

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Amendment (Workforce Programs) Regulations 2023

Purpose and operation

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.

The Health Insurance Regulations 2018 (Principal Regulations) set out the overarching framework supporting the provision of appropriate medical services.

The *Health Insurance Amendment (Workforce Programs) Regulations 2023* (the Regulations) amend the *Health Insurance Regulations 2018* (the Principal Regulations) to remove references to the Rural Locum Relief Program (RLRP) and the Special Approved Placements Program (SAPP) for the purposes of paragraph 3GA(5)(a) of the *Health Insurance Act 1973* (the Act). Section 3GA of the Act provides for the registration of certain medical practitioners in approved placements.

The purpose of the Regulations is to give effect to a 2018-19 Budget decision to cease the operation of the RLRP and the SAPP on the Register of Approved Placements. The closure of the SAPP and RLRP closed to new applicants on 30 June 2019 and are to cease operating from 30 June 2023, with all current placements ending on 30 June 2023.

Usually, to be eligible to provide Medicare rebated services, a medical practitioner must be vocationally registered (a recognised fellow of a medical specialist college, include one of the two general practitioner (GP) colleges), in accordance with section 19AA of the Act. This requirement is designed to improve the quality of medical services provided to Australians under Medicare.

The RLRP was established to provide an exception to these arrangement, to allow non-vocationally recognised doctors to access Medicare where they were engaged to provide locum relief to general practitioners (GPs) working at identified rural locations. Similarly, the SAPP was established to allow non-vocationally recognised doctors to access Medicare where their circumstances were exceptional and they were working in an area that contributed to improved access to medical services.

These programs are not approved training programs and do not result in progression towards vocational recognition by participants. The Department of Health and Aged Care and the Rural Workforce Agencies have engaged directly with participants on the SAPP and RLRP to ensure seamless transition to alternative pathways for doctors who have not yet achieved vocational recognition.

Both general practice colleges, the Royal Australian College of General Practitioners (RACGP) and the Australian College of Rural and Remote Medicine (ACRRM), provide training pathways that support non-vocationally recognised GPs to attain vocational recognition.

In order to meet the requirements of section 19AA of the Act, non vocationally recognised doctors may participate on programs such as the Australian General Practice Training Program (AGPT), RACGPs Fellowship Support Program, the ACCRM Independent Pathway, or the More Doctors for Rural Australia Program (MDRAP). Doctors who participate on the approved workforce or training programs listed can obtain a Medicare Provider Number and access Medicare benefits.

Authority

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.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

Commencement

The Regulations commence on 1 July 2023.

Consultation

Consultation was undertaken with the General Practice Colleges, Rural Workforce Agencies, Regional Training Organisations and Services Australia, who considered that the amendments support the requirement for non-vocationally recognised doctors to be working towards vocational recognition on an approved training program.

General

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

Details of the Regulations are set out in **Attachment A**.

The Regulations are 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**.

Health Insurance Amendment (Workforce Programs) Regulations 2023

Section 1 – Name

This section provides that the name of the Regulations is the *Health Insurance Amendment (Workforce Programs) Regulations 2023*.

Section 2 – Commencement

This section provides that the Regulations commence on 1 July 2023.

Section 3 – Authority

This section provides that the Regulations are made under section 133 of the *Health Insurance Act 1973* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations 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

Health Insurance Regulations 2018

Item 1 – Subsection 26(2) (table item 2, column 2, paragraphs (h) and (i))

This item repeals the references to the Rural Locum Relief Program (RLRP) and the Special Approved Placements Program (SAPP) in column 2 of table item 2 in subsection 26(2) of the *Health Insurance Regulations 2018* (the Principal Regulations).

Subsection 26(2) of the Principal Regulations provides a list of approved programs upon which doctors can be placed for the purposes of section 3GA of the Act. Columns 1 and 2 of the table in subsection 26(2) list the authorised bodies and approved programs respectively for the purposes of paragraph 3GA(5)(a) of the Act.

