

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. 5) 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.

On 22 December 2021, the Australian Government announced a new temporary Medicare Benefits Schedule (MBS) item will be made available to support GPs to provide COVID-19 booster doses. The item, which will pay a \$10 incentive on top of existing MBS items when a patient receives a COVID-19 booster vaccination, will be available from 23 December 2021 to 30 June 2022.

This increase in funding will support general practices to proactively identify and encourage patients to come in for a booster vaccination and to increase vaccination capacity, particularly over the holiday period.

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. 5) Determination 2021* (the Amendment Determination) is to introduce a new item to support general practices to administer booster doses of the COVID-19 vaccine. The new service can be claimed by general practices providing a suitability assessment if:

- the person is receiving a suitability assessment for the purpose of receiving a third dose of a COVID-19 vaccine (a booster dose); and
- the service is provided to the patient at no cost (known as ‘bulk-billing’).

Consultation

On 22 December 2021, the Australian Government announced that they will be providing further support to general practices in the rollout of the COVID-19 booster vaccination program.

Due to the short timeframe in drafting this 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 23 December 2021.

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

ATTACHMENT

Details of the Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 5) Determination 2021

Section 1 – Name

Section 1 provides for the Amendment Determination 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. 5) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 23 December 2021.

Section 3 – Authority

Section 3 provides that the Amendment 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 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

This Schedule will amend the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (Principal Determination) to list the new items for an assessment of a person to receive a booster of the COVID-19 vaccine.

Amendment item 1 will insert a definition of “booster dose” which is used to define patient eligibility for the new service (see **amendment item 2**). A booster dose is defined as the third dose of a COVID-19 vaccine.

Amendment item 2 will list a management support service for a booster dose of a COVID-19 vaccine (item 93666). This includes immunocompromised patients who have been eligible for their third dose of a COVID-19 vaccine since October 2021.

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. 5) 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.

On 22 December 2021, the Australian Government announced a new temporary Medicare Benefits Schedule (MBS) item will be made available to support GPs to provide COVID-19 booster doses. The item, which will pay a \$10 incentive on top of existing MBS items when a patient receives a COVID-19 booster vaccination, will be available from 23 December 2021 to 30 June 2022.

This increase in funding will support general practices to proactively identify and encourage patients to come in for a booster vaccination and to increase vaccination capacity, particularly over the holiday period.

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. 5) Determination 2021* (the Amendment Determination) is to introduce a new item to support general practices to administer booster doses of the COVID-19 vaccine. The new service can be claimed by general practices providing a suitability assessment if:

- the person is receiving a suitability assessment for the purpose of receiving a third dose of a COVID-19 vaccine (a booster dose); and
- the service is provided to the patient at no cost (known as ‘bulk-billing’).

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 the right to social security by providing general practice an additional incentive to provide a suitability assessment to administer booster doses of the COVID-19 vaccine.

Conclusion

This instrument is compatible with human rights as it advances the right to health and the right to social security by encouraging the provision of vaccine assessments for patients seeking a third dose of a COVID-19 vaccine. The instrument maintains the right of equality and non-discrimination.

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