EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018

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 The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2018* which will commence on 1 July 2018.

Purpose of the *A Stronger Rural Health Strategy measure*

There are two types of general practice services: standard services and non-standard services. Standard services comprise consultation services for any clinical indication (level A to D), and are the most commonly claimed general practice service by volume. Non-standard services comprise specific purpose general practice services, such as chronic disease management.

Since 1989 it has been government policy that fellows of a general practice college (specialist GPs) receive a higher fee for the services they provide than medical practitioners working in general practice. The fee differential is intended to compensate specialist GPs for having met each of the standards for working in independent private practice, including continuing professional development requirements. The fee differential also reflects the higher quality of care provided by specialist GPs.

Specialist GPs and GP trainees working towards specialist recognition may claim a higher fee than a medical practitioner for standard general practice services in the Table. However, the current application of the fee differential is limited in scope as:

- No fee differential applies to a medical practitioner if they have been approved to practise as an eligible non-vocationally recognised medical practitioner by participating in one of the Other Medical Practitioner (OMP) Programs; which are intended to address a defined workforce shortage or after-hours service availability. These doctors are defined as "general practitioners" in clause 1.1.2 of the Table, meaning they can claim the higher specialist GP rate.
- Several item groups in the Table that are for non-standard attendances can be provided by medical practitioners with the same fee as their specialist GP counterparts, despite their lack of a specialist qualification.

The current limits on the fee differential mean medical practitioners are not incentivised to achieve or train towards fellowship before becoming eligible to render services at the specialist GP rate. To address this issue, the Government announced it would create a new fee structure for standard and non-standard general practice attendances performed by medical practitioners from 1 July 2018.

This change was announced in the 2018-19 Budget under the *A Stronger Rural Health Strategy* measure. Under this measure, the benefit a patient will receive for a general practice service will be based on the training of the medical practitioner, the area the service is rendered, and the type of general practice service.

The *Health Insurance Legislation Amendment (2018 Measures No. 2) Regulations 2018* amends the *Health Insurance (General Medical Services Table) Regulations 2018* to restrict the existing standard and non-standard general practice items from being rendered by a medical practitioner who does not meet the definition of a "general practitioner" from 1 July 2018. This will apply the fee differential to all general practice consultation items currently covered in the Table.

The higher specialist GP rate will continue to be available for medical practitioners who meet the definition of a "general practitioner". A general practitioner is defined in section 3 of the Act as:

a. a medical practitioner in respect of whom a determination under section 3EA is in force. These are doctors who are recognised fellows of the Royal Australian College of General Practitioners (RACGP).
b. a person registered under section 3F as a vocationally registered general practitioner. These are doctors who are registered as fellows of the RACGP.
c. a medical practitioner of a kind specified in the regulations.

Clause 1.1.2 of the Table specifies these kinds of medical practitioners. Among others, it includes:

- a practitioner to whom a determination is in force under regulation 6DA of the *Health Insurance Regulations 1975* recognising that he or she meets the fellowship standards of the Australian College of Rural and Remote Medicine (ACRRM). ACRRM is accredited by the Australian Medical Council to set and maintain standards in the specialty of general practice with a specific focus on practice in rural and remote communities.
- a practitioner who is on a pathway to general practice fellowship. This includes:
    - a training program for general practice leading to the award of Fellowship of the RACGP;
    - as part of another training program recognised by the RACGP as being of an equivalent standard; or
    - a practitioner who is undertaking a placement in general practice as part of the Remote Vocational Training Scheme administered by Remote Vocational Training Scheme Limited.
- an eligible non−vocationally recognised medical practitioner.

This means specialist GPs and GP trainees are defined as general practitioners. Medical practitioners who are approved to participate in an OMP Program will also continue to be defined as a general practitioner. OMP Programs include the Rural Other Medical Practitioners Program, the Outer-Metropolitan Other Medical Practitioners Program, the MedicarePlus for Other Medical Practitioners Program and the After-Hours Other Medical Practitioners Program.

These Programs will run until 1 July 2023, though participants may separate from these arrangements before this date. Access to the OMP Programs will be closed to

new applicants from 1 November 2018 through changes to the relevant administrative program guidelines.

Specialists and consultant physicians, who currently have access to services in A5, A6 and A30 in the Table will continue to be eligible to render these services from 1 July 2018.

