

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (Indexation) Determination 2022*

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 (No. 2) 2020*.

#### **Purpose**

The purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (Indexation) Determination 2022* (the Determination) is to apply annual indexation to specified items in the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, increasing the schedule fees for the items by 1.6 per cent. This reflects the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2022.

Due to an administrative error on 1 July 2021, the schedule fees for two items (243 and 244) in the Determination will also be reduced from 1 July 2022. On 1 July 2021, the fees for items 243 and 244 were calculated as 80% of the equivalent GP items without accounting for the differences in benefit, resulting in fees that were higher than 80 per cent of the equivalent GP items. To correct this issue and implement the Government's intention for other medical practitioner (OMP) items to be paid at 80% of the equivalent GP services, from 1 July 2022, the fees will be reduced for item 243 from \$67.85 to \$58.60 and for item 244 \$31.60 to \$27.30.

This instrument also repeals 3 (894, 896 and 898) mental health services for patients affected by bushfire. Despite the cessation of these services, eligible Australians will continue to have access to the Better Access scheme services beyond 30 June 2022, as they continue as part of the ongoing telehealth service options introduced as part of the Government's response to the COVID-19 pandemic without the restriction for being affected by bushfires.

#### **Consultation**

No consultation was undertaken on this instrument as it continues the business-as-usual implementation of the Government's policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year. The complete list of all indexed fees is available in the Medicare Benefits Schedule xml data file which is available for anyone to download on MBS Online ([www.mbsonline.gov.au](http://www.mbsonline.gov.au)).

Details of the Determination are set out in the [Attachment](#).

The Determination commences on 1 July 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*

## ATTACHMENT

**Details of the Health Insurance (Section 3C General Medical Services – Other Medical Practitioner – Medicare Indexation) Determination 2022**Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (Indexation) Determination 2022*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 July 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.

Schedule 1 – Amendments

*Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*

**Amendment items 1 to 3** apply indexation to the schedule fees of specified items, increasing the schedule fees by 1.6 per cent from 1 July 2022. The fees for the items are calculated to reflect 80 per cent of the schedule fee for the equivalent GP item.

The benefit for items 243 and 244 is 100% of the schedule fee whereas the benefit for the equivalent GP items (871 and 872) is 85% of the schedule fee. This means that items 243 and 244 require an additional calculation to ensure indexation is correctly applied.

Due to an administrative error in items 243 and 244 on 1 July 2021, the fees for these items were indexed to a higher amount than intended. This determination also corrects this error to provide the correct indexation amount for each item for 1 July 2022.

**Amendment item 4** repeals medical practitioner items 894, 896 and 898, which provide mental health services for patients affected by bushfire. The items commenced on 01 November 2018 and are being repealed from 30 June 2022 as they are no longer required after the implementation of the ongoing telehealth services.

**Amendment item 5** applies indexation to the flag fall service in subclause 1.14.1(1), increasing the flag fall amount by 1.6 per cent from 1 July 2022.

## 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 – Other Medical Practitioner) Amendment (Indexation) Determination 2022*

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 (Section 3C General Medical Services – Other Medical Practitioner) Amendment (Indexation) Determination 2022* (the Determination) is to apply annual indexation to specified items in the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, increasing the schedule fees for the items by 1.6 per cent. This reflects the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2022.

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This instrument also repeals 3 (894, 896 and 898) mental health services for patients affected by bushfire. Despite the cessation of these services, eligible Australians will continue to have access to the Better Access scheme services beyond 30 June 2022, as they continue as part of the ongoing telehealth service options introduced as part of the Government's response to the COVID-19 pandemic without the restriction for being affected by bushfires.

### 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 maintains the right to health, the right to social security and the right of equality and non-discrimination by applying indexation to the Medicare benefit patients will receive when accessing these services.

Despite the cessation of the Bushfire Services Determinations, eligible Australians will continue to have access to the Better Access scheme beyond 30 June 2022 under *the Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020*. Patients will also continue to have access to general practice mental health services under the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*, which continues remote service options introduced as part of the Government's response to the COVID-19 pandemic.

### **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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