

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Extended Medicare Safety Net) Determination 2017

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) apply and the maximum increases 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', and the maximum increase amount is known as the 'EMSN benefit cap'.

Subsections 10ACA(7A) and 10ADA(8A) of the Act provide that where a Medicare item is listed in a determination made under section 10B, the EMSN benefit must not exceed the amount determined as the EMSN benefit cap. At present, only 10% of Medicare items are capped under the EMSN.

Purpose

The Government agreed to restructure and amend existing Medicare obstetric items, and to place a 65% EMSN benefit cap on new obstetric items. Three obstetric items will be removed as part of the review. All other current obstetric items will continue to be capped at the current fixed dollar amount.

The purpose of this Determination is to implement the 65% EMSN benefit cap on new obstetric items that will be implemented from 1 November 2017. It also repeals the *Health Insurance (Extended Medicare Safety Net) Determination 2009*, which is due to sunset on 1 April 2020, and continues the existing EMSN benefit caps on other items that currently apply under that instrument.

Background

The EMSN provides an additional rebate for Australian families and singles who incur high out-of-pocket costs for Medicare eligible out-of-hospital services. Out-of-hospital services include general practitioner and specialist attendances. The out-of-pocket cost is the difference between the fee charged by the doctor and any benefit that the patient receives from Medicare (including any benefit received through the original Medicare safety net arrangement).

Once the relevant annual threshold of out-of-pocket costs has been reached, Medicare will pay up to 80% of any future out-of-pocket costs for Medicare eligible out-of-hospital services for the remainder of the calendar year. For the 2017 calendar year, the annual EMSN threshold for people who have concessional beneficiary status and people who receive Family Tax Benefit (Part A) is \$656.30. For all other singles and families the annual threshold is \$2,056.30. These amounts are indexed by the Consumer Price Index on 1 January each year in accordance with section 10A of the Act.

This Determination specifies an EMSN benefit cap of 65% of the Schedule fee for the new obstetric Medicare items 16407, 16408, 16530, 16531, 16533 and 16534. This will ensure that obstetrics items continue to be subject to an EMSN benefit cap. Current obstetric items will

continue to be capped at the current fixed amount. These existing obstetric items have been capped since 2010.

This Determination will continue to cap all other Medicare items that are currently capped under the EMSN, either at a dollar value or as a percentage of the Schedule fee. The EMSN benefit cap will continue to place an upper limit on the amount of EMSN benefit that patients will receive each time they have a claim for one of the identified items.

A person's EMSN benefit is calculated in accordance with the Act. That is, the EMSN benefit is 80% of their out-of-pocket costs for that claim once they have reached the applicable EMSN threshold. However, when the calculated EMSN benefit (i.e. 80% of out-of-pocket costs) is greater than the amount of the EMSN benefit cap in the Determination for that Medicare item, then the EMSN benefit will be limited to the EMSN maximum increase in the Determination. When the EMSN benefit calculated is less than the EMSN benefit cap, the person will receive the full EMSN benefit.

For example, if an item has a Schedule fee of \$124.65 and a Medicare rebate of \$106.00. Assuming that the patient has already qualified for the EMSN benefit, if the doctor charges \$250 for this service, the patient will receive an EMSN benefit of up to \$115.20 (80% of their out-of-pocket costs), in addition to the \$106.00 rebate. This is \$221.20 in total benefits paid.

If the item has an EMSN benefit cap of 65% of the Schedule fee, the capped benefit amount would be \$81.00 (65% of \$124.65). If the patient is charged \$250, then the patient will only receive an EMSN benefit of up to \$81.00. The total benefits paid, including the Medicare rebate, would be \$187.00.

If the patient is charged \$200, the EMSN benefit will be \$75.20 (80% of \$94.00 out-of-pocket costs). There is no impact on this patient as the EMSN benefit they are entitled to (\$75.20) is less than the EMSN benefit cap (\$81.00). The total benefits paid including the Medicare rebate would be \$181.20.

