

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) 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 shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the general medical services table. The general medical services table is set out in the regulations made under subsection 4(1) of the Act.

In addition to the power to make this instrument under subsection 3C(1) of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

### **Purpose**

Items 6080 and 6081 apply in relation to a transcatheter aortic valve implantation (TAVI) case conference, which is a process undertaken by a number of medical practitioners to assess and make recommendations regarding a patient's suitability to receive a TAVI procedure for the treatment of symptomatic severe aortic stenosis. Patients determined as eligible will be able to subsequently access the procedure under item 38495.

Items for TAVI and associated services were introduced on 1 November 2017 in the *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2017* (2017 Determination). The *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2018* will revoke and remake the 2017 Determination, with a higher fee for items 6080 and 6081.

### **Consultation**

No consultation was required as the services are the same but with a higher fee for items 6080 and 6081. The higher fee will be communicated to stakeholders once this determination is registered.

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

The Determination commences on 1 January 2019.

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 – Transcatheter Aortic Valve Implantation) Determination 2018***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2018*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 January 2019.

Section 3 – Authority

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

Section 4 – Repeal

Section 4 provides that the Determination repeals the *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2017*.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

This section includes the definition of a ‘TAVI Hospital’. The *Transcatheter Aortic Valve Implantation - Rules for the Accreditation of TAVI Practitioners*, issued by Cardiac Accreditation Services Limited in November 2017, provides guidance regarding clinically acceptable TAVI facilities. This document is publicly available from the website <https://tavi.org.au/>, or can be obtained directly from Cardiac Accreditation Services Limited.

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service specified in Schedule 1 to the Determination and 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 7 – Application of item 38495

Section 7 provides that Medicare benefit is not payable in respect of the service described in item 38495 if, that service is provided at the same time as, or in connection with, the provision of a pain pump for post-surgical pain management.

### Schedule 1 – Relevant services

Schedule 1 specifies the professional services and prescribes the associated fees for items 6080, 6081 and 38495.

## 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 – Transcatheter Aortic Valve Implantation) 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 Legislative Instrument**

Items 6080 and 6081 apply in relation to a transcatheter aortic valve implantation (TAVI) case conference, which is a process undertaken by a number of medical practitioners to assess and make recommendations regarding a patient's suitability to receive a TAVI procedure for the treatment of symptomatic severe aortic stenosis. Patients determined as eligible will be able to subsequently access the procedure under item 38495.

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#### **Human rights implications**

This 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 maintain rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective. It will adjust the fees for the TAVI case conference items to keep the fees relative to other specialist attendance items.

#### **Conclusion**

This Determination is compatible with human rights as it has a positive effect on the right to health and the right to social security.

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