

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C – Revocation of Instruments Incorporated into Tables) Determination 2023

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 GMST), diagnostic imaging services table (the DIST) and the pathology services table (the PST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the Table.

The GMST 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*.

The DIST is set out in the regulations made under subsection 4AA of the Act. The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

The PST is set out in the regulations made under subsection 4A of the Act. The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 2020*.

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 purpose of the *Health Insurance Legislation Amendment (Section 3C – Revocation of Instruments Incorporated into Tables) Determination 2023* (the Amendment Determination) is to revoke six Principal Determinations which contain items that will be rolled into the general medical services table (GMST), diagnostic imaging services table (DIST) and pathology services table (PST) by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

The Amendment Determination will revoke the following Principal Determinations:

1. *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022*;
2. *Health Insurance (Section 3C General Medical Services – Abdominoplasty for Postpartum Rectus Diastasis) Determination 2022*;
3. *Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021*;
4. *Health Insurance (Section 3C Pathology Services – HbA1c Point of Care Testing) Determination 2021*;

5. *Health Insurance (Section 3C Diagnostic Imaging Services – 3D Breast Tomosynthesis) Determination 2018*; and
6. *Health Insurance (Poly Implant Prosthesis MRI) Determination 2020*.

Patients will continue to have access to the Medicare Benefits Schedule (MBS) items listed in the repealed Principal Determinations, as they will be rolled into their respective tables.

Consultation

Consultation was not undertaken for this instrument as the revocation of the instruments is machinery in nature and does not alter existing arrangements. There is no change to the arrangements for patients and health professionals, and Medicare will continue to subsidise the services.

Details of the Amendment Determination are set out in the Attachment.

The Amendment Determination commences immediately after the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

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 Legislation Amendment (Section 3C – Revocation of Instruments Incorporated into Tables) Determination 2023Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C – Revocation of Instruments Incorporated into Tables) Determination 2023*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences immediately after the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulation 2023*.

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 the determinations made under subsection 3C(1) of the *Health Insurance Act 1973* listed in Schedules 1, 2 and 3 to this instrument are revoked.

Schedule 1 – General Medical Services

Schedule 1 revokes the whole of the:

- *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022*;
- *Health Insurance (Section 3C General Medical Services – Abdominoplasty for Postpartum Rectus Diastasis) Determination 2022*; and
- *Health Insurance (Section 3C General Medical Services – Insertion of Testicular Prosthesis) Determination 2021*.

The Medicare Benefit Schedule (MBS) items listed within the Determinations will be rolled into the general medical services table (GMST) by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulation 2023*.

Schedule 2 – Pathology Services

Schedule 2 revokes the whole of the *Health Insurance (Section 3C Pathology Services – HbA1c Point of Care Testing) Determination 2021* as the MBS items listed within the Determination will be rolled into the pathology services table (PST) by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulation 2023*.

Schedule 3 – Diagnostic Imaging Services

Schedule 3 revokes the whole of the:

- *Health Insurance (Poly Implant Prosthese MRI) Determination 2020*; and
- *Health Insurance (Section 3C Diagnostic Imaging Services – 3D Breast Tomosynthesis) Determination 2018*.

The MBS items listed within the Determinations will be rolled into the diagnostic imaging services table (DIST) by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulation 2023*.

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 – Revocation of Instruments Incorporated into Tables) Determination 2023

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

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The Amendment Determination will revoke the following Principal Determinations:

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4. *Health Insurance (Section 3C Pathology Services – HbA1c Point of Care Testing) Determination 2021*;
5. *Health Insurance (Section 3C Diagnostic Imaging Services – 3D Breast Tomosynthesis) Determination 2018*; and
6. *Health Insurance (Poly Implant Prosthese MRI) Determination 2020*.

Patients will continue to have access to the Medicare Benefits Schedule (MBS) items listed in the repealed Principal Determinations, as they will be rolled into their respective tables.

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 does not affect the right to health or the right to social security. This is an administrative consolidation and there is no change to the Medicare arrangements for patients or health providers.

Conclusion

This instrument is compatible with human rights as it does not affect the right to health, the right to social security or the right of equality and non-discrimination.

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