

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

*Health Insurance (Section 3C General Medical Services – Mechanical Thrombectomy)
Determination 2017*

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, 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 Health Insurance (General Medical Services Table) Regulations which is remade each year

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – Mechanical Thrombectomy) Determination 2017* (Determination) is to provide a legal basis for the payment of Medicare benefits for a mechanical thrombectomy service under new Medicare item 35414.

From the commencement of this Determination, Medicare benefits will be payable under the new item 35414 for mechanical thrombectomy services which aim to restore blood flow to the brain by using a device to remove blood clots.

In practice, the service described in item 35414 may be used in conjunction with thrombolytic therapy (medication to dissolve the blood clot) or as an alternative treatment for patients not suitable for thrombolytic therapy.

The service will achieve better clinical outcomes in both these patient groups, including higher rates of functional independence and lower rates of stroke related disability post treatment.

Consultation

The listing of item 35414 was considered and agreed to by the Medical Services Advisory Committee (MSAC).

MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through Medicare. As part of the MSAC process, consultation was undertaken with professional bodies, consumer groups, the public and clinical experts for proposals put forward for consideration by the Committee.

The following organisations were consulted on item 35414:

- Royal Australian and New Zealand College of Radiologists;
- Royal Australasian College of Surgeons;
- Royal Australasian College of Physicians;
- Interventional Radiology Society of Australasia;

- Australian and New Zealand Society of Neuroradiology;
- Neurosurgical Society of Australasia; and
- Australian and New Zealand Association of Neurologists.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 November 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 – Mechanical Thrombectomy) 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 – Mechanical Thrombectomy) Determination 2017*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 2017.

Section 3 – Authority

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

Section 4 – Definitions

Section 4 defines terms used in the Determination.

Section 5 – Treatment of relevant services

Section 5 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 medical general 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

Section 6 specifies provisions of the general medical services table that apply in relation to item 35414.

Schedule 1 – Relevant services

Schedule 1 specifies the service and prescribes the fee for item 35414.

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 - Mechanical Thrombectomy) 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 *Health Insurance (Section 3C General Medical Services – Mechanical Thrombectomy) Determination 2017* (Determination) lists the new Medicare item 35414, which provides for Medicare benefits to be payable for the rendering of a mechanical thrombectomy service.

The service aims to restore blood flow to the brain by using a device to remove blood clots.

The service seeks to achieve better clinical outcomes for patients, including higher rates of functional independence and lower rates of stroke related disability post treatment.

The Determination takes effect on 1 November 2017.

Human rights implications

The Determination engages 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 advance rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

Conclusion

This Legislative Instrument is compatible with human rights as it has a positive effect on human rights issues.

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