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

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

Consultation

This Determination will implement changes that have been recommended by the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce). On 22 April 2015, the Government established the clinician-led Taskforce to undertake a review of the entire MBS to ensure it reflects current best clinical practice, aligns with the latest evidence and promotes the provision of health services that improve health outcomes.

The Taskforce reviewed 99 MBS items relating to obstetrics and made a number of recommendations to Government. The Taskforce's draft obstetrics recommendations were released for public consultation and recommendations were widely accepted by respondents to the consultation. Public feedback was provided to the Taskforce for consideration prior to the

finalisation of its recommendations to Government. The Government agreed to amend a number of MBS obstetric items and to the introduction of six new items.

Commencement

The Determination will commence the later of 1 November 2017, or the day after the Determination has been approved by each House of Parliament. However, the Determination will not commence at all if it is not approved by each House of Parliament.

ATTACHMENT

DETAILS OF THE *Health Insurance (Extended Medicare Safety Net) Determination 2017*

1. Name of Determination

Section 1 provides that the title of the Determination is the *Health Insurance (Extended Medicare Safety Net) Determination 2017*.

2. Commencement

Section 2 provides that the Determination will commence the later of 1 November 2017, or the day after the Determination has been approved by each House of Parliament. However, the Determination will not commence at all if it is not approved by each House of Parliament.

3. Definitions

Section 3 defines certain terms used in the Determination.

4. Maximum increases for items under section 10ACA and 10ADA of the Act

Subsection 4(1) of the Determination sets out a table containing individual items from the general medical services table (GMST) that will have an EMSN benefit cap and the amount of the EMSN benefit cap that will apply to each of those items. This includes new EMSN benefit caps that will apply to new obstetric items (16407, 16408, 16530, 16531, 16533 and 16534). Three obstetric items have been removed from the table (16525, 16633, 16636). The *Health Insurance (General Medical Services Table) Amendment (Obstetric) Regulations 2017* will insert the new obstetric items in the GMST. The other items listed in the table are currently prescribed in the *Health Insurance (General Medical Services Table) Regulations 2017*.

Subsection 4(2) of the Determination specifies items that have an EMSN benefit cap of 80% of the Schedule fee. These items are currently prescribed in the *Health Insurance (General Medical Services Table) Regulations 2017*.

Subsection 4(3) of the Determination sets out a table containing groups specified in the GMST that include practitioner, GP and specialist consultation items, and that have an EMSN benefit cap of 300% of the Schedule fee or \$500.00, whichever represents the lesser amount. These items are currently prescribed in the *Health Insurance (General Medical Services Table) Regulations 2017*.

Subsection 4(4) of the Determination sets out a table containing groups that include items in relation to allied health services that have an EMSN benefit cap of 300% of the Schedule fee or \$500.00, whichever represents the lesser amount. These items are currently specified in a determination made under subsection 3C(1) of the Act which operates so that the items are treated as if they were prescribed in the GMST.

Subsection 4(5) of the Determination specifies items in relation to midwife services that have an EMSN benefit cap of 300% of the Schedule fee or \$500.00, whichever represents the lesser amount. These items are currently specified in a determination made under subsection 3C(1) of the Act which operates so that the items are treated as if they were prescribed in the GMST.

Subsection 4(6) of the Determination sets out a table containing items in the diagnostic imaging services table that have an EMSN benefit cap and the amount of the EMSN benefit cap that will apply to those items. These items are currently prescribed in the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2017*.

5. Repeal

Section 5 repeals the *Health Insurance (Extended Medicare Safety Net) Determination 2009*.

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) Determination 2017

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 Determination places a 65% EMSN benefit cap on new obstetric items that will be implemented from 1 November 2017. These items have been restructured and amended to acknowledge increased time and complexity required to undertake certain services, and to ensure providers are only able to claim items in specific circumstances. Three obstetric items will be removed as part of the review. All previous EMSN benefit caps for other items, including for current obstetric items, are also applied in the Determination.

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.

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

This Determination will maintain or advance rights to health and social security by ensuring access to publicly subsidised health 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.

Greg Hunt

Minister for Health