

## 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 (No. 4) 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 Australian Government is committed to offering every person in Australia access to safe and effective COVID-19 vaccines at no cost.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 4) Determination 2021* (the Amendment Determination) is to introduce two new items to allow COVID-19 vaccine suitability assessment services to be performed outside of consulting rooms by qualified health professionals under remote supervision by a medical practitioner.

The two new COVID-19 vaccine suitability assessment items allow qualified health professionals to provide vaccine suitability assessment services outside of a medical practice without on-site supervision by a medical practitioner. These new items are intended to target the provision of COVID-19 vaccines to vulnerable people who may have difficulty travelling to a medical practice.

#### **Consultation**

As part of its health care package to protect all Australians from COVID-19, the Australian Government is consulting broadly with the medical sector.

This Amendment Determination is intended to target the provision of COVID-19 vaccines to vulnerable people who may have difficulty travelling to a medical practice.

Considering the nature of the instrument and the short timeframe to draft the legislative instrument, it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument.

Details of the Amendment Determination are set out in the Attachment.

The Amendment Determination commences on 1 January 2022.

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 (No. 4) Determination 2021***

Section 1 – Name

Section 1 provides for the instrument 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 (No. 4) Determination 2021* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 1 January 2022.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under subsection 3C(1) of the *Health Insurance Act 1973* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this 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 this Amendment Determination has effect according to its terms.

Schedule 1 – Amendments

*Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID- 19 Vaccine) Determination 2021* (the Principal Determination)

**Amendment item 1** amends subsection 7(1) and inserts subsection 7(1A) in the Principal Determination.

Subsection 7(1) provides that most services in the Principal Determination can be rendered by a medical practitioner or by a relevant health professional on behalf of a medical practitioner. These services can be performed 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. Medical practitioners do not have to personally attend the service, but they must be on-site, must supervise the service in accordance with clinical standards, and accept full responsibility for the service

The in-depth assessment services (10660 and 10661) are excluded from this provision as they must be rendered by a medical practitioner.

Subsection 7(1) has been amended to exclude the two new off-site COVID-19 vaccine suitability assessment items (93660 and 93661 – see **amendment item 3**) from the operation of this subsection.

Subsection 7(1A) provides that for items 93660 and 93661 the medical practitioner on whose behalf the service is provided is not required to attend the location where the service performed. The medical practitioner under whose supervision the COVID-19 vaccine suitability assessment service is being provided retains responsibility for the health, safety and clinical outcomes of the patient. The medical practitioner must be satisfied that the relevant health professional is appropriately qualified and trained to provide the relevant suitability assessment.

**Amendment item 2** inserts subsection 9(5) in the Principal Determination.

Section 9 of the Principal Determination provides conditions for the fee to be increased by an amount specified in subsection 9(1) if a medical practitioner attends a residential aged care facility, residential disability facility setting or the person's place of residence to perform a service.

This amount, known as a 'flag fall', only applies to the first patient attended at the location the service is provided, and only to services rendered on patients who are unable to travel to a medical practitioner due to their medical condition, disability, dementia or frailty.

Subsection 9(5) provides that the 'flag fall' will apply to a service provided on behalf of a medical practitioner by a relevant health professional.

**Amendment item 3** amends the table in the Schedule in the Principal Determination, inserting two new items. This amendment inserts items 93660 and 93661 in subgroup 6 of Group A44 in the Principal Determination. These items allow for vaccine suitability assessment services to be performed by a relevant health professional on behalf of a medical practitioner outside of general practice consulting rooms, where the medical practitioner is not in attendance at the location where the service is provided.

## 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 (No. 4) 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 Australian Government is committed to offering every person in Australia access to safe and effective COVID-19 vaccines at no cost.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 4) Determination 2021* (the Amendment Determination) is to introduce two new items to allow COVID-19 vaccine suitability assessment services to be performed outside of consulting rooms by qualified health professionals under remote supervision by a medical practitioner.

The two new COVID-19 vaccine suitability assessment items allow qualified health professionals to provide vaccine suitability assessment services outside of a medical practice without on-site supervision by a medical practitioner. These new items are intended to target the provision of COVID-19 vaccines to vulnerable people who may have difficulty travelling to a medical practice.

### 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 and social security and the right of equality and non-discrimination by providing greater access to COVID-19 vaccine suitability assessment services for vulnerable Australians who may be unable to attend general practice locations offering COVID-19 vaccine services.

**Conclusion**

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

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