

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021

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 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. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2019*. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*.

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021* (the Determination) is to amend the fee for item 30630, which is for the insertion of a testicular prosthesis where the prosthesis is inserted at least six months after an orchidectomy, so that the fee is with parity with the fee for item 45051.

On 1 November 2020, the *Health Insurance Legislation Amendment (2020 Measures No. 2) Regulations 2020* listed item 30630 in the general medical services table (GMST). This change was announced in the 2019-20 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Review – response to Taskforce recommendations* measure.

The service provided under item 30630 is intended to replace this service from being claimed under item 45051. Item 45051 is for the contour reconstruction for open repair of contour defects, due to deformity, where the insertion of a non-biological implant is required. The fee for item 45051 is \$488.55.

On 1 March 2021, the *Health Insurance Legislation Amendment (2020 Measures No. 3) Regulations 2020* will remove item 30630 from the GMST. The Determination will list item 30630 with the amended fee of \$488.55. This will provide that the fee for item 30630 is with parity with the fee for item 45051, ensuring that the fee accurately reflects the cost of the provision of this service.

Consultation

The Urological Society of Australia and New Zealand was consulted on the fee amendment to item 30630 and supports this change.

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

The Determination commences on 1 March 2021.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

Details of the *Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 March 2021.

Section 3 – Authority

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

Section 4 – Definitions

Section 4 defines terms used in the Determination.

Section 5 – Treatment of relevant services

Section 5 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the medical services table for the service.

Section 6 – Application of provisions of the general medical services table

Section 6 specifies provisions of the general medical services table that apply as if item 30630 in the Determination was specified in the relevant provision in the general medical services table.

Subsection 6(1) of the Determination provides that item 30630 will be treated as if it was specified in clause 5.1.1 of the general medical services table. Clause 5.1.1 provides that an item in Group T8 does not apply if the service is provided at the same time, or in connection with, the provision of a pain pump for post- surgical pain management.

Schedule 1 – Relevant services

The Schedule specifies the service and the amended fee for item 30630.

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 – Insertion of Testicular Prosthesis) Determination 2021

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 – Insertion of Testicular Prosthesis) Determination 2021* (the Determination) is to amend the fee for item 30630, which is for the insertion of a testicular prosthesis where the prosthesis is inserted at least six months after an orchidectomy, so that the fee is with parity with the fee for item 45051.

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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 rights to health and social security by ensuring access to publicly subsidised health services, which are clinically effective and cost-effective.

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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