



Health Insurance (Section 19AB Exemptions Guidelines) Determination 2019

Health Insurance Act 1973

I, Amber Mardon, delegate for the Minister for Health, make the following determination.

Dated 14 June 2019

Amber Mardon
Acting Director
Access Policy Section
Health Workforce Division

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Part 1 Preliminary

1 Name

This instrument is the *Health Insurance (Section 19AB Exemptions Guidelines) Determination 2019*.

2 Commencement

This instrument commences on 1 July 2019.

3 Authority

This instrument is made under subsection 19AB(4B) of the *Health Insurance Act 1973*.

4 Definitions and interpretation

(1) In this instrument:

Aboriginal and Torres Strait Islander specific primary health care service means a health service that is funded principally to provide medical services to a predominantly Aboriginal and Torres Strait Islander population and in respect of which a direction under subsection 19(2) of the Act is in force.

Act means the *Health Insurance Act 1973*.

after hours means:

- (a) all day on a Saturday, Sunday or public holiday; and
- (b) before 8:00 am or after 6:00 pm on any day other than a Saturday, Sunday or public holiday.

application means an application for an exemption under subsection 19AB(3) of the Act

ASGS means the geographical framework known as the *Australian Statistical Geography Standard*, July 2016 edition, published by the Australian Bureau of Statistics.

average working hours for a practitioner means total working time for that practitioner divided by their total days worked.

Distribution Priority Area means, in respect of general practitioners and other medical practitioners who are not specialists (***non-specialists***):

- (a) the Northern Territory; or
- (b) any area located in Modified Monash Model areas 5, 6 or 7; or
- (c) a GP catchment area, which is a measure determined by the Department of Health (the Department), in which the number of non-specialist services provided in the GP catchment area is less than the

benchmark, which is not classified as an inner metropolitan location by the Department.

Note 1: Distribution Priority Area status for non-specialists is determined annually for the purposes of paragraph (c) of the definition of Distribution Priority Area by the Department by comparing the services provided in a GP catchment area with the services needed (ie. the benchmark).

Note 2: Maps of current Distribution Priority Areas are at www.doctorconnect.gov.au/.

Note 3: Maps of current Modified Monash Model areas are at www.doctorconnect.gov.au/.

District of Workforce Shortage means, in respect of medical practitioners who are specialists in a particular specialty (excluding general practice):

- (a) the Northern Territory; or
- (b) a geographical area, determined by the Department, in which the number of specialists multiplied by the average FSE for specialists in that specialty in that area, per person in the geographical area, is less than the current national average for that specialty; or
- (c) any area located in Remoteness Areas 3, 4 or 5 as determined by the Department using ASGS data.

Note 1: District of Workforce Shortage status is determined annually for specialist medical practitioners for the purposes of paragraph (b) of the definition of District of Workforce Shortage by the Department using Medicare billing data and estimated resident population data from the Australian Bureau of Statistics.

Note 2: Maps of current District of Workforce Shortage areas are at www.doctorconnect.gov.au/.

Note 3: The Department uses the ASGS system published by the Australian Bureau of Statistics in 2016. The Department's Remoteness Area classifications are at www.doctorconnect.gov.au/.

exemption means an exemption from the operation of subsections 19AB(1) and (2) of the Act, granted under subsection 19AB(3) of the Act.

full-time benchmark is 1800 hours.

Note: The full-time benchmark is 7.5 hours per day, 5 days per week, 48 weeks per year.

Full-time Service Equivalent or ***FSE*** is a measure of medical practitioner workload calculated using the following formula:

$$\frac{\text{total days worked x average working hours per day}}{\text{full-time benchmark}}$$

FSE year means a period of 12 months ending on 30 June.

General Skilled Migration visa has the meaning given by the *Migration Regulations 1994*.

migration occupation in demand has the meaning given by the *Migration Regulations 1994*.

Modified Monash Model area 5 means all areas in Remoteness Areas 2 or 3, as determined by the Department using ASGS data, that are not:

- (a) in, or within 20 kilometres road distance of, a town with a population of greater than 50,000;
- (b) in, or within 15 kilometres road distance of, a town with a population of between 15,001 and 50,000; and
- (c) in, or within 10 kilometres road distance of, a town with a population of between 5,000 and 15,000.

