

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Amendment Determination 2019*

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The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year.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 2019*.

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA 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

The amendments made by the *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Amendment Determination 2019* (the Amendment Determination) is part of a consequential change to the heart health assessment services from 1 November 2019.

On 1 April 2019, two new health assessment services (items 699 and 177) were introduced to provide patients a comprehensive assessment of their cardiovascular health, identification of any physical or lifestyle-related risks to their cardiovascular health, and a comprehensive preventive health care plan to improve their cardiovascular health.

The *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019* (the Principal Determination) listed the new items to subsidise access to heart health assessment services lasting at least 20 minutes by a general practitioner (item 699) or a medical practitioner working in general practice (item 177). A patient is currently eligible for a Medicare benefit of \$73.95 for a service to which item 699 applied and \$59.15 for a service to which item 177 applied.

From 1 November 2019, the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* will increase the Medicare benefit amount a patient will be eligible for a service provided under items 699 and 177, from 85% of the schedule fee to 100% of the schedule fee. Increasing the benefit to 100% of the schedule fee will align the heart health assessment items with other health assessment services in Group A14 of the Table, which have a benefit of 100% of the schedule fee.

The purpose of the Amendment Determination is to maintain the benefit parity through a reduction of the schedule fees for the items so there is no change in the amount of Medicare benefit a patient will be eligible for a heart health assessment service. A patient will continue to be eligible for a Medicare benefit of \$73.95 for a service to which item 699 applies and \$59.15 for a service to which item 177 applies.

**Consultation**

Consultation was not undertaken on the instrument as the changes are machinery in nature and do not affect the nature of the heart health assessment services or the Medicare benefit amount a patient will receive. The change is administrative only and will provide that the heart health assessment items reflect equivalent items in Group A14 of the Medicare Benefits Schedule, which have a benefit calculation of 100% of the schedule fee.

Details of the Determination are set out in the Attachment.

The Determination commences immediately after the commencement of Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 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 – Heart Health Assessment No.2) Amendment Determination 2019***Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Amendment Determination 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences immediately after commencement of Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019*.

Section 3 – Authority

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

Section 4 – Schedules

Section 4 provides that 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.

Schedule 1 – Amendments

*Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019*

**Item 1 – Schedule 1 (item 699, column 3)**

Item 1 omits the schedule fee of \$86.95 for item 699 and substitutes with an amended fee of \$73.95. There will be no change to the Medicare benefit amount the patient receives for a service (\$73.95) due to the amendments made by the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019*.

**Item 2 – Schedule 1 (item 177, column 3)**

Item 2 omits the schedule fee of \$69.55 for item 177 and substitutes with an amended fee of \$59.15. There will be no change to the Medicare benefit amount the patient receives for a service (\$59.15) due to the amendments made by the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019*.

## 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 – Heart Health Assessment No.2) Amendment Determination 2019***

This 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 Determination**

The amendments made by the *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Amendment Determination 2019* (the Amendment Determination) is part of a consequential change to the heart health assessment services from 1 November 2019.

On 1 April 2019, two new health assessment services (items 699 and 177) were introduced to provide patients a comprehensive assessment of their cardiovascular health, identification of any physical or lifestyle-related risks to their cardiovascular health, and a comprehensive preventive health care plan to improve their cardiovascular health.

The *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019* (the Principal Determination) listed the new items to subsidise access to heart health assessment services lasting at least 20 minutes by a general practitioner (item 699) or a medical practitioner working in general practice (item 177). A patient is currently eligible for a Medicare benefit of \$73.95 for a service to which item 699 applied and \$59.15 for a service to which item 177 applied.

From 1 November 2019, the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* will increase the Medicare benefit amount a patient will be eligible for a service provided under items 699 and 177, from 85% of the schedule fee to 100% of the schedule fee. Increasing the benefit to 100% of the schedule fee will align the heart health assessment items with other health assessment services in Group A14 of the Table, which have a benefit of 100% of the schedule fee.

The purpose of the Amendment Determination is to maintain the benefit parity through a reduction of the schedule fees for the items so there is no change in the amount of Medicare benefit a patient will be eligible for a heart health assessment service. A patient will continue to be eligible for a Medicare benefit of \$73.95 for a service to which item 699 applies and \$59.15 for a service to which item 177 applies.

#### **Human rights implications**

This instrument 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 instrument maintains the right to health and social security. This instrument is part of a package of legislative changes which will make consequential amendments to the heart health assessment services from 1 November 2019. The *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* will increase the Medicare benefit amount a patient will be eligible for a service provided under items 699 and 177, from 85% of the schedule fee to 100% of the schedule fee. Increasing the benefit to 100% of the schedule fee will align the heart health assessment services with other heart health assessment services in Group A14 of the Table, which have a benefit of 100% of the schedule fee.

Subject to commencement of that instrument, this instrument will reduce the schedule fees for the heart health assessment items so there is no change in the Medicare benefit amount a patient will receive. A patient will continue to be eligible for a Medicare benefit of \$73.95 for a service to which item 699 applies and \$59.15 for a service to which item 177 applies.

### **Conclusion**

This instrument is compatible with human rights as it maintains the right to health and the right to social security.

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