Purpose of the Determination

The purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Determination) is to create a new fee structure for standard and non-standard attendances performed by "medical practitioners" from 1 July 2018. For the purpose of the Determination, "medical practitioner" excludes general practitioners who have access to the existing specialist GP services in the Table. This is a narrower definition than the definition of "medical practitioner" in the Act, which is inclusive of general practitioners.

The Determination creates 94 new general practice services available to these doctors with a fee that is 80% of the equivalent specialist GP item in the Table. This will allow doctors who are new entrants to general practice, both domestic graduates (who are not GP trainees) and overseas medical practitioners who have an exemption under 19AB of the Act, to provide services under Medicare. Medical practitioners who were registered prior to 1 November 1996 who have not undergone vocational training, but can practice privately under Medicare as they are not subject to section 19AA of the Act, can also render the services in the Determination.

The patient benefit for these services will be 80% of the existing benefit for specialist GP services. Paragraph 10(2)(aa) of the Act provides a regulation making power to list items with a Medicare benefits calculated as 100% of the schedule fee. These items are prescribed in the *Health Insurance Regulations 1975.* The 94 items in the Determination will be added to the list by the amendments in Schedule 1 of the *Health Insurance Legislation Amendment (2018 Measures No. 2) Regulations 2018*.

The Determination will provide patients in regional areas (Modified Monash areas 2 to 7) with a higher benefit for standard GP services provided by a medical practitioner. Currently, these patients receive the lower rates in A2 and A19 of the Table if the general practice service is rendered by a medical practitioner. Patients in these areas will be eligible for the new items in Divisions 1.2 and 1.8 of this Determination, which have a higher benefit.

The new items include:

Specialist GP equivalent in the Table	**New mirror items in the Determination**	**Providers**
A1 of the Table, attendance to which no other item applies	Group A7, Subgroup 2 179, 181, 183, 185, 187, 188, 189, 191, 202, 203, 206, 212	Medical practitioners in Modified Monash areas 2 to 7
A5 of the Table, prolonged attendance to which no other item applies	Group A7, Subgroup 3 214, 215, 218, 219, 220	All medical practitioners
A6 of the Table, group	Group A7, Subgroup 4	All medical

Specialist GP equivalent in the Table	New mirror items in the Determination	Providers
therapy	221, 222, 223	practitioners
A14 of the Table, health assessments	Group A7, Subgroup 5 224, 225, 226, 227, 228	All medical practitioners
A15 of the Table, management plans, team care arrangements and multidisciplinary care plans and case conferences	Group A7, Subgroup 6 229, 230, 231, 232, 233, 235, 236, 237, 238, 239, 240, 243, 244	All medical practitioners
A17 of the Table, medication management review	Group A7, Subgroup 7 245, 249	All medical practitioners
A18 of the Table, attendance associated with PIP payments	Group A7, Subgroup 8 251, 252, 253, 254, 255, 256, 257, 259, 260, 261, 262, 263, 264, 265, 266, 268, 269, 270, 271	Medical practitioners in Modified Monash areas 2 to 7
A20 of the Table, mental health care	Group A7, Subgroup 9 272, 276, 277, 279, 281, 282, 283, 285, 286, 287	All medical practitioners
A22 of the Table, after-hours attendances	Group A7, Subgroup 10 733, 737, 741, 745, 761, 763, 766, 769, 772, 776, 788, 789	All medical practitioners
A27 of the Table, pregnancy support counselling	Group A7, Subgroup 11 792	All medical practitioners
A30 of the Table, video conferencing consultation	Group A7, Subgroup 12 812, 827, 829, 867, 868, 869, 873, 876, 881, 885, 891, 892	All medical practitioners

New medical practitioners in metropolitan areas (Modified Monash area 1) will continue to claim the existing medical practitioner items for standard GP services (Group A2 and A19 in the Table).

Consultation

The Department consulted with stakeholders on key elements and principles of the *A Stronger Rural Health Strategy* measure. This included stakeholders representing general practice. Key stakeholders, particularly the Australian Medical Association, Royal Australian College of General Practitioners and the Australian College of Rural and Remote Medicine are supportive of the fee differential and continued financial recognition for general practice as a speciality.

Details of the Determination are set out in the Attachment.

