

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) 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 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

The *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2023* (the Determination) will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination). This amendment will expand access to telehealth and telephone consultations to allow two additional groups of patients who are experiencing acute respiratory symptoms and have a high-risk of developing a severe illness arising from a COVID-19 infection to be exempt from having a pre-existing relationship with a medical practitioner to request to a private pathologist for Polymerase Chain Reaction (PCR) testing.

The Determination will align the exemption to the UMP rule for persons who meets the PBS criteria for COVID- 19 antiviral therapy with the original policy intention by expanding the definition of a *person who meets the PBS criteria for COVID- 19 antiviral therapy* in the Telehealth Determination to two additional high-risk groups of patients.

Without the exemption, the UMP rule would restrict receipt of telehealth or telephone consultations for the purposes of getting access to anti-viral therapy under the PBS only to persons to have an established clinical relationship with their medical practitioner (or another medical practitioner located at the same practice) and to have been provided at least one face to face service in the previous 12 months. Expanding the groups of people with an exemption to this restriction will support timely commencement of COVID-19 anti-viral therapy to support the improvement of patient outcomes. It will also align the groups of people who can access a Medicare

subsidised telehealth consultation service for the purposes of receiving a PCR referral with the groups of people who are able to access the PBS subsidised anti-viral therapy.

The definition of a *person who meets the PBS criteria for COVID- 19 antiviral therapy* will be extended to include a person who is:

- 60 years of age or older with at least one additional risk factor; or
- 18 years of age or older who has been previously hospitalised from COVID-19 disease.

This is in addition to those already listed which includes a person who is:

- 70 years of age or older;
- 50 years of age or older with at least two additional risk factors;
- of First Nations descent, who is 30 years of age or older and with at least one additional risk factor; or
- 18 years of age or older who is moderately to severely immunocompromised.

Examples of ‘risk factors’ to persons 70, 60, 50 or 30 years old and above include:

- living in residential aged care;
- living with disability with multiple conditions and/or frailty (but not limited to living in supported accommodation);
- neurological conditions like stroke or dementia and demyelinating conditions e.g. multiple sclerosis, Guillain-Barre Syndrome;
- chronic respiratory conditions including COPD, moderate or severe asthma;
- obesity or diabetes (type I or II requiring medication);
- heart failure, coronary artery disease, cardiomyopathies;
- kidney failure or cirrhosis; and/or
- living remotely with reduced access to higher level healthcare.

Consultation

No additional consultation was undertaken regarding the amendments to the definition of a *person who meets the PBS criteria for COVID- 19 antiviral therapy* as it aligns with the policy intention from when this exemption to UMP rule was introduced.

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

The Determination commences on the day after the instrument is registered.

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

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

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2023*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2023*.

Section 2 – Commencement

Section 2 provides for the Determination to commence the day after this instrument is registered.

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 – Telehealth and Telephone Attendances) Determination 2021

Item 1 will amend subsection 5(1) to expand the definition of *person who meets the PBS criteria for COVID- 19 antiviral therapy*. Under the amended definition, a person who meets the Pharmaceutical Benefits Scheme (PBS) criteria for COVID-19 antiviral therapy will include a person who is:

- ‘18 years of age or older who has been previously hospitalised from COVID-19 disease’; or
- ‘60 years of age or older with at least on additional risk factor’.

This is in additional to those already listed which includes a person who is:

- 70 years of age or older;
- 50 years of age or older with at least two additional risk factors;
- of First Nations descent, who is 30 years of age or older and with at least one additional risk factor; or
- 18 years of age or older who is moderately to severely immunocompromised.

This amendment will ensure that people who are experiencing acute respiratory symptoms and are at a high-risk of developing a severe illness arising from a COVID-19 infection can access telehealth and telephone services when they need it most.

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 – Telehealth and Telephone Attendances) Amendment (No. 1) 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 *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2023* (the Determination) will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination). This amendment will expand access to telehealth and telephone consultations to allow two additional groups of patients who are experiencing acute respiratory symptoms and have a high-risk of developing a severe illness arising from a COVID-19 infection to be exempt from having a pre-existing relationship with a medical practitioner to request to a private pathologist for Polymerase Chain Reaction (PCR) testing.

The Determination will align the exemption to the UMP rule for persons who meets the PBS criteria for COVID- 19 antiviral therapy with the original policy intention by expanding the definition of a *person who meets the PBS criteria for COVID- 19 antiviral therapy* in the Telehealth Determination to two additional high-risk groups of patients.

Without the exemption, the UMP rule would restrict receipt of telehealth or telephone consultations for the purposes of getting access to anti-viral therapy under the PBS only to persons to have an established clinical relationship with their medical practitioner (or another medical practitioner located at the same practice) and to have been provided at least one face to face service in the previous 12 months. Expanding the groups of people with an exemption to this restriction will support timely commencement of COVID-19 anti-viral therapy to support the improvement of patient outcomes. It will also align the groups of people who can access a Medicare subsidised telehealth consultation service for the purposes of receiving a PCR referral with the groups of people who are able to access the PBS subsidised anti-viral therapy.

The definition of a *person who meets the PBS criteria for COVID- 19 antiviral therapy* will be extended to include a person who is:

- 60 years of age or older with at least one additional risk factor; or
- 18 years of age or older who has been previously hospitalised from COVID-19 disease.

This is in addition to those already listed which includes a person who is:

- 70 years of age or older;
- 50 years of age or older with at least two additional risk factors;
- of First Nations descent, who is 30 years of age or older and with at least one additional risk factor; or
- 18 years of age or older who is moderately to severely immunocompromised.

Examples of ‘risk factors’ to persons 70, 60, 50 or 30 years old and above include:

- living in residential aged care;
- living with disability with multiple conditions and/or frailty (but not limited to living in supported accommodation);
- neurological conditions like stroke or dementia and demyelinating conditions e.g. multiple sclerosis, Guillain-Barre Syndrome;
- chronic respiratory conditions including COPD, moderate or severe asthma;
- obesity or diabetes (type I or II requiring medication);
- heart failure, coronary artery disease, cardiomyopathies;
- kidney failure or cirrhosis; and/or
- living remotely with reduced access to higher level healthcare.

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 maintain the rights to health, social security, equality and non-discrimination by expanding patient access to telehealth and telephone consultations and supporting subsidised and timely access to COVID-19 anti-viral therapy treatment under the Pharmaceutical Benefits Scheme (PBS).

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.

Daniel McCabe
First Assistant Secretary
Medicare Benefits and Digital Health Division
Health Resourcing Group
Department of Health and Aged Care