

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Allied Health Services) Amendment Determination 2014 (No. 2)*

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.

The purpose of the *Health Insurance (Allied Health Services) Amendment Determination 2014 (No. 2)* (the Amendment Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination). The Principal Determination sets out items that may be provided as Medicare-eligible services by appropriately qualified allied health professionals, including but not limited to psychologists, osteopaths, chiropractors, physiotherapists and audiologists.

The Principal Determination is being amended for two purposes. The first is to update the qualification requirements for the provision of psychological therapy health services as a Medicare-eligible service. From 1 November 2014, the main qualification pathway will require a person to hold general registration as a psychologist with the Psychology Board of Australia (the Board) and also be endorsed by the Board to practise in clinical psychology.

Previously, a person could also meet the qualification requirements if he or she held general registration with the Board and was a member of the College of Clinical Psychologists of the Australian Psychological Society or had been assessed as meeting its membership requirements. Grandfathering provisions have been included so that anyone able to provide Medicare-eligible psychological therapy health services on the basis of the Australian Psychological Society pathway immediately before the commencement of the Amendment Determination on 1 November 2014 can continue to do so for a period of 12 months.

These changes reflect that, following the establishment of the Board, it has taken over the role of endorsing psychologists to practise clinical psychology from the Australian Psychological Society.

The second change to the Principal Determination is to exclude psychologists registered by the Board from the obligation to undertake focussed psychological strategies continuing professional development in order to continue to provide Medicare-eligible focussed psychological strategies health services. This removes unnecessary regulation on these psychologists, as they are already required to undertake continuing professional development as part of their registration requirements with the Board.

Social workers and occupational therapists providing Medicare-eligible focussed psychological strategies services will remain subject to the focussed psychological strategies continuing professional development requirements. These health professions are not currently subject to mandatory regulation imposing other continuing professional development requirements.

Details of the Amendment Determination are set out in the Attachment.

The Act specifies no conditions which need to be met before the power to make the Amendment Determination may be exercised.

This Amendment Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

This Amendment Determination commences on 1 November 2014.

**Consultation**

Consultation was undertaken with the Psychology Board of Australia and the Australian Health Practitioner Regulation Agency.

## **Details of the Determination**

### **Section 1 – Name of Determination**

Section 1 provides that the name of the Determination is the *Health Insurance (Allied Health Services) Amendment Determination 2014 (No. 2)* (the Amendment Determination).

### **Section 2 - Commencement**

Section 2 provides that the Amendment Determination commences on 1 November 2014.

### **Section 3 - Authority**

Section 3 provides that the Amendment Determination is made under the *Health Insurance Act 1973*.

### **Section 4 – Amendment of the *Health Insurance (Allied Health Services) Determination 2014***

Section 4 provides that the Schedule to the Determination amends the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination).

### **Schedule - Amendment**

#### **Item 1 – Section 10**

Item 1 substitutes a new section 10 of the Principal Determination. Section 10 establishes the continuing professional development regime for allied health professionals providing Medicare-eligible focussed psychological strategies (FPS) health services. These services may be provided by psychologists holding general registration with the Psychology Board of Australia (the Board) and certain social workers and occupational therapists.

Previously, all three categories of FPS health service providers were required to complete 10 units (equating to 10 hours) of FPS continuing professional development (FPS CPD) each CPD year. Under new section 10, only social workers and occupational therapists will be subject to FPS CPD. The opportunity has also been taken to update some drafting in section 10 and also to remove a redundant provision relating to the FPS CPD requirements prior to 1 July 2011 (subsection 10(3)).

Subsection 10(1) provides that a person to whom new subsection 10(1A) applies must complete FPS CPD each CPD year (each 1 July to 30 June).

New subsection 10(1A) provides that it applies to a person who is an allied health professional in relation to the provision of a FPS health services but who is not a ‘general registrant psychologist’. This term is defined in new subsection 10(11), but means a person holding general registration in psychology with the Board.

Subsection 10(2) provides that a person required to complete FPS CPD must retain records for two years from the end of the relevant CPD year. This requirement is unchanged.

Subsection 10(4) deals with the pro-rata application of the FPS CPD requirement where a person seeks to become an allied health professional in relation to FPS health services during the course of a CPD year. This subsection has been revised so that it only applies to persons who are not general registrant psychologists, otherwise the requirements remain unchanged.

Subsections 10(5) and 10(6) provide that:

- where the Minister for Health is satisfied that a person has not completed their FPS CPD, he or she may decide to remove the name of that person from the register kept by the Chief Executive Medicare of allied health professionals qualified to provide FPS health services (the FPS Register) and then notify the Chief Executive Medicare (subsection 10(5)); and
- before notifying the Chief Executive Medicare, the Minister must notify the person, including giving reasons for the decision and informing the person of their review rights (subsection 10(6)).

These subsections remain unchanged under new section 10.

