

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Government Services  
*Human Services (Medicare) Act 1973*

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

### **Purpose**

The Human Services (Medicare) (Medicare Programs) Amendment (MyMedicare) Specification 2023 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 MyMedicare Program (MyMedicare) as a 'medicare program' for the purposes of paragraph 41G(b) of the Act.

MyMedicare is a new voluntary patient registration model, which aims to strengthen the relationship between Patients, their general practice, general practitioner (GP) and primary care teams. It will allow Patients to register with their regular GP and nominate their preferred GP through an Organisation Register which contains details of medical practices and associated Providers.

Specifying MyMedicare as a 'medicare program' will enable Commonwealth officers to record, communicate and divulge certain information protected by Commonwealth secrecy laws for the purposes of administering the MyMedicare program.

### **Background**

Subsection 130(1) of the *Health Insurance Act 1973* (Health Insurance Act) and subsection 135A(1) of the *National Health Act 1953* (National Health Act) prohibit a person from making a record of, divulging or communicating information about the affairs of another person obtained in the performance of duties, or exercise of functions or powers, under that Act unless an exception applies. Exceptions to this general prohibition relevantly includes where the recording, communication or divulgence 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 41(G)(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, communicated and divulged.

Specification of MyMedicare as a 'medicare program' was recommended as a privacy safeguard as part of a Privacy Impact Assessment (PIA) regarding the Voluntary Patient Registration (VPR) aspects of MyMedicare and a secrecy compliance assessment.

## **MyMedicare**

MyMedicare is a new voluntary patient registration model. It aligns with the recommendations made in the *Strengthening Medicare Taskforce Report 2022* (accessible at <https://www.health.gov.au/resources/publications/strengthening-medicare-taskforce-report?language=en>). The recommendations include improved continuity of care, a strengthened relationship between the Patient and their care team and more integrated, person centred care through the introduction of voluntary patient registration.

Over time, MyMedicare may support a range of reforms to improve access to general practice and support practice viability. Each of these benefits and services that will link to the MyMedicare program will require a Patient to evidence a link to their regular GP or nurse-led practice, in order to be eligible for the benefit or service.

The Department of Health and Aged Care (DoHAC) and Department of Veterans' Affairs (DVA) have partnered with Services Australia to implement MyMedicare on Services Australia's ICT platform. It will consist of the following ICT components:

- MyMedicare system, which is used to register and record the details of Patients who elect to register for and participate in the MyMedicare program, and
- Organisation Register, which will register and record the details of Practices that register to provide services under the MyMedicare program.

Patients will be able to register for MyMedicare via the MyMedicare system after logging into their myGov account, or in person at their registered Practice from 1 October 2023. Patients must have a Medicare or DVA Veteran card to register in MyMedicare.

In order to be eligible to enrol into the MyMedicare program, a Patient must have received two eligible services from their registered Practice in the past 24 months, or one eligible service with their registered Practice in the last 12 months where the Practice is located in a specified zone.

Patient's eligibility will be determined based on information held within Services Australia's Medicare systems that was collected for the purposes of Medicare.

General practices have been able to commence their registration since 1 July 2023. Registration is subject to certain eligibility requirements, available on DoHAC's website (<https://www.health.gov.au/our-work/mymedicare#eligibility>). Provider information that is held on Services Australia's Medicare systems will be used to confirm Provider details using their link to the Practice. Provider details will also be extracted and recorded onto the Organisation Register.

Specifying the MyMedicare program as a 'medicare program' is necessary for the administration of the MyMedicare program. It will ensure the requisite data can be shared and accessed by authorised officers in Services Australia, DoHAC and DVA, to determine eligibility for the program, administer the program and undertake compliance functions in relation to the program.

### ***Information sharing***

Registration to MyMedicare and access to linked health initiatives for both general practices, general practitioners, other health professionals, and Patients will require the communication, divulging and recording of Medicare-related 'protected information' within the meaning of the Health Insurance Act.