Modified Monash Model area 6 means all areas in Remoteness Area 4, as determined by the Department using ASGS data, that are not on a populated island that is separated from the mainland and is more than 5 kilometres offshore.

Modified Monash Model area 7 means all areas in Remoteness Area 5, as determined by the Department using ASGS data, that are on a populated island that is separated from the mainland and is more than 5 kilometres offshore.

provider number has the same meaning as in regulation 4 of the *Health Insurance Regulations 2018*.

relevant assessing authority has the meaning given by the *Migration Regulations 1994*.

service location means the location of the practice, by street address, to which an application relates.

skilled occupation has the meaning given by the *Migration Regulations 1994*.

spouse includes de facto partner, which has the meaning given by the *Acts Interpretation Act 1901*.

total days worked for a practitioner is the total number of days in the most recently completed FSE year on which a professional service for which a Medicare benefit was paid was rendered by or on behalf of the practitioner.

total working time for a practitioner is the time worked by the medical practitioner in the most recently completed FSE year, as determined by the Department, based on the professional services rendered by or on behalf of the medical practitioner for which Medicare benefits was paid.

visa has the meaning given by the *Migration Act 1958*.

Note: The following terms are defined in subsection 3(1) of the Act:

- Chief Executive Medicare
- consultant physician
- general practitioner
- medical practitioner
- professional service
- specialist

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- (2) In this instrument, a service location is in a Distribution Priority Area or District of Workforce Shortage in respect of a type of medical practitioner if:
 - (a) for a medical practitioner who is a general practitioner or other medical practitioner who is not a specialist, the service location is in a Distribution Priority Area in respect of general practitioners and other medical practitioners who are not specialists; and
 - (b) for a medical practitioner who is a specialist in a particular specialty, the service location is in a District of Workforce Shortage in respect of practitioners who are specialists in that specialty.
 - (3) A reference in this instrument to a specialist includes a reference to a consultant physician.
 - (4) A reference in this instrument to the type of medical practitioner to which an application relates means a reference to:
 - (a) a general practitioner or other medical practitioner who is not a specialist; or
 - (b) a specialist in a particular specialty, as appropriate.
 - (5) References to provisions in the *Migration Regulations 1994* are to the provisions in force and applied to the person at the time the person migrated to Australia.

5 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2 Exemptions

6 Considerations for exemptions - general

- (1) This section applies subject to sections 7 to 10.
- (2) When making a decision under subsection 19AB(3) of the Act, the Minister must take into account as a primary consideration whether the service location is in a Distribution Priority Area or District of Workforce Shortage in respect of the type of medical practitioner to which the application relates.
- (3) The Minister may also take into account:
 - (a) whether the applicant's registration or licence as a medical practitioner is subject to any conditions;
 - (b) where the applicant is the holder of a visa, whether the visa entitles the applicant to work as a medical practitioner or undertake clinical training in medicine;

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- (c) whether the applicant has entered into, or has commenced negotiations to enter into, a contract of service or contract for services under which he or she will provide professional services at the service location;
 - (d) whether professional services were rendered at the service location within the last 12 months by another person:
 - (i) to whom an exemption in respect of that location applied; and
 - (ii) whose provider number in respect of that location has been cancelled by the Chief Executive Medicare;
 - (e) whether the applicant will render professional services after hours at the service location;
 - (f) where:
 - (i) the applicant has commenced negotiations to enter into a contract of service or contract for services under which he or she will provide professional services at the service location, and
 - (ii) the service location is not in a Distribution Priority Area or District of Workforce Shortage in respect of the type of medical practitioner to which the application relates,

whether the service location was in a Distribution Priority Area or District of Workforce Shortage in respect of that type of medical practitioner at the time negotiations commenced; and
 - (g) any other matters the Minister considers relevant.
- (4) For the purposes of paragraph (3)(d) of this section, reference to another person to whom an exemption in respect of the service location applied includes reference to a person who is or was a person to whom an exemption made in respect of a class of persons applied.

