EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019

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The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and remade each year. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2019*.

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019* (the Determination) is to list new comprehensive treatment and management services for patients with an eating disorder from 1 November 2019.

The Determination will list 30 new items to provide Medicare benefits to subsidise access to evidence-based services for patients with anorexia nervosa and other eligible eating disorders, including:

- Services to develop a comprehensive and coordinated treatment plan (an 'eating disorder treatment and management plan') to manage a patient's care for 12 months, including access to allied health mental health and dietetic services. The eating disorder treatment and management plan can be provided by medical practitioners working in general practice, psychiatry and paediatrics.
- Services to review the efficacy of the patient's eating disorder treatment and management plan. This includes modifying the patient's plan, where appropriate, to improve patient outcomes. The review services can be provided by medical practitioners working in general practice, psychiatry and paediatrics.
- Psychological treatment services provided by medical practitioners working in general practice with appropriate mental health skills training.

The Determination is part of a package of changes which will provide patients with an eating disorder treatment and management plan with access to:

- up to 40 psychological treatment services in a 12 month period from the date of the eating disorder treatment and management plan, including services provided by medical practitioners working in general practice with appropriate mental health skills training and allied health mental health services; and
- up to 20 allied health dietetic services in a 12 month period from the date of the eating disorder treatment and management plan.

The *Health Insurance (Allied Health Services) Determination 2014* will be amended by the

Health Insurance (Allied Health Services) Amendment (Eating Disorders) Determination 2019 to list the allied health component of the eating disorder package from 1 November 2019.

Medicare benefits for eating disorders services was recommended by the independent clinician-led Medicare Benefits Schedule (MBS) Review Taskforce. The Government agreed to the MBS Review Taskforce recommendation in the 2018-19 Mid-Year Economic and Fiscal Outlook under the *Guaranteeing Medicare – strengthening primary care* measure.

Consultation

Consultation was undertaken on the eating disorder items as part of the MBS Review Taskforce process. The MBS Review Taskforce establishes expert committees and working groups focusing on specific areas of the MBS to review how items on the MBS can be better aligned with contemporary clinical evidence and practice, and improve health outcomes for patients. The Eating Disorders Working Group was established in response to a request from the Minister of Health for the MBS Review Taskforce to investigate Medicare funding for the treatment of eating disorders. The report from the Eating Disorders Working Group was released for public consultation to inform the final MBS Review Taskforce report and recommendation to Government.

The Department established an Implementation Liaison Group (ILG) of expert medical, allied health, consumer and academic organisations with expertise in eating disorder treatment. The ILG was established to inform development of the new eating disorder services recommended by the MBS Taskforce and to represent the views of health professionals who will be providing the new services.

The Department has also consulted with the Royal Australian College of General Practitioners, the Australian Society of Psychologists, the InsideOut Institute and the Butterfly Foundation.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 November 2019.

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 – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*

Section 1 – Name

Section 1 provides that the instrument is the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 November 2019.

Section 3 – Authority

Section 3 provides that the instrument is made under section 3C of the *Health Insurance Act 1973* (the Act).

Section 4 – Definition

Section 4 provides a list of definitions for terms used in the instrument.

An 'eating disorder examination questionnaire' is defined to be the 17th edition of the *Eating Disorder Examination* as developed by the Centre for Research on Eating Disorders at Oxford University (Fairburn et al) as at 1 November 2019. Details of the relevant website are provided in a note to this definition.

An 'eating disorder psychological treatment service' means certain mental health treatment services, as specified in the definition, and which are provided by an allied health professional or a medical practitioner in general practice with appropriate mental health training. These treatment services include Medicare mental health treatment services currently provided to patients under the 'Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS ('Better Access') initiative, and from 1 November 2019, will include mental health services provided to patients with an eligible eating disorder. This definition is required to prevent a patient from having any more than 40 eating disorder psychological treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided (refer to section [11]).

