

Medical services -

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Health Industry Partnership

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'Medical services'

1. Section 38-7 provides a supply of a *medical service is GST-free. '*Medical service' is defined to mean:

- f. service for which Medicare benefit is payable under Part II of the *Health Insurance Act 1973*, or
- g. any other service supplied by or on behalf of a *medical practitioner or *approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the *recipient of the supply.

2. The definition of a 'medical service' has two limbs. Any service that falls within either the first or second limb of the definition, is GST-free.

Explanation of the definition's first limb

3. A service for which a Medicare benefit is payable under Part II of the *Health Insurance Act 1973*, is GST-free under the first limb of the definition.

4. Any service for which a Medicare benefit is not payable, must be addressed under the second limb of the definition.

5. For the first limb it should be noted that unlike the second limb, the supply does not have to be made by a *medical practitioner or *approved pathology practitioner (as those terms are defined in section 195-1 of the GST Act).

Explanation of definition's second limb

6. The second limb of the definition of '*medical service' contains a number of elements. All of these elements must be satisfied before a service will be a medical service under the second limb.

7. The first element is that the service must be supplied by or on behalf of a *medical practitioner (defined in section 195-1 of the GST Act as a person who is a medical practitioner for the purposes of the *Health Insurance Act 1973*) or an *approved pathology practitioner (defined in section 195-1 of the GST Act as a person who is a approved pathology practitioner for the purposes of the *Health Insurance Act 1973*).

8. The second element is that the service supplied must be generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

Meaning of ‘service supplied by or on behalf of a *medical practitioner or *approved pathology practitioner’

9. The phrase ‘on behalf of’ for the purposes of the definition of ‘*medical service’ means the performance of a component of the service provided by a practitioner that is not necessarily supervised by that practitioner. An example is where a laboratory technician assists in undertaking pathology testing of specimens.

10. However, ‘on behalf of’ does not include a service performed on referral by another person. A service performed on referral by another person, is not a component of the supply being provided by the first practitioner. The service being provided by the second person will be a separate supply, the GST-free status of which must be examined by reference to the supply by that second person.

Meaning of ‘generally accepted in the medical profession as being necessary for the appropriate treatment’

11. The above requires interpretation as to what is meant by ‘generally accepted’ and ‘appropriate treatment’.

12. ‘Appropriate treatment’ will be established where the practitioner assesses the recipient’s state of health and determines a process to pursue in an attempt to preserve, restore or improve the physical or psychological wellbeing of the recipient and will include subsequent supplies for the assessed process. ‘Appropriate treatment’ includes the principles of preventative medicine.

13. In addition, the definition requires the treatment must be generally accepted in the medical profession as being necessary. The particular service being provided by the *medical practitioner or *approved pathology practitioner and the circumstances in which it is provided must be generally accepted by the medical profession. The words ‘generally accepted in the medical profession’ indicate that it will ultimately be the medical profession that determines what services will be generally accepted.

Meaning of ‘the *recipient of the supply’

14. Section 195-1 defines ‘*recipient’ in relation to a supply to mean the entity to which the supply was made. In some circumstances, the ‘*recipient of the supply’ is not the patient of the practitioner but is a third party such as an employer. ‘Appropriate treatment’ will not include supplies undertaken for a third party that does not encompass the concept of treatment.

15. For example, an insurance company is a third party who may be the actual ‘*recipient of the supply’, where an assessment of a person is made for insurance purposes, there is no actual treatment involved and such a supply will be taxable.