

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Extended Medicare Safety Net) Amendment Determination 2013 (No.1)

Section 10B of the *Health Insurance Act 1973* (the Act) provides that the Minister 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 maximum increase in the Medicare benefit payable under the EMSN is commonly referred to as the 'EMSN benefit cap'.

The *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2013 (No. 1)* (the Determination) introduces EMSN benefit caps on two items for radiofrequency ablation for the treatment of varicose veins (RFA) and all items in Group M15 – Audiology of the Medicare Benefits Schedule (MBS) by amending the *Health Insurance (Extended Medicare Safety Net) Determination 2009*. The Determination also amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* to remove a note which will become irrelevant on 1 May 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 that the patient receives from Medicare (including any benefit received through the original Medicare safety net).

Once the relevant annual threshold of out-of-pocket costs has been reached, Medicare will pay 80 per cent of any future out-of-pocket costs for Medicare-eligible out-of-hospital services for the remainder of the calendar year. For the 2013 calendar year, the annual EMSN threshold for concession cardholders and people who receive Family Tax Benefits (Part A) is \$610.70. For all other singles and families, the annual threshold is \$1,221.90. Where an item has an EMSN benefit cap, there is a maximum benefit payable for that item.

EMSN benefit caps were introduced in 2010 to discourage doctors from charging excessive fees on the basis that Medicare would cover 80% of patients' out-of-pocket costs once they reached the EMSN threshold.

Radiofrequency Ablation

From 1 May 2013, two new MBS items will be introduced for RFA (MBS items 32523 and 32526).

RFA is an alternative to endovenous laser therapy (ELT) and complex in-hospital vein stripping for the treatment of varicose veins in the lower legs. A radiofrequency emitter is inserted into the long or short saphenous vein of the leg and energy is applied to occlude the diseased vein. In 2012, the Medical Services Advisory Committee (MSAC) found that RFA is safe and clinically effective when compared to ELT. MSAC supported public funding of RFA for varicose veins on the condition that the service was subject to the same EMSN benefit caps as those already in place for ELT.

Group M15 of the General Medical Services Table

On 1 November 2012, nine new items for diagnostic audiology services were introduced into the MBS. The new items enable an audiologist to bill Medicare directly for performing diagnostic services, rather than providing services on behalf of a specialist.

Diagnostic hearing tests are used for the audiological assessment of patients with potential medical conditions (ear disease or related disorders), or patients whose hearing loss may be able to be corrected by surgery or medical intervention.

Effect of the Health Insurance (Extended Medicare Safety Net) Amendment Determination 2013 (No.1)

Patients who have qualified for the EMSN and receive a capped service out-of-hospital will be entitled to the general Medicare benefit plus an amount up to the EMSN benefit cap. In addition, patients may also be eligible for an increase in their Medicare benefit through the original Medicare safety net, as specified under section 10AC of the Act.

The EMSN benefit cap amounts for the new items will be publicly available for patients and practitioners through the MBS Online website. This website is a commonly used resource which sets out item descriptors, MBS 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

The Determination will commence on 1 May 2013.

Consultation

MSAC's advice about the public funding of RFA was the culmination of a 12 month assessment process. During that period comments on the assessment were sought from Medical organisations, practitioners and consumers. In addition, a range of medical organisations were specifically asked to provide comment, including the Royal Australian and New Zealand College of Radiologists, the Australasian College of Phlebology, the Australian and New Zealand Society of Phlebology, and the Royal Australasian College of Surgeons (specifically the Australian and New Zealand Society for Vascular Surgery).

Application of EMSN benefit caps to Group M15 (audiology) is consistent with the 2012-13 Budget measure capping all consultation and allied health items and was included in a public consultation paper circulated to stakeholders in the development of the items.

No submissions have been made for capping not to apply to either the RFA or audiology items.

