

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 1) Determination 2023

The *Health Insurance Act 1973* (the Act) sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

Subsection 3C(1) of 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. Subsection 4(1) of the Act provides that regulations may prescribe a table of general medical services which sets out items of general medical services, the fees applicable for each item, and rules for interpreting the table. The table made under this subsection is referred to as the General Medical Services Table. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST).

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 1) Determination 2023* (the Determination) is to make administrative amendments to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the OMP Determination).

The Determination will:

- (1) amend the definitions for ***Modified Monash 2 area***, ***Modified Monash 3 area*** and ***Modified Monash 4 area*** at subsection 4(1) to replace references to the 2013 estimated resident population with the 2016 estimated resident population and insert a definition for ***2016 estimated resident population***.
- (2) amend subclause 1.5.1(4) to ensure that arrangements for health assessment services provided by other medical practitioners (certain non-vocationally recognised medical practitioners working in general practice) are consistent with general practitioner health assessment services.

Consultation

No consultation was undertaken regarding the amendments in the Determination as they are minor and machinery in nature and intended to ensure consistent arrangements for certain MBS services provided by general practitioners and other medical practitioners.

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

The Determination commences on 1 July 2023.

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 – Other Medical Practitioner) 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 – Other Medical Practitioner) Amendment (No. 1) 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 – Amendments

Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018 (OMP Determination)

Items 1 to 4 amend subsection 4(1) of the OMP Determination to insert the definition of **2016 estimated resident population** and update the definitions of **Modified Monash 2 area**, **Modified Monash 3 area** and **Modified Monash 4 area** to replace references to the 2013 estimated resident population with the 2016 estimated resident population as at 30 June 2016, as published by the Australian Bureau of Statistics (ABS). These changes will align the OMP Determination with changes to the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST) commencing on 1 July 2023, to ensure consistent arrangements for services with geographical restrictions provided by general practitioners and other medical practitioners (certain non-vocationally recognised medical practitioners working in general practice).

The referred to ABS information, which is incorporated by reference, is as existing on 17 March 2017 and is freely available on the ABS's website. These changes will align the OMP Determination with the current 2019 Modified Monash Model used by the Department of Health and Aged Care, which uses the estimated resident population as at 30 June 2016. The ABS has been consulted regarding the changes. For information regarding the 2019 Modified Monash Model, refer to the department's website.

Item 5 amends subclause 1.5.1(4) of the OMP Determination to ensure that arrangements for health assessment services provided by other medical practitioners are consistent with general practitioner health assessment services. This change is administrative in nature and intended to ensure the OMP Determination aligns with existing policy relating to health assessment services.

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 – Other Medical Practitioner) 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 purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 1) Determination 2023* (the Determination) is to make administrative amendments to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the OMP Determination).

The Determination will amend:

- (1) the definitions for ***Modified Monash 2 area***, ***Modified Monash 3 area*** and ***Modified Monash 4 area*** at subsection 4(1) to replace references to the 2013 estimated resident population with the 2016 estimated resident population and insert a definition for ***2016 estimated resident population*** in line with the definition in the general medical services table as at 30 June 2016, as published by the Australian Bureau of Statistics (ABS).
- (2) subclause 1.5.1(4) to ensure that arrangements for health assessment services provided by other medical practitioners (certain non-vocationally recognised medical practitioners working in general practice) are consistent with general practitioner health assessment 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 maintains the rights to health and social security and the right of equality and non-discrimination as it is administrative in nature and will ensure that arrangements for services provided by certain non-vocationally recognised medical practitioners working in general practice are consistent with the arrangements for relevant general practitioner services.

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.

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