

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Minister for Government Services

Human Services (Medicare) Act 1973

Human Services (Medicare) (Medicare Programs) Amendment Specification 2023

Purpose

The Human Services (Medicare) (Medicare Programs) Amendment Specification 2023 (the Specification) is made for the purposes of paragraph 41G(b) of the *Human Services (Medicare) Act 1973* (the Act), and amends the *Human Services (Medicare) (Medicare Programs) Specification 2021* (the Principal Specification).

The Specification amends the Principal Specification to include the Australian General Practice Training Program (the AGPT Program) as a 'medicare program' for the purposes of paragraph 41G(b) of the Act.

The AGPT Program trains doctors to become GPs in Australia, and is a component of the Health Workforce Program, which is supported by item 218 of the table in Part 4 of Schedule 1AB to the *Financial Framework (Supplementary Powers) Regulations 1997* (the FF(SP) Regulations). Specifying the AGPT Program as a 'medicare program' will enable officers to record, communicate and divulge certain information protected by Commonwealth secrecy laws for the purposes of administering the AGPT Program.

Background

The AGPT Program supports the training of medical registrars in general practice by providing education and training through employed placements in training practices and offering incentives to train in regional, rural and remote areas.

The AGPT Program is administered by the Department of Health and Aged Care (DHAC). DHAC asked Services Australia to build a digital registration system to facilitate new arrangements under which the AGPT Program has, from 1 February 2023, been jointly administered with 2 training colleges: the Royal Australian College of General Practitioners (RACGP) and the Australian College of Rural and Remote Medicine (ACRRM). The RACGP and ACRRM are collectively referred to in this explanatory statement as 'the training colleges'.

DHAC has entered partnership arrangements with the training colleges to enable the registration of eligible recipients for the program. Under this arrangement:

- the training colleges verify their organisation and member identities through an Organisation Register (within MyMedicare) and other International Safety Management (ISM) certified systems operated by Services Australia.
- the training colleges securely transmit files to Services Australia with information collected from their members for the purpose of administering the program and compliance.

- Services Australia verifies the transmission and pays the nominated bank account, amount and person provided by the relevant training college and sends responses to the relevant training college regarding transmission success.
- Where there are issues in making claims, a tier 3 helpdesk and program management team assist from Services Australia and DHAC.

These arrangements involve the collection, use, recording and disclosure of information of personal and other information that is subject to secrecy arrangements and the *Privacy Act 1988*.

Subsection 130(1) of the *Health Insurance Act 1973* (Health Insurance Act) is a secrecy provision. This provision prohibits a person from making a record of, disclosing or communicating information about the affairs of a person obtained in the performance of duties, or exercise of functions or powers, under that Act unless an exception applies. This includes where it is for the purpose of enabling a person to perform functions in relation to a 'medicare program'.

Section 41G of the Act defines 'medicare programs' as services, benefits, programs or facilities that are provided under certain health-related legislation referred to in paragraph 41G(a) or that are specified in a legislative instrument made by the Minister under paragraph 41G(b). By defining 'medicare programs' to include programs specified in a legislative instrument, section 41G of the Act provides a mechanism for updating, from time to time, the list of Medicare programs in relation to which information can be recorded and disclosed.

Specification of the AGPT Program as a 'medicare program' was recommended as a privacy safeguard in a Privacy Impact Assessment (PIA) prepared by MinterEllison law firm for Services Australia regarding the Voluntary Patient Registration (VPR) aspects of AGPT Program (see <https://www.servicesaustralia.gov.au/privacy-impact-assessment-register>, reference number 48925).

Other aspects of the Australian General Practice Training Program

From 1 February 2023, the day-to-day management of the AGPT Program moved from the Department of Health and Aged Care to be jointly led by the training colleges.

Under this new model, the training colleges select, train, educate, assess and support registrars through fellowship. The AGPT Program will continue to provide a range of payments including payments to:

- general practices to compensate for the expense of training registrars
- Aboriginal Medical Services and Aboriginal Community Controlled Health Services to support training opportunities for general practice registrars in Aboriginal health training
- supervisors to compensate for teaching and training registrars
- registrars to support relocation and education related expenses.

Medical practitioners who undertake the AGPT Program are eligible for registration in approved placements under section 3GA of the Health Insurance Act, enabling payment of Medicare benefits for professional services rendered by those practitioners.

The AGTP Program is specified in section 26 of the *Health Insurance Regulations 2018* for the purposes of paragraph 3GA(5)(a) of the Health Insurance Act, which concerns the Register of Approved Placements maintained by the Chief Executive Medicare (as defined in the *Human Services (Medicare) Act 1973*).

Information sharing

Under the new college-led training model, the training colleges supply information to Services Australia so that Services Australia can make relevant payments on behalf of the Department of Health and Aged Care.