ATTACHMENT

Details of the *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2013 (No.1)*

Section 1 – Name of Determination

Section 1 provides that the name of the Determination is the *(Extended Medicare Safety Net) Amendment Determination 2013 (No.1)*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 May 2013.

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

Section 3 provides that schedule 1 to the Determination amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009*.

Schedule 1 – Amendments commencing 1 May 2013

Item 1 of schedule 1 to the Determination inserts two new items (items 32523 and 32526) into the table in paragraph 4(1)(b) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009* to introduce EMSN benefit caps on those items. The EMSN benefit cap on item 32523 will be 15 per cent of the schedule fee. The EMSN benefit cap on item 32526 will be 10 per cent of the schedule fee. These caps are consistent with MSAC's advice that RFA for varicose veins should be subject to the same EMSN benefit caps as ELT.

Item 2 of schedule 1 to the Determination removes the first note appearing after the table in paragraph 4(1)(b). The note will no longer be relevant on and from 1 May 2013 as the determination made under subsection 3C(1) of the Act with respect to endovenous laser therapy services will be revoked with effect from that date and items 32520 and 32522 will be inserted into the general medical services table.

Item 3 of schedule 1 to the Determination introduces an EMSN benefit cap on all items in Group M15 (items 82300-82332) by inserting a reference to the M15 Group into the table in paragraph 4(1B)(b) of the *Health Insurance (Extended Medicare Safety Net) Determination 2009*.

Paragraph 4(1B)(b) of the Determination provides that the EMSN benefit cap for all items listed in the table will be 300 per cent of the schedule fee or \$500, whichever is lower. The EMSN benefit caps on audiology services are the same as those that already apply to all consultation and allied health items on the MBS.

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 2013 (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 benefit 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 is payable in addition to the standard Medicare rebate (including any benefits received through the original Medicare Safety Net).

Currently 563 Medicare Benefit Schedule (MBS) items have an EMSN benefit cap.

The *Health Insurance (Extended Medicare Safety Net) Amendment Determination 2013 (No. 1)* (the Determination) amends the *Health Insurance (Extended Medicare Safety Net) Determination 2009* (the Principal Determination) to introduce EMSN benefit caps for MBS items in Group M15 (Audiology) and for two MBS items relating to radiofrequency ablation (RFA) from 1 May 2013. The Determination also amends the Principal Determination to remove a note which will become irrelevant on 1 May 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 a total of eleven MBS items (one Group of nine items, and two individual 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.

EMSN benefit caps were first 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 of EMSN benefits.

Radiofrequency ablation for the treatment of varicose veins

Before a new medical service is publicly funded in Australia, it is assessed by the Medical Services Advisory Committee (MSAC) to ensure the service is safe, effective and cost-effective. MSAC assessed radiofrequency ablation (RFA) for the treatment of varicose veins in August 2012. The MSAC assessment found that RFA is safe and clinically effective when compared to endovenous laser therapy (ELT), however cost-effectiveness concerns relating to the EMSN were identified. MSAC advised that public funding of RFA should be supported as long as the services were subject to the same EMSN benefit caps as those already in place for ELT.

Restriction of EMSN benefits for RFA services ensures that the Australian government's expenditure on healthcare remains efficient and sustainable, therefore enabling the continued provision of universal healthcare in Australia.

Audiology items (Group M15)

In the 2012-13 Budget, the Government announced that EMSN benefit caps would be placed on an additional 39 selected MBS items and all consultations including allied health services. The level of the caps is 300 per cent of the schedule fee up to a maximum of \$500 for consultations; and 80 per cent of the schedule fee for newly capped procedural items. These caps commenced on 1 November 2012.

Placing an EMSN benefit cap on audiology services ensures consistency with the 2012-13 Budget capping measure.

Conclusion

The Determination is compatible with human rights because, to the extent that it may limit the right to health or social security, those limitations are for a legitimate objective and reasonable, necessary and proportionate in the circumstances.

Tanya Plibersek
Minister for Health