

EXPLANATORY STATEMENT

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. 1) Determination 2023.

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 GMST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST.

The GMST 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 Australian Government is committed to offering Australians access to safe and effective COVID-19 vaccines and their administration by medical practitioners. The Australian Government has launched the National COVID-19 Health Management Plan 2023 (the National Plan). The National Plan will ensure Australia's health system has the capacity and capability to respond to future waves and variants of COVID-19. The National Plan promotes uptake of vaccination and treatments and slowing the spread of transmission.

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. 1) Determination 2023* (the Amendment Determination) is to amend 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) to streamline and simplify the Medicare Benefits Schedule items used to assess a patient's suitability for a COVID-19 vaccination. These suitability assessments allow people access to medical information to help people gain an assessment of their suitability for administration of COVID-19 vaccines to mitigate against infection and transmission of the disease. The Amendment Determination will benefit people and medical practitioners by simplifying billing arrangements for COVID-19 vaccination suitability assessments as the disease becomes endemic or 'normal' within Australian society.

The Amendment Determination repeals the definitions for a primary dose and a booster dose as the Government moves into a new phase of managing the COVID-19 pandemic to normalise patient's suitability assessments for COVID-19 vaccinations.

The Amendment Determination will amend the additional fee in Section 9, associated with a General Practitioner (GP) or Other Medical Practitioner (OMP) attending a residential aged care facility or a person's place or residence to provide a service listed in the Schedule.

The Amendment Determination repeals nine items for assessing a patient's suitability for a first dose of a COVID-19 vaccine and amends ten items for the purpose of assessing patient suitability to receive a COVID-19 vaccine regardless of the dose that a patient is being assessed to receive. The Amendment Determination repeals the item providing an additional benefit where a service is a booster dose and the benefits for the amended suitability assessment items have been increased. These services are available to a person 'eligible for a COVID-19 vaccine' if the service is 'bulk-billed' and any clinically relevant patient history and limited examination and management have been undertaken.

Consultation

The Government launched the National Plan on 12 December 2022. The legislative instrument simplifies the items available for COVID-19 vaccine suitability assessment services.

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 1 February 2023.

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. 1) Determination 2023

Section 1 – Name

This section provides for the Amendment 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. 1) Determination 2023*.

Section 2 – Commencement

This section provides for Schedule 1 of the Amendment Determination to commence on 1 February 2023.

Section 3 – Authority

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

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument 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 and Item 2 amends the Principal Determination to repeal the definitions for a primary dose and a booster dose as they are no longer required as the suitability assessment services for assessing a patient's suitability for a COVID-19 vaccine will be the same services regardless of the number of vaccinations a patient has received.

Item 3 amends Section 9 of the Principal Determination to increase the additional MBS fee to include the amount of \$139.00 in addition to the amount listed for the MBS item in the Schedule. The increased fee applies when a GP or OMP attends a residential aged care facility, residential disability facility setting or the person's place of residence, on each occasion that the GP or OMP attends the facility or residence.

The increased fee only applies to:

- a service provided at a residential aged care facility if the patient is a care recipient in the facility or a staff member of the approved provider operating

the facility. “Staff member” of the approved provider has the same meaning as in Schedule 1 to the *Aged Care Act 1997*.

- a service provided at a person’s place of residence if the patient is unable to attend the practice location because of the patient’s medical condition, disability, dementia, or frailty.
- a service provided at a residential disability facility setting if the patient is a recipient in the facility or is employed, hired, retained, or contracted (whether directly or through an employment or recruiting agency) to provide care and other care related services in the facility.

Item 4 repeals items in Subgroups 1, 2 and 7 as they will no longer be required and will amend items in Subgroups 3 and 4 to remove the requirement for the items to be for assessing a patient suitability for a second or subsequent dose of a COVID-19 vaccine. The services listed in Subgroups 5 will be amended to remove the services being repealed from the item descriptors and Subgroup 6 will be reinstated without any amendments to the services.

