

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2022 Measures No. 4) 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.

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. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST).

The *Health Insurance Regulations 2018* (HIR) provide the overarching policy framework supporting the provision of appropriate Medicare services. For the purposes of paragraph 10(2)(aa) of the Act, section 28 of the HIR provides items that have a Medicare benefit equal to 100% of the fee in respect of the service.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022* (the Regulations) is to amend the GMST and the HIR from 1 March 2023.

Parts 1 and 2 of Schedule 1 of the Regulations will amend the GMST to implement the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) relating to otolaryngology, head and neck surgery services and thoracic surgery services. These changes were announced in the 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure.

Part 3 of Schedule 1 of the Regulations will amend four specialist, consultant physician and general practitioner (GP) items as part of the Government's response to the Taskforce's recommendations relating to services for children and young adults diagnosed with complex neurodevelopmental disorders. These changes were announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

Part 5 of Schedule 1 of the Regulations will introduce four new GP items to facilitate family and carer participation in treatment under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS* initiative (Better Access). This change was announced in the 2021-22 Budget under the *Mental Health* measure. Part 5 of Schedule 1 will also amend subsection 28(1) of the HIR to specify 12 new general practice items for Better Access services to facilitate family and carer participation in treatment. This change will allow the specified items to attract a Medicare benefit equal to 100% of the schedule fee.

Parts 4, 6 and 7 of Schedule 1 of the Regulations will also make amendments to the GMST that are minor and machinery in nature. These administrative changes include updating the definition of *relevant visa* for the purposes of health assessments and, following the continuation of telehealth services introduced in response to the COVID-19 pandemic, removing superseded geographically-restricted eating disorder video conference services and updating co-claiming restrictions for services related to GP management plans, team care arrangements and multidisciplinary care plans.

Consultation

The Taskforce, the Medical Services Advisory Committee (MSAC) and medical professional organisations were consulted on 1 March 2023 changes. There was general support from stakeholders on the changes implemented by the Regulations. Additional consultation information is outlined in the [Attachment](#).

Some of the amendments in the Regulations are minor and machinery in nature and did not require consultation to be undertaken.

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 March 2023.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022*

Section 1 – Name

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

Section 2 – Commencement

This section provides for the Regulations to commence on 1 March 2023.

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 – General medical services

Part 1— Otolaryngology, head and neck surgery

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Part 1 of Schedule 1 of the Regulations implements the Government’s response to recommendations from the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) in relation to services for otolaryngology diagnostic procedures, audiology services and ear, nose and throat surgical operations to ensure the items reflect contemporary clinical practice and the Medicare benefits appropriately reflect the skill and complexity of the relevant procedure. These changes were announced in the 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure. Representatives from peak bodies, including the Australian Medical Association (AMA), Australasian Society of Otolaryngology, Head and Neck Surgery, Laryngology Society of Australia, Audiology Australia, Independent Audiologists Australia and Private Healthcare Australia (PHA), were consulted on the changes and were largely supportive.

The changes includes:

- adjusting item descriptors to reflect complete medical services and contemporary clinical practice;
- introducing co-claiming restrictions to minimise potentially inappropriate claims;
- creating new groupings of items to facilitate achieving these priorities; and

- deleting obsolete services.

Items 1 to 4 amend subclause 1.2.11(1) of Schedule 1 to omit repealed items from, and insert new items into, the list of items to which clause 1.2.11 applies. Clause 1.2.11 specifies services that may be provided by a person other than a medical practitioner in accordance with accepted medical practice and under the supervision of a medical practitioner.

Item 5 amends item 11300 to restrict claiming for the purposes of programming an auditory implant or the sound processor of an auditory implant. The Regulations provide for services related to programming an auditory implant or the sound processor of an auditory implant to be claimed under new item 11302 (refer to **item 6**).

The change also restricts co-claiming of item 11300 with items 11340, 11341 or 11343 on the same occasion or claiming of item 11300 if a service to which item 82300 of the *Health Insurance (Allied Health Services) Determination 2014* (the AHS Determination) applies has been performed on the same day.

