

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C General Medical Services – Allied Health Case Conference) 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 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 – Allied Health Case Conference) Determination 2021* (Amendment Determination) is to list six new items to enable a Medicare benefit to be paid where allied health practitioners participate in case conferences to manage the care of certain patients.

This includes listing three items for patients with a chronic or terminal disease and three items for patients under the age of 13 who have been diagnosed with, or are suspected of having, the following conditions:

- autism or another pervasive developmental disorder; or
- an eligible disability.

A case conference occurs where an eligible allied health practitioner participates in a meeting (in person or remotely) with a medical practitioner and at least one other person providing care as part of the patient's multidisciplinary team. The case conference must be organised by the medical practitioner and involve at least two other persons providing different kinds of care to the patient. The allied health practitioner can be counted as one of these other two persons.

The Government announced funding for the new items as part of the *Primary Care* measure in the 2021-22 Budget.

Consultation

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. Clinical committee and reference group reports are

released for public consultation to inform the final MBS Review Taskforce (the Taskforce) reports and recommendations to Government.

Multidisciplinary case conferences were reviewed by the General Practice and Primary Care Clinical Committee and the Allied Health Reference Group. Representatives of allied health providers, and the primary care sector more broadly, were given the opportunity to comment.

The Department of Health has also conducted targeted consultation with the allied health sector on the design and implementation of the new allied health case conference service items.

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 Legislation Amendment (Section 3C General Medical Services – Allied Health Case Conference) 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 – Allied Health Case Conference) 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 – Allied Health Case Conference Amendments

Schedule 1 will amend the *Health Insurance (Allied Health Services) Determination 2014* (Principal Allied Health Determination).

Amendment item 1 repeals the definition of *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*. This will enable all incorporated references to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* in the Principal Allied Health Determination to apply from-to-time.

Amendment item 2 inserts new sections 14 to 16 after section 13 of the Principal Allied Health Determination.

Section 14 applies application provisions to the six new allied health case conference items (see **amendment items 3 and 4**).

Subsection 14(2) provides that references to *community case conference*, *multidisciplinary case conference*, *multidisciplinary case conference team* and *participate* have the meaning given by the specified provisions in the general medical services table. To summarise these terms in relation to the new allied health case conference items:

- *community case conference* means a case conference for community based patients. This is intended to exclude patients residing in residential aged care facilities or admitted to hospital.

- *multidisciplinary case conference* describes the activities that are undertaken as part of the case conference.
- *multidisciplinary case conference team* means a team of at least three persons who are involved in managing the patient's care. The team must involve at least one medical practitioner and two other persons (one who may be a medical practitioner) who are providing different types of care or services to the patient. The other persons may include allied health professionals, home and community service providers and care organisers.

Unpaid carers and family members of the patient do not count towards the minimum of three formal service providers. Note that **subsection 15(4)** provides additional limitations relating to the multidisciplinary case conference team for patients with a chronic or terminal disease, and **subsection 16(3)** provides additional limitations relating to the multidisciplinary case conference team for patients diagnosed with, or suspected of having, autism or another pervasive developmental disorder or an eligible disability.

- *participate* describes the activities that a formal member of the multidisciplinary case conference team must undertake if they are not organising and coordinating the conference. These activities include acquiring and recording the patient's agreement to the allied health practitioner's participation in the conference.

Subsection 14(3) provides that the allied health case conference items will apply if the patient is not in attendance (in person or remotely). This does not preclude the patient (or carer) from attending, where appropriate.

Subsections 14(4), (5) and (6) relate to the attendance requirements for the multidisciplinary case conference team for allied health case conference services. Subsection 14(4) requires that the minimum number of members of the multidisciplinary case conference must attend on the one occasion.

Subsection 14(5) provides that the minimum number of members is three and subsection 14(6) provides that attendance by the minimum number of members includes attending in person or remotely (by phone or video conference). The allied health case conference services could not be performed if fewer than three of the members did not meet to discuss the patient's condition.

For example, a multidisciplinary case conference team includes a GP, an eligible allied health practitioner and a specialist. The GP, eligible allied health practitioner and specialist discuss the patient's condition on the phone. In that scenario the eligible allied health practitioner can claim the allied health case conference service as the minimum number of participants met on the one occasion.

It is important to note this is a minimum number of members for the multidisciplinary case conference team. Other persons can participate as part of the multidisciplinary case conference team.

