

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 98**

#### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) Amendment Regulations 2011 (No. 1)*

#### *Health Insurance Amendment Regulations 2011 (No. 2)*

Subsection 133(1) of the *Health Insurance Act 1973* (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 benefit for professional services rendered to eligible persons. Part II, section 9 of the Act provides that medicare benefits be calculated with reference to fees for medical services set out in prescribed tables.

Subsection 4(1) of the Act provides that regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services) setting out items of medical services, fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulations 2010* (the GMST Regulations) currently prescribe such a table.

The Regulations amend the GMST Regulations by adding five new items to the Medical Benefits Schedule (the MBS), amending 16 existing items and deleting seven items. These amendments ensure that the medical services provided through the MBS continue to be up-to-date, comprehensive and represent best medical practice. Rules are inserted to govern the new items and consequential amendments are made to the rules governing amended or deleted items.

Schedule 6 to the *Health Insurance Regulations 1975* (the HI Regulations) lists items for MBS services for which the Medicare benefit is 100 per cent of the MBS fee. The Regulations also amend Schedule 6 to the HI Regulations to include 15 new items.

Details of the amendments to the GMST Regulations are set out in Attachment A and details of the amendments to the HI Regulations are set out in Attachment B.

The Act specifies no conditions which need to be met before the power to make the regulations is exercised.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

Regulations 1 to 3 and Schedule 1 to the amendments to the GMST Regulations commence on 1 July 2011 and regulation 4 and Schedule 2 commence on 1 October 2011. The different commencement dates give Medicare Australia the necessary time to make the system changes required by the amendment in Schedule 2.

The amendments to the HI Regulations commence on 1 July 2011.

Consultation on implementing the two 2010 election initiatives, the *Better Start for Children with Disability* initiative and the *Connecting Health Services with the Future* initiative, was undertaken with all interested parties. For the former initiative, these parties comprised the Australian Medical Association (AMA) and the relevant craft groups, on the medical side, and the associations representing the relevant professions on the allied health side. For the *Connecting Health Services with the Future* initiative, consultation was undertaken with the Telehealth Advisory Group whose members represent the craft groups whose work will be affected by the initiative. In both cases, most of the organisations supported the resulting MBS item and fee structures.

The translation of MBS item 12250 (overnight investigation for sleep apnoea) from a section 3C Determination to the *Health Insurance (General Medical Services Table) Regulations 2010*, is supported by the AMA and the relevant craft groups.

The following two amendments were made at the request of the Pharmacy Guild of Australia and the medical craft groups, respectively: (a) the expansion of GP-referral options under the medication review program (at Schedule 2, [1]); (b) the removal of limitations on the categories of specialist medical trainee eligible to perform therapeutic procedures under the direct supervision of a specialist who retains billing rights (at [20]).

The remaining amendments to the *Health Insurance (General Medical Services Table) Regulations 2010* and the *Health Insurance Regulations 1975*, when not minor in nature, have been made on the recommendation of the Pharmaceutical Benefits or Medical Services Advisory Committees whose members are drawn from the relevant craft groups.

## ATTACHMENT A

**DETAILS OF THE HEALTH INSURANCE (GENERAL MEDICAL SERVICES TABLE) AMENDMENT REGULATIONS 2011 (No. 1)**

**Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations are the *Health Insurance (General Medical Services Table) Amendment Regulations 2011 (No. 1)*.

**Regulation 2 - Commencement**

This regulation provides for the Regulations to commence as follows:

- (a) on 1 July 2011 — regulations 1 to 3 and Schedule 1;
- (b) on 1 October 2011 — regulation 4 and Schedule 2.

**Regulation 3 – Amendment of the *Health Insurance (General Medical Services Table) Regulations 2010***

This regulation provides that Schedule 1 amends the *Health Insurance (General Medical Services Table) Regulations 2010*.

**Regulation 4 – Amendment of the *Health Insurance (General Medical Services Table) Regulations 2010***

This regulation provide that Schedule 2 amends the *Health Insurance (General Medical Services Table) Regulations 2010*.

**Schedule 1 – Amendments**

**Item [1] – Schedule 1, Part 1, subclause 1.2.2(1)**

This item includes new MBS item 137 (consultation to prepare a treatment and management plan for a child with an eligible disability) in a list of specialist and consultant physician services which are subject to the rules set out in subclauses 1.2.2 (2) and 1.2.2 (3) (e.g. that the patient must have been referred by another medical practitioner).

