevant phone services. Relevant phone service would be defined in section 5 of the PSR Regulations and include phone services performed by GPs, other medical practitioners in general practice, and consultant physicians. The proposed Regulations would commence on 1 October 2022 per the Government decision to defer the commencement of the 30/20 rule from 1 July 2022 to 1 October 2022.

Under the 30/20 rule, a medical practitioner is taken to have engaged in inappropriate practice if they have rendered or initiated 30 or more ‘relevant phone services’ on each of 20 or more days in a 12 month period.

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 assist with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health by protecting the integrity of Commonwealth Medicare benefits from consistently high volumes of rendered services by medical practitioners, without a reasonable justification for rendering those services. This will mean that the sustainability of the Medicare program is protected. There is no change to the right to social security and this Regulation does not retrogressively affect the entitlement of patients to Medicare benefits for clinically relevant services.

Conclusion

This instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

Mark Butler

Minister for Health and Aged Care