Item 6 introduces new item 11302 for services related to programming an auditory implant or the sound processor of an auditory implant, which are currently claimed under item 11300. Item 11302 will not be claimable if a service to which item 82301 of the AHS Determination or item 82302 or 82304 of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) has been performed on the same day. Item 11302 will also only apply to one of the first four services to which this item or item 11342 or 11345 of the Telehealth Determination applies on the same day.

Item 7 amends item 11306 to prevent claiming of the item if a service to which item 82306 applies has been performed on the patient on the same day. Item 82306 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 8 amends item 11309 to prevent claiming of the item if a service to which item 82309 applies has been performed on the patient on the same day. Item 82309 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 9 amends item 11312 to prevent claiming of the item if a service to which item 82312 applies has been performed on the patient on the same day. Item 82312 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 10 amends item 11315 to prevent claiming of the item if a service to which item 82315 applies has been performed on the patient on the same day. Item 82315 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 11 amends item 11318 to prevent claiming of the item if a service to which item 82318 applies has been performed on the patient on the same day. Item 82318 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 12 amends item 11324 to incorporate the services currently provided under items 11327 and 11330 (refer to **item 13**) into a single service and remove the co-claiming restriction with items 11309, 11312, 11315 and 11318. The schedule fee has also been adjusted to reflect a weighted average of the three services to achieve cost neutrality. The amended item 11324 will not be claimable if a service to which item 82324 applies has been performed on the patient on the same day. Item 82324 of the AHS Determination is for equivalent audiology health services provided by eligible audiologists.

Item 13 repeals audiometry health service items 11327 and 11330, which are being consolidated into a single service under item 11324 (refer to **item 12**).

Item 14 amends item 11332 to include the assessment of outer hair cell function in the cochlear as part of the service provided under the item and broaden the availability of services under the item to include all patients at risk of permanent hearing loss for a variety of specified reasons, not just infants with congenital or birth risk factors.

Item 15 repeals items 11333, 11336 and 11339 and replaces them with three new items (11340, 11341 and 11343), introducing a consolidated approach to vestibular assessment.

Item 16 amends item 30247 to include removal of tumour as part of the service and provide a co-claiming restriction with services provided under item 39321, 39324, 39327 or 39330.

Item 17 amends item 30250 to include removal of tumour and exposure or mobilisation of the nerve as part of the service and provide a co-claiming restriction with services provided under item 39321, 39324, 39327 or 39330.

Item 18 amends item 30251 to include removal of tumour and exposure or mobilisation of the nerve as part of the service and provide a co-claiming restriction with services provided under item 39321, 39324, 39327 or 39330.

Item 19 amends item 30253 to include removal of tumour and exposure or mobilisation of the nerve as part of the service and provide a co-claiming restriction with services provided under item 39321, 39324, 39327 or 39330.

Item 20 amends item 30256 to insert a co-claiming restriction with services on the same side of the neck to which item 31423, 31426, 31429, 31432, 31435 or 31438 applies.

Item 21 introduces new item 30257 for services to retrieve stones from salivary gland drainage ducts or alleviate narrowing of these ducts.

Item 22 amends item 30275 to remove “commando-type operation” and restrict co-claiming with neck lymph node dissection services to which item 31423, 31426, 31429, 31432, 31435 or 31438 applies on the same side of the neck.

Item 23 amends item 30278 to restrict co-claiming with a service to which item 45009 applies.

Item 24 amends item 30281 to restrict co-claiming with a service to which item 45009 applies.

Item 25 amends item 30473 to remove the reference to item 41816, which is being repealed (refer to **item 84**).

Items 26 and 27 amends item 30478 to remove the reference to item 41816, which is being repealed (refer to **item 84**), and makes another minor administrative change.

Items 28 to 33 amend items 31423, 31426, 31429, 31432, 31435, 31438 to restrict co-claiming with a service on the same side of the body to which item 30256 or 30275 applies.

Item 34 amends item 38428 to replace the term “dilatation” with “treatment”.