Protected information is required for the following purposes:

- When a Patient registers to participate in MyMedicare Services Australia will check the applicant's Medicare to determine their eligibility, and communicate the outcome to the MyMedicare system (see below for further details). This includes checking on DVA records to ensure eligibility where registered through a DVA issued card.
- When a delegate of a Practice registers to participate in the MyMedicare program, the delegate will provide details of the general practitioners that render services at the site, further details will then be extracted from the Provider Directory System and recorded in the Organisation Register (see below for further details).
- Upon the commencement of MyMedicare, Services Australia will extract and provide DoHAC and DVA with information necessary for the administration of MyMedicare (see below for further details).
- When a claim is made for a rebate (MBS Item), or when a service is claimed for a DVA client, that is only available to Patients who are registered with MyMedicare, Services Australia will check the applicant's MyMedicare registration and their Medicare to determine their eligibility as part of the rebate claim.
- When a general practice or general practitioner claims for a payment associated with the MyMedicare related initiatives Services Australia will access the Patient's history of rebates paid to calculate additional payments to the Practice and/or general practitioner.
- To enable ongoing management of a Patient's records and provide assistance to Patients, Services Australia staff will access records to amend a Patient's MyMedicare information on behalf of a Patient if requested by a Patient or their authorised representative.

- To allow DoHAC and DVA officers to undertake compliance functions in relation to general practitioners who have claimed payments associated with MyMedicare related initiatives.
- To allow DoHAC officers to measure MyMedicare registration uptake by Practices, Providers and Patient cohorts, and ongoing program monitoring and reporting.
- To inform policy development through data-driven population health needs and analysis to improve Patient health outcomes and provide a platform for future funding reform and improvements in digital health and infrastructure.

### Patient MyMedicare Registration

When a Patient applies to register for the MyMedicare program via their Practice, a delegate of the Practice will initially conduct a search for the Patient's Medicare. If a match for the Patient is located, the following details for the Patient will be displayed:

- Patient name
- date of birth
- Medicare Card Number – IRN or DVA File Number

The above information is information about a person acquired by Services Australia under the Health Insurance Act or the National Health Act, for the purposes of the relevant Act. The displaying of such information from a Patient's Medicare record to a Practice delegate, will constitute a divulging of protected information under the Health Insurance Act and National Health Act.

During the Patient registration process, Services Australia will conduct a check of a Patient's Medicare Benefits Schedule (MBS) claims information to determine if the Patient meets the eligibility requirements (that is that they have received the required number of relevant services from their preferred Practice).

The system will search the Patient's MBS and DVA claims data within the Medicare claims Item Fee File and apply the rules to determine the Patient's eligibility.

These activities will constitute a communication of information about the affairs of a person that was collected for the purposes of the Health Insurance Act or the National Health Act.

Once the Patient's eligibility to participate in the MyMedicare scheme has been determined in the system, the outcome is recorded in the MyMedicare system. This will constitute a divulging of protected information under the Health Insurance Act and National Health Act.

### Organisation Site MyMedicare Registration

Where a Practice registers to participate in the MyMedicare program, during the registration process, the following details will be extracted and recorded into the Organisation Register:

- Provider location number
- Provider name, and
- Provider location address

Such actions will constitute a communication and making of a record of information which is about the affairs of a person that was collected for the purposes of the Health Insurance Act or the National Health Act Health.

Any changes or updates made to a Provider record, are automatically copied into the Organisation Register. This constitutes a communication and making of a record of information about the affairs of a person that was collected for the purposes of the Health Insurance Act or the National Health Act.

#### Department of Health and Aged Care

Upon commencement of MyMedicare, Services Australia will extract and send to the Department of Health and Aged Care, data elements collected when administering MyMedicare, which will include the following protected information for the purposes of the Health Insurance Act or National Health Act:

- Medicare Provider Number of Providers linked to the Practice and preferred GPs
- preferred GP Suspended Status Flag
- Medicare PIN of the registered Patient, and
- registration Eligibility Reason Code of the registered Patient.

