

EXPLANATORY STATEMENT

Issued by the Authority of the Acting Minister for Health
Health Insurance Act 1973

Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No. 1)

Section 10B of the *Health Insurance Act 1973* ('the Act') provides that the Minister for Health may, by legislative instrument, determine to which Medicare items subsections 10ACA(7A) and 10ADA(8A) of the Act apply, and the maximum increase in Medicare benefit payable for those items under the Extended Medicare Safety Net ('EMSN'). The increase in the Medicare benefit payable under the EMSN is commonly referred to as the 'EMSN benefit'.

Subsections 10ACA(7A) and 10ADA(8A) of the Act provide that, where an item is listed in a determination made under section 10B of the Act, the EMSN benefit must not exceed the amount determined in relation to that item ('the EMSN benefit cap').

Under the 2012-13 Federal Budget measure, '*Extended Medicare Safety Net – capping benefits including for items with excessive fees*' the Australian Government announced that it would be expanding the number of Medicare Benefits Schedule (MBS) items that have an EMSN benefit cap.

The *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012(No. 1)* ('the Determination') amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* (the Principal Determination) to introduce EMSN benefit caps to all consultation and attendance items and a number of procedural items in accordance with the Budget announcement. The EMSN benefit caps on these items commence on 1 November 2012.

The Determination also:

- (a) makes technical amendments to the Principal Determination as of 1 November 2012 by deleting and adding items with EMSN benefit caps in relation to diagnostic imaging services from subsection 4(3) to subsection 4(2) of the Principal Determination; and
- (b) makes changes to a number of procedural items and all consultation and attendance items from a fixed dollar amount cap ('fixed fee cap') to a percentage cap, and indexes existing EMSN benefit caps by Consumer Price Index (CPI) as of 1 January 2013.

Background

The EMSN provides an increased Medicare rebate for Australian families and singles who incur out-of-pocket costs for Medicare-eligible out-of-hospital services, and is provided for in sections 10ACA and 10ADA of the Act. The out-of-pocket cost is the difference between the fee charged by the doctor and the standard Medicare rebate (including any benefit received through the original Medicare safety net) that the patient receives from Medicare. Once the relevant annual threshold of out-of-pocket costs has been reached, Medicare will pay 80% of any future out-of-pocket costs for Medicare-eligible out-of-hospital services for the remainder of the calendar year. However, where an item has an EMSN benefit cap, there is a maximum benefit payable for that item. For the 2012 calendar year, the annual EMSN

threshold for concession cardholders and people who receive Family Tax Benefits (Part A) is \$598.80. For all other singles and families, the annual threshold is \$1,198.00. These amounts are indexed by CPI on 1 January each year.

There are currently EMSN benefit caps on 109 MBS items including Assisted Reproductive Technology (ART) and obstetric services, midwifery services and seven procedural items.

The EMSN benefit caps for MBS items in the Principal Determination are currently fixed fee caps. Patients are eligible to receive up to the amount of the EMSN benefit cap in EMSN benefits each time they make a claim for a capped item. The EMSN benefit cap does not place a limit on the out-of-pocket costs that count towards a singles or families EMSN threshold.

Effect of the Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No. 1)

The Determination amends the Principal Determination to impose EMSN benefit caps on 448 MBS items from 1 November 2012 as announced by Government in the 2012-13 Budget. These changes respond to issues raised in an independent review report tabled in Parliament in July 2011. The EMSN benefit cap is 80 per cent of the Schedule fee for each of the 38 selected procedural items and one diagnostic imaging item, and 300 per cent of the Schedule fee for each item up to a maximum of \$500.00 for each of the consultation and attendance items, which includes allied health services. The EMSN benefit caps on each of the consultation and attendance items are set generously and are likely to only affect doctors who are billing these items excessively or incorrectly. This measure saves the Australian Government \$96.5 million over 4 years.

The Determination also makes technical amendments and indexes the existing EMSN benefit caps of those items that will not move to percentage caps by CPI to commence on 1 January 2013.

The EMSN benefit cap is the maximum amount of benefit payable under the EMSN, regardless of the fee charged by the practitioner. The EMSN benefit cap is payable in addition to the standard Medicare rebate (including any benefits received through the original safety net). The Medicare rebate a patient receives for a Medicare eligible service is calculated based on a percentage of the Schedule fee for an item. EMSN benefits are paid in addition to the Medicare rebate for an item. The Determination is drafted in accordance with changes to the Department of Human Services (DHS) Information Technology (IT) systems which will streamline the administration of the EMSN benefit caps. The streamlining of DHS IT systems provides for the ability for the EMSN benefit caps to be automatically calculated from a percentage of the Schedule fee ('percentage cap'). A percentage cap means that the calculated cap amount will remain in proportion to the Schedule fee over time and provides for the automatic indexation of the caps. This system change takes effect on 1 January 2013.

