

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services - Optometric Services) 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 (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.

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 (Section 3C General Medical services - Optometric Services) Determination 2020* (the Determination) is to repeal and remake the *Health Insurance (Optometric services) Determination 2016* (the previous Determination) and prescribe a new table of optometric services from 1 July 2020. This will ensure that Medicare benefits continue to be payable for optometric services performed by optometrists.

This Determination will also apply indexation for optometric services by replacing the fees in the previous Determination with fees indexed by 1.5%. This is part of the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2020.

Consultation

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. This instrument will continue the Government's policy regarding indexation by indexing the schedule fees of these services.

No consultation was undertaken on this instrument as it continues the business-as-usual implementation of the Government's policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year. The complete list of all indexed fees is available in the Medicare Benefits Schedule xml data file which is available for anyone to download on MBS Online (www.mbsonline.gov.au).

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

The Determination commences on 1 July 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 (Section 3C General Medical Services – Optometric Services) Determination 2020***Part 1 - Preliminary**Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 July 2020.

Section 3 – Authority

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

Section 4 – Revocation

Section 4 revokes the *Health Insurance (Optometric services) Determination 2016*.

Section 5 – Definitions

Section 5 provides definitions for 10 words or phrases used in the Determination, defines Group A10 groups and subgroups and specifies that the *Health Insurance Act 1973* the *National Health Act 1953* and regulations made under those Acts are to be relevant provisions from time to time.

Section 6 – Treatment of relevant services

This section provides that a relevant service described in the Schedule to the Determination shall be treated as if it were both a professional service and a medical service as if it were specified in the general medical services table for the relevant provisions of the Act, other than subsection 3(5) of the Act (which includes all attendances associated with a service) for item 10944 (which excludes aftercare for removing a foreign body from an eye).

Section 7 – Application of item 10929

This section outlines the restrictions on the claiming of item 10929. This excludes provision of contact lenses for personal appearance, work or sport, or psychological difficulty for using spectacles.

Section 8 – Application of items 10931, 10932 and 10933

This section provides that items 10931, 10932 or 10933 can be claimed additionally to another item in Subgroup 1 of Group A10 if both items apply.

Section 9 – Application of 10940 and 10941

This section provides that items 10940 and 10941 are perimetry services, and that a maximum of only two perimetry services can be claimed per patient in any 12 month period.

Section 10 – Limitation on item 10943

This section provides that 10943 cannot be used to assess learning difficulties or learning disabilities.

Section 11 – Limitation on items

This section provides that item 10943 may only be claimed once per patient in a 12 month period, item 10942 may only be claimed twice per patient in a 12 month period, and items 10921 to 10929 may only apply to a service once per patient once in a 36 month period.

Section 12 - Limitation on item 10944

This section provides the list of other items that cannot be claimed on the same occasion as 10944 for testing for or confirmation of certain conditions in a child between 3 and 14.

Section 13 – Application of items 10945 and 10946

This section provides that items 10945 and 10946 do not apply if the patient or specialist travels to a location (at least 15 kilometres away) to satisfy the distance requirements of the items.

Section 14 – Application of items 10945 to 10948

This section provides that items 10945 to 10948 (video conferencing for telehealth area patients, aboriginal health service patient or aged care facility patient) only apply if the video conference in which the patient is participating is a service for which there is also an item in the general medical services table (or is treated as being in the table because of subsection 3C(1) of the Act).

Section 15 – Professional attendance items and services provided with non-medicare services

This section provides that items 10905 to 10929 in the Determination are professional attendances, under 1.2.5 of the general medical services table. Items 10905 to 10948 in the Determination should not be provided with non-medicare services under clause 1.2.8 and 1.2.9 of the General Medical Services Table.

Schedule – Relevant Services

This schedule lists 32 item numbers, descriptions of services and fees under *Group A10 – Optometric services provided by optometrist*:

- *Subgroup 1 – General* provides items 10905 to 10918 for various attendances and 10921 to 10944 for specific treatments.
- *Subgroup 2 – Telehealth attendance* includes items 10945, 10946, 10947 and 10948

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 - Optometric Services) 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 (Section 3C General Medical services - Optometric Services) Determination 2020* (the Determination) is to repeal and remake the *Health Insurance (Optometric services) Determination 2016* (the previous Determination) and prescribe a new table of optometric services from 1 July 2020. This will ensure that Medicare benefits continue to be payable for optometric services performed by optometrists.

This Determination will also apply indexation for optometric services by replacing the fees in the previous Determination with fees indexed by 1.5%. This is part of the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2020.

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 furthers the right to health and the right to social security because it will increase the Medicare benefit for patients accessing the prescribed health services. This will assist patients to continue accessing clinically relevant health services, consistent with the rights to health and social security.

Conclusion

This instrument is compatible with human rights.

Paul McBride
First Assistant Secretary
Medical Benefits Division
Health Financing Group
Department of Health