

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Indexation) 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) or the diagnostic imaging services table (the DIST) 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*.

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 (Indexation) Determination 2023* (the Determination) is to apply annual fee indexation by increasing the schedule fees of the Medicare Benefits Schedule (MBS) items in the following determinations by 3.6 per cent:

- *Health Insurance (Section 3C General Medical Services—Transcatheter Aortic Valve Repair) Determination 2018;*
- *Health Insurance (Section 3C General Medical Services – Botox, Dysport or Xeomin Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020;*
- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021;*
- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022;*

- *Health Insurance (General Practice COVID-19 Treatment) Determination 2022;*
- *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022; and*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022.*

This increase of the schedule fees reflects the Australian Government’s policy regarding Medicare indexation and means that patients will receive an increased Medicare benefit for these services.

Consultation

No consultation was undertaken regarding annual indexation, as these changes continue 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.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 July 2023.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

Details of the *Health Insurance Legislation Amendment (Indexation) Determination 2023*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Indexation) Determination 2023*.

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 July 2023.

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 – Indexation provisions

Schedule 1 applies annual indexation to the schedule fees of MBS items. This will increase the Medicare benefit paid to patients for these services, which is calculated as a percentage of the fee per section 10 of the *Health Insurance Act 1973* (the Act). Indexation will be applied by 3.6 per cent in the sections described below.

Item 1 inserts new section 9 into the *Health Insurance (Section 3C General Medical Services—Transcatheter Aortic Valve Repair) Determination 2018*, which applies annual indexation to the schedule fees of listed items.

Items 2 to 9 amend the indexation provisions in the following determinations to apply annual indexation to the schedule fees of listed items:

- *Health Insurance (Section 3C General Medical Services – Botox, Dysport or Xeomin Injection) Determination 2020*;
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020*;
- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020*;
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photophoresis) Determination 2020*;
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020*;
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021*;

- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021; and*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022.*

Schedule 2 – Indexation amendments

Schedule 2 applies annual indexation to the schedule fees of MBS items. This will increase the Medicare benefit paid to patients for these services, which is calculated as a percentage of the fee per section 10 of the Act. Indexation will be applied by 3.6 per cent in the sections described below.

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

Item 1 amends the schedule fee for item 93716 to apply annual indexation.

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID- 19 Vaccine) Determination 2021 (COVID-19 Vaccine Suitability Determination)

Item 2 amends subsection 9(1) of the COVID-19 Vaccine Suitability Determination to apply annual indexation to the amount specified. Section 9(1) provides the flag fall amount for the first patient during each attendance at a residential aged care facility, residential disability setting facility or person’s place of residence.

Item 3 amends subsection 10(1) of the COVID-19 Vaccine Suitability Determination to apply annual indexation to the schedule fees for items listed in the COVID-19 Vaccine Suitability Determination.

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (Telehealth and Telephone Determination)

Item 4 amends subsection 8(1) of the Telehealth and Telephone Determination to apply annual indexation to the schedule fees for items listed in Telehealth and Telephone Determination.

Item 5 amends the Telehealth and Telephone Determination to apply annual indexation to the items listed in the table.

Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021 (Smoking Cessation Services Determination)

Item 6 amends the Smoking Cessation Services Determination to apply annual indexation to the items listed in the table.

Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022

Item 7 amends the schedule fee for item 32118 to apply annual indexation.

Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022

Item 8 amends the schedule fee for item 63564 to apply annual indexation.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Indexation) 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

The purpose of the *Health Insurance Legislation Amendment (Indexation) Determination 2023* (the Determination) is to apply annual fee indexation by increasing the schedule fees of the Medicare Benefits Schedule (MBS) items in the following determinations by 3.6 per cent:

- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2018;*
- *Health Insurance (Section 3C General Medical Services – Botox, Dysport or Xeomin Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020;*
- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021;*
- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022;*
- *Health Insurance (General Practice COVID-19 Treatment) Determination 2022;*
- *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022; and*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022.*

This increase of the schedule fees reflects the Australian Government's policy regarding Medicare indexation and means that patients will receive an increased Medicare benefit for these services.

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 rights to health and social security and the right of equality and non-discrimination by increasing the Medicare benefit patients will receive when accessing the services listed in the determinations specified. This will assist patients to continue accessing clinically relevant health services.

Conclusion

This instrument is compatible with human rights as it advances the right to health, the right to social security and the right of equality and non-discrimination.

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