

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Indexation) Regulations 2025

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).

Section 4A of the Act provides that regulations may prescribe a table of pathology services which set out items of pathology services, the fees applicable for each item, and rules for interpreting the table. The table made under this section is referred to as the Pathology Services Table. The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 2020* (PST).

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 Legislation Amendment (Indexation) Regulations 2025* (the Regulations) is to implement annual fee indexation from 1 July 2025 by increasing the schedule fee by 2.4 per cent for most general medical services in the GMST and diagnostic imaging services in the DIST, and introduce indexation for pathology services in the PST including tissue pathology, cytology, haematology, immunology, and infertility and pregnancy testing services.

The Regulations will apply indexation to:

- most items in the GMST;
- most items in the DIST, except positron emission tomography items in Group I4 (subgroup 2) and nuclear medicine modifier items in Group I4 (subgroup 3);

- pathology services in Group P1 (haematology), Group P4 (immunology), Group P5 (tissue pathology), Group P6 (cytology), Group P8 (infertility and pregnancy tests) and Group P12 (management of bulk-billed services). For the first time indexation would be applied to pathology services, as announced by the Government in the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule (MBS)* measure.

Consultation

The Department of Health and Aged Care consulted with key stakeholders on the proposed changes to apply indexation to non-PET nuclear medicine items and to certain pathology services (Groups P1, P4, P5, P6 and P8). These stakeholders included:

- Australasian Association of Nuclear Medicine Specialists, Australian and New Zealand Society of Nuclear Medicine, Australian Diagnostic Imaging Association, Royal Australian and New Zealand College of Radiologists and Rural Alliance in Nuclear Scintigraphy; for non-PET diagnostic imaging indexation.
- Australian Pathology, Public Pathology Australia and the Royal College of Pathologists of Australasia; for pathology services indexation.

No consultation was undertaken regarding indexation of schedule fees that are routinely indexed each year as this is administrative in nature. This includes indexation of items in the GMST and indexation of DIST services that does not relate to nuclear medicine services.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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 July 2025.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (Indexation) Regulations 2025*

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (Indexation) Regulations 2025* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2025.

Section 3 – Authority

This section provides that the Regulations are made under the *Health Insurance Act 1973* (the Act).

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

Schedule 1 of the Regulations applies annual indexation of the schedule fees of most Medicare Benefits Schedule (MBS) items from 1 July 2025. This will increase the benefit paid to patients for these services, which is calculated as a percentage of the fee per section 10 of the *Health Insurance Act 1973*. Indexation will be applied by 2.4 per cent, which is represented as 1.024 in the diagnostic imaging services table (clause 2.7.1), general medical services table (clause 1.3.1) and the pathology services table (clause 2.14.1).

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

Items 1 to 4 apply indexation to most items in the DIST. **Amendment 4** will apply indexation to non-PET nuclear medicine imaging services.

From 1 July 2025, indexation will apply to all diagnostic imaging services other than positron emission tomography items in Group I4 (subgroup 2) and nuclear medicine modifier items in Group I4 (subgroup 3).

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

Items 5 to 23 apply indexation to most items in the GMST. There is no change to the range of items which is indexed in the GMST. All items in the GMST are subject to indexation, other than a small number of general practice-type items which are intended to be registered by medical practitioners who were registered or in training on or after 1 November 1996 and have not completed vocational training. The schedule fee for these items is not indexed to encourage these doctors to complete vocational training to access the higher fee items available to general practitioners.

Health Insurance (Pathology Services Table) Regulations 2020 (PST)

Items 24 to 30 apply indexation to particular items in the PST. **Amendment 30** will apply indexation to pathology services in P1 (haematology), P4 (immunology), P5 (tissue pathology), P6 (cytology) and P8 (infertility and pregnancy tests). The bulk-billing incentives for unREFERRED pathology services in Group P12 will continue to be subject to indexation.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Indexation) Regulations 2025

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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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 the 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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