This will constitute a divulging of information about the affairs of a person that was collected for the purposes of the Health Insurance Act and/or the National Health Act.

#### Department of Veterans' Affairs

Upon commencement of MyMedicare, Services Australia will extract MyMedicare data for DVA clients who have enrolled into MyMedicare and divulge it to DVA via specific tables in the Enterprise Data Warehouse (EDW), DVA will have access to. This will include the following information in relation to:

- Provider location number
- Provider number, and

- Provider location address.

This constitutes divulging of information about the affairs of a person that was collected for the purposes of the Health Insurance Act or the National Health Act.

### ***Additional detail about what safeguards apply to protect this information***

The *Privacy Act 1988* (the Privacy Act) applies to all 'personal information' collected for the purposes of the MyMedicare program regardless of whether it is also covered by one or more secrecy provisions.

The Department of Health and Aged Care, DVA and Services Australia are Commonwealth agencies that must adhere to the Australia Privacy Principles contained in Schedule 1 of the Privacy Act.

Medicare enrolment and claiming information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions under the Health Insurance Act or the National Health Act will remain subject to secrecy provisions to prevent unauthorised handling of that information.

### **Commencement**

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

### **Consultation**

The Specification ensures that the recording, communication and divulgence of Medicare information for the purposes of MyMedicare does not contravene section 130 of the Health Insurance Act or section 135A of the National Health Act. As this Specification is of a mechanical nature, no public consultation on the Specification was considered necessary.

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

### **Impact Analysis**

The Office of Impact Analysis was consulted and agreed that an Impact Analysis report is not required (OIA ID OIA23-05567).

### **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**.



## **ATTACHMENT A**

### **Section 1 – Name**

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

### **Section 2 – Commencement**

This section provides that the Specification 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 amend 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 items.

## **SCHEDULE 1 – AMENDMENTS**

Schedule 1 amends the *Human Services (Medicare) (Medicare Programs) Specification 2021* (Principal Specification).

**Item 1** inserts a new table item 32 at the end of the table in Schedule 1 of the Principal Specification. The new table item will specify the 'MyMedicare Program' as a 'medicare program' for the purposes of paragraph 41G(b) of the Act.



## ATTACHMENT B

### 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 (MyMedicare) Specification 2023***

The 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) Amendment (MyMedicare) Specification 2023 amends the *Human Services (Medicare) (Medicare Programs) Specification 2021* (the Principal Specification). 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, communicated or divulged 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 MyMedicare Program (MyMedicare) 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 specifies MyMedicare as a ‘medicare program’ under paragraph 41G(b) of the Act.

MyMedicare is a new voluntary patient registration model, which aims to strengthen the relationship between patients, their general practice, general practitioner and primary care teams.

The Specification therefore advances the right to health established by Article 12 of the ICESCR insofar as it supports the effective delivery of MyMedicare – a program that ultimately aims to improve access to primary health care.

### *Right to Privacy*

Specifying MyMedicare as a ‘medicare program’ will authorise a person to divulge, communicate and record information obtained under certain Commonwealth laws for the purposes of administering the MyMedicare program. In practice, the change will primarily support the use of Medicare-related information held by Services Australia for MyMedicare program purposes.

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 legitimate and necessary objectives of administering MyMedicare, including to do so consistently with the Medicare Benefits Scheme and other health programs.

The limitation on the right to privacy is proportionate, as the provision of any personal information about Patients or Providers would only be undertaken for the purposes of administering MyMedicare. Information would be subject to secrecy provisions to prevent unauthorised disclosures as well as protections under the *Privacy Act 1988*.

## **Conclusion**

The Specification is compatible with human rights because it advances the protection of 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**