

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

*Health Insurance (Allied Health Services) Amendment (Other Medical Practitioner)
Determination 2018*

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 *Health Insurance (Allied Health Services) Determination 2014* (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. To access these services patients must be referred by a medical practitioner.

The purpose of the *Health Insurance (Allied Health Services) Amendment (Other Medical Practitioner) Determination 2018* (the Amendment Determination) is to amend the Principal Determination to allow doctors working in general practice without post-graduate training to continue referring patients for Medicare-eligible allied health services. This is a consequential change as a result of the 1 July 2018 changes to Medicare general practice services made through the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

In addition, the Amendment Determination updates the applicable practice standards for mental health workers to refer to the *Practice Standards for Mental Health Social Workers 2014*, and provides transitional provisions in relation to certificates issued relating to practice standards that applied the previous standards.

Consultation

No consultation was undertaken on the creation of the Amendment Determination as the amendments are consequential in nature. Consultation was undertaken in relation to the creation of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*. Details on the consultation for these instruments can be found in the explanatory statements for these instruments.

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 *Legislation Act 2003*.

This Amendment Determination commences immediately after the commencement of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

Authority: Subsection 3C(1) of the *Health Insurance Act 1973*

Details of the *Health Insurance (Allied Health Services) Amendment (Other Medical Practitioner) Determination 2018*

Section 1 – Name of Determination

Section 1 provides that the name of the Determination is the *Health Insurance (Allied Health Services) Amendment (Other Medical Practitioner) Determination 2018* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences immediately after the commencement of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Schedules

Section 4 provides that the Schedule to the Amendment Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Health Insurance (Allied Health Services) Determination 2014

Item 1 – Subsection 4(1) (definition of *GP Management Plan*)

Item 1 repeals the definition of the term “*GP Management Plan*” in subsection 4(1) and substitutes a new definition that includes references to newly listed items 229 and 233 of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (Section 3C OMP Determination).

Item 2 – Subsection 4(1) (definition of *GP Mental Health Treatment Plan*)

Item 2 repeals paragraph (b) of the definition of the term “*GP Mental Health Treatment Plan*” in subsection 4(1) and substitutes with a new definition that includes references to newly listed items 272, 276, 281 and 282 of the Section 3C OMP Determination.

Item 3 – Subsection 4(1) (definition of *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*)

Item 3 inserts the definition of the term “*Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*” after the definition of “*Health Care Homes Program*” in subsection 4(1) of the Principal Determination.

Item 4 – Subsection 4(1) (definition of *multidisciplinary care plan*)

Item 4 repeals the definition of the term “*multidisciplinary care plan*” in subsection 4(1) and inserts a new definition that includes a reference to newly listed items 231 and 232 of the Section 3C OMP Determination.

Item 5 – Subsection 4(1) (definition of *Team Care Arrangements*)

Item 5 repeals the definition of the term “*Team Care Arrangements*” in subsection 4(1) and substitutes a new definition that includes references to newly listed items 230 and 233 of the Section 3C OMP Determination.

Item 6 – Subsection 6(4)

Item 6 repeals subsection 6(4) and substitutes a new subsection 6(4). The new subsection has the effect of including services under newly listed items 283, 285, 286 and 287 of the Section 3C OMP Determination within the scope of the definition of “*relevant service*”.

Item 7 – Paragraph 6B(4)(b)

Item 7 repeals paragraph 6B(4)(b) and substitutes it with a new paragraph (b). The new paragraph has the effect of including services under newly listed items 283, 285, 286 and 287 that are listed in the Section 3C OMP Determination within the scope of the definition of “*personalised individual service*”.

Item 8 – Schedule 2, Part 3, items 81000, 81005 and 81010

Item 8 repeals the text after the end of paragraph (d) of each of the items 81000, 81005 and 81010 in the Principal Determination and substitutes it with new text to include newly listed item 792 of

the Section 3C OMP Determination. This is to make it clear that item 792 cannot be claimed if a person has had three pregnancy support services across the general practice or allied health pregnancy support items.

Item 9 – Schedule 1, paragraph 7(b) and subparagraphs 8(e)(ii) and 9(c)(ii)

Item 9 omits references to “titled ‘Practice Standards for Mental Health Social Workers’, as in force on 8 November 2008”, wherever occurring in the Principal Determination and substitutes it with “titled ‘Practice Standards for Mental Health Social Workers 2014’ as in force on 25 September 2014”.

This has the effect that the Australian Association of Social Workers will now certify a person as meeting the standards for mental health against standards set out in this 2014 document which is one of the requirements that a person must meet under clauses 7, 8 and 9 of Schedule 1 to the Principal Determination. The certification is required in order to be considered an allied health professional in relation to the provision of a mental health service, a focussed psychological strategies health service, or in relation to the provision of a non-directive pregnancy support counselling health service.

Schedule 2 – Transitional provisions

Item 1 – Certificates issued relating to practice standards for mental health social workers

This item provides that if at the time of the commencement of the Amending Determination, a person has been certified by the Australian Association of Social Workers (the AASW) as meeting the standards for mental health under the old standard and that certification has not been revoked, then for the purposes of paragraph 7(b), and subparagraphs 8(e)(ii) and 9(c)(ii) of Schedule 1 of the Determination, the person is taken to be certified as meeting the standards for mental health set out in the new standard (refer to Item 9 of Schedule 1 of this Amending Determination). Thus, this provision treats the certification in relation to a person made under those provisions using the old standard, assuming they have not been revoked, as if they were certified against the new standards in force on 25 September 2014.

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 (Other Medical Practitioner) Determination 2018

This Amendment 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 Legislative Instrument

The *Health Insurance (Allied Health Services) Determination 2014* (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. To access these services patients must be referred by a medical practitioner.

The purpose of the *Health Insurance (Allied Health Services) Amendment (Other Medical Practitioner) Determination 2018* (the Amendment Determination) is to amend the Principal Determination to allow doctors working in general practice without post-graduate training to continue referring patients for Medicare-eligible allied health services. This is a consequential change as a result of the 1 July 2018 changes to Medicare general practice services made through the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

In addition, the Amendment Determination updates the applicable practice standards for mental health workers to refer to the *Practice Standards for Mental Health Social Workers 2014*, and provides transitional provisions in relation to certificates issued relating to practice standards that applied the previous standards.

Human rights implications

The Amendment Determination engages 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

The Amendment Determination will maintain rights to health and social security by ensuring access to publicly subsidised health services which are clinically and cost effective.

Conclusion

This Amendment Determination is compatible with human rights as it does not raise any human rights issues.

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