

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

*Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation)
Determination 2018*

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, determine that a health service not specified in an item in the general medical services table shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the general medical services table.

The general medical services table is set out in the regulations made under subsection 4(1) of the Act.

In addition to the power to make this instrument under subsection 3C(1) of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018* (Determination) is to provide for the permanent listing of Medicare Benefits Schedule (MBS) item 42705 with a higher fee, and to list new item 42505.

Item 42705 is for micro-invasive glaucoma surgery (MIGS) stent implantation for open-angle glaucoma (OAG). The item was previously listed on an interim basis in the *Health Insurance (Section 3C General Medical Services–Cataract) Determination 2017* (Cataract Determination), which was due to cease on 31 December 2018 and which is repealed by this Determination.

The Government announced this service in the 2018-19 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule – New and Amended Listings* measure.

In November 2017, the Medical Services Advisory Committee (MSAC) supported the listing of MIGS stent implantation for patients with OAG who are also undergoing cataract surgery on the MBS. MSAC accepted that suprachoroidal micro-invasive glaucoma surgery stent implantation was similar to trabecular bypass micro-invasive glaucoma surgery stent implantation in this population and suggested both procedures be covered by a single MBS item.

In relation to this procedure, MSAC recommended:

- that item 42705 be permanently listed in the MBS, given the profession has been claiming this service under this item number since May 2017;
- specification of a higher fee for item 42705 to appropriately remunerate the service; and
- listing new item 42505 for the removal of MIGS devices with or without replacement, should the original stent fail or complications arise.

Consultation

MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through listing on the MBS. This includes the listing of new items, or amendments to existing items on the MBS.

Targeted consultation was undertaken as part of the MSAC process. The Royal Australian and New Zealand College of Ophthalmologists, Australian and New Zealand Glaucoma Interest Group, Centre for Eye Research Australia, Indigenous Eye Health Unit, Glaucoma Australia, Australian Society of Ophthalmologists and the Macular Disease Foundation were advised of the intent to list the above items and associated descriptors.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 November 2018.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

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

ATTACHMENT

Details of the Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 2018.

Section 3 – Authority

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

Section 4 – Repeal

Section 4 provides that the Determination revokes the *Health Insurance (Section 3C General Medical Services–Cataract) Determination 2017*.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the diagnostic imaging services table for the service.

Section 7 – Application of items of the general medical services table

Section 7 specifies provisions of the general medical services table that apply in relation to items 42505 and 42705.

Subsection 7(1) provides that clause 1.2.1 of the general medical services table shall have effect as if item 42505 and 42705 were also specified in the clause. Clause 1.2.1 provides that items do not apply to a service provided in contravention of a law of the Commonwealth, a State or Territory.

Subsection 7(2) provides that clause 1.2.5 of the general medical services table shall have effect as if items 42505 and 42705 were also specified in subclause 1.2.5(1). Clause 1.2.5 prescribes services that must be provided in the course of a personal attendance by a single medical practitioner on a single patient on a single occasion.

Subsection 7(3) provides that clause 1.2.6 of the general medical services table shall have effect as if item 42505 and 42705 were also specified in subclause 1.2.6(1). Clause 1.2.6 prescribes requirements relating to the personal attendance of the medical practitioner when providing the service.

Subsection 7(4) provides that clause 2.45.2 of the general medical services table shall have effect as if item 42505 and 42705 were also specified in the clause. Clause 2.45.2 provides that an item in Group T8 of the general medical services table does not apply if the service is provided at the same time as, or in connection with, the provision of a pain pump for post-surgical pain management.

Subsection 7(5) provides a table that specifies in column 1 an item of the general medical services table that shall have effect as if its reference to a medical service or item, as appropriate, that is specified in column 2 of the table, included as a reference to the health service or item that relates to the health service that is specified in column 3 of the table. This table specifies that:

- items 42719, 42731, 42789, 45051 and 45572 cannot be co-claimed with item 42705;
- item 45051 cannot be co-claimed with item 42505; and
- Item 51315 can be claimed for assistance at an operation when a cataract and intraocular lens surgery (42698, 42701, 42702, 42704 or 42707) is performed in association with other ophthalmology services specified in items 42551 to 42569, 42653, 42656, 42725, 42746, 42749, 42752, 42776 or 42779. Item 42705 will be treated as if it was a specified cataract and intraocular lens surgery item.

Schedule 1 – Relevant services

The Schedule specifies the services and the associated fees for items 42705 and 42505.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018

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 purpose of the *Health Insurance (Section 3C General Medical Services – MIGS Stent Implantation) Determination 2018* (the Determination) is to permanently list item 42705, which is for micro-invasive glaucoma surgery (MIGS) stent implantation for open-angle glaucoma, with a higher fee, and to list a new item 42505 for the removal of MIGS devices. The Government announced this service in the 2018-19 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule – New and Amended Listings* measure.

Human rights implications

This 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

This Determination will advance rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective, safe and cost-effective.

Conclusion

This Determination is compatible with human rights as it has a positive effect on the right to health and the right to social security.

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