

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (General Practice COVID-19 Management Support Service) 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**

On 29 October 2021, the Minister for Health, the Hon. Greg Hunt MP, announced a \$180 million package to assist the primary care health sector to support cases of COVID-19 at home and in the community.

The purpose of the *Health Insurance (General Practice COVID-19 Management Support Service) Determination 2021* (the Determination) is to list a temporary attendance service for patients who have been recently diagnosed with COVID-19 by a laboratory diagnostic test. Patients diagnosed with a point of care test, such as a rapid antigen test, will not be eligible until they have the result confirmed by a laboratory test.

The service is expected to be performed by GPs, but can be performed by any medical practitioner who is not a specialist or consultant physician. The service can be performed in conjunction with most other general practice attendance services if the requirements of that service are met.

The service will cease on 30 June 2022.

### **Consultation**

The Royal Australian College of General Practitioners was consulted in relation to the primary care support package.

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 (General Practice COVID-19 Management Support Service) Determination 2021***Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (General Practice COVID-19 Management Support Service) 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* (the Act).

Section 4 – Cessation

Section 4 provides that the Determination ceases on 30 June 2022, unless earlier revoked.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

Section 6 – Treatment of relevant service

Section 6 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the Act 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 general medical services table for the service.

Section 7 – Application of COVID-19 management support service

Section 7 of the Determination requires that the COVID-19 management service does not apply unless the rendering medical practitioner performs the service in person.

Section 8 – Limitation of COVID-19 management support service

Subsection 8(1) requires that the COVID-19 management service does not apply if the patient is an “admitted patient”, as defined in section 5.

Subsection 8(2) requires that the COVID-19 management service does not apply if it is rendered in association with any of the following services:

- (a) acupuncture;
- (b) the mirror of GP services to which paragraphs (c) to (e) apply, where performed by medical practitioners without vocational training;

- (c) health assessment service;
- (d) chronic disease management or case conference services; or
- (e) mental health services.

Other than those services, the COVID-19 management service can be performed in conjunction with another attendance service on the same occasion if the requirements of that attendance are met.

#### Schedule – relevant service

The Schedule lists the new COVID-19 management attendance service.

## Statement of Compatibility with Human Rights

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

*Health Insurance (General Practice COVID-19 Management Support Service)  
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

On 29 October 2021, the Minister for Health, the Hon. Greg Hunt MP, announced a \$180 million package to assist the primary care health sector to support cases of COVID-19 at home and in the community.

The purpose of the *Health Insurance (General Practice COVID-19 Management Support Service) Determination 2021* (the Determination) is to list a temporary attendance service for patients who have been recently diagnosed with COVID-19 by a laboratory diagnostic test. Patients diagnosed with a point of care test, such as a rapid antigen test, will not be eligible until they have the result confirmed by a laboratory test.

The service is expected to be performed by GPs, but can be performed by any medical practitioner who is not a specialist or consultant physician. The service can be performed in conjunction with most other general practice attendance services if the requirements of that service are met.

The service will cease on 30 June 2022.

### 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 by encouraging GPs to provide care to patients diagnosed with COVID-19 where it is safe and appropriate to do so. Physical assessment of a patient to determine the severity of disease soon after confirmation of the infection is consistent with current clinical guidelines and may help to reduce the demand on hospitals during the COVID-19 pandemic. Treating a patient in the community does not prevent that patient from receiving hospital treatment if their symptoms worsen.

**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.

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