Item 35 introduces clause 5.10.19AB, which provides that item 41764 (refer to **item 76**) also applies to a service provided by an eligible speech pathologist on behalf of a specialist in the practice of the specialist’s speciality of otolaryngology head and neck surgery if other specified requirements are met.

Item 36 amends item 40600 to insert a reference to new item 41887 (refer to **item 102**) to restrict co-claiming of these items.

Item 37 amends item 41503 to restrict co-claiming with a service to which another item in Subgroup 8 of Group T8 applies.

Item 38 amends item 41509 to restrict co-claiming with a service to which item 41647 applies.

Item 39 amends item 41521 to restrict co-claiming with a service to which an item in Subgroup 18 applies.

Item 40 amends item 41524 to remove the references to items 41557, 41560 and 41563, which currently limit the use of the item. The change simplifies and clarifies the item descriptor for item 41524.

Item 41 repeals items 41527, 41530, 41533 and 41536, which are being moved to new Subgroup 18 (refer to **item 104**).

Items 42 and 43 amend items 41539 and 41542 to restrict co-claiming with a service to which item 41611 applies.

Item 44 repeals items 41545, 41551, 41554, 41557, 41560, 41563, 41564 and 41566, which are being moved to new Subgroup 18 (refer to **item 104**).

Item 45 amends item 41569 to restrict co-claiming with a service to which item 41617 applies.

Items 46 to 49 amends item 41603 and repeals item 41604 to consolidate both items into a single service under item 41603, amending the item descriptor to better describe contemporary clinical practice.

Item 50 amends item 41611 to restrict co-claiming with a service to which item 41539 or 41542 or an item in Subgroup 18 applies.

Item 51 amends item 41614 to restrict co-claiming with a service to which item 41617 applies.

Item 52 amends item 41617 to restrict co-claiming with a service to which item 41614 or 41569 applies and include cochleotomy and exposure of facial nerve as part of the service where required.

Item 53 amends item 41626 to include as part of the service the injection of therapeutic agents into the middle ear and restrict co-claiming with a service to which item 41632 applies.

Item 54 repeals item 41629, which is being moved to new Subgroup 18 (refer to **item 104**).

Item 55 amends item 41632 to restrict co-claiming with a service to which item 41626 applies.

Item 56 repeals items 41635 and 41638, which are being moved to new Subgroup 18 (refer to **item 104**).

Item 57 amends item 41647 to clarify the item descriptor, addressing concerns related to inappropriate use of the item for the removal of uncomplicated wax.

Item 58 repeals item 41653, which is considered obsolete and outdated clinical practice.

Item 59 amends item 41662 to restrict co-claiming with a service on the same side of the body to which item 41702, 41703 or 41705 applies.

Item 60 amends item 41668 to remove “(H)” to allow claiming of this item where the service is performed in out of hospital settings.

Item 61 repeals items 41671, 41672, 41689 and 41692, which are being moved to new Subgroup 21, consolidating items 41671 and 41672 into one service under item 41671 (refer to **item 104**).

Item 62 amends item 41698 to restrict co-claiming with a service on the same side of the body to which item 41702, 41703, 41705, 41710, 41734 or 41737 applies.

Item 63 amends item 41707 to include both external and endoscopic approaches to align the service with current surgical techniques and contemporary best practice.

Item 64 repeals item 41710, which is being moved to new Subgroup 20 (refer to **item 104**).

Item 65 amends item 41713 to align the item descriptor for the service with contemporary clinical practice.

Item 66 repeals item 41716, which is being consolidated with item 41710 in new Subgroup 20 under item 41710 (refer to **item 104**).

Item 67 amends item 41719 to restrict co-claiming with a service to which item 41722 applies.

Item 68 amends item 41722 to restrict co-claiming with a service to which item 41719 or 45009 applies.

Item 69 amends item 41725 to include both external and endoscopic approaches to align the service with contemporary best clinical practice.

Item 70 amends item 41728 to allow tumour removal by any approach to reflect contemporary best clinical practice.

