

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C General Medical Services – Telehealth and Phone GP Fee Alignment) 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*.

Subsection 10(1) of the Act provides that a Medicare benefit is payable, calculated in accordance with subsection (2), in respect of a professional service rendered in Australia to an eligible person. Subsection 10(2) of the Act provides a benefit is calculated as 75% of the fee for an episode of hospital treatment or hospital- substitute treatment if the person to whom the treatment is provided chooses to receive a benefit from a private health insurer. In any other case the benefit is 85%, or 100% if prescribed in regulations.

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

In 2004, the Government announced a number of policies to increase the bulk-billing rate for GP services. One of the measures was to increase the benefit for GP items from 85% of the schedule fee to 100% of the fee. Ongoing GP items are currently prescribed in subsection 28(1) of the *Health Insurance Regulations 2018* (HIR).

On 1 March 2022, the *Health Insurance Legislation Amendment (2021 Measures No. 4) Regulations 2021* will amend the HIR to include a number of general practice remote service items that were originally created in response to the COVID-19 pandemic but have been continued following the realisation of the need for these services in these forms. This includes all GP and medical practitioner (excluding specialist and consultant physician) items in Group A40, A41, A42, A43 and A45.

Prescribing these items in the HIR will change the benefit calculation from 85% to 100% of the fee. The purpose of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Telehealth and Phone GP Fee Alignment) Determination 2021* is to make an administrative change to reduce the fees of those items so the benefit paid for the service remains unchanged.

Consultation

No consultation was undertaken on this change as it is administrative only and does not affect how much benefit will be paid for a service provided under the items.

Details of the Determination are set out in the Attachment.

The Determination commences the day after registration. Schedule 1 of the Determination commences on 1 March 2022.

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 – Telehealth and Phone GP Fee Alignment) 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 – Telehealth and Phone GP Fee Alignment) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences the day after registration. Schedule 1 commences on 1 March 2022.

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.

Schedules

Schedule 1 of the Determination will change the benefit calculation from 85% to 100% of the fee for all GP and medical practitioner (excluding specialist and consultant physician) items in Group A40, A41, A42, A43 and A45. Schedule 1 will commence on 1 March 2022.

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 – Telehealth and Phone GP Fee Alignment) 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

In 2004, the Government announced a number of policies to increase the bulk-billing rate for GP services. One of the measures was to increase the benefit for GP items from 85% of the schedule fee to 100% of the fee. Ongoing GP items are currently prescribed in subsection 28(1) of the *Health Insurance Regulations 2018* (HIR).

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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 is part of an administrative package that will amend the fee and benefit calculation of GP items that have been listed in the past two years to reflect the arrangements of other GP services. Although this instrument will reduce the fee for certain general practice phone service items, this instrument should be considered with the *Health Insurance Legislation Amendment (2021 Measures No. 4) Regulations 2021* which will change the benefit calculation to 100% of the fee for these items. Taken together, this package of instruments will maintain the existing rights to health and social security and the existing right of equality and non-discrimination as there will be no change in the amount that is paid for a service. That is, the change is administrative only.

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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