EXPLANATORY STATEMENT

*Health Insurance Act 1973*

*Health Insurance (Section 3C – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) 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 AIAprovides 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**

Since 1 November 2021, Medicare benefits have been available to encourage allied health practitioners to participate in case conferences to manage the care of certain patients. This includes three items for patients with a chronic or terminal disease (‘chronic disease management case conference service’).

The purpose of the *Health Insurance (Section 3C – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) Determination 2021* (the Determination)is to make a consequential change by introducing an exceptional circumstances provision for patients who are accessing these services (items 10955, 10957 and 10959).

This will exempt patients from the normal rule that a chronic disease management case conference service can only be claimed once in a three month period. A patient will satisfy the condition of an exceptional circumstance if there has been significant change in their clinical condition or care circumstances that necessitates the performance of the service.

**Consultation**

No consultation was undertaken on the consequential change which aligns with the policy intent of the chronic disease management case conference service and prevents a potential patient access issue.

Details of the Determination are set out in the Attachment.

The Determination commences on 8 November 2021.

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 – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) Determination 2021*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) Determination 2021* (the Determination).

Section 2 – Commencement

Section 2 provides that the Determination commences on 8 November 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 – exceptional circumstances provision

The Schedule will amend the *Health Insurance (Allied Health Services) Determination 2014* (Principal Allied Health Determination).

Subsection 15(3) provides that a particular chronic disease management case conference service cannot be performed if the patient has received a chronic disease management service within the past 3 months. **Amendment item 1** will amend this subsection to qualify this general rule is subject to a carve out due to exceptional circumstances.

**Amendment item 2** inserts subsection 15(3A) which specifies the meaning of exceptional circumstances for the purpose of subsection (3). Exceptional circumstances mean there has been a significant change in the patient’s clinical condition or care circumstances that necessitates the performance of the service. This is the same requirement as the exceptional circumstances provision which applies to GP management plans, team care arrangements and multidisciplinary care plan services performed by GPs in the general medical services table.

**Statement of Compatibility with Human Rights**

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

*Health Insurance (Section 3C – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) 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**

Since 1 November 2021, Medicare benefits have been available to encourage allied health practitioners to participate in case conferences to manage the care of certain patients. This includes three items for patients with a chronic or terminal disease (‘chronic disease management case conference service’).

The purpose of the *Health Insurance (Section 3C – Allied Health Services) Amendment (Case Conference Exceptional Circumstance) Determination 2021* (the Determination)is to make a consequential change by introducing an exceptional circumstances provision for patients who are accessing these services (items 10955, 10957 and 10959).

This will exempt patients from the normal rule that a chronic disease management case conference service can only be claimed once in a three month period. A patient will satisfy the condition of an exceptional circumstance if there has been significant change in their clinical condition or care circumstances that necessitates the performance of the service.

**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 rights to health and social security and the right of equality and non-discrimination as it creates a new exceptional circumstances pathway from a frequency limitation on the grounds a patient has had a significant change in their clinical condition or care circumstances.

**Conclusion**

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

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