

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Regulations 2018

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 medical services which sets out items of medical services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulation 2017* (GMST) currently prescribes such a table.

Subsection 4(2) of the Act provides that unless repealed earlier, this regulation will cease to be in force and will be taken to have been repealed on the day following the 15th sitting day of the House of Representatives after the end of a 12 month period which begins on the day when the regulation is registered on the Federal Register of Legislation (FRL). The GMST was registered on the FRL on 16 June 2017.

Purpose

The purpose of the *Health Insurance (General Medical Services Table) Regulations 2018* (the Regulations) is to repeal and remake the GMST. This will ensure that Medicare benefits continue to be payable for services currently available in the 2017 GMST. The Regulations will also remove four pelvic organ prolapse (POP) surgery items, as these items will be amended and listed through a ministerial determination under section 3C of the Act. This was announced in the 2018-19 Budget under the *Guaranteeing Medicare — Medicare Benefits Schedule Review — response to Taskforce recommendations* measure to restrict the use of urogynaecological mesh. This change also addresses Recommendation four of the Senate Community Affairs Report - *Number of women in Australia who have had transvaginal mesh implants and related matters*.

In the 2017-18 Budget the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. The Regulations will commence the second phase of this measure by implementing indexation of standard GP consultations and specialist attendances from 1 July 2018. Annual indexation of GP bulk-billing incentive items, which commenced on 1 July 2017, will continue from 1 July 2018.

Consultation

Consultation was not undertaken for the remake of this instrument as it is machinery in nature and it does not alter existing arrangements. Consultation was undertaken on indexation as part of the compacts negotiated between the Government and the

Australian Medical Association and the Royal Australian College of General Practitioners.

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 commence on 1 July 2018.

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

ATTACHMENT

Details of the *Health Insurance (General Medical Services Table) Regulations 2018*Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance (General Medical Services Table) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2018.

Section 3 – Authority

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

Section 4 – General medical services table

This section provides that the new table of medical services set out in Schedule 1 be prescribed for subsection 4(1) of the Act.

Section 5 – Dictionary

This section provides for a Dictionary in Part 3 of Schedule 1 at the end of the Regulations.

Section 6 – Schedule 2

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 table

This part of the Regulations remakes the existing general medical services table, which is currently prescribed by the *Health Insurance (General Medical Services Table) Regulations 2017*. In addition, the Regulations will make the following changes to the existing table.

Indexation

The Regulations will commence the second phase of the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure by indexing approximately 220 items across standard GP consultations (group A1), specialist attendances and GP bulk-billing incentive items.

Inclusion of mechanical thrombectomy item

The Regulations will include one item which is currently prescribed by the *Health Insurance (Section 3C General Medical Services – Mechanical Thrombectomy) Determination 2017*. The Regulations will incorporate mechanical thrombectomy item 35414 from 1 July 2018, with the Determination to be subsequently revoked.

This item is already available on the Medicare Benefits Schedule (MBS), so there is no change to patients or providers.

Removal pelvic organ prolapse (POP) surgery items

The Regulations will remove four POP surgery items (35570, 33571, 35573, and 35577). These items will be amended and listed through a ministerial determination under section 3C of the Act from 1 July 2018. The ministerial determination will also list three new items to allow for the payment of Medicare benefits for the surgical removal of mesh products in symptomatic patients.

This was announced in the 2018-19 Budget under the *Guaranteeing Medicare — Medicare Benefits Schedule Review — response to Taskforce recommendations*.

Minor and machinery changes

The Regulations make a number of minor and machinery amendments to the GMST by:

- Renumbering clauses to reflect chronological order and the Regulations structure.
- Moving the general application provision relating to consultant occupational physicians (previously in clause 1.2.6) to Group A12. The clause applies to items in Group A12 only has been moved to the relevant section in the GMST (clause 2.12.1).
- Moving the general application provision relating to the meaning of participating in a video conferencing consultation (previously clause 1.2.9) to Part 3 (Dictionary). This is because this clause provides the meaning rather than the application of participating in a video conference consultation.
- Amending clause 2.45.12 (previously 2.44.12A) to remove reference to item 31584. Currently, there are two items for the surgical reversal of bariatric surgery available on the MBS. Item 31584, in its current form, can be claimed when bariatric reversal surgery is performed as a standalone procedure. Item 31591 was introduced in the *Health Insurance (Section 3C General Medical Services – Additional item for reversal of a bariatric procedure) Determination 2017* to cover circumstances where a bariatric reversal is performed on the same occasion as another bariatric surgical procedure. It allowed the item to be co-claimed with bariatric surgery items 31569 to 31581 where appropriate. As only one item is needed for the reversal of a bariatric procedure, the Regulations allow item 31584 to be co-claimed in association with an additional bariatric service under items 31569 to 31581, or as an independent reversal procedure. Item 31591 is redundant and will be revoked by a ministerial determination.

Application of items 16590, 16591 and 16407

As part of an antenatal (items 16590 and 16591) or a postnatal (item 16407) service, it is expected that a medical practitioner be required to enquire about the mental wellbeing of the patient and undertake a more comprehensive assessment where agreed to by the patient. This would include a discussion about factors that pose a significant risk to mental health, such as drug and alcohol use and domestic violence. This would then enable monitoring or referral for appropriate assessment, support and treatment, and facilitate education about the inherent risks of drug and alcohol misuse in pregnancy.

It is not intended that the screening for drug and alcohol use would require diagnostic testing of the patient. It is also not intended that a patient would be ineligible for Medicare benefits if the patient declines to receive a comprehensive mental health assessment. In that scenario, a Medicare benefit would still be payable providing the medical practitioner had enquired about the patient's mental wellbeing.

Further guidance around the billing of items under Medicare can be obtained in the explanatory notes that are available at www.mbsonline.gov.au.

Schedule 2 – Repeals

This section repeals the *Health Insurance (General Medical Services Table) Regulations 2017*.

Statement of Compatibility with Human Rights

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

Health Insurance (General Medical Services Table) Regulations 2018

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 Regulation

The purpose of the *Health Insurance (General Medical Services Table) Regulations 2018* (the Regulations) is to repeal and remake the GMST. This will ensure that Medicare benefits continue to be payable for services currently available in the 2017 GMST. The Regulations will also remove four pelvic organ prolapse (POP) surgery items, as these items will be amended and listed through a ministerial determination under section 3C of the Act. This was announced in the 2018-19 Budget under the *Guaranteeing Medicare — Medicare Benefits Schedule Review — response to Taskforce recommendations* measure to restrict the use of urogynaecological mesh.

In the 2017-18 Budget the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. The Regulations will commence the second phase of this measure by implementing indexation of standard GP consultations and specialist attendances from 1 July 2018. Annual indexation of GP bulk-billing incentive items, which commenced on 1 July 2017, will continue from 1 July 2018.

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.

Analysis

The Regulations will maintain rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

Conclusion

This Regulation is compatible with human rights because it maintains existing arrangements and the protection of human rights.

Greg Hunt

Minister for Health