Paragraph 14(7)(a) provides that the eligible allied health practitioner may participate as a member of the multidisciplinary case conference team by attending in person or by a remote attendance method (phone or video conference). Paragraph 14(7)(b) provides that the eligible allied health practitioner can participate through another attendance method than other members

of the multidisciplinary case conference team. See **subsections 15(5)** and **16(4)** for the meaning of eligible allied health practitioner in relation to the new items.

Section 15 applies limitation provisions to the three new allied health case conference items for patients with a chronic or terminal disease (see **amendment item 3**). These items will be referred to as ‘chronic disease management case conference services’ for the purpose of explaining the relevant provisions in this section.

Subsection 15(2) provides that a chronic disease management case conference service can only be undertaken for a patient that has a chronic or terminal condition. A chronic condition is defined as a medical condition that has persisted for more than six months, or is expected to persist for more than six months. Patients with these conditions who are admitted to a hospital are not eligible for a chronic disease management case conference service.

Subsection 15(3) provides that a particular chronic disease management case conference service cannot be performed if the patient has received that chronic disease management service within the past 3 months.

Subsections 15(4) requires the multidisciplinary case conference team for chronic disease management case conference services to include at least one medical practitioner (who is not a specialist or consultant physician). This would commonly be the GP who organises and coordinates the case conference, it but may also include a medical practitioner working in general practice who performs that role.

Subsection 15(5) specifies the types of eligible allied health practitioner. This is the same list of allied health practitioners who can perform the individual allied health attendance services in Group M3 of the Principal Allied Health Determination.

Section 16 applies limitation provisions to the three new allied health case conference items for patients with a pervasive development disorder (including autism) or an eligible disability (see **amendment item 4**). These items will be referred to as the ‘pervasive development disorder and disability case conferences’ for the purpose of explaining the relevant provisions in this section.

Subsection 16(2) provides that a pervasive development disorder and disability case conference can only be undertaken for a patient that:

- is a child younger than 13 years old; and
- the child has been diagnosed with, or is suspected of having, a pervasive developmental disorder (including autism) or an eligible disability.

Patients with these conditions who are admitted to a hospital are not eligible for a pervasive development disorder and disability case conference.

Subsection 16(3) relates to the requirements of the multidisciplinary case conference team for the pervasive development disorder and disability case conference service.

For patients with, or suspected of having, autism or another pervasive developmental disorder, subparagraph 16(3)(a)(i) requires that the team must include a consultant physician in the practice of the consultant physician’s specialty of paediatrics or psychiatry. This would commonly be the practitioner who organises and coordinates the case conference.

For patients with, or suspected of having, an eligible disability, subparagraph 16(3)(a)(ii) requires that the team must include a GP, specialist or consultant physician. This would commonly be the practitioner who organises and coordinates the case conference.

Subsection 16(4) specifies the types of eligible allied health practitioner. This list includes the allied health practitioners who can perform the individual allied health attendance services in Group M10 of the Principal Allied Health Determination as well as eligible Aboriginal health workers, eligible Aboriginal and Torres Strait Islander health practitioners, eligible mental health nurses and eligible mental health workers.

Amendment item 3 lists the three new allied health items for chronic disease management case conference services in Group M3 in the Principal Allied Health Determination (items 10955, 10957 and 10959). These items allow an eligible allied health practitioner to participate in a community case conference or a multidisciplinary case conference in a residential aged care facility.

Amendment item 4 lists the three new allied health items for pervasive development disorder and disability case conferences in Group M10 in the Principal Allied Health Determination (items 82001, 82002 and 82003). These items allow an eligible allied health practitioner to participate in a community case conference.

Schedule 2 – Definition of eligible allied health practitioner

Schedule 2 will amend the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020* (Principal RACF Chronic Disease Management Determination).

Amendment item 1 inserts the definition for *eligible allied health practitioner* in the Principal RACF Chronic Disease Management Determination.

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 – Allied Health Case Conference) 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 – Allied Health Case Conference) Determination 2021* (Amendment Determination) is to list six new items to enable a Medicare benefit to be paid where allied health practitioners participate in case conferences to manage the care of certain patients.

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The Government announced funding for the new items as part of the *Primary Care* measure in the 2021-22 Budget.

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 rights to health and social security and the right of equality and non-discrimination as it lists six new items which allow for payment of a Medicare benefit where certain allied health practitioners participate in a case conference for specified patient cohorts.

Conclusion

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

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