The Determination places an EMSN benefit cap equal to 80 per cent of the Schedule fee on 39 MBS items and an EMSN benefit cap equal to 300 per cent of the Schedule fee up to a maximum of \$500 for all consultation and attendance items including items which relate to allied health services. Consultation and attendance items that carry a 'derived fee' (a Schedule fee calculated using a formula) will be introduced with a fixed fee cap on 1 November 2012. These items and the seven existing capped items will then move to the

percentage cap system on 1 January 2013 once DHS IT system changes are implemented. The remaining existing items (obstetrics and ART services) will remain as fixed fee caps and will be indexed on 1 January 2013 (as set out in Schedule 2, Part 2 of the Determination).

Calculation of the EMSN benefit caps

The EMSN benefit caps for procedural items will be 80 per cent of the Schedule fee from 1 November 2012. For example, MBS item 32504 (Group T8 varicose vein treatment) will have a Schedule fee of \$267.65 and an out-of-hospital Medicare rebate of \$227.55 from 1 November 2012. The EMSN benefit cap for this item will be \$214.15 (80 per cent of the Schedule fee for this item). The maximum Medicare benefit a patient can expect to receive if this service is provided out-of-hospital is \$441.70 (Out-of-hospital rebate + EMSN benefit cap), excluding any additional benefits that may be payable through the original Medicare safety net.

The EMSN benefit cap for consultation and attendance items, including items which relate to allied health services will be 300 per cent of the Schedule fee for each item up to a maximum of \$500.00. For example, MBS item 23 (Group A1– level B General Practitioner (GP) attendance) will have a Schedule fee of \$36.30 from 1 November 2012 (the rebate for GP services is paid at 100 per cent of the Schedule fee). The EMSN benefit cap for this item will be \$108.90 (300 per cent of the Schedule fee for this item). Therefore the maximum Medicare benefit payable for a level B attendance is \$145.20.

For MBS item 132 (Group A4 – consultant physician attendance, assessment, treatment and management plan) the Schedule fee will be \$263.90 from 1 November 2012. The EMSN benefit cap for this item will be \$500.00, as the EMSN benefit cap for consultation and attendance items must not exceed \$500.00. Therefore the maximum Medicare benefit payable for a MBS item 132 is \$724.35.

The maximum amount for the EMSN benefit cap only applies to consultation and attendance items and is \$500. There is no maximum amount for the capped procedural items.

Capping of Derived fee for consultation and attendance items

The Schedule fee for derived fee items depends on the calculation set out in the Act for those items. For example, MBS item 4 is a derived fee item (home visit consultation and attendance item to be capped from 1 November 2012) and has a Schedule fee equal to “the fee for MBS item 3, plus \$25.00 divided by the number of patients seen, up to a maximum of six patients. For seven or more patients - the fee for item 3 plus \$1.90 per patient”. Following the DHS IT system changes on 1 January 2013, the EMSN benefit cap for these items will be applied based on the calculated MBS derived Schedule fee to apply to the item. However, until this change is implemented these items will carry fixed fee caps. For example, the EMSN benefit cap for MBS item 4 is based on one patient being seen on the one occasion (this is the maximum EMSN benefit cap that could potentially apply).

Changes to DHS IT systems – ‘percentage caps’

From 1 January 2013 the EMSN benefit caps for the capped items announced in the 2012-13 Budget will be moved to the streamlined percentage cap. This allows the EMSN benefit cap to remain proportional to the Schedule fee for each MBS item, as the EMSN benefit cap will be indexed automatically in accordance with the Schedule fee for those items.

Items for injection of poly-L-lactic acid (items 14201, 14202), varicose vein treatment (item 32500), endovenous laser therapy (items 32520, 32522), cataract surgery (item 42702) and hair transplantation (item 45560) in subsection 4(1) in the Principal Determination from 1 January 2013 will no longer have a fixed fee cap but instead have a percentage cap. This change ensures that the calculation of the maximum EMSN benefit caps for these items are consistent with changes made to the Schedule fee for those items

Indexation of EMSN benefit caps

Indexation of the EMSN benefit caps provides for a greater Medicare rebate to be paid to patients who are eligible for the EMSN benefit cap. For example, if a patient is billed for item 16590, planning and management of a pregnancy, and is eligible to receive the EMSN benefit cap, in 2012 the EMSN benefit cap is \$216.85. After indexation, the EMSN benefit cap in 2013 for the same item will be \$219.45.

