

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019*

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

The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2018*.

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 – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019* (the Determination) is to simplify and improve patient rebates for general practice attendances at residential aged care facilities.

The Determination amends the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (Principal OMP Determination) from 1 March 2019 to increase the Medicare benefit for the most commonly claimed general practice services performed by other medical practitioners (OMPs) in regional residential aged care facilities. The changes also simplify the item structure for doctors and patients.

Currently, the Medicare benefit is calculated from the type of service provided and the number of patients seen at the residential aged care facility. This complex arrangement, known as a ‘ready reckoner’, requires doctors and patients to calculate the total benefit based on a nominal amount plus a modifier. The modifier must be divided or multiplied (6 or fewer patients is divided, 7 or more patients is multiplied) by the number of patients seen by the doctor at the residential aged care facility.

This arrangement will be replaced with a flag fall amount plus the standard attendance structure for each patient attendance at the residential aged care facility. This Determination will implement the arrangements for services performed by OMPs in regional areas (Modified Monash areas 2 to 7). The arrangements for vocationally registered general practitioners, and OMPs working in metropolitan areas, will be

implemented by the *Health Insurance Legislation Amendment (Services for Patients in Residential Aged Care Facilities) Regulations 2019*.

The Government announced this change as part of the *Guaranteeing Medicare — strengthening primary care* package in the 2018-19 Mid-Year Economic and Fiscal Outlook.

### **Consultation**

The Medicare Benefits Schedule (MBS) Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The Taskforce considered general practice items for services provided at residential aged care facilities in 2018. Its draft report and recommendations, which included a flag fall approach, was provided to general practice stakeholders for targeted consultation in 2018.

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

The Determination commences on 1 March 2019.

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 – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019***

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 March 2019.

Section 3 – Authority

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

Section 4 – Schedules

Section 4 provides that that each instrument that is specified in a Schedule to this instrument 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 (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018***

**Amendment 1 – Clause 1.1.1 of Schedule 1 (table items 2, 4, 6 and 8)**

Clause 1.1.1 of the Principal OMP Determination is the legal basis for applying the ready reckoner calculation. This calculation determines the total amount for a service based on the type of service provided and the number of patients seen at a residential aged care facility.

Amendment 1 repeals the old attendance items (183, 188, 202 and 212) from this clause.

**Amendment 2 – Division 1.2 of Schedule 1 (items 183, 188, 202 and 212)**

Amendment 2 repeals the old residential aged care facility attendance items for regional OMPs (183, 188, 202 and 212). These services will be replaced with the new attendance items (see amendment 3).

**Amendment 3 – After item 898, Division 1.12, of Schedule 1**

Amendment 3 inserts Division 1.13 which creates the new arrangements for general practice services performed by regional OMPs in residential aged care facilities.

Subclause 1.13.1 will increase the fee for the first patient attendance during the residential aged care facility visit by \$40. This amount is intended to reflect the costs doctors incur when providing professional services in residential aged care facilities. Subclause 1.13.1 only applies to the attendance for the first patient seen at the residential aged care facility.

Division 1.13 also creates the new attendance items for regional OMPs (90183, 90188, 90202 and 90212). These items have the same requirements as the deleted attendance items (see amendment 2), but have a nominal fee amount like other standard attendances. The new attendance items can be claimed for each patient attended during a residential aged care facility visit.

## 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 – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019***

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 – Other Medical Practitioner) (Services for Patients in Residential Aged Care Facilities) Amendment Determination 2019* (the Determination) is to implement the Government's response to recommendations from the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce) relating to general practice attendances at residential aged care facilities.

The Determination amends the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (Principal OMP Determination) to increase the MBS fees for the most commonly claimed general practice services performed by other medical practitioners (OMPs) in regional residential aged care facilities. The changes also simplify the item structure for doctors and patients.

The Government announced this change as part of the *Guaranteeing Medicare — strengthening primary care* package in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO).

#### **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

The Determination will advance rights to health and social security by increasing the patient subsidy (the Medicare benefit) for the most commonly claimed general practice services in regional residential aged care facilities. This investment will incentivise doctors to provide clinically effective medical services in residential aged care facilities.

### **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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