

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Optometric services) Determination 2016

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may determine in writing that a health service not specified in an item in the general medical services table (the Table) shall, in specified circumstances and for the purpose of specified statutory provisions, be treated as if it were specified in the Table. This Table is set out in the *Health Insurance (General Medical Services Table) Regulation*, which is re-made each year.

Purpose

The purpose of the *Health Insurance (Optometric services) Determination 2016* (the Determination) is to prescribe a table of health services that may be provided as Medicare-eligible services by appropriately qualified optometrists.

Background

The Common Form of Undertaking (the Undertaking) is an agreement between the Commonwealth and an optometrist (or a person who employs optometrists, to provide services in the course of their practice), which enables them to participate in Medicare by becoming a 'participating optometrist'. A participating optometrist is a practising optometrist who has entered into an arrangement by signing the Undertaking.

On 1 January 2015, the Undertaking was varied due to changes to the optometry arrangements announced in the 2014-15 Budget. The change removed the charging cap that had applied to optometrists providing services under the Medicare Benefits Schedule, enabling optometrists to set their own fees in a similar manner to other health practitioners.

For the purposes of Medicare, the Undertaking is redundant and duplicative given practitioner requirements for Medicare are already contained within the Act.

This Determination will allow all optometrists, defined under subsection 3(1) of the Act as persons registered or licensed as an optometrist or optician under a law of a State or an internal Territory that provides for the registration or licensing of optometrists or opticians, to provide services under Medicare. This will mean practising optometrists will be allowed to provide services under Medicare, without the requirement to sign the Undertaking. This aligns Medicare arrangements for optometrists with that of other health practitioners, which require providers to meet State and Territory registration standards. Optometrists will continue to be required to meet all requirements under the Act, in line with all other health practitioners under Medicare.

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

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

This Determination commences on 1 April 2016.

Consultation

General consultation has occurred with Optometry Australia in relation to optometry services, which has indicated its support to remove the need to sign the outdated Common Form of Undertaking for the purpose of Medicare benefits.

Details of the *Health Insurance (Optometric services) Determination 2016*

Section 1 – Name of Determination

This section provides for the Determination to be referred to as the *Health Insurance (Optometric services) Determination 2016*.

Section 2 – Commencement

This section provides for the Determination to commence on 1 April 2016.

Section 3 – Authority

This section provides that the Determination is made under the *Health Insurance Act 1973*.

Section 4 – Definitions

This section defines terms used in the Determination.

Section 5 – Treatment of relevant services

This section provides that a relevant service described in the Schedule to the Determination shall be treated as if it were both a professional service and a medical service as if it were specified in the general medical services table for the relevant provisions of the Act, other than subsection 3(5) of the Act for item 10944.

Section 6 – Application of item 10929

This section outlines the restrictions on the claiming of item 10929.

Section 7 – Application of items 10931, 10932 and 10933

This section provides that items 10931, 10932 or 10933 can be claimed with another item in Subgroup 1 of Group A10 if both items apply.

Section 8 – Application of items 10940 and 10941

This section provides that items 10940 and 10941 are perimetry services, and a maximum of two perimetry services can be claimed per patient in a 12 month period.

Section 9 – Limitation on item 10943

This section provides that 10943 cannot be used to assess learning difficulties or learning disabilities.

Section 10 – Limitation on items

This section provides that item 10943 may only be claimed once per patient in a 12 month period, item 10942 may only be claimed twice per patient in a 12 month period, and items 10921 to 10929 may only apply to a service once per patient once in a 36 month period.

Section 11 – Limitation on item 10944

This section provides the list of items that cannot be claimed on the same occasion as 10944.

Section 12 – Application of items 10945 and 10946

This section provides that items 10945 and 10946 do not apply if the patient or specialist travels to a location (at least 15 kilometres away) to satisfy the distance requirements of the items.

Section 13 – Application of items 10945 to 10948

This section provides that items 10945 to 10948 only apply if the video conference in which the patient is participating is a service for which there is an item in the general medical services table or treated as being in the table because of subsection 3C(1) of the Act.

Section 14 – Professional attendance items and services provided with non-medicare services or autologous injections of blood or blood products

This section provides that items 10905 to 10929 in the Determination are professional attendances, per 1.2.3 of the general medical services table. Items 10905 to 10948 in the Determination should not be provided with non-medicare services or autologous injections of blood or blood products, per 1.2.7 and 1.2.7A of the general medical services table.

Schedule – relevant services

Prescribes a table of relevant services under items 10905 to 10948.

Statement of Compatibility with Human Rights

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

Health Insurance (Optometric services) Determination 2016

This Legislative 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 Legislative Instrument

The purpose of the *Health Insurance (Optometric services) Determination 2016* (the Determination) is to prescribe a table of health services that may be provided as Medicare-eligible services by appropriately qualified optometrists.

The Common Form of Undertaking is an agreement between the Commonwealth and an optometrist (or a person who employs optometrists, to provide services in the course of their practice), which enables them to participate in Medicare by becoming a ‘participating optometrist’. A participating optometrist is a practising optometrist who has entered into an arrangement by signing the Undertaking.

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Human rights implications

The regulations engage 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.

Analysis

This Determination will advance rights to health and social security by ensuring continued access to publicly subsidised optometry services which are clinically effective and cost-effective.

Conclusion

The Legislative Instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

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