

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Indexation) 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 Legislation Amendment (Indexation) Determination 2020* (the Determination) is to amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the COVID-19 Determination) and the *Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020* (the Bulk-billing Determination) to increase the schedule fee by 1.5 per cent for all of the health services specified. This reflects 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 certain remote attendance items.

These items are temporary services which enable patients to access many general practice, specialist and consultant physician, nurse practitioner, midwife, and allied health attendances during the coronavirus (COVID-19) pandemic.

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 – COVID-19 Telehealth and Telephone Attendances) Amendment (Indexation) Determination 2020*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Indexation) 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 – Schedules

Section 4 provides that that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

Schedule 1 – Indexation of telehealth and telephone attendance items

Schedule 1 amends the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the COVID-19 Determination).

The amendments in Schedule 1 index the schedule fees for most of the MBS items specified in the COVID-19 Determination.

Schedule 2 – Indexation of bulk-billing incentive items

Schedule 2 amends the *Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020* (the Bulk-billing Determination).

The amendments in Schedule 2 index the schedule fees for the bulk-billing incentive items for services to patients at risk of COVID-19 (items 10981 and 10982).

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Indexation) 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 (Indexation) Determination 2020* (the Determination) is to amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the COVID-19 Determination) and the *Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020* (the Bulk-billing Determination) to increase the schedule fee by 1.5 per cent for all of the health services specified. This reflects 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 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.

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