

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020

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 (GMST), the diagnostic imaging services table (DIST) and the pathology services table (PST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in one of these tables.

These tables are set out in:

- for the GMST, regulations made under subsection 4(1) of the Act;
- for the DIST, regulations made under subsection 4AA(1) of the Act; and
- for the PST, regulations made under subsection 4A(1) of the Act.

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 purpose of the *Health Insurance Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020* (the Determination) is to revoke instruments made under section 3C of the Act because the items included in those instruments are now included in the GMST, DIST and PST. This is an administrative consolidation and there is no change to the Medicare arrangements for patients or providers.

Consultation

Consultation was not undertaken for this instrument as the revocation of the instruments is machinery in nature and does not alter existing arrangements. There is no change to the arrangements for patients and health professionals, and Medicare will continue to subsidise those services.

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

The Act specifies no conditions that need to be satisfied before the power to make the Determination may be exercised.

The Determination commences on 1 May 2020.

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 Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020*Section 1 – Name

This section provides that the Determination is to be referred to as the *Health Insurance Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020*.

Section 2 – Commencement

This section provides that the Determination commences on 1 May 2020.

Section 3 – Authority

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

Section 4 - Revocation

This section provides that the legislative instruments, as specified in Schedules 1 to 3, are revoked. These instruments are no longer required as the items they prescribed are now included in the GMST, DIST or the PST.

SCHEDULE 1 General Medical Services Table items

- *Health Insurance (Section 3C General Medical Services – Cryopreservation of Semen) Determination 2018*
- *Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018*
- *Health Insurance (Section 3C General Medical Services – Unscheduled specialist attendance) Determination 2019*
- *Health Insurance (Section 3C General Medical Services – Blue Light Cystoscopy) Determination 2019*
- *Health Insurance (Section 3C General Medical Services – Vigilance Testing) Determination 2018*

SCHEDULE 2 Pathology Service Table items

- *Health Insurance (Section 3C Pathology Services— Cystic fibrosis gene testing) Determination 2018*
- *Health Insurance (Section 3C Pathology Services – Alport Syndrome Testing) Determination 2019*

SCHEDULE 3 Diagnostic Imaging Service Table items

- *Health Insurance (Section 3C Diagnostic Imaging Services – Liver and Obstetric MRI Services) Determination 2019*
- *Health Insurance (Poly Implant Prosthese MRI) Determination 2012*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020

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 purpose of the *Health Insurance Legislation Amendment (Section 3C - Revocation of Instruments Incorporated into Tables) Determination 2020* (the Determination) is to revoke instruments made under section 3C of the Act which specify health services because the items included in those instruments are now included in the GMST, DIST and PST. This is an administrative consolidation and there is no change to the Medicare arrangements for patients or health providers.

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

The Determination does not affect the right to health or the right to social security. This is an administrative consolidation and there is no change to the Medicare arrangements for patients or health providers.

Conclusion

The Determination is compatible with human rights as it does not affect the right to health and the right to social security.

David Weiss
First Assistant Secretary
Medical Benefits Division
Health Financing Group
Department of Health