

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination (No. 2) 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 2021*.

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 General Medical Services - GP Mental Health Treatment Plan Review) Determination (No. 2) 2021* (the Determination) is to repeal and replace the *Health Insurance Legislation Amendment (Section 3C General Medical Services - GP Mental Health Treatment Plan Review) Determination 2021* (the GP Mental Health Treatment Plan Review Determination) due to an administrative error. The GP Mental Health Treatment Plan Review Determination acted to reinstate item 92126 in the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal COVID-19 Determination) and amend a schedule fee in the *Health Insurance (Section 3C General Medical Services - Anterior and Posterior Pelvic Ring Disruption) Determination 2021* (the Principal Pelvic Ring Disruption Determination).

Due to an administrative error, the GP Mental Health Treatment Plan Review Determination, which reinstated item 92126 and amended the schedule fee for 47491, included incorrect commencement instructions. This error unintentionally meant these changes were not implemented in line with the original policy intent. Schedule 1 of the Determination repeals the GP Mental Health Treatment Plan Review Determination and implements the same changes with corrected commencement instructions to reflect policy intent.

Schedule 2 of the Determination reinstates item 92126 in the Principal COVID-19 Determination. Item 92126 provides for a general practitioner (GP) phone attendance service to review a GP mental health treatment plan or a psychiatrist assessment and management plan. Reinstating this item is necessary to prevent service gaps for patients

requiring access to this remote service option not covered under other items in the Principal COVID-19 Determination.

Schedule 3 of the Determination amends an incorrect schedule fee for item 47491 in the Principal Pelvic Ring Disruption Determination, which is an orthopaedic paediatric item for the treatment of a fracture by a pelvic ring disruption, to take into account government policy on rounding conventions.

Consultation

No consultation was undertaken on the Determination, as the amendments it provides are administrative in nature.

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

Sections 1 to 4 of the Determination commence immediately following registration of this instrument, Schedule 1 commences immediately following registration of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination 2021*, Schedule 2 commences immediately following the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021* and Schedule 3 commences immediately following the commencement of the *Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination 2021*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination (No. 2) 2021*.

Section 2 – Commencement

Sections 1 to 4 of the Determination commence immediately following registration of this instrument, Schedule 1 commences immediately following registration of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination 2021*, Schedule 2 commences immediately following the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021* and Schedule 3 commences immediately following the commencement of the *Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 2021*.

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 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 – Repeal of instrument

Item 1 repeals the *Health Insurance Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination 2021*.

Schedule 2 – GP mental health treatment plan review item

Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020

Item 1 reinstates item 92126, which is for a general practitioner (GP) phone attendance service to review a GP mental health treatment plan or a psychiatrist assessment and management plan.

Schedule 3 – Fee amendment

Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 2021

Item 1 amends the schedule fee for item 47491 from \$1,616.32 to \$1,616.30. This amendment is to correct the fee due to an administrative error.

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 General Medical Services – GP Mental Health Treatment Plan Review) 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 Legislation Amendment (Section 3C General Medical Services – GP Mental Health Treatment Plan Review) Determination 2021* (the Determination) is to reinstate an item in the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal COVID-19 Determination) and amend a schedule fee in the *Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 2021* (the Principal Pelvic Ring Disruption Determination).

The Determination reinstates item 92126 in the Principal COVID-19 Determination. Item 92126 provides for a general practitioner (GP) phone attendance service to review a GP mental health treatment plan or a psychiatrist assessment and management plan. Reinstating this item is necessary to prevent service gaps for patients requiring access to this remote service option not covered under other items in the Principal COVID-19 Determination.

The Determination also amends an incorrect schedule fee for item 47491 in the Principal Pelvic Ring Disruption Determination, which is an orthopaedic paediatric item for the treatment of a fracture by a pelvic ring disruption, to take into account government policy on rounding conventions.

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

The Determination maintains the right to health, the right to social security and the right of equality and non-discrimination by maintaining patient access to GP phone attendance services for the review of GP mental health treatment plans and psychiatrist assessment and management plans and ensuring the correct schedule fee for an orthopaedic service item.

Conclusion

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

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