Indexation will apply to all fixed fee capped items to take effect on 1 January 2013. The EMSN benefit caps will be increased by 1.2 per cent (annual CPI as measured in the June quarter 2012). The EMSN benefit caps were previously indexed in a similar manner on 1 January 2012.

Technical Amendments

This Determination also makes a number of technical amendments to the Principal Determination. These include deleting and adding items with EMSN benefit caps relating to diagnostic imaging and capital sensitivity services from section 4(3) to section 4(2) of the Principal Determination and notes to make it clear that some of the items referred to in the Principal Determination are located in determinations made under subsection 3C(1) of the Act.

This Determination will not have an impact on small business. The EMSN benefit is a patient benefit. Practitioners will not be required to complete any additional activities to comply with the change. EMSN benefit caps are automatically applied by DHS at the time that a patient's claim is submitted.

The EMSN benefit caps are publicly available for patients and practitioners through the MBS Online website. This website is a commonly used resource which sets out item descriptors, Schedule fees and rebates for all Medicare items. The EMSN benefit cap will be clearly displayed in the item descriptor to ensure that practitioners and patients are well informed of patient entitlements relating to Medicare services.

Details of the Determination can be found in the [Attachment](#).

Commencement

Sections 1 to 3 and Schedule 1 of this Determination will commence on 1 November 2012. Schedule 2 of this Determination will commence on 1 January 2013.

Consultation

This Determination will implement the measure *Extended Medicare Safety Net – capping benefits including for items with excessive fees* which was announced in the 2012-13 Budget. The Department has consulted a range of professional organisations in relation to the development of EMSN caps for consultation and attendance items, and procedural items including the Australian Medical Association (AMA) and the Royal Australian and New Zealand College of Ophthalmology (RANZCO).

Details of the *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No. 1)*

Section 1 – Name of Determination

Section 1 provides that the name of the Determination is the *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No. 1)*.

Section 2 – Commencement

Section 2 provides that Sections 1 to 3 and Schedule 1 of the Determination commence on 1 November 2012; and Schedule 2 of the Determination commences on 1 January 2013.

Section 3 – Amendment of the *Health Insurance (Extended Medicare Safety Net) Determination 2009*

Section 3 provides that Schedules 1 and 2 of this Determination amend the *Health Insurance (Extended Medicare Safety Net) Determination 2009*.

Schedule 1 Amendments commencing 1 November 2012

Item [1] – Section 3, Definitions after definition of general medical services table

Section 3 of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* defines certain terms used in the Determination. Item 1 of this Determination inserts a definition of the term ‘Schedule fee’.

Items [2] to [10] – Subsection 4(1)

Subsection 4(1) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* sets out a table specifying the Medicare items to which an EMSN benefit cap will apply and the amount of the EMSN benefit cap that will apply to each of those items.

Items 2 to 10 of this Determination amends the table to specify EMSN benefit caps for 413 consultation items and 38 procedural items.

Item [11] – Subsection 4(1), after the table

Item 11 of this Determination inserts three notes after the table in Subsection 4(1) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* to clarify that there are a number of items in the table in subsection 4(1) that appear in determinations made under subsection 3C(1) of the Act. Note 1 explains that items 32520 and 32522 (endovenous laser therapy items) appear in the determination made under subsection 3C (1) of the Act with respect to endovenous laser therapy services, which operates so that the items are treated as if they are in the general medical services table.

Note 2 explains that items 10950-10970 (general allied health items), 80000-81010 (psychological therapy and pregnancy support counselling items), 81100-81125 (diabetes education services, exercise physiology services and dietetics services), 81300-81360 (items

relating to Aboriginal and Torres Strait Islander services) and 82000-82035 (items relating to pervasive developmental disorder or disability services) appear in the determination made under subsection 3C (1) of the Act with respect to allied health services which operates so that the items are treated as if the items were in the general medical services table.

Note 3 explains that items 82100-82152 (items relating to midwifery services) and 82200-82225 (items relating to nurse practitioner services) appear in the determination made under subsection 3C (1) of the Act with respect to midwife and nurse practitioner services and operates so that the items are to be treated as if the items were in the general medical services table.

Item [12] – Subsection 4(2) and subsection 4(3)

Item 12 of this Determination deletes subsections 4(2) and 4(3) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* and inserts a new subsection 4(2) which contains all of the items in relation to diagnostic imaging services that were previously in subsection 4(3). This is a technical amendment to stream line the *Health Insurance (Extended Medicare Safety Net) Determination 2009*.