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

The Determination commences immediately following the commencement of the *Health Insurance Legislation Amendment (2018 Measures No. 2) Regulations 2018*.

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

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*

Section 1 – Name of Determination

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Determination).

Section 2 – Commencement

Section 2 provides that the Determination commences immediately following the commencement of the *Health Insurance Legislation Amendment (2018 Measures No. 2) Regulations 2018*.

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.

The term "medical practitioner" is used throughout this Determination. The Act defines a medical practitioner as a person registered or licensed as a medical practitioner under a law of a State or Territory. This encompasses all Medicare-eligible doctors who can participate under Medicare, including general practitioners, specialists and consultant physicians.

For the purpose of the Determination, "medical practitioner" is narrower than the definition in the Act. A "medical practitioner" means a medical practitioner who is not a general practitioner, specialist or consultant physician, and who:

(a) is registered under section 3GA of the Act, to the extent that the person is practicing during the period in respect of which, and in the location in respect of which, he or she is registered, and insofar as the circumstances specified for paragraph 19AA(3)(b) of the Act apply; or

(b) is covered by an exemption under subsection 19AB(3) of the Act; or

(c) first became a medical practitioner before 1 November 1996.

This narrower definition will exclude medical practitioners who are general practitioners, specialists or consultant physicians from claiming the new items in the Determination, as they already have access to equivalent services in the general medical services table (the Table).

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 Table for the service.

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

Section 6 provides that certain general application provisions in the Table shall have effect as if an item in Schedule 1 to the Determination were specified in specified provisions of the Table.

Subsection 6(1) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.1 of the Table. Clause 1.2.1 of the Table provides that a service does not apply to a service provided in contravention of a law of the Commonwealth, a State or Territory.

Subsection 6(2) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.4 of the Table. Clause 1.2.4 of the Table lists the requirements of a professional attendance service. Paragraph 6(2)(b) of the Determination provides that an item in Divisions 1.2 and 1.10 will be treated as if it was specified in subclause 1.2.4(3) of the Table. The purpose of subclause 1.2.4(3) is to provide that the cost of supplying a vaccine which is not subsidised by the Commonwealth or a State is separate from a 'professional attendance' in respect of the prescribed items, such that medical practitioners who bulk bill under section 20A of the Act are not precluded from passing on the cost of supplying that vaccine to their patients.

Subsection 6(3) of the Determination provides that certain items in specified Divisions in Schedule 1 will be treated as if they were specified in clause 1.2.5 of the Table. Clause 1.2.5 of the Table provides that medical practitioners must personally attend the service which must be performed on a single occasion. Subsection 6(3) of the Determination provides that items in Division 1.3 (prolonged attendance to which no other item applies) Division 1.4 (group therapy), Division 1.5 (health assessments) and Division 1.6 (management plans, team care arrangements and multidisciplinary care plans and case conferences) do not apply to clause 1.2.5 of the Table.

Subsection 6(4) of the Determination provides that most items in Schedule 1 will be treated as if they were specified in clause 1.2.6 of the Table. Clause 1.2.6 of the Table provides that medical practitioners must personally attend the service. This applies regardless if the medical practitioner, or a person on behalf of the medical practitioner, performs the service. Subsection 6(4) of the Determination provides that items 231, 232 and 235-244 do not apply to clause 1.2.6 of the Table. These items are not applicable as they do not require the medical practitioner to be in personal attendance.

Subsection 6(5) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.7 of the Table. Clause 1.2.7 of the Table provides that consultation services do not apply if the service is provided at the same time, or in connection with, a non-medicare service. A non-medicare service is defined in Part 3 of the Table.

Subsection 6(6) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.8 of the Table. Clause 1.2.8 of the Table provides that a service does not apply to a service provided at the same time, or in connection with, an injection of blood or a blood product that is autologous.

Schedule 1 – relevant services

The purpose of the Determination is to create a new fee structure for standard and non-standard attendances performed by medical practitioners, per the term defined in section 4 of the Determination, from 1 July 2018. Schedule 1 of the Determination will create 94 new general practice services available to these doctors with a fee that is 80% of the equivalent specialist GP item. The benefit for the new items will be 100% of the fee. Medical practitioners in metropolitan areas (Modified Monash area1) will continue to claim the existing items for standard general practice services in the Table (Group A2 and A19).

