EXPLANATORY STATEMENT

*Health Insurance Act 1973*

*Health Insurance (Section 3C General Medical Services - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022*

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**

In the 2021-22 Mid-Year Economic and Fiscal Outlook, the Government announced it would amend the Medicare Benefits Schedule (MBS) to list services for remote programming of auditory implants and sound processors. This was announced under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

The *Health Insurance (Section 3C General Medical Services - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022* (the Determination)will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* to implement this policy.

Item 11342 and 11345 will be listed to provide a service by telehealth and phone means respectively for a service rendered by, or on behalf of a medical practitioner. Item 82302 and 82304 will be listed to provide a service by telehealth and phone means respectively for a service rendered by an audiologist. This is an expansion of service options for auditory implant programming improving access and choice, particularly for rural and remote patients. The new telehealth and phone audiologist items do not require a request. Patients will benefit from more direct access to a clinically relevant service.

**Consultation**

This change arises from a recommendation of the MBS Review Taskforce Report on Otolaryngology, Head and Neck surgery MBS items. As part of the MBS Review Taskforce process, consultation was undertaken with key stakeholders, including clinical experts and providers, and consumer health representatives. This change was also considered by the Medical Services Advisory Committee (MSAC) Executive who advised that a full health technology assessment of the items was not required. Additional targeted consultation on the four new MBS items was undertaken with otolaryngology, head and neck surgery specialists, audiologists and other key stakeholders.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 March 2022.

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 - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical Services - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022* (the Determination)*.*

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 March 2022.

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 – 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

Schedule 1 makes amendments to the *Health Insurance (Section 3C General Medical Services –Telehealth and Telephone Attendances) Determination 2021* (Telehealth Determination).

Amendment item 1 will insert new Schedule 4A after Schedule 4 of the Telehealth Determination.

Subclause 4A.1.1(1) defines the meaning of telehealth which has application to items 11342 and 82302. This term has the same meaning as the definition of ‘telehealth attendance’ in section 5 of the Telehealth Determination, except it is not limited to services relating to an attendance.

Subclause 4A.1.1(2) defines the meaning of phone which has application to items 11345 and 82304. This term has the same meaning as the definition of ‘phone attendance’ in section 5 of the Telehealth Determination, except it is not limited to services relating to an attendance.

Subclause 4A.1.1(3) provides that the medical practitioner items 11342 and 11345 can be rendered by the medical practitioner or on behalf of a medical practitioner. If it is rendered on behalf of the medical practitioner, the service must be rendered by a person who is not a medical practitioner and the service must be supervised, consistent with the requirements of subsection 3(17) of the Act

Subclause 4A.1.2 provides that a Medicare benefit can only be paid for audiology items 82302 and 82304 if a private health insurance benefit has not been claimed for the service.

Items 11342 (telehealth) and 11345 (phone) provide remote programming services for an auditory implant or the sound processor of an auditory implant, performed by or on behalf of a medical practitioner. Patients can also continue to access face-to-face programming services through item 11300, which is prescribed in the general medical services table. Items 11342 and 11345 allow patients to access up to four services to which items 11300, 11342 and 11345 apply on the same day.

Items 82302 (telehealth) and 82304 (phone) provide remote programming services for an auditory implant or the sound processor of an auditory implant, performed by an ‘eligible audiologist’ as defined in section 5 of the Telehealth Determination. Patients can also continue to access face-to-face programming services through item 82300, which is prescribed in the *Health Insurance (Allied Health Services) Determination 2014*. Items 82302 and 82304 allow patients to access up to four services to which items 82300, 82302 and 82304 apply on the same day.

**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 - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022*

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**

In the 2021-22 Mid-Year Economic and Fiscal Outlook, the Government announced it would amend the Medicare Benefits Schedule to list services for remote programming of auditory implants and sound processors. This was announced under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

The *Health Insurance (Section 3C General Medical Services - Telehealth and Telephone Attendances) Amendment (Remote Audiometry Programming) Determination 2022* (the Determination)will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* to implement this policy.

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**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 by providing patients with access to four new services for remote programming of auditory implants and sound processors.

**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.

**Nigel Murray**

**Assistant Secretary**

**MBS Policy and Specialist Services Branch**

**Medical Benefits Division**

**Health Resourcing Group**

**Department of Health**