

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment 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 2021*.

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 purpose of the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment Determination 2021* (the Amendment Determination) is to amend six temporary allied health items (93518, 93519, 93520, 93571, 93572 and 93753) that are provided in a residential aged care facility to remove the restriction that the patient is required to have previously received five allied health services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

The temporary six allied health items commenced on 10 December 2020 as part of the Government's response to the Aged Care Royal Commission's recommendations on COVID-19. These items are listed in the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020* (the Principal Determination) and will cease on 30 June 2022.

Items 93518, 93519 and 93520 are for a chronic disease management physical therapy service that is provided to care recipients in residential aged care facilities. Items 93571, 93572 and 93753 are for a chronic disease management physical therapy service that is provided to care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent.

A service under these items is to be at least 20 minutes in duration, and includes a number of requirements, including that the patient has previously received five allied

health services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

The Amendment Determination will remove the restriction that the patient is required to have previously received any services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year. This restriction provides an unintentional barrier to utilising the additional physical therapy items, as there are a number of different types of allied health professionals who can utilise the first five items in Groups M29 and M3, and these sessions may be distributed throughout the calendar year. This is an administrative change which will reflect the original policy intent of these items.

### **Consultation**

The Royal Commission into Aged Care Quality and Safety recommended the immediate creation of items to facilitate access to additional health support for residents of aged care. To inform this policy, the Government received stakeholder advice supporting the expansion of health services, including for allied health, for care recipients in a residential aged care facility.

Consultation on the Amendment Determination was not undertaken as the changes reflect the original policy intent of the allied health items and are administrative in nature. The Department of Health received feedback from allied health stakeholders and Primary Health Networks confirming that the restriction was an unintentional barrier to utilising the items.

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

The Amendment Determination commences on 15 September 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 – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment Determination 2021***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences 15 September 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 – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020 (the Principal Determination)***

**Amendments 1 to 6** amends the item descriptor of items 93518, 93519, 93520, 93571, 93572 and 93753 to remove the restriction that the patient is required to have previously received a service under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

## 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 – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment 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 purpose of the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Amendment Determination 2021* (the Amendment Determination) is to amend six temporary allied health items (93518, 93519, 93520, 93571, 93572 and 93753) that are provided in a residential aged care facility to remove the restriction that the patient is required to have previously received five allied health services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

The temporary six allied health items commenced on 10 December 2020 as part of the Government's response to the Aged Care Royal Commission's recommendations on COVID-19. These items are listed in the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020* (the Principal Determination) and will cease on 30 June 2022.

Items 93518, 93519 and 93520 are for a chronic disease management physical therapy service that is provided to care recipients in residential aged care facilities. Items 93571, 93572 and 93753 are for a chronic disease management physical therapy service that is provided to care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent.

A service under these items is to be at least 20 minutes in duration, and includes a number of requirements, including that the patient has previously received five allied health services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

The Amendment Determination will remove the restriction that the patient is required to have previously received any services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year. This restriction provides an unintentional barrier to utilising the additional physical therapy items, as there are a number of different types of allied health professionals who can utilise the first five items in Groups M29 and M3, and these sessions may be distributed throughout the calendar year. This is an administrative change which will reflect the original policy intent of these items.

### 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.

#### Analysis

This instrument will advance the rights to health and social security by providing greater access to allied health services for patients in residential aged care facilities by removing the restriction that the patient is required to have previously received five allied health services under an item in subgroup 1 or 3 of Group M29 or Group M3 in that calendar year.

#### **Conclusion**

This instrument is compatible with human rights as it advances the right to health and the right to social security.

**Travis Haslam**  
**Acting First Assistant Secretary**  
**Medical Benefits Division**  
**Health Resourcing Group**  
**Department of Health**