Services Australia will collect and make a record of 'protected information' within the meaning of the Health Insurance Act (including Registrar and Supervisor Medicare provider numbers (MPNs) and Medicare STEMs) when the following occurs:

- a registrar or supervisor registers for GP training payments
- Services Australia creates internal reports about GP training payments that include such information.

Services Australia officers will use and disclose 'protected information' within the meaning of the section 130 of the Health Insurance Act (such as registrar and supervisor MPNs and Medicare STEMs) in the course of:

- verifying information against a registrar's or supervisor's Medicare record in the system
- sharing GP training payments reports, including Registrar and Supervisor MPNs and Medicare STEMs.

The following information will be collected, recorded and used by the specified agency in relation to the AGPT Program

Services Australia

- personal information about training college and general practice delegates, including:
 - identifying information such as: full name, date of birth
 - gender
 - contact details
 - identity document details
- personal information about training college and general practice authorised contacts and associates, including:
 - identifying information such as full name, date of birth and unique systems identifiers
 - contact details

- personal information about Registrars and Supervisors, including:
 - identifying information such as Medicare Provider Number (MPN), Medicare Stem (the first 6 digits of the MPN), full name and date of birth
 - gender
 - contact details
 - identity document details
 - payment details such as type of payment, payment amount
 - bank account details.

Personal information provided to Services Australia will be sourced from organisation delegates, organisation authorised contacts and associates and registrars and supervisors.

The Department of Health and Aged Care (DHAC)

DHAC does not collect payment data for the AGPT Program directly from eligible payment recipients. However eligible payment recipients may contact the department to query payment information, status and system issues. In such case, DHAC will direct recipients to the Services Australia helpdesk for system issues, the training colleges for payment status information or provide further information on payment eligibility.

DHAC receives data from the Services Australia which notes the recipient identity (either by the MPN or another unique identifier) and payment status for each of the data requests sent from the training colleges to Services Australia. The data is used ensure compliance with Services Australia billing of DHAC funds and is filed electronically and access is limited to departmental staff responsible for the AGPT Program. Email communication between DHAC and Services Australia occurs through a secure network.

DHAC receives data reports from the training colleges which note payment data requests and include details regarding registrar Medicare Stem, surname, practice name, practice organisation registrar ID, location and payment level). This data is used to ensure compliance of payments to eligible payment recipients. This data is stored in DHAC's secure Health Data Portal with access limited to the departmental staff responsible for the AGPT Program.

Entities to which information can be disclosed

The above information will be disclosed to, and used by, DHAC, Services Australia and the training colleges—the RACGP and ACRRM—in the administration of the AGPT Program.

There are specified grounds on which the above information may be disclosed to an entity. These include

- for the purposes of the Health Insurance Act 1973 (**HI Act**), a 'medicare program', the *Medicare Guarantee Act 2017*, the *Dental Benefits Act 2008*, the *MyHealth Records Act 2012*, the *Medical Indemnity Act 2002*, the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*, the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme*

Act 2010 or the Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010

- where it would be in the public interest to divulge the information (for example, for a law enforcement purpose)
- in respect of which the person to whom the information relates has given their express or implied consent
- to a prescribed authority or person (but only in respect of information set out in the regulations made under the HI Act)
- for the purposes of claiming a medicare benefit
- for use by a body for the purpose of any investigation or inquiring being conducted by a professional disciplinary or regulatory body.

Additional detail about what safeguards apply to protect this information, including whether the Privacy Act 1988 applies

The Privacy Act applies to all ‘personal information’ collected for the purposes of the AGPT Program regardless of whether it is also covered by one or more secrecy provisions.

DHAC and Services Australia are Commonwealth agencies that must adhere to the Australia Privacy Principles contained in Schedule 1 of the Privacy Act.

Information collected or used for the purposes of the AGPT Program is also protected by the secrecy provision in section 130 of the HI Act. Subsection 130(1) of the HI Act prohibits an officer from making a record of, divulging or communicating any information with respect to the affairs of another person acquired by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions, under that Act.

The secrecy provisions in the HI Act are the same provisions that protect the health information of individuals collected for, amongst others, the Medicare Benefits Schedule. Specifying the AGPT Program as a Medicare program engages these protections.

Commencement

The Specification commences the day after registration on the Federal Register of Legislation.

Consultation

The Specification ensures that the recording and disclosure of Medicare provider information for the purposes of the AGPT Program does not contravene section 130 of the Health Insurance Act. Public consultation on the Specification was not considered necessary because it will facilitate better training outcomes.

Services Australia and the Department of Health and Aged Care were consulted on this amendment to the Principal Specification.

Regulatory Impact Statement

The Office of Impact Analysis was consulted and agreed that a Regulatory Impact Statement is not required (OIA ID OBPR23-04033).

