EXPLANATORY STATEMENT

*Health Insurance Act 1973*

*Health Insurance (General Practice COVID-19 Treatment) 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 2021*.

**Purpose**

The *Health Insurance (General Practice COVID-19 Treatment) Determination 2022* (the Determination) inserts two items for general practitioners (GPs) or other medical practitioners (OMPs) to determine a patient’s eligibility to receive oral antiviral medication for the effective treatment of COVID-19.

As announced on 16 July 2022 by the Hon Mark Butler MP, the Minister for Health and Aged Care, two new temporary items will be available on the Medical Benefits Schedule (MBS) under item numbers 93716 and 93717 until 31 October 2022. Under these new items, Medicare benefits will be available for longer phone consultations for the purpose of determining a patient’s eligibility to receive a COVID-19 oral antiviral treatment and prescribing a COVID-19 antiviral treatment where appropriate. This change will ensure as many people as possible can safely access these treatments.

These items are available for Medicare eligible patients where the service is performed by a GP or OMP practicing in a general practice setting and where the patient’s COVID-19 infection is confirmed by a laboratory test (PCR) or by a rapid antigen self-test (RAT).

The Medicare benefits for the new temporary items will be paid at 85% of the schedule fee and are equivalent to the benefit paid for other time-tiered consultation items of equivalent duration.

**Consultation**

Targeted consultation was undertaken with the Australian Medical Association and Royal Australian College of General Practitioners regarding the introduction of new temporary phone items. It was not reasonably practicable to undertake consultation with all representatives of persons affected by the Determination considering the evolving nature of the COVID‑19 emergency. It was also not appropriate to withhold the Determination from patients being able to access the services as it will help support the safe prescription of antiviral treatments for the treatment of COVID‑19 infections.

Details of the Determination are set out in the Attachment.

The Determination commences on 19 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 (General Practice COVID-19 Treatment) Determination 2022*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (General Practice COVID-19 Treatment) Determination 2022*

Section 2 – Commencement

Section 2 provides that the Determination commences on the 19 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 – Cessation

Section 4 provides that the Determination, unless earlier revoked, ceases as if revoked on 31 October 2022 at 11.59pm.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a general medical service and as if there were an item specified in the general medical services table for the service.

Section 7 – Application of provisions of the COVID-19 Treatment Items

Section 7 provides the circumstances in which the COVID-19 treatment items are to apply. Under these requirements, the diagnosis of COVID-19 must be evidenced by either a laboratory test (PCR) or by a rapid antigen self-test (RAT). The appropriate state or territory, if applicable, must have either already been notified at the time of the positive test, or the practitioner must assist the patient to report the positive test to the relevant state or territory public health unit where reporting requirements are in place from time to time.

Section 7 also provides that the medical practitioner performing the service must also be located at a medical practice with the capacity for in person assessment where appropriate, or have a formal agreement with a medical practice to provide personal attendance services.

8. Limitation of COVID-19 Treatment

Section 8 provides that a service in this Determination does not apply to a service mentioned in the item if the person is an admitted patient, nor does it apply if the service is performed in association with any other attendance service on the same occasion by the same medical practitioner.

Schedule – Relevant services

The Schedule specifies the service and the associated fee for items 93716 and 93717.

**Statement of Compatibility with Human Rights**

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

*Health Insurance (General Practice COVID-19 Treatment) 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 *Health Insurance (General Practice COVID-19 Treatment) Determination 2022* (the Determination) inserts two items for general practitioners (GPs) or other medical practitioners (OMPs) to determine a patient’s eligibility to receive oral antiviral medication for the effective treatment of COVID-19.

As announced on 16 July 2022 by the Hon Mark Butler MP, the Minister for Health and Aged Care, two new temporary items will be available on the Medical Benefits Schedule (MBS) under item numbers 93716 and 93717 until 31 October 2022. Under these new items, Medicare benefits will be available for longer phone consultations for the purpose of determining a patient’s eligibility to receive a COVID-19 oral antiviral treatment and prescribing a COVID-19 antiviral treatment where appropriate. This change will ensure as many people as possible can safely access these treatments.

These items are available for Medicare eligible patients where the service is performed by a GP or OMP practicing in a general practice setting and where the patient’s COVID-19 infection is confirmed by a laboratory test (PCR) or by a rapid antigen self-test (RAT).

The Medicare benefits for the new temporary items will be paid at 85% of the schedule fee and are equivalent to the benefit paid for other time-tiered consultation items of equivalent duration.

**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 will improve patient access to appropriate antiviral medications to treat COVID‑19 by subsidising a medical service for a medical practitioner to assess, and if clinically appropriate, prescribe the necessary medications. This instrument will improve access to health, social security, equality and non-discrimination be ensuring people who require treatment for COVID-19 will be able to access treatment under this instrument.

**Conclusion**

This instrument is compatible with human rights as it improves the right to health and the right to social security by increasing the patient population who will be able to access appropriate treatment for COVID-19.

**Travis Haslam**

**Acting First Assistant Secretary**

**Medical Benefits Division**

**Health Resourcing Group**

**Department of Health and Aged Care**