Division 1.1 – Multiple patients in a single attendance
Division 1.1 of the Determination provides for the calculation of the fee where a medical practitioner, as defined in the Determination, attends multiple patients at a single attendance. This derived fee calculation applies to relevant items in Division 1.2 (attendance to which no other item applies), Division 1.8 (attendance associated with PIP payments) and Division 1.10 (after-hours attendances).

It does not apply to items in Division 1.9 (mental health care) or Division 1.12 (video conferencing consultation), which have specific provisions in their respective divisions.

Division 1.2 – Non Specialist Practitioner attendances to which no other items applies
Division 1.2 of the Determination lists the 12 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A1 of the Table. These items cover the level A to D attendances, which are the commonly claimed general practice services.

The new items are available to medical practitioners as defined in the Determination in an eligible area. An eligible area is defined as Modified Monash areas 2 to 7. Medical practitioners in metropolitan areas (Modified Monash area 1) will continue to have access to the existing items in group A2 of the Table.

Division 1.3 – Non Specialist Practitioner prolonged attendances to which no other item applies
Division 1.3 of the Determination lists the 5 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A5 of the Table. These items cover the prolonged attendance services on a patient in risk of imminent danger of death. The new items are available to all medical practitioners as defined in the Determination.

Division 1.4 – Non Specialist Practitioner group therapy
Division 1.4 of the Determination lists the 3 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A6 of the Table. These items cover group therapy services. The new items are available to all medical practitioners as defined in the Determination.

Division 1.5 – Non Specialist Practitioner health assessments
Division 1.5 of the Determination lists the 5 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A14 of the Table. The new items are available to all medical practitioners as defined in the Determination.

These items cover the health assessment services which are available to certain cohorts of patients with higher risk factors than the general population. These patients are the same

cohort who can access the existing health assessments in A14 of the Table.

Health assessments in Division 1.5 will remain limited to:

- One every 12 months for a person who is at least 75 years old.
- One every 12 months for a person who is a permanent resident in a residential aged care facility.
- One every 12 months for a person with an intellectual disability.
- Once every three years for a person eligible for the type 2 diabetes risk evaluation.
- Once only for a person who is at least 45 years old and under 50 years old and is at risk of developing chronic disease.
- Once only for a person who is a refugee or other humanitarian entrant.
- Once only for a person who is a former serving member of the Australian Defence Force.

This limitation applies if the patient accessed the health assessment service through a specialist GP (A14 of the Table) or through the medical practitioner health assessments items in Division 1.5 of this Determination.

Division 1.6 – Non Specialist Practitioner management plans, team care arrangements and multidisciplinary care plans and case conferences

Division 1.6 of the Determination lists the 13 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A15 of the Table. The new items are available to all medical practitioners as defined in the Determination.

These items cover the chronic disease management services which are available to a cohort of patients who have a terminal condition or a chronic disease which has been (or is likely to be) present for six months. These patients can access ongoing care from a multidisciplinary case conference team. These patients are the same cohort who can access the existing chronic disease management items in A15 of the Table.

Clause 1.6.1 of the Determination provides for the definition of terms used in Division 1.6.

Subclauses 1.6.2(1) of the Determination provide that items 229 to 240, where rendered as a private service in a public hospital, must be rendered by a medical practitioner operating outside their course of employment with the public hospital (the medical practitioner must be exercising their right of private practice). Subclause 1.6.2(2) of the Determination provides that paragraph (1)(b) applies whether or not another person provides essential assistance to the medical practitioner referred to in that paragraph, in accordance with accepted medical practice.

Subclause 1.6.2(3) of the Determination provides that items 229, 230 and 233 must be rendered by a single medical practitioner, in personal attendance, on a single patient.

Subclause 1.6.2(4) of the Determination provides that items 229, 230 and 233 are not applicable if the same practitioner renders any of the following services to the same patient on the same day:

- any specialist GP item in A1 (standard consult), A11 (urgent after-hours) or after-hours (A22) of the Table; or
- any medical practitioner item for after-hours (A23) in the Table; or
- any medical practitioner item in Division 1.2 (standard consult) or Division 1.10 (after-hours) of the Determination.