Item 71 repeals items 41729 and 41731, which are obsolete, and repeals items 41734 and 41737, which are being moved to new Subgroup 20 (refer to **item 104**).

Item 72 amends items 41740 and 41743 to restrict co-claiming with a service to which item 41749 applies.

Item 73 amends item 41746 to apply the service to the frontal, sphenoid and maxillary sinuses and include graft harvesting as part of the service.

Item 74 amend item 41749 to reflect current best clinical practice, apply the service to the frontal, sphenoid and maxillary sinuses and restrict co-claiming with a service to which item 41743 or 41740 applies.

Item 75 repeals item 41752, which is being moved to new Subgroup 20 (refer to **item 104**).

Item 76 amends item 41764 to restrict co-claiming with a service to which item 41702, 41703, 41705, 41734, 41737 or 41693 applies. For the purposes of item 41764, clause 5.10.19AB also provides that the item applies to a service provided by an eligible speech pathologist on behalf of a specialist in the practice of the specialist's speciality of otolaryngology head and neck surgery if other specified requirements are met (refer to **item 35**).

Item 77 repeals item 41767, which is obsolete and outdated with contemporary clinical practice, and item 41773, which is being consolidated with item 41776 under item 41776 (refer to **item 104**).

Items 78 and 79 amends item 41776 to consolidate this service with the service described in item 41773 (refer to **item 77**) and increase the scheduled fee to reflect the consolidated services.

Items 80 and 81 repeal item 41782 and amend item 41785 to consolidate both items into a single service under item 41785, amending the item descriptor to better describe contemporary clinical practice and increasing the fee to reflect the consolidated services.

Item 82 repeals item 41787 as the service is adequately provided under item 41786 for Uvulopalatopharyngoplasty.

Item 83 amends item 41804 to remove “lateral pharyngeal bands” from the item descriptor to reflect current clinical practice.

Items 84 and 85 repeals item 41816 and amend item 41822 to consolidate both items into a single service under item 41822, amending the item descriptor to reflect contemporary best clinical practice and increasing the fee to reflect the consolidated services.

Item 86 amends item 41825 to reflect current best clinical practice and apply the item to laryngoscopy and oesophagoscopy services.

Item 87 amends item 41834 to reflect current best clinical practice.

Item 88 amends item 41837 to reflect current best clinical practice and restrict to the service to one per patient per provider per lifetime.

Item 89 amends item 41830 to reflect current best clinical practice and restrict to the service to one per patient per provider per lifetime.

Item 90 amends item 41855 to reflect current best clinical practice, providing for different techniques and including biopsy.

Item 91 repeals item 41858, which is outdated practice.

Item 92 amends item 41861 to include benign and malignant tumour removal procedures, reflecting current best clinical practice, and to restrict co-claiming with a service to which item 41870 applies on the same side of the body.

Item 93 repeals item 41864, which is considered outdated practice.

Item 94 amends item 41867 to reflect current best clinical practice and make the service applicable to any technique.

Item 95 repeals item 41868, which is outdated practice.

Item 96 amends item 41870 to reflect current best clinical practice, allow the service to be claimed in out of hospital settings and restrict co-claiming with a service to which item 41861 or 41879 applies.

Item 97 amends item 41873 to prevent claiming in out of hospital settings.

Item 98 amends item 41879 to reflect current best clinical practice, make the service applicable to any technique and restrict co-claiming with a service to which item 41870 applies.

Item 99 amends item 41880 to reflect current best clinical practice and make the service applicable to any technique.

Item 100 amends item 41881 to reflect current best clinical practice and make the service applicable to any technique.

Item 101 amends item 41884 to reflect current best clinical practice and make the service applicable to any technique.

Item 102 introduces items 41887, 41888 and 41890 in Subgroup 8 of Group T8.

Item 103 amends item 45009 to restrict co-claiming with a service to which item 30278, 30281 or 41722 applies.

Item 104 inserts four new subgroups at the end of Group T8 (Subgroup 18—Myringoplasty and Tympanomastoid Procedures, Subgroup 19—Functional Sinus Surgery, Subgroup 20—Sinus Procedures and Subgroup 21—Airway Procedures). The new groupings of items will help to facilitate new co-claiming restrictions to minimise potentially inappropriate co-claiming.