Subgroup 3 lists four items (93644, 93645, 93646 and 93647) for the purpose of assessing a patient’s suitability for a COVID-19 vaccine assessment service. Items 93644 and 93645 are for services performed by, or on behalf of, a general practitioner. Item 93644 is for services performed in metropolitan areas (Modified Monash 1) and 93645 is for services performed in regional and remote areas (Modified Monash 2 to 7). Items 93647 and 93648 are for services performed by, or on behalf of, a medical practitioner (other than a general practitioner). Item 93646 is for services performed in metropolitan areas (Modified Monash 1) and 93647 is for services performed in regional and remote areas (Modified Monash 2 to 7).

Subgroup 4 lists four items (93653, 93654, 93655 and 93656) for the purpose of assessing a patient’s suitability for a COVID-19 vaccine assessment service in after-hours situations. These items must be performed in the after-hours period, as defined in subsection 4(1). Items 93653 and 93654 are for services performed by, or on behalf of, a general practitioner. Item 93653 is for services performed in metropolitan areas (Modified Monash 1) and 93654 is for services performed in regional and remote areas (Modified Monash 2 to 7). Items 93655 and 93656 are for services performed by, or on behalf of, a medical practitioner (other than a general practitioner). Item 93655 is for services accessed performed in metropolitan areas (Modified Monash 1) and 93656 is for services accessed and performed in regional and remote areas (Modified Monash 2 to 7).

Subgroup 5 lists two items (10660 and 10661) for the purpose of assessing a patient’s suitability for a COVID-19 vaccine that requires a more in-depth patient assessment by a medical practitioner for a patient who has received a vaccine suitability assessment service listed in Subgroup 3 or 4).

Subgroup 6 list two items (93660 and 93661) for the purpose of allowing for a vaccine suitability assessment service to be performed by a relevant health professional on behalf of a medical practitioner outside of general practice consulting rooms, where the medical practitioner is not in attendance at the location where the service is provided.

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. 1) Determination 2023

This Amendment Determination 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 Disallowable Legislative Instrument

The Australian Government is committed to offering Australians access to safe and effective COVID-19 vaccines and their administration by medical practitioners. The Australian Government has launched the National COVID-19 Health Management Plan 2023 (the National Plan). The National Plan will ensure Australia's health system has the capacity and capability to respond to future waves and variants of COVID-19. The National Plan promotes uptake of vaccination and treatments and slowing the spread of transmission.

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. 1) Determination 2023* (the Amendment Determination) is to amend 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) to streamline and simplify the Medicare Benefits Schedule items used to assess a patient's suitability for a COVID-19 vaccination. These suitability assessments allow people access to medical information to help people gain an assessment of their suitability for administration of COVID-19 vaccines to mitigate against infection and transmission of the disease. The Amendment Determination will benefit people and medical practitioners by simplifying billing arrangements for COVID-19 vaccination suitability assessments as the disease becomes endemic or 'normal' within Australian society.

The Amendment Determination repeals the definitions for a primary dose and a booster dose as the Government moves into a new phase of managing the COVID-19 pandemic to normalise patient's suitability assessments for COVID-19 vaccinations.

The Amendment Determination will amend the additional fee in Section 9, associated with a General Practitioner (GP) or Other Medical Practitioner (OMP) attending a residential aged care facility or a person's place or residence to provide a service listed in the Schedule.

The Amendment Determination repeals nine items for assessing a patient's suitability for a first dose of a COVID-19 vaccine and amends ten items for the purpose of assessing patient suitability to receive a COVID-19 vaccine regardless of the dose that a patient is being assessed to receive. The Amendment Determination repeals the item providing an additional benefit where a service is a booster dose and the benefits for the amended suitability assessment items have been increased. These services are

available to a person ‘eligible for a COVID-19 vaccine’ if the service is ‘bulk-billed’ and any clinically relevant patient history and limited examination and management have been undertaken.

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*’ considers 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 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

The Government has launched the National COVID-19 Health Management Plan 2023 (National Plan). The National Plan provides clear guidance to the community and health care providers on how the Australian Government will play its part in managing COVID-19 into the future.

The changes in the Amendment Determination reflect the National Plan and ensure Australia's health system has the capacity and capability to respond to future waves and variants of COVID-19 and promotes uptake of vaccination and treatments and slowing the spread of transmission.

The changes in the Amendment Determination maintain the rights to health and social security and the rights of equality and non-discrimination by ensuring access to publicly subsidised medical services are clinically necessary and cost-effective as intended.

Conclusion

This instrument is compatible with human rights as it maintains 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
Department of Health and Aged Care