**Item [2] – Schedule 1, Part 1, subclause 1.2.3(1)**

This item amends a list of MBS attendance items to include items 13209 (management of a patient undergoing assisted reproductive treatment) and 17690 (pre-surgical consultation) which had been erroneously omitted from the list. The principal purpose of clause 1.2.3 is to define ‘professional attendance’ for the listed items.

**Items [3] to [6] – Schedule 1, Part 1, subclauses 1.2.4(1), 1.2.4(3), 1.2.5(1) and 1.2.5(4)**

These items:

- amend subclauses 1.2.4(1) and 1.2.5(1) to prevent the *de facto* inclusion in a list of items for existing MBS services, of new items for telehealth specialist services, which are introduced into the MBS on 1 July 2011 via the *Health Insurance (Telehealth services) Determination 2011*, as provided for in section 3C of the Act; and
- amend the criteria of 'personal attendance' on a patient by a medical practitioner, as set out in subclauses 1.2.4(3) and 1.2.5(4), to include specialist consultations undertaken by video conference, and to list the relevant MBS items.

**Item [7] – Schedule 1, Part 1, subclause 1.2.8(1)**

This item inserts new MBS item 12250 (overnight investigation for sleep apnoea) into a list of items for MBS services which may be provided by persons other than medical practitioners.

**Item [8] Schedule 1, Part 2, Division 2.5, table, item 135**

**Item [9] Schedule 1, Part 2, after Division 2.5**

**Item [10] Schedule 1, Part 2, Division 2.10, after clause 2.10.3**

**Item [11] Schedule 1, Part 2, Division 2.10, table, item 289**

These items implement the *Better Start for Children with Disability* program.

Items [8] and [9] translate MBS item 135 from Group 4 to new Group A29 (*Early intervention services for children with autism, pervasive developmental disorder or disability*) which is inserted by item [9]. Group A29 also includes new MBS items 137 and 139. MBS items 135, 137 and 139 provide for the preparation of a treatment and management plan for an eligible child by a paediatrician, a consultant physician and a general practitioner, respectively. Clauses 2.5A.1 and 2.5A.2 define key terms used in MBS items 135, 137 and 139.

Items [10] and [11] amend existing MBS item 289 and its rules to include it in the *Better Start for Children with Disability* program while leaving it in Group A8 (*Consultant psychiatrist attendances*).

**Item [12] – Schedule 1, Part 2, Division 2.18, heading**

This item amends the descriptor for Group A17 MBS items to reference the fact that the group includes MBS items for both domiciliary and residential medication management reviews, and not just the former as the current descriptor suggests.

**Item [13] – Schedule 1, Part 2, Division 2.20, table, item 2710**

**Item [14] – Schedule 1, Part 2, Division 2.28, table, item 10907, column 2**

**Item [15] – Schedule 1, Part 2, clause 2.31.1, definition of eligible area, subparagraph (c) (v)**

**Item [16] – Schedule 1, Part 2, clause 2.31.1, definition of eligible area, subparagraph (c) (xxii)**

These items correct minor drafting errors.

**Item [17] – Schedule 1, Part 2, after subclause 2.34.2(1)**

**Item [18] – Schedule 1, Part 2, Division 2.34, table, after item 12217**

These items insert new MBS item 12250 (overnight investigation for sleep apnoea) and amend the rules to define the category of medical practitioner eligible to provide the service in question. This item is associated with item [7] above.

**Item [19] – Schedule 1, Part 2, Division 2.34, table, item 11332**

This item substitutes ‘Down Syndrome’ for ‘Down’s Syndrome’, the former being the term now preferred by those with the condition.

**Item [20] – Schedule 1, Part 2, Division 2.36**

This item removes limitations on the categories of specialist medical trainee eligible to perform therapeutic procedures under the direct supervision of a specialist who retains billing rights.

**Items [21] and [22] – Schedule 1, Part 2, Division 2.38, table items 15360, 15363 and 15541**

These items remove obsolete MBS items for intravascular brachytherapy for coronary artery restenoses and their associated rules.

