

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2022

The *Health Insurance Act 1973* (the Act) sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

Subsection 133(1) of 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 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. The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (DIST).

Purpose

The purpose of the *Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2022* (the Regulations) is to amend the DIST to allow applications to obtain an exemption to the equipment capital sensitivity requirements under clauses 1.2.1 and 1.2.2 on the basis of delays or shortages in the supply of equipment.

Under clauses 1.2.1 and 1.2.2 of the DIST, Medicare benefits are not payable for equipment that has exceeded its applicable life age or maximum extended life.

Due to existing challenges in the global supply chain, it has been increasingly difficult for practices to provide certainty that new or upgraded equipment will be received before the three month timeframe, as is required for the extension to be approved in its current format. Some manufacturers have estimated that it will take between six and nine months for equipment to arrive in Australia and then be delivered to practices. They estimate that 18 to 24 months will pass before this supply issue may be resolved (subject to further global and local challenges that may impact the supply chain).

The Regulations make changes to clauses 1.2.8 and 1.2.10 of the DIST to allow applications for temporary exemptions to the equipment capital sensitivity requirements on the grounds of delays in the supply chain to be considered by the Secretary. This will enable equipment to maintain Medicare eligibility where it

provides crucial patient access to services and due to supply chain issues there is an unforeseen delay in replacing the equipment.

Consultation

The Department has consulted with the Australian Diagnostic Imaging Association (ADIA) and the Royal Australian and New Zealand College of Radiologists (RANZCR) on the changes made by the Regulations. These stakeholders support the change.

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 the day after registration.

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 2022*

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 2022*.

Section 2 – Commencement

This section provides for the whole of the Regulations to commence on the day after registration.

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 (Diagnostic Imaging Services Table) Regulations (No. 2) 2020 (DIST)

Item 1 repeals and replaces paragraphs 1.2.8(3)(a) and (b) of Schedule 1 to allow for the Secretary to approve applications for exemptions to the equipment capital sensitivity requirements if the proprietor is unable to replace or upgrade the equipment due to delays or shortages in the supply of equipment.

Currently, paragraphs 1.2.8(3)(a) and (b) of Schedule 1 are reliant on the proprietor obtaining the upgrade or new equipment within three months of the exemption being granted. This amendment allows proprietors to seek an exemption of the capital sensitivity requirements in instances where they do not know when they will receive the new equipment or upgrade due to supply delays.

Item 2 repeals and replaces paragraphs 1.2.10(3)(a) and (b) of Schedule 1 to allow for the Secretary to approve applications to extend by an additional three months the exemption period to the equipment capital sensitivity requirements if the proprietor is unable to replace or upgrade the equipment due to delays or shortages in the supply of equipment. This amendment is provided as an alternative to an exemption being granted by the Secretary on the existing grounds for exemption.

Item 3 inserts Part 4 which describes the application, saving and transitional provisions for the equipment capital sensitivity requirements.

Clause 4.1 inserts definition for “amending instrument” and “commencement day” into the DIST. Under clause 4.1, **amending instrument** means the *Health Insurance (Diagnostic Imaging Services Table) Amendment (Equipment Capital Sensitivity) Regulations 2022* and **commencement day** means the day the amending instrument commences.

Item 3 also inserts clause 4.2 into the DIST, which is for the application of amendments, allows for applications made on or before the commencement day (provided that the Secretary has not made a decision on the application for an exemption) to be considered by the Secretary on the basis of shortages or delays in the supply of equipment. This means that any applications for exemptions to the equipment capital sensitivity requirements that have not been considered by the Secretary by the time the Regulations are in place, they will be eligible under the grounds for exemption contained within the Regulations.

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 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

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Under clauses 1.2.1 and 1.2.2 of the DIST, Medicare benefits are not payable for equipment that has exceeded its applicable life age or maximum extended life.

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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 medical services are clinically and cost-effective as intended.

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