Subgroup 18 contains existing items 41527, 41530, 41533, 41536, 41545, 41551, 41554, 41557, 41560, 41563, 41564, 41566, 41629, 41635 and 41638. These existing items have been amended to implement a co-claiming restriction with another item in Subgroup 18.

Subgroup 19 contains new items 41702, 41703 and 41705 for functional sinus surgery services.

Subgroup 20 contains existing items 41710, 41734, 41737 and 41752. These existing items have been amended to implement a co-claiming restriction with an item in Subgroup 19 or other specified items.

Subgroup 21 contains existing items 41671, 41689 and 41692 and new item 41693, which is for septal surgery services. The existing items have been amended to implement a co-claiming restriction with another item in Subgroup 21. Item 41693 also has a co-claiming restriction with item 41764.

Part 2—Thoracic surgery

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Part 2 of Schedule 1 of the Regulations implements the Government's response to recommendations from the Taskforce in relation to services for thoracic surgery to ensure they align with contemporary clinical practice. These changes were announced in the 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure. Stakeholders, including the AMA, Australian & New Zealand Society of Cardiac and Thoracic Surgeons, Australian Private Hospitals Association and consumers, were consulted on these changes and were largely supportive.

The changes to thoracic surgery services aim to:

- improve the structure and sequencing of thoracic surgery MBS items to ensure a logical and simplified approach, organising the items into anatomical areas of increasing procedure complexity;
- restrict inappropriate co-claiming;
- introduce new services that reflect current clinical practice; and
- delete outdated and obsolete items that do not reflect current best practice.

Item 105 amends subclause 5.10.17(2) to specify new items 38817 and 38818. Subclause 5.10.17(2) provides the list of items for services that must be performed using open exposure or minimally invasive surgery.

Item 106 repeals items 38415, 38418, 38421 and 38424, which are being renumbered as items 38830, 38816, 38832 and 38833 respectively to improve the structure and sequencing of thoracic surgery services (refer to **item 128**).

Item 107 repeals item 38427 to remove a duplicate procedure, as the service under this MBS item is already reflected in the spinal surgery section.

Item 108 repeals items 38430, 38436, 38438, 38440, 38441, 38446, 38447, 38448, 38849, 38450, 38452, 38453, 38455, 38456, 38457, 38458, 38460, 38462, 38464 and 38466 and inserts renumbered items 38429 and 38431. To improve the structure and sequencing of thoracic surgery services, the Regulations renumber thoracic surgery services (refer to **item 128**). Accordingly, items 38436, 38438, 38440, 38441, 38446, 38447, 38448, 38849, 38450, 38452, 38456, 38457, 38458, 38460, 38462, 38464 and 38466 are being renumbered as items 38815, 38822, 38820, 38823, 38838, 38841, 38837, 38842, 38840, 38839, 38864, 38846, 38847, 38845, 38850, 38851 and 38852 respectively.

Item 38430 is being repealed as the service under this item provides low or no value care. Renumbered items 38429 and 38431 will replace items 38453 and 38455 to align the item numbers for these services with other bronchoscopy items.

Item 109 amends item 38467 to replace references to items 38418 and 38806, which are being renumbered (refer to **items 106** and **127**), with references to item numbers 38816 and 38828.

Item 110 repeals items 38468 and 38469, which are being consolidate into one item under new item number 38853 (refer to **item 128**).

Item 111 amends items 38474 to 38484, 38499 to 38509, 38512 and 38515 to 38554 to replace references to items 38418 and 38806, which are being renumbered (refer to **items 106 and 127**), with references to item numbers 38816 and 38828.

Items 112 to 117 amend items 38555, 38556 to 38571, 38572, 38609 to 38618, 38621, 38624, 38627 and 38637 to replace references to items 38418 and 38806, which are being renumbered (refer to **items 106 and 127**), with references to item numbers 38816 and 38828.