Subclause 1.6.2(5) of the Determination provides that items 229, 230, 231, 232 and 233 (for GP management plans, team care arrangements and multidisciplinary care plans) are treated as if they were specified in subclause 2.18.9(1) of the Table. This limits those items to a cohort of patients who have a terminal condition or a chronic disease which has been (or is likely to be) present for six months, and provides other limitations for items as specified in the table.

Clause 1.6.3 of the Determination limits the application of items 229, 230, 231, 232 and 233 (for GP management plans, team care arrangements and multidisciplinary care plans). The limitations, which are subject to an "exceptional circumstances" exemption in subclause 1.6.3(1), include:

Item 1 of the table in clause 1.6.3 limits item 229 from applying if:

- the patient has had a service by a specialist GP under items 729, 731 or 732 of the Table or a medical practitioner under items 231, 232 or 233 of the Determination in the previous 3 months; or
- the patient has had a GP management plan by a specialist GP (under item 721 of the Table) or a medical practitioner (under item 229 of the Determination) in the previous 12 months; or
- the service cannot be performed by a person who is a specialist in palliative medicine if an item in Subgroup 3 or 4 of Group A24 of the Table would be applicable.

Item 2 of the table in clause 1.6.3 limits item 230 from applying if:

- the patient has had a service by a specialist GP (under items 732 of the Table) or a medical practitioner (under item 233 of the Determination) in the previous 3 months; or
- the patient has had a service to coordinate the development of team care arrangements by a specialist GP (under item 723 of the Table) or a medical practitioner (under item 230 of the Determination) in the previous 12 months; or
- the service cannot be performed by a person who is a specialist in palliative medicine if an item in Subgroup 3 or 4 of Group A24 of the Table would be applicable.

Item 3 of the table in clause 1.6.3 limits item 231 from applying if:

- the patient has had a service by a specialist GP under items 731 or 732 of the Table or a medical practitioner under items 232 or 233 of the Determination in the previous 3 months; or
- the same medical practitioner provided a GP management plan or team care arrangement service to the patient in the previous 12 months; or
- the patient has had a service to contribute or review a multidisciplinary care plan prepared by another provider (item 729 of the Table; item 231 of the Determination) in the previous 3 months.

Item 4 of the table in clause 1.6.3 limits item 232 from applying if:

- the patient has had a service by a specialist GP under items 721, 723, 729 or 732 of the Table or a medical practitioner under items 229, 230, 231 or 233 of the Determination in the previous 3 months; or
- the patient has had a service to contribute or review a multidisciplinary care plan prepared for a patient in a residential aged facility of hospital under certain

circumstances (item 731 of the Table; item 232 of the Determination) in the previous 3 months.

Item 5 of the table in clause 1.6.3 limits item 233 from applying if:

- the patient has had a service to review or coordinate a review a GP management plan or team care arrangements by a specialist GP under item 732 of the Table or a medical practitioner under item 233 in the previous 3 months; or
- the service cannot be performed by a person who is a specialist in palliative medicine if an item in Subgroup 3 or 4 of Group A24 of the Table would be applicable.

Item 233 can be claimed twice on the same day. This could occur if the patient required two services to review a GP management plan and team care arrangements.

Division 1.7 – Non Specialist Practitioner domiciliary and residential medication management review

Division 1.7 of the Determination lists the 2 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A17 of the Table. These items cover the domiciliary and residential medication management review services. The new items are available to all medical practitioners as defined in the Determination.

Domiciliary Medication Management Review services, which are available to patients with a chronic medical condition or a complex medication regimen living in a community setting, will remain generally limited to once every 12 months for each patient. This limitation applies regardless if the patient accessed the service through a specialist GP (item 900 of the Table) or through a medical practitioner (item 245 of the Determination).

Residential Medication Management Review services, which are available to patients living in a residential aged care facility, will remain generally limited to once every 12 months for each patient. This limitation applies regardless if the patient accessed the service through a specialist GP (item 903 of the Table) or through a medical practitioner (item 249 of the Determination).

Division 1.8 – Non Specialist Practitioner attendances associated with Practice Incentive Program payments

Division 1.8 of the Determination lists the 19 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A18 of the Table. These items cover attendances associated with the Practice Incentives Program.

