

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment 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 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. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*.

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 Australian Government is committed to offering every person in Australia access to safe and effective COVID-19 vaccines at no cost.

On 25 February 2021, the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination) listed 16 new Medicare Benefits Schedule (MBS) items to support general practices to administer the COVID-19 vaccine.

General practices supplied with the COVID-19 vaccine are able to provide a service to assess if a person who is at least 18 years of age is suitable to receive the COVID-19 vaccine. The service can be rendered by general practitioners (GPs) and other medical practitioners (OMPs), or by a person on behalf of the medical practitioners (such as a registered nurse or other health professional registered under the Health Practitioner Regulation National Law) if it is provided in accordance with acceptable clinical practice and under supervision of the medical practitioner.

Medical practitioners do not have to personally attend the service but they must be on-site, and must supervise the service in accordance with clinical standards and accept full responsibility for the service.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment Determination 2021* (the Amendment Determination) is to increase the schedule fee by \$66.75, in addition to the schedule amount listed in the relevant MBS assessment item, if a GP or OMP attends a residential aged care facility or a person's place of residence to provide the service. The additional amount will only be applicable for the first patient who is seen on each occasion that the GP or OMP attends the residential aged care facility or place of residence.

The additional amount is applicable to a service provided at a residential aged care facility if the relevant MBS item is provided to a patient who is a care recipient of the facility or a staff member of the approved provider operating the facility.

The additional amount is applicable to a service provided at a person's place of residence (not being a residential aged care facility), if the relevant MBS item is provided to a patient who is unable to personally attend the practice location because of the patient's medical condition, disability, dementia or frailty. The person's place of residence could include a person's private home, a group home, or a facility where the person resides.

Consultation

Consultation was undertaken with the Australian Medical Association and the Royal Australian College of General Practitioners.

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

The Amendment Determination commences on 14 June 2021.

The Amendment 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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment Determination 2021

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences the day after the Amendment Determination is registered.

Section 3 – Authority

Section 3 provides that the Amendment Determination 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 the Amendment Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Determination has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 sets out the amendments made by the Amendment Determination to the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination).

Item 1 – Section 4

Item 1 inserts the definition of a residential aged care facility, which means a facility where residential care (as defined in section 41-3 of the *Aged Care Act 1997*) is provided, and the definition of staff member, which has the same meaning as in Schedule 1 to the *Aged Care Act 1997*. Schedule 1 of the *Aged Care Act 1997* provides that *staff member* of an approved provider means an individual who is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services.

Item 2 – Subparagraph 5(1)(b)(ii)

Item 2 omits the words “the Schedule” and substitutes “this instrument” in subparagraph 5(1)(b)(ii) of the Amendment Determination, to reflect that the fee specified in the Schedule in relation to each service may be increased by new section 9 (see item 3 below).

Item 3 – After Section 8

Item 3 inserts new section 9 to provide for the MBS fee for an item to include the amount of \$66.75 in addition to the amount listed for the MBS item in the Schedule, if a GP or OMP attends a residential aged care facility, residential disability facility setting or the person's place of residence. The increased fee will only be applicable for the first patient who is seen at the residential aged care facility, residential disability facility, at a person's place of residence, on each occasion that the GP or OMP attends the facility or residence.

No change is being made to the requirement that the MBS items in the Principal Determination must be bulk-billed, meaning patients will continue not to experience any out-of-pocket costs.

The increased fee only applies to a service provided at a residential aged care facility if the patient is a care recipient in the facility or a staff member of the approved provider operating the facility. Staff member of the approved provider has the same meaning as in the *Aged Care Act 1997* (see item 1 above).

The increased fee only applies to a service provided at a person's place of residence if the patient is unable to attend the practice location because of the patient's medical condition, disability, dementia or frailty.

The increased fee only applies to a service provided at a residential disability facility setting if the patient is a recipient in the facility or is employed, hired, retained or contracted (whether directly or through an employment or recruiting agency) to provide care and other care related services in the facility.

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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment 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 *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination) lists 16 Medicare Benefits Schedule (MBS) items to support general practices to administer the COVID-19 vaccine.

The purpose of this instrument, the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment Determination 2021* (the Amendment Determination) is to amend the Principal Determination to increase the schedule fee by \$66.75, in addition to the schedule amount listed in the relevant MBS item, if a general practitioner (GP) or medical practitioner (other than a general practitioner) (OMP) attends a residential aged care facility or a person's place of residence to provide the service. The increased fee applies to the first patient who is seen on each occasion that the GP or OMP attends the residential aged care facility or place of residence. No change is being made to the requirement that the MBS items in the Principal Determination must be bulk-billed, meaning patients will continue not to experience any out-of-pocket costs.

The additional amount applies to a service provided at a residential aged care facility to a patient who is a care recipient of the facility or staff member of the approved provider of the facility. The additional amount applies to a service provided at a person's place of residence to a patient who is unable to attend the practice location because of the patient's medical condition, disability, dementia or frailty.

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.

The right of equality and non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Analysis

This instrument advances the right to health; right to social security and right of equality and non-discrimination by increasing the fee for the MBS items to improve access to the COVID-19 vaccine for residential aged care recipients and staff members; and persons who are unable to attend a practice location because of a medical condition, disability, dementia or frailty.

Conclusion

This instrument is compatible with human rights as it advances the right to health; the right to social security and the right to equality and non-discrimination.

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