Item 118 repeals item 38643, which is being renumbered as item 38817 to improve the structure and sequencing of thoracic surgery services (refer to **item 128**).

Item 119 amends item 38653 to replace references to items 38418 and 38806, which are being renumbered (refer to **items 106 and 127**), with references to item numbers 38816 and 38828.

Item 120 repeals item 38656, which is being renumbered as item 38818 to improve the structure and sequencing of thoracic surgery services (refer to **item 128**).

Items 121 to 126 amend items 38670 to 38724, 38727, 38730 and 38733 to 38766 to replace references to items 38418 and 38806, which are being renumbered (refer to **items 106 and 127**), with references to item numbers 38816 and 38828.

Item 127 repeals items 38806 and 38809, which are being renumbered as items 38828 and 38829 respectively to improve the structure and sequencing of thoracic surgery services (refer to **item 128**).

Item 128 inserts new and renumbered thoracic surgery service items 38815 to 38864.

The new items include:

- 38821 for multiple wedge resection services;
- 38824 for segmentectomy, lobectomy, bilobectomy or pneumonectomy services to better reflect all clinical situations of differing complexity;
- 38831 for thoracoscopy or thoracotomy services to better reflect all clinical situations of differing complexity;
- 38834 for thoracotomy services to better reflect all clinical situations of differing complexity;
- 38848 and 38849 for insertion and removal of a concave bar for pectus excavatum services;
- 38857 and 38858 for chest wall resection services to better describe and remunerate this procedure; and
- 38859 for plating of multiple ribs for flail segment services.

The renumbered items have also been amended to restrict inappropriate co-claiming and reflect current clinical practice.

Part 3— Attendance services for complex neurodevelopmental disorders and eligible disabilities

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Part 3 of Schedule 1 of the Regulations implements the Government’s response to recommendations from the Taskforce in relation to services for children and young adults diagnosed with complex neurodevelopmental disorders. These changes were announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure. Consultation on the changes has been undertaken with consultant physicians, consultant paediatricians and psychiatrists and general practitioner (GP) peak bodies as well as the AMA, private hospitals and insurers and rural peak bodies, and feedback on the changes was largely positive.

Item 129 amends the heading of Division 2.6 of Schedule 1, replacing the current heading with “Attendance services for complex neurodevelopmental disorder or disability”.

Item 130 amends the definition of *eligible disability* for the purposes of clause 2.6.1 of Schedule 1 to include three additional eligible disabilities: fetal alcohol spectrum disorder, Lesch Nyhan syndrome and 22q deletion syndrome. The change will extend the list of eligible disabilities included under items 137 and 139.

Item 131 amends the heading for Group A29 to replace the reference to “pervasive developmental disorders” with “complex neurodevelopmental disorders”. The change will provide additional clarity to providers by aligning Group A29 with current diagnostic terminology, reflecting contemporary clinical practice, to ensure eligible patients have access to services under the relevant MBS items in Group A29.

Items 132 to 135 amend items 135, 137, 139 and 289 to extend eligibility for these services from under 13 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities. The changes also replace references to “pervasive developmental disorders” with “complex neurodevelopmental disorders” to align the items with current diagnostic terminology, reflecting contemporary clinical practice, and ensure eligible patients continue to have access to these services.

Part 4— Health assessments

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Items 136 and 137 amend subclause 2.15.2(2) to update the definition of *relevant visa* for the purposes of health assessment services for a refugee or other humanitarian entrant to reflect relevant changes to refugee and humanitarian visa types within the *Migration Regulations 1994*. No consultation was undertaken on the change as it is machinery in nature.

Part 5—Focussed psychological strategies services

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Health Insurance Regulations 2018 (HIR)

Part 5 of Schedule 1 of the Regulations amends the GMST to insert four new items to facilitate family and carer participation in treatment under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS* initiative (Better Access) as part of a suite of legislative amendments that will introduce 48 items for this purpose. These changes were announced in the 2021-22 Budget under the *Mental Health* measure. These changes were informed by recommendations of the Productivity Commission in its Inquiry into Mental Health, the Taskforce, and the National Children's Mental Health and Wellbeing Strategy. These processes involved extensive stakeholder consultation, research and expert analysis.