The new items are available to medical practitioners as defined in the Determination in an eligible area. An eligible area is defined as Modified Monash areas 2 to 7. Medical practitioners in metropolitan areas (Modified Monash area 1) will continue have access to the existing item in group A19 of the Table.

Attendances associated with the Practice Incentives Program in this Determination will not be applicable if:

- an eligible patient has had any diabetes mellitus items in the previous 11 months; or
- an eligible patient has had any Asthma Cycle of Care items in the previous 12 months.

This limitation applies regardless if the patient accessed the service through a specialist GP (group A18 of the Table), through a medical practitioner in Modified Monash area 1 (group A19 of the Table) or through a medical practitioner in Modified Monash areas 2 to 7 (items in Division 1.8 of this Determination).

Division 1.9 – Non Specialist Practitioner mental health care

Division 1.9 of the Determination lists the 10 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A20 of the Table. These items are for general practice mental health services. The new items are available to all medical practitioners as defined in the Determination.

Clause 1.9.1 of the Determination provides for the definition of terms used in Division 1.9.

Clause 1.9.2 of the Determination provides for the calculation of the fee where a medical practitioner attends multiple patients at a single attendance.

Subclause 1.9.3(1) of the Determination provides that items in paragraph 1.9.3(1)(a) are treated as if they were specified in subclause 2.22.6(1) of the Table. Items in subclause 2.22.6(1) apply only to a patient with a mental disorder. A mental disorder is defined in clause 2.22.1 of the Table.

Items in paragraph 1.9.3(1)(b) of the Determination are treated as if they were specified in subclause 2.22.6(2) of the Table. Items in subclause 2.22.6(2) require that the service can only be conducted in certain settings and must be provided by a single medical practitioner who is in personal attendance on a single patient.

Subclause 1.9.3(2) of the Determination provides that items 272, 276, 281 and 282 are not applicable if any of the following apply, unless exceptional circumstance as defined in subclause 1.9.3(8) exist:

- any of the specified items were provided to a patient in the last 12 months.
- any of the GP case conference or the GP mental health treatment consultation items are applicable. This limitation applies regardless if the patient accessed:
    - the case conference service through a specialist GP (items 735 to 758 of the Table) or through a medical practitioner (items 235 to 240 of the Determination); or
    - the GP mental health treatment consultation through a specialist GP (item 2713 of the Table) or through a medical practitioner (items 279 of the Determination).
- any of the review of the GP mental health treatment plan items were provided to a patient in the last 3 months. This limitation applies regardless if the patient accessed the service through a specialist GP (item 2712 of the Table) or through a medical practitioner (item 277 of the Determination).

Subclause 1.9.3(3) of the Determination provides that item 277, which is for a review of the GP mental health treatment plan, only applies if the patient has a GP mental health treatment plan. This limitation applies regardless if the patient accessed through a specialist GP (items 2700, 2701, 2715 or 2717 of the Table) or through a medical practitioner (items 272, 276, 281 or 282 of the Determination).

Subclause 1.9.3(4) of the Determination provides that item 277, which is for a review of the GP mental health treatment plan, does not apply if any of the following apply:

- any of the GP case conference items or the GP mental health treatment consultation are applicable. This limitation applies regardless if the patient accessed:
    - the case conference service through a specialist GP (items 735 to 758 of the Table) or through a medical practitioner (items 235 to 240 of the Determination); or
    - the GP mental health treatment consultation through a specialist GP (item 2713 of the Table) or through a medical practitioner (items 279 of the Determination).
- the item was provided to a patient in the last 3 months, unless exceptional circumstances exist.
- the item was provided to a patient who had a GP mental health treatment plan in the last 4 weeks, unless exceptional circumstances exist. This limitation applies regardless if the patient accessed the service through a specialist GP (items 2700, 2701, 2715 or 2717 of the Table) or through a medical practitioner (items 272, 276, 281 or 282 of the Determination).

An "exceptional circumstance" is defined in subclause 1.9.3(8) of the Determination. Subclause 1.9.3(5) of the Determination provides that item 279, which is for a GP mental health treatment consultation, applies only to a surgery consultation and must be of at least 20 minutes in duration.

Subclause 1.9.3(6) of the Determination provides that item 279 cannot be claimed in association with the GP mental health treatment plan. This limitation applies if the patient accessed the service through a specialist GP (items 2700, 2701, 2715, 2717 or 2712 of the Table) or through a medical practitioner (items 272, 276, 281, 282 or 277 of the Determination).

