

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) 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 pathology 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 section 4A of the Act. The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 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 purpose of the *Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Amendment Determination 2021* (the Determination) is to amend the *Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Determination 2015* (the Principal Determination) by repealing and replacing the table in the Schedule to update the table formatting and amend item 73844.

The Principal Determination enables Medicare benefits to be payable for point of care pathology testing for the diagnosis and management of diabetes in Aboriginal and Torres Strait Islander primary health care sites, under the Quality Assurance in Aboriginal and Torres Strait Islander Medical Services (QAAMS) program.

The Principal Determination currently provides point-of-care Medicare items for on-site testing at the time of patient consultation for three specific diabetes related tests:

- (a) item 73839 – diabetes diagnosis blood test;
- (b) item 73840 – diabetes management blood test; and
- (c) item 73844 – diabetes management urine test.

The Determination amends item 73844 to align the service with clinical best-practice. Item 73844 currently provides for the quantitation of urinary microalbumin as determined by urine albumin excretion on a timed overnight urine sample or urine albumin/creatinine ratio (ACR), as determined on a first morning urine sample for patients with diagnosed diabetes. The requirement for a first morning urine collection is not in line with current clinical guidelines.

The Determination will amend the item descriptor for item 73844 to remove the requirement for the test to be performed on a first morning urine sample and instead require the test be performed on random spot collection.

A service provided under the updated item will provide results to Aboriginal and Torres Strait Islander health workers in six minutes, rather than 42 hours. This change will enable patients to receive their results, more comprehensive advice and treatment plans in a single visit to the health service.

The Determination will also amend item 73844 to expand the service to patients at risk of microalbuminuria, in addition to patients with established diabetes. This change will align the service with current clinical practices and assist in the management of patients with multiple co-morbidities.

Consultation

The QAAMS program is a long-standing national Indigenous health program between the Flinders University, the Royal College of Pathologists of Australasia Quality Assurance Programs and the Australian Government Department of Health.

The updates to item 73844 were proposed by Flinders University International Centre for Point-of-Care testing. Flinders University were also consulted and agreed to the revision to item 73844.

This change was announced by Government in the 2021-22 Budget under the *Guaranteeing Medicare – changes to the Medicare Benefits Schedule* measure.

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

The Determination commences on 1 November 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 (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Amendment Determination 2021

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Amendment Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 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 – Amendments

Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Determination 2015

Item 1 – Schedule (table)

Item 1 repeals and replaces the table in the Schedule to update the item descriptor for item 73844 to provide that the service is for the quantitation of urinary albumin/creatinine ratio to be performed using a urine sample on a random spot collection in the management of patients with established diabetes or patients at risk of microalbuminuria. This change will align the service with current clinical practice and will enable earlier diagnosis of kidney health and/or hypertension in Indigenous patients. The updated table is also formatted for the layout to be consistent with other legislative instruments in relation to Medicare services.

Statement of Compatibility with Human Rights

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

Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) 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

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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.

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 maintains the right to health, the right to social security and the right of equality and non-discrimination by ensuring patients access to subsidised pathology services that are clinically relevant and consistent with current clinical practice.

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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