

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 1) 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 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 purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 1) Determination 2024* (the Amendment Determination) is to insert a cessation clause into the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination).

Under the 2024-25 Budget *Supporting ongoing access to vaccines* measure, the Australian Government extended the temporary COVID-19 vaccine suitability assessment items and associated items until 30 June 2025. From 1 July 2025, Medicare Benefits Schedule (MBS) treatment of COVID-19 vaccine support services will be brought in line with other vaccines, including those provided under the National Immunisation Program Schedule. This measure recognises the shift of the national response to COVID-19 from an emergency management response to a response which manages COVID-19 like other endemic diseases.

In alignment with the *Supporting ongoing access to vaccines* measure, the Amendment Determination will insert the cessation date of 30 June 2025 into the Principal Determination. This means the temporary COVID-19 vaccine suitability assessment items, including remote supervision items and in-depth suitability assessments will no longer be subsidised on the MBS from 1 July 2025. The requirements for COVID-19 vaccine suitability assessment services to be bulk billed will also be removed.

Consultation

No consultation was undertaken on the changes made by the Amendment Determination to cease the temporary items. This is because the Government has signalled to stakeholders that the COVID-19 vaccination services will transition to business-as-usual processes beginning in the 2025-26 financial year and the Amendment Determination inserts a simple cessation provision to remove the temporary COVID-19 vaccine suitability assessment items.

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

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

Details of the Amendment 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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 1) Determination 2024*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 1) Determination 2024*.

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence the day after registration.

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 Amendment 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 Amendment Determination has effect according to its terms.

Schedule 1 – Amendments

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

Item 1 amends the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination) to insert a cessation section. New section 3A will provide that the Principal Determination will cease, as if revoked, on 30 June 2025 at 11.59 pm unless the instrument is revoked earlier.

This will mean temporary COVID-19 vaccine suitability assessment items 93644, 93645, 93646, 93647, 93653, 93654, 93655, 93656, 10660, 10661, 93660, 93661, and the administrative flag fall item (90005) for COVID-19 vaccine suitability assessments provided outside of consulting rooms which is enabled by section 9 of the Principal Determination, will not be available on the Medicare Benefits Schedule from 1 July 2025.

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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 1) 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

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Under the 2024-25 Budget *Supporting ongoing access to vaccines* measure, the Australian Government extended the temporary COVID-19 vaccine suitability assessment items and associated items until 30 June 2025. From 1 July 2025 MBS treatment of COVID-19 vaccine support services will be brought in line with other vaccines, including those provided under the National Immunisation Program Schedule. This measure recognises the shift of the national response to COVID-19 from an emergency management response to a response which manages COVID-19 like other endemic diseases.

In alignment with the *Supporting ongoing access to vaccines* measure, the Amendment Determination will insert the cessation date of 30 June 2025 into the Principal Determination. This means the temporary COVID-19 vaccine suitability assessment items, including remote supervision items and in-depth suitability assessments will no longer be subsidised on the Medicare Benefits Schedule from 1 July 2025. The requirements for COVID-19 vaccine suitability assessment services to be bulk billed will also be removed.

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 reflect contemporary clinical practice to ensure that from 1 July 2025 patients have access to health and social security for COVID-19 vaccinations in a similar way to vaccinations under the National Immunisation Program Schedule. No impact to the health and social security access to patients receiving COVID-19 vaccinations in Australia is anticipated as a result of the amendments made by this instrument.

Conclusion

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

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