Item [13] – Subsection 4(2), after the table

Item 13 of this Determination inserts a note after the table in Subsection 4(2) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* to clarify that there are a number of items in the table in subsection 4(2) that appear in a determination made under subsection 3C(1) of the Act. The note explains that items 55701, 55702, 55710, 55711, 55713, 55714, 55716, 55717, 55719, 55720, 55722, 55724, 55726, 55727, 55730, 55763, 55765, 55767, 55769, 55771, 55773 and 55775 (relating to general, obstetric and gynaecological ultrasound services) appear in the determination made under subsection 3C (1) of the Act in relation to diagnostic imaging (including services to which capital sensitivity applies) and operates so that the items are to be treated as if the items were in the diagnostic imaging services table.

Schedule 2 – Amendments commencing 1 January 2013

Schedule 2 consists of two parts, Part 1 and Part 2. Part 1 makes changes to maximum increase for items in the *Health Insurance (Extended Medicare Safety Net) Determination 2009* as a result of Schedule 1 of this Determination. Part 2 makes changes to maximum increases for items added to the *Health Insurance (Extended Medicare Safety Net) Determination 2009* prior to 1 November 2012.

Part 1 Changes to maximum increase for items added to the *Health Insurance (Extended Medicare Safety Net) Determination 2009* as a result of Schedule 1 of this determination

Items [1] to [9] – Subsection 4(1)

Items 1 to 9 of this Determination amends the table in subsection 4(1) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* by removing 413 consultation items and 38 procedural items and the associated EMSN benefit caps for these items as a result of the items being transferred from a fixed fee cap to a percentage cap.

Item [10] – Subsection (1), after the table

Item 10 of this Determination removes notes 2 and 3 in Subsection 4(1) and inserts a new note 2. Note 2 provides that items 82100, 82105, 82110, 82115, 82130, 82135 and 82140 (which relate to midwifery services) appear in the determination made under subsection 3C (1) of the Act with respect to midwife and nurse practitioner services and operates so that the items are to be treated as if the items were in the general medical services table. This is a consequential amendment as a result of removing 38 procedural items and all of the consultation items from the table in section 4(1) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* by items 1 to 9.

Item [11] – Subsection 4(1), after Note 2

Item 11 of this Determination amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* by inserting a number of rules which allow for percentage EMSN benefit cap for:

- (a) 38 procedural items. The maximum amount of EMSN benefit cap that will apply to each of those items is 80 percent of the Schedule fee;
- (b) consultation and attendance items in the general medical services table (Groups A1 to A9, A11 to A15, A17 to A24, A 26 to A30, T6 and M12). The maximum amount of EMSN benefit cap that will apply to each of those items is 300 percent of the Schedule fee or \$500.00 for each item, whichever represents the lesser amount;
- (c) 63 consultation and attendance items in relation to allied health services. The maximum amount of EMSN benefit cap that will apply to each of those items is 300 percent of the Schedule fee or \$500.00 for each item, whichever represents the lesser amount; and
- (d) 15 consultation and attendance items in relation to midwife and nurse practitioner services. The maximum amount of EMSN benefit cap that will apply to each of those items is 300 percent of the Schedule fee or \$500.00 for each item, whichever represents the lesser amount.

Item 11 also amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* by inserting two notes. The two notes explain that:

- (a) items 10950-10970 (general allied health items), 80000-81010 (psychological therapy and pregnancy support counselling items), 81100-81125 (diabetes education services, exercise physiology services and dietetics services), 81300-81360 (items relating to Aboriginal and Torres Strait Islander services) and 82000-82035 (items relating to pervasive developmental disorder or disability services) appear in the determination made under subsection 3C (1) of the Act with respect to allied health services; and
- (b) items 82100-82152 (items relating to midwifery services) and 82200-82225 (items relating to nurse practitioner services) appear in the determination made under subsection 3C (1) of the Act with respect to midwife and nurse practitioner services.

Item [12] – Subsection 4(2) before item 55700 of the table

Item 12 of this Determination deletes the fixed fee EMSN benefit cap for an item related to a general ultrasound service (item 55054) in the *Health Insurance (Extended Medicare Safety Net) Determination 2009* and imposes a percentage fee of 80 percent of the Schedule fee for this item.