'Eligible patient' defines the group of patients who can access the new eating disorder services. There are two cohorts of eligible patients. The first cohort are patients who have been clinically diagnosed as having anorexia nervosa. The second cohort are patients who have been clinically diagnosed as having an eating disorder prescribed in paragraph (b) and who meet the defined 'eligibility criteria'. This will target the services to patients with eating disorders who have complex needs and are assessed as being at high-risk of repeat hospitalisation and serious medical and psychological complications. The MBS Review Taskforce identified these patients as the most suitable for intervention due to the risk factors and the likelihood that they have not responded to treatment at lower levels of intensity, such as Better Access mental health services

under Medicare.

Section 5 – Treatment of relevant services

Section 5 provides that a clinically relevant service provided in accordance with the instrument shall be treated, for relevant provisions of the *Health Insurance Act 1973* 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 (the Table) for the service.

Section 6 – Application of general provisions of the general medical services table

Subsection 6(1) provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.1 of the Table. Clause 1.2.1 of the Table provides that a service does not apply to a service provided in contravention of a law of the Commonwealth, a State or Territory.

Subsection 6(2) provides that items 90260, 90261, 90262, 90263, 90266, 90267, 90268 and 90269 will be treated as if they were specified in clause 1.2.2 of the Table. Clause 1.2.2 of the Table provides that a specified service does not apply if the patient does not have a referral within the period of validity.

Subsection 6(3) provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.4 of the Table. Clause 1.2.4 of the Table specifies requirements of a professional attendance service including what types of professional attendance are not included.

Subsection 6(4) provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.5 of the Table. Clause 1.2.5 of the Table specifies attendances included as a personal attendance by a medical practitioner. Clause 1.2.5 also provides that the item applies to a service provided in the course of a personal attendance by a single medical practitioner on a single patient on a single occasion.

Subsection 6(5) provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.6 of the Table. Clause 1.2.6 of the Table specifies attendances included as a personal attendance by a medical practitioner.

Subsection 6(6) provides that an item in Schedule 1 will be treated as if it was specified in clauses 1.2.7, 1.2.8 and 1.2.9 of the Table. These clauses in the Table provide a list of services which cannot be provided or rendered as part of a Medicare-eligible service at the same time as certain services or in certain circumstances.

Section 7 – General application provisions

Section 7 provides general rules which apply to items in the Determination.

Subsection 7(1) provides that an item in Schedule 1 does not apply if the patient is an admitted patient in hospital.

Subsection 7(2) provides that items for the development and review of an eating disorder management plan, performed by a medical practitioner working in general practice, cannot be performed in association with a GP mental health consultation service.

Subsection 7(3) provides that an eating disorder treatment and management plan expires after 12 months. Patients requiring further treatment will need a new eating disorder treatment and management plan to provide a comprehensive and coordinated treatment plan for the next 12 months.

Subsection 7(4) requires that a patient cannot have more than one eating disorder treatment and management plan in a 12 month period. This applies regardless of who rendered the eating disorder treatment and management plan, as the 12 month period commences from the provision of any of the services performed by medical practitioners working in general practice (items in Subgroup 1) and the services performed by consultant physicians practising in the speciality of psychiatry or paediatrics (items in Subgroup 2).

Section 8 – Application of items in Subgroup 1 of A36

Section 8 provides rules which apply to the eating disorder treatment and management plan items provided by medical practitioners working in general practice.

Paragraph 8(1)(a) requires that an item in Subgroup 1 cannot be performed in association with a case conference service performed by a GP (items 735 to 758 in the Table). Paragraph 8(1)(b) requires that an item in Subgroup 1 cannot be performed in association with a case conference service performed by an 'other medical practitioner' (items 235 to 244 in the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*).

Subsection 8(2) provides that items 90252, 90253, 90256 and 90257 apply only if the medical practitioner who renders the service has completed mental health skills training accredited by the General Practice Mental Health Standards Collaboration. These items are paid at a higher rate than the items rendered by medical practitioners without the training (90250, 90251, 90254 and 90255).

Section 9 – Application of items in Subgroup 2 of A36

Section 9 provides rules which apply to the eating disorder treatment and management plan items provided by consultant physicians practising in the speciality of psychiatry or paediatrics.