Subclause 1.9.3(7) of the Determination provides that items 281 and 282 apply only if the medical practitioner who renders the service has completed mental health skills training accredited by the General Practice Mental Health Standards Collaboration. These GP mental health treatment plan items are paid at a higher rate than the items rendered by medical practitioners without the training (272 and 276).

Clause 1.9.4 has application to the focussed psychological strategies items (283, 285, 286 and 287) of the Determination. Subclause 1.9.4(1) requires that:

- the service must be clinically indicated under a GP mental health treatment plan or a psychiatrist assessment and management plan; and
- the rendering medical practitioner must be registered with the Department of Human Services as being eligible to render focussed psychological strategies items; and
- the rendering medical practitioner must meet any training and skills requirements as determined by the General Practice Mental Health Standards Collaboration.

Subclause 1.9.4(2) limits how many focussed psychological strategies can be rendered per patient. Paragraph 1.9.4(2)(a) requires that a maximum of 6 focussed psychological strategies services can be rendered in a calendar year without requiring the patient to undergo a review by the medical practitioner managing the GP mental health treatment plan or the psychiatrist assessment and management plan. Paragraph 1.9.4(2)(b) limits the total number of focussed psychological strategies to 10 per patient in a calendar year.

Division 1.10 – Non Specialist Practitioner after-hours attendances to which no other item applies

Division 1.10 of the Determination lists the 12 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A22 of the Table. These items cover the non-urgent afters hours review services. The new items are available to all medical practitioners as defined in the Determination.

Division 1.11 – Non Specialist Practitioner pregnancy support counselling

Division 1.11 of the Determination lists the new medical practitioner item which has a fee that is 80% of the specialist GP item in group A27 of the Table. This item is for a pregnancy support counselling service. The new items will be available to all medical practitioners as defined in the Determination and who are registered with the Chief Executive Medicare as being credentialed to render the service.

Item 792 is available to:

- a person who is pregnant; or
- a person who was pregnant within 12 months preceding the rendering of the first general practice pregnancy support item. This can be provided by a specialist GP (item 4001 of the Table) or through the new medical practitioner item (item 792 of the Determination); or
- a person who was pregnant within 12 months preceding the rendering of the first allied health pregnancy support item (items 81000, 81005 and 81010), made under a determination about allied health services under subsection 3C(1) of the Act.

Item 792 cannot be claimed if a person has had three pregnancy support services across the general practice or allied health pregnancy support items.

Division 1.12 – Non Specialist Practitioner video conferencing consultation

Division 1.12 of the Determination lists the 12 new medical practitioner items which have a fee that is 80% of the specialist GP items in group A30 of the Table. These items are for patient end support services at a video conferencing consultation. The new items are available to all medical practitioners as defined in the Determination.

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 – Other Medical Practitioner) Determination 2018

This Determination 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

The purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Determination) is to create a new fee structure for standard and non-standard attendances performed by "medical practitioners" from 1 July 2018. The Determination is made under section 3C of the *Health Insurance Act 1973* (the Act). For the purpose of the Determination, "medical practitioner" is narrower than the definition in the Act and excludes general practitioners who have access to the existing specialist GP services in the general medical services table (the Table).

The Determination creates 94 new general practice services available to these doctors with a fee that is 80% of the equivalent specialist GP item in the Table. This allows doctors who are new entrants to general practice, both domestic graduates (who are not GP trainees) and overseas medical practitioners who have an exemption under 19AB of the Act, to provide services under Medicare. Medical practitioners who were registered prior to 1 November 1996 who have not undergone vocational training, but can practice privately under Medicare as they are not subject to section 19AA of the Act, can also render the services in the Determination.

The patient benefit for these services is 80% of the existing benefit for the equivalent specialist GP item. Paragraph 10(2)(aa) of the Act provides a regulation making power to list items with a Medicare benefits calculated as 100% of the schedule fee. These items are prescribed in the *Health Insurance Regulations 1975.* The 94 items in the Determination were added to the list by the amendments in Schedule 1 of the *Health Insurance Legislation Amendment (2018 Measures No. 2) Regulations 2018*.