The Medical Services Advisory Committee (MSAC) Executive considered the proposed MBS changes to facilitate family and carer participation in treatment under Better Access on 19 August 2022. MSAC Executive noted the supporting evidence and endorsed the changes.

Services provided to a person other than the patient under any of the 48 new items to facilitate family and carer participation in treatment under Better Access will also count towards a patient's limit of 10 services per calendar year for Better Access service items.

Part 5 of Schedule 1 of the Regulations also makes consequential amendments to the HIR.

Item 138 amends clause 2.20.2 to specify the fees for new item 2741 and 2745 (refer to **item 145**).

Item 139 amends subclause 2.20.3(2) to include the 48 new items to facilitate family and carer participation in treatment under Better Access in the definition of ***referral and treatment options*** as well as telehealth and phone services introduced in response to the COVID-19 pandemic, which have now been continued on an ongoing basis, and Better Access group therapy services introduced on 1 November 2022.

For items 80000 to 80025 and 80100 to 80175, refer to the *Health Insurance (Allied Health Services) Determination 2014*.

For items 91166, 91167, 91168, 91171, 91181, 91182, 91198, 91199, 91818, 91819, 91842, 91843, 91859, 91861, 91864, 9186, 91169, 91170, 91172, 91173, 91174, 91175, 91176, 91177, 91183, 91184, 91185, 91186, 91187, 91188, 91194, 91195, 91196, 91197, 91200, 91201, 91202, 91203, 91204, 91205, 91820, 91821, 91844, 91845, 91862, 91863, 91866 and 91867, refer to the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

For items 283, 285, 286, 287, 309, 311, 313 and 315, refer to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

Item 140 repeals the note at the end of subclause 2.20.3(2).

Item 141 amends subparagraph 2.20.7(2)(a)(i) of Schedule 1 to insert a reference to “a person other than a patient” in accordance with the new items to facilitate family and carer participation in treatment under Better Access.

Item 142 amends paragraph 2.20.7(2)(b) to include the 48 new items for services to facilitate family and carer participation in treatment under Better Access in the limitation providing a total of 10 services per calendar year for Better Access service items.

For items 283, 285, 286, 287, 309, 311, 313 and 315, refer to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

For items 80000 to 80016, 80100 to 80116, 80125 to 80141 and 80150 to 80166, refer to the *Health Insurance (Allied Health Services) Determination 2014*.

For items 91166, 91167, 91168, 91169, 91170, 91171, 91172, 91173, 91174, 91175, 91176, 91177, 91181, 91182, 91183, 91184, 91185, 91186, 91187, 91188, 91194, 91195, 91196, 91197, 91198, 91199, 91200, 91201, 91202, 91203, 91204, 91205, 91818, 91819, 91820, 91821, 91842, 91843, 91844, 91845, 91859, 91861, 91862, 91863, 91864, 91865, 91866 and 91867, refer to the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

Item 143 repeals the note at the end of subclause 2.20.7(2).

Item 144 inserts new subclause 2.20.7(3), which provides additional requirements for the four new items for GP services to facilitate family and carer participation in treatment under Better Access (for items 2739, 2741, 2743 and 2745 refer to **item 145**), including:

- the GP must determine it clinically appropriate to provide the service to a person other than a patient and make a written record of this determination;
- the GP must explain the service to the patient, obtain the patient’s consent for the service and make a written record of the consent;
- the service must be provided as part of the patient’s treatment; and
- in relation to a particular patient, no more than two services to which any of the 48 new Better Access items apply may be provided in a calendar year.

Item 145 inserts four new GP items for focussed psychological strategies services provided to a person other than the patient (2739, 2741, 2743 and 2745).

Item 146 inserts new subclause 2.31.9(1A), which provides that a reference in subclause (1) to a service providing a treatment to a patient includes the 48 new items for services to facilitate family and carer participation in treatment under Better Access. Clause 2.31.9 relates to restrictions on items in Group A36, providing limitations on the number of services providing treatments under an eating disorder treatment and management plan.

