

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (No. 2) 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 (GMST) and the diagnostic imaging service table (DIST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in these tables.

The GMST is set out in the regulations made under subsection 4(1) of the Act. The latest version of the GMST is the *Health Insurance (General Medical Services Table) Regulations 2021*.

The DIST is set out in the regulations made under section 4AA of the Act. The latest version of the DIST is the *Health Insurance (Diagnostic Imaging 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 purpose of the *Health Insurance Legislation Amendment (No. 2) Determination 2021* (the Determination) is to revoke two instruments made under subsection 3C(1) of the Act because items included in those instruments will be included in the GMST and DIST from 1 November 2021.

From 1 November 2021, the *Health Insurance Legislation Amendment (2021 Measures No. 2) Regulations 2021* (the Regulations) will list items which are currently listed in instruments made under subsection 3C(1) of the Act in the following tables:

- General Medical Services Table:
 - *Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 2021*
- Diagnostic Imaging Services Table:
 - *Health Insurance (Section 3C Diagnostic Imaging Services – Multiparametric MRI of the prostate) Determination 2018*

The Determination will repeal these instruments from 1 November 2021. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

Consultation

Consultation was not undertaken for this instrument as the revocation of these instruments is machinery in nature and does not alter existing arrangements. There is no change to the arrangements for patients and health professionals, and Medicare will continue to subsidise those services.

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 (No. 2) Determination 2021*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (No. 2) 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 – Schedule

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 – Repeals of instruments

Item 1 repeals the following instruments:

- *Health Insurance (Section 3C General Medical Services – Anterior and Posterior Pelvic Ring Disruption) Determination 2021*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Multiparametric MRI of the prostate) Determination 2018*

This is a consequential change as the items listed in these instruments will be listed in the general medical services table or the diagnostic imaging services table.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (No. 2) 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 (No. 2) Determination 2021* (the Determination) is to revoke two instruments made under subsection 3C(1) of the Act because items included in those instruments will be included in the GMST and DIST from 1 November 2021.

From 1 November 2021, the *Health Insurance Legislation Amendment (2021 Measures No. 2) Regulations 2021* (the Regulations) will list items which are currently listed in instruments made under subsection 3C(1) of the Act in the following tables:

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The Determination will repeal these instruments from 1 November 2021. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

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 advances the right to health and the right to social security.

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