Subsection 9(1) provides that a paediatrician cannot perform an eating disorder treatment and management plan service in association with the general consultant physician attendance items in the Table (items 110, 116, 119, 132 or 133).

Subsections 9(2) and (3) provide the requirements for video conference attendance items 90262 and 90263, consistent with other video conference services listed in the Table. Generally, services provided under these items apply if the patient is located within a 'telehealth eligible area' per the meaning in the Table. At the time of the video conferencing attendance, both the patient and the medical practitioner will need to be located at least 15km by road from each other. The patient or the medical practitioner cannot travel to a place to satisfy this distance requirement. Services provided under items 90262 and 90263 may also apply if the patient is a care recipient in a residential care service, or if the person is a patient of an Aboriginal Medical Service or Aboriginal Community Controlled Health Service which render Medicare-eligible services.

Section 10 – Application of items in Subgroup 3 of A36

Section 10 provides rules which apply to the review of eating disorder treatment and management plans items provided by medical practitioners working in general practice and consultant physicians practising in the speciality of psychiatry or paediatrics.

Subsection 10(1) defines an 'associated medical practitioner working in general practice' for the purpose of the two review items performed by GPs or other medical practitioners (90264 and 90265). The purpose of this term is to allow a medical practitioner in general practice to review an eating disorder treatment and management plan performed by another medical practitioner in general practice upon the patient's request (or at the request of the patient's guardian).

Subsections 10(2) and (3) provide the requirements for video conference attendance items 90268 and 90269, consistent with other video conference services listed in the Table. Generally, services provided under these items apply if the patient is located within a 'telehealth eligible area' per the meaning in the Table. At the time of the video conferencing attendance, both the patient and the medical practitioner will need to be located at least 15km by road from each other. The patient or the medical practitioner cannot travel to a place to satisfy this distance requirement. Services provided under items 90268 and 90269 may also apply if the patient is a care recipient in a residential care service, or if the person is a patient of an Aboriginal Medical Service or Aboriginal Community Controlled Health Service which render Medicare-eligible services.

Section 11 – Application of items in Subgroup 4 of A36

Section 11 provides rules which apply to the eating disorders psychological treatment services performed by medical practitioners working in general practice with appropriate mental health training.

Subsection 11(1) provides a list of evidence-based psychological therapies which must be used as part of an eating disorder treatment service for a Medicare benefit to be paid.

Subsection 11(2) provides that an item in Subgroup 4 only applies if the medical practitioner is registered with the Chief Executive Medicare to render the service. Section 33 of the *Human Services (Medicare) Regulations 2017* prescribes it is a function of the Chief Executive Medicare to establish and maintain a Register of medical practitioners who may provide focused psychological strategies under the initiative known as Better Access. Medical practitioners who meet the training and skills requirements as determined by the General Practice Mental Health Standards Collaboration, and are entered on the Register as being eligible to render a focussed psychological strategy service, can render an eating disorders psychological treatment service in Subgroup 4 of this Determination.

Subsections 11(3) and (4) provide conditions on when, and how many, 'eating disorder psychological treatment service(s)' a patient may have (refer to section [4] for the definition of the term).

Subsection 11(3) creates a review process to measure the effectiveness of the eating disorder psychological treatment services and the appropriateness of the intensity of treatment. The review services, which are defined under subsection 11(8) to be a service performed under an item in Subgroup 3 of this Determination, will involve a comprehensive assessment of the effectiveness of the patient's treatment. To access a higher intensity of treatments (more services in a 12 month period), the rendering medical practitioner must determine that the patient needs

additional treatment services and make the recommendation in writing. The 12 month period commences from the provision of an eating disorder treatment and management plan.

Paragraph 11(3)(a) provides that a patient must have a review of the eating disorder treatment and management plan before they can access more than 10 treatment services in a 12 month period. While it is expected that the review will be performed by the medical practitioner coordinating the patient's care (usually their GP), it can be performed by an associated medical practitioner, paediatrician or psychiatrist.