General

The Specification is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in the **Attachment A**.

The instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Human Services (Medicare) (Medicare Programs) Amendment Specification 2023

Section 1—Name

This section provides that the name of this instrument is the *Human Services (Medicare) (Medicare Programs) Amendment Specification 2023* (the Specification).

Section 2—Commencement

This section provides that the instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3—Authority

This section provides that the legislative authority for making the Specification is paragraph 41G(b) of the *Human Services (Medicare) Act 1973* (the Act). At the end of section 3, there is a note to alert the reader that the power to vary a legislative instrument can be found in subsection 33(3) of the *Acts Interpretation Act 1901*. This subsection provides that:

Where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

This gives the Minister power to amend the *Human Services (Medicare) (Medicare Programs) Specification 2021* (Principal Specification) for the purposes of paragraph 41G(b) of the Act.

Section 4—Schedules

This section provides that each instrument that is specified in a Schedule to the Specification is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Specification has effect according to its terms.

SCHEDULE 1—AMENDMENTS

Schedule 1 amends the Principal Specification.

Item 1 inserts a new table item 31 at the end of the table in Schedule 1 of the Principal Specification. The new table item will specify the 'Australian General Practice Training Program' as a 'medicare program' for the purposes of paragraph 41G(b) of the Act.

Statement of Compatibility with Human Rights

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

Human Services (Medicare) (Medicare Programs) Amendment Specification 2023

This legislative instrument 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 legislative instrument

The *Human Services (Medicare) (Medicare Programs) Specification 2023* (the Principal Specification) specifies programs that are a ‘medicare program’ for the purposes of paragraph 41G(b) of the *Human Services (Medicare) Act 1973* (the Act),

A number of Commonwealth laws allow information that has been obtained in administering one program to be recorded or disclosed for the administration of another program in circumstances where the other program is a ‘medicare program’. For example, the *Health Insurance Act 1973* and the *National Health Act 1953* authorise persons to record, divulge and communicate information obtained under those Acts for the purposes of enabling a person to perform functions in relation to ‘medicare programs’ or other specified Acts. These laws rely on the term ‘medicare programs’ in section 41G of the Act to identify those programs for which information may be recorded, divulged and communicated.

Section 41G defines ‘medicare programs’ to be services, benefits, programs or facilities that are provided under certain health-related legislation referred to in paragraph 41G(a) or those that are specified in a legislative instrument made under paragraph 41G(b).

By expanding the term ‘medicare programs’ to include programs specified in a legislative instrument, section 41G of the Act provides a mechanism to update and add to the range of programs that operate as ‘medicare programs’ (and in relation to which information can be recorded and disclosed).

The Specification amends the Principal Specification to include the Australian General Practice Training Program (the AGPT Program) as a ‘medicare program’ for the purposes of section 41G(b) of the Act.

Human rights implications

The Specification engages the right to health (in article 12(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR)) and the right to privacy (in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR)).

Right to health

The Specification adds the AGPT Program as a ‘medicare program’ under paragraph 41G(b) of the Act.

The AGPT Program trains doctors to become general practitioners. It supports the training of medical registrars in general practice by covering participant training fees and offering incentives for working in regional, rural and remote areas.

The Specification therefore advances the right to health established by article 12 of the ICESCR insofar as it supports the effective delivery of the AGPT Program—a program that ultimately aims to improve access to primary health care, including in rural, regional and remote areas.

Right to Privacy

Specifying the AGPT Program as a ‘medicare program’ will authorise a person to divulge, communicate and record information obtained under certain laws (for example, those that establish Medicare and the Pharmaceutical Benefits Scheme) for the purposes of administering the AGPT Program. In practice, the change will primarily support the use of Medicare-related information held about health professionals (such as Medicare provider numbers and Medicare STEMs) for AGPT Program purposes.

The information obtained for the purposes of the AGPT Program may also be divulged, communicated and recorded for the purposes of other Medicare programs but only where this is authorised by law.

For the purposes of Article 17 of the ICCPR, the collection or use of any personal information would not be unlawful as it would be authorised under legislation. Further, the collection or use of personal information for this purpose would not constitute an arbitrary interference with the right to privacy as it would be undertaken for the legitimate and necessary objectives of administering the AGPT Program, including to do so consistently with Medicare and other health programs.

The limitation on the right to privacy is proportionate, as the provision of any personal information about providers would only be undertaken for the purposes of administering the AGPT Program. Information would be subject to secrecy provisions to prevent unauthorised disclosures.

Conclusion

The Specification is compatible with human rights because it advances the protection of the right to health. To the extent that it limits the right to privacy to that end, those limitations are reasonable, necessary and proportionate.

The Hon Bill Shorten MP, Minister for Government Services