The Determination provides patients in regional areas (Modified Monash areas 2 to 7) with a higher benefit for standard GP services provided by a medical practitioner. Prior to this Determination, patients received the lower rates in A2 and A19 of the Table if the general practice service was rendered by a medical practitioner. Patients in these areas are eligible for the new items in Divisions 1.2 and 1.8 of this Determination, which have a higher benefit.

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.

The Right to Work

The right to work is contained in Article 6 of the ICESCR. It requires that a country must recognise the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. It is not to be understood as providing an unconditional right to obtain employment or for the state to provide everyone with employment; rather it is a right to choose an occupation and engage in work.

Analysis

The Determination 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*. Patients continue to have access to subsidised general practice services under Medicare, which is consistent with Articles 9 and 12 of ICESCR.

Australia has the third highest general practice to population ratio among Organisation for Economic Co-operation and Development countries, and the number of general practice services per capita has increased since the early 2000s. In 2005 Australians were receiving around five general practice services per annum. This has now increased to just over six per annum. Access to general practice services is higher in metropolitan areas.

This Determination reduces the Medicare benefit for general practice services performed by certain medical practitioners. Services provided by new entrants to general practice, both domestic graduates (who are not GP trainees) and overseas medical practitioners who have an exemption under 19AB of the Act, are paid at 80%

of the existing benefit for specialist GP services. Generally, the benefit payable for these services is less than the previous benefit for the services under the previous arrangements. It is justifiable to reduce the existing level of benefits to allocate resources to higher-value care provided by specialists GPs or those on a pathway to specialisation. This change is also a reasonable and proportionate way to incentivise more doctors working in general practice to obtain specialist recognition as a general practitioner.

General practitioners are required to continue their professional development by meeting all of the standards for working in independent private practice. These standards are set by the general practice colleges, the Royal Australian College of General Practitioners and the Australian College of Rural and Remote Medicine. The training programs for these organisations are recognised by the Australian Medical Council, which is the national body responsible for accrediting medical education and training. Patients accessing services rendered by these doctors, along with medical practitioners on a specialist pathway (GP trainees), will have no change to their existing benefit level.

Patients in Modified Monash areas 2 to 7 will have their benefit increased for standard general practice services performed by medical practitioners. From 1 July 2018, these doctors will be able to claim the higher remunerated items in this Determination (items in Divisions 1.2 and 1.8) than the lower existing items in the Table (items in groups A2 and A19). These services are the most commonly rendered GP services.

This is consistent with Article 9 which provides it is legitimate for a Government to target its resources to the more disadvantaged members of society. According to the Australian Bureau of Statistics 2016-17 Patient Experiences in Australia Report, patients in regional areas are more likely to:

- wait to see a GP; and
- access emergency department services due to GP services being unavailable.

This change is a reasonable and proportionate response to incentivise more doctors to become specialist GPs. Medical practitioners currently participating in an OMP Program will continue to be defined as a general practitioner for a period of five years. This will provide these doctors sufficient time to complete their specialist training before being affected by the benefit reduction.

This change will ultimately improve the quality of general practice health care patients receive. This is consistent with the enjoyment of the highest attainable standard of health as a right to health. It is also consistent with right to social security, which allows governments to re-direct its resources to be more effective at meeting the general health needs of society.

The Determination engages the right to work in a number of ways. First, the Determination does not impact on the ability to freely obtain employment. Domestic medical practitioners can continue to choose to practice privately under Medicare through a section 3GA program. Overseas medical practitioners can still practice privately under Medicare, subject to the same conditions under the 19AB exemption.

Second, the Determination results in the remuneration of medical practitioners at a lower rate that a GP would receive for the same service. However, the Determination does not limit the ability for medical practitioners to obtain higher qualifications in order to access higher specialist GP rates. Further, the higher rate afforded to a GP for the rendering their services reflects their specialist qualifications in general practice. As such, this measure is necessary and proportionate way to achieve the legitimate

objective of incentivising medical practitioners to obtain higher, specialist recognition, and thereby increase the quality of medical services to the community.

Conclusion

This Determination has a positive effect on the right to health and the right to social security because it ultimately improves the quality of general practice health care patients receive. It engages, but does not unjustifiably limit the right to work. As such, this Determination is compatible with human rights because it promotes the right to health and the right to social security.

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