Paragraphs (h) and (i) of column 2 of table item 2 refer to the RLRP and the SAPP. The 2018-19 Budget announced the closure of these programs to new applicants from July 2018 and scheduled the termination of the programs on 30 June 2023. The repeal of paragraphs (h) and (i) removes the programs from the list of programs for which the Department is authorised to approve the placement of doctors from 30 June 2023.

Item 2 – Subsection 26(2) (table items 3 to 6)

This item repeals and substitutes items 3 to 6 of the table in subsection 26(2) to reflect the termination of the RLRP. Currently, the General Practice Workforce Inc, trading as Health Recruitment Plus; Health Network Northern Territory Ltd; Health Workforce Queensland Ltd; and NSW Rural Doctors Network Ltd are identified as authorising bodies for both the More Doctors for Rural Australia Program (MDRAP) and RLRP. This item effectively removes the RLRP from column 2 of items 3 to 6 of the table, so that the MDRAP remains as the only program under which the bodies listed in items 3 to 6 can authorise the placement of doctors after 30 June 2023.

Item 3 – Subsection 26(2) (table items 10 to 12)

This item repeals and substitutes items 10 to 12 of the table in subsection 26(2) to reflect the termination of the RLRP. Currently, the Rural Doctors Workforce Agency Incorporated; Rural Workforce Agency, Victoria Limited; and Western Australian Centre for Remote and Rural Medicine Ltd, are identified as authorising bodies for both the MDRAP and RLRP. This item effectively removes the RLRP from column 2 of items 10 to 12 of the table, so that the MDRAP remains as the only program under which the bodies listed in items 10 to 12 can authorise the placement of doctors after 30 June 2023.

Statement of Compatibility with Human Rights

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

Health Insurance Amendment (Workforce Programs) Regulations 2023

This 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 Regulations

The purpose of the *Health Insurance Amendment (Workforce Programs) Regulations 2023* (the Regulations) is to amend the *Health Insurance Regulations 2018* (the Principal Regulations) to remove references to the Rural Locum Relief Program (RLRP) and the Special Approved Placements Program (SAPP) for the purposes of paragraph 3GA(5)(a) of the *Health Insurance Act 1973* (the Act)

Human Rights implications

The Regulations engage the right to health through the following Articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- Article 12(1): The right of individuals to the enjoyment of the highest attainable standard of physical and mental health.
- Article 6: The right to work, including the right of everyone to the opportunity to gain a living by work which he/she freely chooses or accepts, and will take appropriate steps to safeguard this right.
- Article 7(c): The right of everyone to the enjoyment of just and favourable conditions of work, including equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

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.

Analysis

In this context, the requirement for general practitioners (GPs) to be either vocationally recognised or working towards vocational recognition on an approved program results in a higher quality workforce of GPs for the Australian population to access, promoting the overall quality of healthcare in Australia.

The Right to Work

The right to work is contained in Article 6 of the ICESCR.

In accordance with Article 6, it is the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right.

Analysis

Removing the RLRP and SAPP ensures that participants no longer engage in programs that do not assist with progression towards vocational recognition in accordance with the requirements of section 19AA of the *Health Insurance Act 1973*. The previous government announced the closure of the programs would cease in the 2018-19 Federal Budget, with a transition period until 30 June 2023 to allow those on the programs a reasonable opportunity to transition to a College-led general practice training program, fellowship pathway or chose not to access the higher GP MBS items.

The Right of Everyone to the Enjoyment of Just and Favourable Conditions of Work

In accordance with Article 7(c) of the ICESCR, it is the right of everyone to enjoyment of just and favourable conditions of work, including equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

Analysis

Continued participation on the RLRP or the SAPP had the effect of preventing the progression of participants towards vocational recognition. Non-vocationally recognised general practitioners who participate in an approved fellowship pathway such as those administered by the GP colleges are supported in their pathway to obtaining vocational recognition.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

**The Hon Mark Butler MP
Minister for Health and Aged Care**