

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services—Cataract) Determination 2017

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by writing, determine that a health service not specified in an item in the general medical services table (the Table) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the Table. The Table is set out in the regulations made under subsection 4(1) of the Act, which is re-made each year. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulation 2016* which commenced on 1 July 2016.

Purpose

This instrument lists new cataract surgery item 42705 to allow it to be claimed with the insertion of eye stent devices with the same fee as existing cataract surgery item 42702. This will allow the service to be available on the Medicare Benefits Schedule (MBS) on an interim basis for patients with glaucoma who are not adequately responsive to topical anti-glaucoma medications or who are intolerant of anti-glaucoma medication.

The listing of this service will remain until 31 December 2017 to allow time for Medical Services Advisory Committee (MSAC) to consider the funding of the service.

Consultation

The Department has consulted with the ophthalmology medical profession and device manufacturers about MBS ophthalmology items and any associated prostheses.

Details of the Determination are set out in the [Attachment](#).

The Determination will be taken to have commenced on 1 May 2017 and will cease at the end of 31 December 2017.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services—Cataract) Determination 2017*Section 1 – Name of Determination

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services—Cataract) Determination 2017*.

Section 2 – Commencement

Section 2 provides that the Determination commenced on 1 May 2017 and will cease at the end of 31 December 2017.

Subsection 3C(2) of the Act provides that a determination made under subsection 3C(1) would not apply to subsection 12(2) of the *Legislation Act 2003*. This is the section that limits retrospective application of instruments.

The result is the Department can retrospectively apply a liability (in the form of a Medicare benefit) to the Commonwealth for claims rendered between 1 May 2017 and this instrument's registration.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Definitions

This section defines terms used in the Determination.

Section 5 – Treatment of relevant services

This section provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the general medical services table for the service. The general medical services table is a table of medical services prescribed under section 4 of the *Health Insurance Act 1973*.

Section 6 – Application of provisions of the general medical services table

This section applies application clauses in the general medical services table to the new cataract surgery item 42705.

Schedule 1 – relevant services

Schedule 1 lists new cataract surgery item 42705.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C General Medical Services—Cataract) Determination 2017

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 Legislative Instrument

The purpose of the Determination is to list new cataract surgery item 42705 to allow it to be claimed with the insertion of eye stent devices with the same fee as existing cataract surgery item 42702. This will allow the service to be available on the MBS on an interim basis for patients with glaucoma who are not adequately responsive to topical anti-glaucoma medications or who are intolerant of anti-glaucoma medication. The listing of this service will remain until 31 December 2017 to allow time for Medical Services Advisory Committee (MSAC) to consider funding of the service.

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

This Determination will maintain or advance rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

Conclusion

The Legislative Instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

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