**Items [23] to [25] – Schedule 1, Part 2, Division 2.42, clauses 2.42.3 and 2.42.4;**

**Schedule 1, Part 2, Division 2.42, table, items 18350 to 18373;**

**Schedule 1, Part 2, Division 2.42 after the table**

These items move MBS items 18350 to 18373 (botulinum toxin treatments) and associated rules from Group T7 (Regional or field nerve blocks) where they had been erroneously placed, into new Group T11 (Botulinum toxin); a new MBS item 18361 (botulinum toxin treatment for focal spasticity) is also included in new Group T11.

**Item [26] – Schedule 1, Part 2, subclause 2.43.5(2)**

**Item [27] – Schedule 1, Part 2, Division 2.43, table, item 21981**

These items remove a redundant phrase in MBS item 21981 (anaesthetic agent allergy testing) and clarify when the test in question should be performed.

**Item [28] – Schedule 1, Part 2, clause 2.44.3**

This item deletes a clause which is made redundant by the amendments introduced in item [20] above.

**Item [29] – Schedule 1, Part 2, Division 2.44, Subdivision D, table, item 37218**

This item inserts a new MBS item 37217 (implantation of gold fiducial markers into the prostate gland or prostate surgical bed) and amend the descriptor for MBS item 37218 to prevent it being used for services which are to be billed under new MBS item 37217.

**Item [30] – Schedule 1, Part 2, Division 2.44, Subdivision D, table, items 38321, 38324, 38327 and 38330**

This item removes obsolete MBS items for intravascular brachytherapy for coronary artery restenoses.

**Items [31] and [32] – Schedule 1, Part 2, Division 2.44, Subdivisions D and E, table, items 41767 and 41861**

These items amend the descriptors for MBS items 41767 (for nasopharyngeal angiofibroma) and 41861 (microlaryngoscopy) to align them with current clinical practice.

**Items [33] and [34] – Schedule 1, Part 2, Division 2.44, Subdivision H, table, items 47915 and 47916**

These items amend MBS item 47916 to expand the range of treatments for the condition in question (ingrowing toe-nail) and amend MBS item 47915 so that its descriptor might remain consistent with that of item 47916.

**Item [35] – Schedule 1, Part 2, Division 2.44, Subdivision H, table, items 49833, 49836, 49837 and 49838**

These items amend the descriptors for these MBS items (orthopaedic surgery) to clarify the policy intent of the items and to thereby remove the opportunity for incorrect billing.

**Items [36] to [40] – Dictionary**

These items update the dictionary in line with the changes which are effected by these amendments.

**Schedule 2 – Amendment commencing on 1 October 2011****Item [1] – Schedule 1, Part 2, Division 2.18, table, item 900, column 2, paragraph (a)**

This item amends MBS item 900 to increase the referral options of a general practitioner (GP) whose patient requires a medication review. Currently, the GP refers the patient to a community pharmacy which in turn refers the patient to an accredited pharmacist who undertakes the medication review. MBS Item 900 is amended to give the GP the option of referring the patient directly to an accredited pharmacist.

## ATTACHMENT B

**DETAILS OF THE HEALTH INSURANCE AMENDMENT REGULATIONS 2011 (NO. 2)****Regulation 1 – Name of Regulations**

This regulation provides that the title of the regulations is the *Health Insurance Amendment Regulations 2011 (No. 2)*.

**Regulation 2 - Commencement**

This regulation provides for the regulations to commence on 1 July 2011.

**Regulation 3 – Amendment of the *Health Insurance Regulations 1975***

This regulation provides that Schedule 1 amends the *Health Insurance Regulations 1975*.

**Schedule 1 - Amendments****Item [1] Regulation 3A, table, after item 10**

This item includes orthoptic services as a ‘health service’ for the purpose of paragraph 3C(8) (b) of the Act.

**Items [2], [3] and [4] – Schedule 6, after items 2 and 15, and item 16**

These items amend the list of MBS items for services for which the medicare benefit is 100 per cent of the Schedule fee, to include 15 new items. Of these items, only item 139 (preparation of a GP-treatment and management plan for a child with an eligible disability) is included in the *Health Insurance (General Medical Services Table) Regulations 2010*. The other items, for telehealth services, are included in the MBS via *Health Insurance (Telehealth services) Determination 2011*, as provided for in section 3C of the Act.