

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024

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

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

Purpose

The purpose of the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024* (the Determination) is to insert new pathology item 73813 for point-of-care testing for detection of neisseria gonorrhoea (NG), chlamydia trachomatis (CT) and trichomonas vaginalis (TV). CT, NG and TV are sexually transmissible bacterial infections which primarily affect people aged between 15 and 29 years and are often asymptomatic.

Point-of-care testing for sexually transmissible infections in remote and very remote populations (defined for the purposes of item 73813 as Modified Monash 6 area and Modified Monash 7 area) was supported by the Medical Services Advisory Committee (MSAC) in November 2023. The new MBS item is intended to address a high prevalence of sexually transmissible infections and the serious consequences of untreated infections representing a significant public health issue for First Nations people.

An equivalent item for point-of-care testing by a nurse practitioner (item 73825) will be introduced on 1 November 2024 by the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2024*. These two new items (items 73813 and 73825) will be delivered through the First Nations Molecular Point-of-Care Testing Program, which currently provides onsite rapid and accurate pathology testing for seven infections, (i.e. COVID-19, influenza A, influenza B, respiratory syncytial virus, chlamydia, gonorrhoea, and trichomoniasis) in First Nations communities. It is expected that services rendered under new items 73813 and 73825 are provided within an Aboriginal Medical Service (AMS) or Aboriginal Community Controlled Health Service (ACCHS).

The new items (items 73813 and 73825) were announced as part of the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule* measure.

Consultation

MSAC consulted publicly with stakeholders in considering point-of-care testing for sexually transmissible infections by AMS and ACCHS in remote and very remote areas, including First Nations stakeholders. Responses were received from nine

individuals and twelve organisations, many of whom are healthcare providers to First Nations peoples. All received feedback was supportive of the changes.

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

The Determination commences on 1 November 2024.

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 Pathology Services – Point-of-Care Testing Services) Determination 2024Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024* (the Determination).

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 November 2024.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Definitions

Section 4 defines terms used in the Determination.

Section 5 – Treatment of relevant services

Section 5 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a pathology service and as if there were an item specified in Group P9 of the pathology services table (the PST) for the service.

Section 6 – Application of items

Section 6 provides the requirements for services provided under new item 73813, stating that a Medicare benefit is only available for a service performed under the item if:

- the service is rendered at, or from, a practice location situated in a Modified Monash 6 area or a Modified Monash 7 area (remote and very remote communities);
- the medical practitioner providing the service, or the health professional providing the service on behalf of the medical practitioner, is employed by an organisation that delivers health services and is participating in the First Nations Molecular Point-of-Care (PoC) Testing Program;
- either the medical practitioner or health professional, or the organisation employing them, is participating in, and is currently certified by, the First Nations Molecular Point-of-Care (PoC) Testing Program; and
- the service provided is in accordance with the Program and results in a test providing a valid result.

Schedule 1 – Relevant services

Schedule 1 specifies the service and associated fee for item 73813. Item 73813 will be introduced for detection by a medical practitioner of chlamydia trachomatis (CT) or neisseria gonorrhoeae (NG), and trichomonas vaginalis (TV) via molecular point-of-care testing for the diagnosis of CT, NG and TV, where the medical practitioner has determined this service to be necessary for the patient under their care.

Statement of Compatibility with Human Rights

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

*Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services)
Determination 2024*

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 Pathology Services – Point-of-Care Testing Services) Determination 2024* (the Determination) is to insert new pathology item 73813 for point-of-care testing for detection of neisseria gonorrhoea (NG), chlamydia trachomatis (CT) and trichomonas vaginalis (TV). CT, NG and TV are sexually transmissible bacterial infections which primarily affect people aged between 15 and 29 years and are often asymptomatic.

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The new items (items 73813 and 73825) were announced as part of the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule* measure.

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 providing access to Medicare benefits for molecular point-of-care testing for detection of sexually transmissible infections in identified remote and very remote areas.

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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