Paragraph 11(3)(b) provides that a patient must have two subsequent reviews (the 'second' and 'third' review) before they can access more than 20 treatment services. These reviews are required to determine that the patient has not responded to treatment at the lower intensity levels. The second review must be performed by a medical practitioner in general practice, and the third review must be performed by a paediatrician or psychiatrist. Should both doctors recommend the patient requires more intensive treatment, the patient would be able to access more than 20 treatment services in a 12 month period.

Paragraph 11(3)(c) provides that a patient must have a further review (the 'fourth' review) of the eating disorder treatment and management plan before they can access more than 30 treatment services in a 12 month period. While it is expected that the review will be performed by the medical practitioner coordinating the patient's care (usually their GP), it can be performed by an associated medical practitioner, paediatrician or psychiatrist.

Subsection 11(4) provides that a patient can have no more than 40 eating disorder psychological treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided.

Subsection 11(5) provides that an item in Subgroup 4 does not apply if more than 12 months have passed since the patient was provided an eating disorder treatment and management plan. Patients requiring further treatment will need a new eating disorder treatment and management plan to provide a comprehensive and coordinated treatment plan for the next 12 month.

Subsections 11(6) and (7) provide the requirements for video conference attendance items 90279, 90280, 90281 and 90282. These items use a different definition of 'telehealth eligible area' than the paediatrician or psychiatrist video conferencing items in subgroups 2 and 3 of this instrument. For the purpose of items 90279, 90280, 90281 and 90282, a 'telehealth eligible' area is an area that is in Modified Monash areas 4 to 7 as defined in the Table. This is consistent with the existing video conferencing focussed psychological strategy items provided by GPs under Better Access. At the time of the video conferencing attendance, both the patient and the medical practitioner will need to be located at least 15km by road from each other. The patient or the medical practitioner cannot travel to a place to satisfy this distance requirement.

Section 12 – Meaning of amount under section 12

Section 12 provides the calculation for the fee for services performed at a residential aged care facility (90272, 90274, 90276 and 90278). The schedule fee is calculated from the type of service provided and the number of patients seen at the residential aged care facility. This arrangement, known as a 'ready reckoner', requires doctors to calculate the total fee based on a nominal amount (column 2) plus a modifier (column 3 or column 4). The modifier must be divided or multiplied (6 or fewer patients is divided, 7 or more patients is multiplied) by the

number of patients seen by the doctor at the residential aged care facility.

Schedule 1 – Relevant service

The Schedule specifies the list 30 new items to provide Medicare benefits for eating disorder services rendered by medical practitioners working in general practice, psychiatry and paediatrics.

Subgroup 1 lists 8 items for eating disorder treatment and management plan services provided by medical practitioners working in general practice.

Subgroup 2 lists 4 items for eating disorder treatment and management plan services provided by consultant physicians practising in the speciality of psychiatry or paediatrics.

Subgroup 3 lists 6 items for reviews of eating disorder treatment and management plans provided by medical practitioner working in general practice, psychiatry and paediatrics.

Subgroup 4 lists 12 items for eating disorders psychological treatment services provided by medical practitioner working in general practice with appropriate mental health training.

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 – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019

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 Determination will list 30 new items from 1 November 2019 to provide Medicare benefits to subsidise access to evidence-based services for patients with anorexia nervosa and other eligible eating disorders under Medicare, including:

- Services to develop a comprehensive and coordinated treatment plan (an 'eating disorder treatment and management plan') to manage the patient's care for 12 months, including access to allied health mental health and dietetic services. The eating disorder treatment and management plan can be provided by medical practitioners working in general practice, psychiatry and paediatrics.
- Services to review the efficacy of the patient's eating disorder treatment and management plan. This includes modifying the patient's plan, where appropriate, to improve patient outcomes. The review services can be provided by medical practitioners working in general practice, psychiatry and paediatrics.
- Psychological treatment services provided by medical practitioners working in general practice with appropriate mental health skills training ('eating disorder psychological treatment services').

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 rights to health and social security by subsidising patient access to eating disorder services performed by a medical practitioner in general practice, psychiatry and paediatrics.

Conclusion

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

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