Subsection 10(7) provides for a process for a person who has had their name removed from the FPS Register because of a failure to comply with his or her FPS CPD obligations to be reinstated. Subsection 10(7) remains unchanged under new section 10.

Subsection 10(8) provides for Ministerial exemptions from FPS CPD obligations. The Minister may grant an exemption, in whole or in part, where the person has applied in writing and the Minister is satisfied that special circumstances prevented or will prevent a person from completing FPS CPD in a CPD year. The subsection has been revised to include reference to situations where the Minister is satisfied that a person will be prevented from completing FPS CPD, to clarify that the subsection allows for prospective exemptions. The subsection is otherwise unchanged.

Subsection 10(9) provides that where the Chief Executive Medicare has received notice of the Minister's decision to remove the name of a person from the FPS Register, the Chief Executive Medicare must not do so until notified that:

- the person has exercised their right to reconsideration of the decision under subsection 11(1) of the Principal Determination, and has been notified that the decision to remove their name has been affirmed; or
- the person has exercised their right to request further time to complete their FPS CPD under subsection 11(6) of the Principal Determination and, at the end of any further time allowed, the decision to remove their name has been affirmed; or

the time for making an application for reconsideration or request for further time has expired, without the person making an application.

Subsection 10(9) has been redrafted to improve clarity of expression and ease of reading, however the substance of the provision has not been changed.

New subsection 10(10) provides that, for the avoidance of doubt, nothing in section 10 prevents the Chief Executive Medicare from including the name of a general registrant psychologist on the FPS Register or requires the Chief Executive Medicare to remove the name of the a general registrant psychologist from the FPS Register.

New subsection 10(11) defines two terms for the purposes of new section 10:

- **general registrant psychologist** – meaning a person who holds general registration in the health profession of psychology under the applicable law in force in the State or Territory in which the service is provided (being the National Law as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as in force in the relevant jurisdiction); and
- **register** - meaning the register kept by the Chief Executive Medicare of allied health professionals who are qualified to provide a FPS health service.

## **Item 2 – Schedule 1, item 16**

Item 2 substitutes a new item 16 of Schedule 1 to the Principal Determination, which sets out qualification requirements for a person to be an allied health professional in relation to the provision of a psychological therapy health service.

Item 16 now provides that a person is an allied health professional in relation to the provision of a psychological therapy health service if he or she holds general registration in the health profession of psychology under the applicable law in force in the State or Territory in which the service is provided and is endorsed by the Board to practice in clinical psychology.

Previously, a person could also meet the qualification requirements based on general registration with the Board and holding membership of the College of Clinical Psychologists of the Australian Psychological Society (the College) or having been assessed by the College as meeting the requirements for membership.

A ‘grandfathering’ provision has been included in Item 16 to ensure that anyone who, immediately before the Amendment Determination took effect, met the qualification requirements to provide psychological therapy health service on the basis of either of the College pathways will continue to meet those requirements until 31 October 2015, provided the person retains their general registration with the Board. This will enable any such person to continue to provide Medicare-eligible psychological therapy health service for a limited time, while arranging for endorsement by the Board to practice in clinical psychology.

## **Statement of Compatibility with Human Rights**

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

### ***Health Insurance (Allied Health Services) Amendment Determination 2014 (No. 2)***

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 *Health Insurance (Allied Health Services) Amendment Determination 2014 (No.2)* (the Amendment Determination) amends the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination) to:

- update the qualification requirements for the provision of psychological therapy health services as a Medicare-eligible service by amending item 16 of Schedule 1 to the Principal Determination. From 1 November 2014, the main qualification pathway will require a person to hold general registration as a psychologist with the Psychology Board of Australia (the Board) and also be endorsed by the Board to practise in clinical psychology;
- insert grandfathering provisions in item 16 of Schedule 1 to the Principal Determination to ensure that anyone able to provide Medicare-eligible psychological therapy health services on the basis of the Australian Psychological Society pathway immediately before the commencement of the Amendment Determination on 1 November 2014 can continue to do so for a period of 12 months; and
- exclude psychologists registered by the Psychology Board of Australia (the Board) from the obligation to undertake focussed psychological strategies continuing professional development in order to continue to provide Medicare-eligible focussed psychological strategies health services by amending section 10 of the Principal Determination.

### **Human rights implications**

The regulations engage Articles 2, 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.

### Analysis

The Amendment Determination will remove requirements in the Principal Determination that duplicate activities undertaken by the Psychology Board of Australia under the *Health Practitioners Regulation National Law Act 2009*. The changes reflect that, following the establishment of the Board, it has taken over the role of endorsing psychologists to practise clinical psychology from the Australian Psychological Society. This change also removes unnecessary regulation on psychologists providing focussed psychological strategies health services, as they are already required to undertake continuing professional development as part of their registration requirements with the Board. The changes maintain health and social security rights and allow providers to adjust to new arrangements.

This Amendment Determination is compatible with the human rights recognised in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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