Item 147 amends paragraphs 2.31.9(3)(a) to (e) to include the 48 new items for services to facilitate family and carer participation in treatment under Better Access in the list of items that are counted as services providing treatment under an eating disorder treatment and management plan.

Items 148 to 150 amend the table at subsection 28(1) of the HIR to specify items 309, 311, 313, 315, 2739, 2741, 2743 and 2745 so that they attract a Medicare benefit of 100%. The change is administrative in nature, aligning these items with existing policy regarding the benefit for general practice services.

For items 309, 311, 313 and 315, refer to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

Part 6—Eating disorder services—attendance by video conference

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Temporary telehealth measures introduced as part of the Government’s response to the COVID-19 pandemic were ceased 31 December 2021, with a transition to ongoing telehealth arrangements for general practitioner, specialist, nursing, midwifery, and allied health providers.

Part 6 of Schedule 1 of the Regulations removes four pre-COVID-19 video conference items (90279, 90280, 90281 and 90282), which are for geographically restricted eating disorder services by medical practitioners. This change will consolidate eating disorder telehealth services to remove duplication of equivalent services. Patients will continue to have access to telehealth services for eating disorder psychological treatment services under items 92182, 92184, 92186 and 92188 of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

Items 151 to 154 amend clauses 1.2.5, 1.2.6 and 1.2.7 to remove references to items 90279, 90280, 90281 and 90282, which are being repealed (refer to **item 159**), and insert references to item 294, which was introduced on 1 November 2022 by the *Health Insurance (Section 3C General Medical Services - Telehealth Psychiatry Attendance Service) Determination 2022*.

Items 155 to 158 amend clauses 1.2.8, 1.3.1, 2.31.8 and 2.31.9 to remove references to items 90279, 90280, 90281 and 90282, which are being repealed (refer to **item 159**).

Item 159 repeal items 90279, 90280, 90281 and 90282.

Part 7—GP management plans, team care arrangements and multidisciplinary care plans

Health Insurance (General Medical Services Table) Regulations 2021 (GMST)

Item 160 amends clause 2.16.11, which provides the same day co-claiming restrictions for items 721, 723 and 732, to include equivalent telehealth and phone

items in the list of items that have same day co-claiming restrictions with items 721, 723 and 732. The equivalent telehealth and phone items, which were first introduced as part of the Government's response to the COVID-19 pandemic, have been continued on an ongoing basis.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation 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

The purpose of the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022* (the Regulations) is to amend the GMST and the HIR from 1 March 2023.

Parts 1 and 2 of Schedule 1 of the Regulations will amend the GMST to implement the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) relating to otolaryngology, head and neck surgery services and thoracic surgery services. These changes were announced in the 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure.

Part 3 of Schedule 1 of the Regulations will amend four specialist, consultant physician and general practitioner (GP) items as part of the Government's response to the Taskforce's recommendations relating to services for children and young adults diagnosed with complex neurodevelopmental disorders. These changes were announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

Part 5 of Schedule 1 of the Regulations will introduce four new GP items to facilitate family and carer participation in treatment under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS* initiative (Better Access). This change was announced in the 2021-22 Budget under the *Mental Health* measure. Part 5 of Schedule 1 will also amend subsection 28(1) of the HIR to specify 12 new general practice items for Better Access services to facilitate family and carer participation in treatment. This change will allow the specified items to attract a Medicare benefit equal to 100% of the schedule fee.

Parts 4, 6 and 7 of Schedule 1 of the Regulations will also make amendments to the GMST that are minor and machinery in nature. These administrative changes include updating the definition of *relevant visa* for the purposes of health assessments and, following the continuation of telehealth services introduced in response to the COVID-19 pandemic, removing superseded geographically-restricted eating disorder video conference services and updating co-claiming restrictions for services related to GP management plans, team care arrangements and multidisciplinary care plans.

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 and the right of equality and non-discrimination 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

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