

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance Legislation Amendment (Bulk-billing Incentive (No. 2)) Regulations 2020

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 medical services which sets out items of 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 (GMST).

Subsection 4AA(1) 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 subsection is referred to as the diagnostic imaging services table (DIST).

Subsection 4A(1) 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 subsection is referred to as the pathology services table (PST).

Purpose

The purpose of the *Health Insurance Legislation Amendment (Bulk-billing Incentive (No. 2)) Regulations 2020* (the Regulations) is to remove the temporary increase that was applied to the schedule fees for the bulk-billing incentive items and return the schedule fees to their normal rate from 1 October 2020. This includes the application of indexation of 1.5 per cent that was applied to most MBS items on 1 July 2020.

This change is part of the Government's commitment to protect all Australians from the coronavirus (COVID-19). It will assist primary care and balance patient access and ongoing vigilance in relation to COVID-19 infection.

On 30 March 2020, the *Health Insurance Legislation Amendment (Bulk-billing Incentive) Regulations 2020* temporarily doubled the fees for bulk-billing incentive items as part of the Government's health care package to protect all Australians from the COVID-19. The fees changes were to cease on 30 September 2020, unless earlier revoked.

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from COVID-19.

Bulk-billing incentives items are available for medical services (items 10990, 10991 and 10992), diagnostic imaging services (items 64990 and 64991) and pathology services (74990 and 74991) for patients who are either under 16 years old, or who are a Commonwealth concessional beneficiary.

Consultation

As part of its health care package to protect all Australians from COVID-19, the Australian Government is consulting broadly with the medical sector including with Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia.

There was no specific consultation on the introduction of the doubling of the bulk billing incentive on 30 March 2020 and it was introduced as a temporary measure. Consultation has been undertaken on the returning of the schedule fees for the bulk billing incentives that is enacted through this regulation with the Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia.

Details of the Regulations are set out in the Attachment.

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations will commence on 1 October 2020.

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

Details of the *Health Insurance Legislation Amendment (Bulk-billing Incentive (No. 2)) Regulations 2020*

Section 1 – Name

This section provides that the instrument is the *Health Insurance Legislation Amendment (Bulk-billing Incentive (No. 2)) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations will commence on 1 October 2020.

Section 3 – Authority

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

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 – Amendments

Part 1 – Amendments

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

Item [1] – Clause 2.6.2 of Schedule 1 (item 64990, column 3)

Item 1 will change the schedule fee of item 64990 from \$14.30 to \$7.15.

Item [2] – Clause 2.6.2 of Schedule 1 (item 64991, column 3)

Item 2 will change the schedule fee of item 64991 from \$21.60 to \$10.80.

Health Insurance (General Medical Services Table) Regulations (No. 2) 2020

Item [3] – Clause 3.2.3 of Schedule 1 (item 10990, column 3)

Item 3 will change the schedule fee of item 10990 from \$15.20 to \$7.60.

Item [4] – Clause 3.2.3 of Schedule 1 (items 10991 and 10992, column 3)

Item 4 will change the schedule fees of items 10991 and 10992 from \$23.05 to \$11.50.

Health Insurance (Pathology Services Table) Regulations 2020

Item [5] – Clause 2.12.2 of Schedule 1 (item 74990, column 3)

Item 5 will change the schedule fee of item 74990 from \$14.30 to \$7.15.

Item [6] – Clause 2.12.2 of Schedule 1 (item 74991, column 3)

Item 6 will change the schedule fee of item 74991 from \$21.60 to \$10.80.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Bulk-billing Incentive (No. 2)) Regulations 2020

This Disallowable 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 Determination

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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.

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. The Regulations will return the schedule fees for the bulk-billing incentive items to standard levels. This will retain the incentives for medical practitioners to provide bulk-billed services to financially disadvantaged patient groups.

Conclusion

The Regulations are compatible with human rights as they maintain the right to health and the right to social security.

Greg Hunt
Minister for Health