Part 2 changes to maximum increase for items added to the *Health Insurance (Extended Medicare Safety Net) Determination 2009* prior to 1 November 2012

Item [13] – Items in subsection 4(1) of the table

Item 13 of this Determination provides for EMSN benefit caps indexed to annual CPI measured at the June quarter 2012 (1.2%) for items in the *Health Insurance (General Medical Services Table) Regulations* relating to obstetric services (items 16399-16636), for ART services (items 13200-13251), items relating to midwifery services (items 82100-82115 and 82130-82140). It also provides for EMSN benefit caps for items for injection of poly-L-lactic acid (items 14201 and 14202), varicose vein treatment (item 32500), endovenous laser therapy (items 32520 and 32522), cataract surgery (item 42702), and hair transplantation (item 45560) to be a percentage of the Schedule fee for that item, the level of which varies between the items.

Item [14] – Items in subsection 4(2) of the table

Item 14 of this Determination provides for a similar indexation (in item 13) of EMSN benefit caps for items in the *Health Insurance (Diagnostic Imaging Services Table) Regulations* relating to obstetric and gynaecological ultrasound services (items 55700-55775).

Statement of Compatibility with Human Rights

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

Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No.1)

This Determination 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 Extended Medicare Safety Net (the EMSN) provides individuals and families with an additional rebate for out-of-hospital Medicare services once an annual threshold of out-of-pocket costs is reached. Sections 10ACA and 10ADA of the *Health Insurance Act 1973* (the Act) provide that once an individual or a member of a registered family reaches the applicable out-of-pocket EMSN threshold, the person is entitled to an increase in the Medicare benefit equal to 80 per cent of their out-of-pocket costs. The increased amount of Medicare benefit payable under the EMSN is commonly referred to as the ‘EMSN benefit’.

Under section 10B of the Act the Minister may, by legislative instrument, determine the maximum increase of Medicare benefit available under the EMSN (an EMSN cap) in respect of particular Medicare items.

The EMSN benefit cap is the maximum amount of benefit payable under the EMSN, regardless of the fee charged by the practitioner. The EMSN benefit cap is payable in addition to the standard Medicare rebate (including any benefits received through the original safety net).

Currently 109 items have an EMSN benefit cap.

The *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2012 (No. 1)* (‘the Determination’) amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* (the Principal Determination) to introduce EMSN benefit caps for all consultation and attendance items, 38 procedural items and one ultrasound item from 1 November 2012.

This Determination also;

- (a) makes technical amendments to the Principal Determination as of 1 November 2012 by deleting and adding items with EMSN benefit caps in relation to diagnostic imaging and capital sensitivity services from subsection 4(3) to subsection 4(2) of the Principal Determination; and
- (b) makes changes to a number of procedural items and all consultation and attendance items from a fixed dollar amount (‘fixed fee cap’) to a percentage fee cap, and indexes existing EMSN benefit caps by Consumer Price Index (CPI) as of 1 January 2013.

Human rights implications

The Right to Health

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 International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural

Rights (the Committee) has stated that health is a ‘fundamental human right indispensable for the exercise of other human rights’, and that the right to health is not to be understood as a right to be healthy, but rather entails a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

Right to Social Security

The right to social security is contained in article 9 of the ICESCR. The right 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.

Discussion of the Determination

This Determination will introduce a cap on the amount of EMSN benefits payable for 448 items. This will potentially reduce the amount of EMSN benefits payable where a person has reached the EMSN benefit threshold and is charged enough that the EMSN benefit cap becomes applicable.

The Committee has stated that the notion of ‘the highest attainable standard of health’ takes into account both the conditions of the individual and the country’s available resources. The 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 Committee has also stated that with respect to the right to social security that the qualifying conditions for benefits must be reasonable, proportionate and transparent.

Patients will still be eligible for existing Medicare rebates and any associated benefits from the original Medicare safety net for families and individuals.

EMSN benefit caps were introduced in 2010 because some doctors were charging excessive fees, knowing that the government would pay 80 per cent of the out-of-pocket costs faced by patients once they reached the relevant threshold. This had implications for those people that had not qualified for the EMSN threshold. It is also of relevance that an independent report ‘Extended Medicare Safety Net Review Report 2009’ by the Centre for Health Economics Research and Evaluation found that prior to EMSN benefit caps being introduced, 55 per cent of EMSN benefits were distributed to the top fifth of Australia’s most socioeconomically advantaged areas, whereas the least advantaged fifth received less than 3.5 per cent.

The introduction of EMSN benefit caps is a reasonable, proportionate response to ensure that the EMSN continues to be financially sustainable.

There is no incompatibility with the right to health or social security because the legislation is for a legitimate objective and reasonable, necessary and proportionate in the circumstances.

Conclusion

The Determination is compatible with human rights.

Mark Butler
Acting Minister for Health