

EXPLANATORY STATEMENT

Issued by the Minister for Health and Aged Care

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021

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 (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. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*.

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA 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 Australian Government is committed to offering every person in Australia access to safe and effective COVID-19 vaccines at no cost.

On 25 February 2021, the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination) listed 16 new Medicare Benefits Schedule (MBS) items to support general practices to administer the COVID-19 vaccine.

General practices supplied with the COVID-19 vaccine are able to provide a service to assess if a person who is at least 18 years of age is suitable to receive the COVID-19 vaccine. The 16 MBS patient suitability assessment services, can be rendered by general practitioners (GPs) and other medical practitioners (OMPs), or by a person on behalf of the medical practitioners (such as a registered nurse or other health professional registered under the Health Practitioner Regulation National Law) if it is provided in accordance with acceptable clinical practice and under supervision of the medical practitioner.

For the 16 MBS suitability assessment services medical practitioners do not have to personally attend the service but they must be on-site, and must supervise the service in accordance with clinical standards and accept full responsibility for the service.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021* (the Amendment Determination) is to list two additional Medicare Benefit Schedule (MBS) items to support general practices to provide in-depth patient assessments for patients who are at least 50 years of age.

The two new MBS services are available if the GPs or OMPs personally attend to the patient for more than 10 minutes, to provide in-depth clinical advice on the individual risks and benefits associated with receiving a dose of the COVID-19 vaccine. The fees for these items are equivalent to the fees for a level B consultation undertaken by a GP or Other Medical Practitioner.

These services are provided in conjunction with a MBS assessment item in relation to the assessment for a COVID-19 vaccine (items 93624, 93625, 93626, 93627, 93634, 93635, 93636, 93637, 93644, 93645, 93646, 93647, 93653, 93654, 93655 and 93656).

Consultation

As part of its health care package to protect all Australians from COVID-19, the Australian Government is consulting broadly with the medical sector.

This legislative instrument is intended to minimise disruptions to patients' access to essential health care services by supporting general practices to provide in-depth patient assessments for patients who are at least 50 years of age and have concerns with receiving a dose of the COVID-19 vaccine.

Considering the nature of the instrument and due to the short timeframe in drafting this legislative instrument it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument.

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

The Amendment Determination commences on 18 June 2021.

The Amendment 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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 18 June 2021.

Section 3 – Authority

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

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this 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 Determination has effect according to its terms.

Schedule 1 – Amendments

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021 (the Principal Determination)

Item 1 – Section 7 (below the heading)

Item 1 repeals and replaces section 7 of the Principal Determination to exclude new items 10660 and 10661 from the section. Section 7 provides that the service can be rendered by a medical practitioner, or by the relevant health professional on behalf of a medical practitioner. A service under item 10660 and 10661 can only be provided if the GP or OMP personally attend to the patient.

Item 2 – schedule

Item 2 inserts two new items (10660 and 10661) after item 93656, which provides for an in-depth patient assessment, for a patient who has received a vaccine suitability assessment service in relation to a dose of the COVID-19 vaccine.

Item 10660 must be performed by a general practitioner and in conjunction with a patient COVID-19 suitability assessment item 93624, 93625, 93634, 93635, 93644, 93645, 93653 or 93654. This item will also only be available for a patient who is at least 50 years of age. This item must be bulk-billed.

Item 10661 must be performed by a medical practitioner (other than a general practitioner) and in conjunction with a patient COVID-19 suitability assessment item 93626, 93627, 93636, 93637, 93646, 93647, 93655 or 93656. This item will also only be available for a patient who is at least 50 years of age. This item must be bulk-billed.

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 – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021

This 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 Determination

The Australian Government is committed to offering every person in Australia access to safe and effective COVID-19 vaccines at no cost.

On 25 February 2021, the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021* (the Principal Determination) listed 16 new Medicare Benefits Schedule (MBS) items to support general practices to administer the COVID-19 vaccine.

General practices supplied with the COVID-19 vaccine are able to provide a service to assess if a person who is at least 18 years of age is suitable to receive the COVID-19 vaccine. The service can be rendered by general practitioners (GPs) and other medical practitioners (OMPs), or by a person on behalf of the medical practitioners (such as a registered nurse or other health professional registered under the Health Practitioner Regulation National Law) if it is provided in accordance with acceptable clinical practice and under supervision of the medical practitioner.

Medical practitioners do not have to personally attend the service but they must be on-site, and must supervise the service in accordance with clinical standards and accept full responsibility for the service.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Amendment (No. 2) Determination 2021* (the Amendment Determination) is to list two additional Medicare Benefit Schedule (MBS) items to support general practices to provide in-depth patient assessments for patients who is at least 50 years of age.

The two new MBS services are available if the GPs or OMPs personally attend to the patient for more than 10 minutes, to provide in-depth clinical advice on the individual risks and benefits associated with receiving a dose of the COVID-19 vaccine. The fees for these items are equivalent to the fees for a level B consultation undertaken by a GP or Other Medical Practitioner.

These services are provided in conjunction with a MBS suitability assessment item in relation to a COVID-19 vaccine (items 93624, 93625, 93626, 93627, 93634, 93635, 93636, 93637, 93644, 93645, 93646, 93647, 93653, 93654, 93655 and 93656).

Human rights implications

This instrument 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.

The right of equality and non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Analysis

This instrument advances the right to health, right to social security and right of equality and non-discrimination by providing additional MBS services to improve access to the COVID-19 vaccine suitability assessment for patients who are at least 50 years of age.

Conclusion

This instrument is compatible with human rights as it advances the right to health; the right to social security and the right to equality and non-discrimination.

Greg Hunt
Minister for Health and Aged Care