

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (General Practice COVID-19 Treatment) Amendment Determination (No. 1) 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*.

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**

On 19 July 2022, the *Health Insurance (General Practice COVID-19 Treatment) Determination 2022* (the Principal Determination) introduced two new general practice phone items (93716 and 93717) for determining a patient's eligibility to receive oral antiviral medication for the effective treatment of COVID-19.

The purpose of the *Health Insurance (General Practice COVID-19 Treatment) Amendment Determination (No. 1) 2022* (the Amendment Determination) is to make a minor change to subsection 7(2) of the Principal Determination, to align this subsection with the policy intention of the new temporary phone items. The amended subsection 7(2) will provide that any medical practitioner (including specialists and consultant physicians) performing a service under item 93716 or 93717 must 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.

#### **Consultation**

No consultation was undertaken regarding the Amendment Determination as the change aligns with the original policy intention for the two temporary phone items (93716 and 93717).

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

The Amendment Determination commences on the day after registration.

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 (General Practice COVID-19 Treatment) Amendment (No. 1) Determination (No. 1) 2022***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (General Practice COVID-19 Treatment) Amendment Determination (No. 1) 2022*

Section 2 – Commencement

Section 2 provides that the Determination commences on the day after registration.

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 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.

Schedules***Health Insurance (General Practice COVID-19 Treatment) Determination 2022***

**Amendment item 1** amends subsection 7(2) of the Principal Determination to provide that any medical practitioner (including specialists and consultant physicians) performing a service under item 93716 or 93717 must 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.

## 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) Amendment Determination  
(No. 1) 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

On 19 July 2022, the *Health Insurance (General Practice COVID-19 Treatment) Determination 2022* (the Principal Determination) introduced two new general practice phone items (93716 and 93717) for determining a patient's eligibility to receive oral antiviral medication for the effective treatment of COVID-19.

The purpose of the *Health Insurance (General Practice COVID-19 Treatment) Amendment Determination (No.1) 2022* (the Amendment Determination) is to make a minor change to subsection 7(2) of the Principal Determination, to align this subsection with the policy intention of the new temporary phone items. The amended subsection 7(2) will provide that any medical practitioner (including specialists and consultant physicians) performing a service under item 93716 or 93717 must 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.

The Amendment Determination will commence on the day after this instrument is registered.

### 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 rights to health and social security and the right of equality and non-discrimination by ensuring appropriate claiming by medical practitioners of the new general practice phone items (93716 and 93717), for determining a patient's eligibility to receive oral antiviral medication for the effective treatment of COVID-19 and aligning the Principal Determination with the original policy intention.

**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.

**Travis Haslam**  
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