7 Considerations for exemption – provision of services at Commonwealth funded Aboriginal and Torres Strait Islander primary health care service

- (1) This section applies where an applicant has entered into, or has commenced negotiations to enter into, a contract of service or contract for services under which the applicant will provide professional services at an Aboriginal and Torres Strait Islander specific primary health care service.
- (2) When making a decision under subsection 19AB(3) of the Act the Minister:
 - (a) must not take into account whether the service location is in a Distribution Priority Area or District of Workforce Shortage in respect of the type of medical practitioner to which the application relates; and
 - (b) may take into account:

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- (i) those matters specified in paragraphs 6(3)(a) to (e) of this instrument; and
 - (ii) any other matters the Minister considers relevant.

8 Considerations for exemption - spouses

- (1) This section applies where an applicant is the spouse of:
 - (a) a medical practitioner who is not prevented by section 19AB of the Act from rendering, or from having rendered on their behalf, a professional service for which a Medicare benefit is payable and who ordinarily resides in Australia; or
 - (b) a person who:
 - (i) ordinarily resides in Australia;
 - (ii) has been granted a General Skilled Migration visa;
 - (iii) has been assessed by a relevant assessing authority as having a skilled occupation or a migration occupation in demand;
 - (iv) migrated to Australia within the last 10 years with the purpose to work in that occupation; and
 - (v) is currently employed in, volunteers in or is undertaking a training placement in that occupation.

Note: Overseas trained doctors or foreign graduates of an accredited medical school who are not prevented by section 19AB of the Act from rendering, or from having rendered on their behalf, a professional service for which a Medicare benefit is payable include medical practitioners in whose respect an exemption under subsection 19AB(3) has been granted.

- (2) When making a decision under subsection 19AB(3) of the Act the Minister:
 - (a) must not take into account whether the service location is in a Distribution Priority Area or District of Workforce Shortage in respect of the type of medical practitioner to which the application relates;
 - (b) may take into account the distance between the primary place of work of the spouse of the applicant and the service location; and
 - (c) may take into account:
 - (i) those matters specified in paragraphs 6(3)(a) – (e) of this instrument; and
 - (ii) any other matters the Minister considers relevant.

9 Considerations for exemption – provision of locum services

- (1) This section applies where:

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- (a) the applicant has entered into, or has commenced negotiations to enter into, a contract of service or contract for services to provide professional services at the service location under a locum arrangement; and
 - (b) the locum arrangement is or would be for a period of not more than six months; and
 - (c) the applicant has not provided locum services at the same service location under an exemption with the condition that the exemption is for the provision of locum services at that service location.
- (2) When making a decision under subsection 19AB(3) of the Act the Minister:
- (a) must not take into account whether the service location is in a Distribution Priority Area or District of Workforce Shortage in respect of the type of medical practitioner to which the application relates; and
 - (b) may take into account:
 - (i) those matters specified in paragraphs 6(3)(a) – (e) of this instrument; and
 - (ii) any other matters the Minister considers relevant.

10 Considerations for class exemptions

- (1) This section applies to decisions to grant an exemption in respect of a class of persons.
- (2) The Minister:
 - (a) is not required to take into account whether members of the class provide, or will be providing, professional services in a Distribution Priority Area or District of Workforce Shortage; and
 - (b) may take into account any matters the Minister considers relevant.

11 Conditions

- (1) Except in special circumstances, the Minister must make an exemption subject to the condition that the exemption only applies to one service location.

Note: Locations to which an exemption may apply include medical practices, health centres and hospitals.
- (2) Subsection (1) does not apply to an exemption granted in respect of a class of persons.
- (3) The Minister may make an exemption subject to the condition that the exemption only applies to professional services rendered after hours at the service location.

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- (4) Subsections (1) and (3) do not limit the conditions to which the Minister may make an exemption subject.
 - (5) In making a decision under subsection 19AB(4) of the Act, the Minister may take into account any matters the Minister considers relevant.

12 Period of exemption

- (1) An exemption:
 - (a) may not be expressed to commence on a day before the decision to grant the exemption is made; and
 - (b) may be expressed to cease on a day specified in the instrument.
- (2) Where an exemption is granted to a person who renders, or is intending to render, professional services under a locum arrangement, the exemption must be expressed to cease on a day no later than six months after the day on which it commences.

Schedule 1—Repeals

Health Insurance (Section 19AB Exemptions) Guidelines 2017

1 The whole of the instrument

Repeal the instrument