

# EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C – Other Medical Practitioner and Telehealth) Amendment  
(Australian Statistical Geography Standard) 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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

Under the Australian Statistical Geography Standard (ASGS), published by the Australian Bureau of Statistics (the ABS), Australia is divided into various categories of Remoteness Area (RA). The Department of Health uses the ASGS-RA structure as the basis of its own Modified Monash Model (MMM), which further classifies areas according to population size, RA and proximity to other population centres.

The MMM categorises these areas in Australia into seven remoteness categories. It was developed to identify health access issues in remote and smaller communities, allowing health workforce programs and Medicare benefits to be better targeted.

The purpose of the *Health Insurance (Section 3C – Other Medical Practitioner and Telehealth) Amendment (Australian Statistical Geography Standard) Determination 2019* (the Amending Determination) is to update the ASGS to reference the July 2016 edition, which uses the latest available Census data, from 1 January 2020. The new MMM is based upon this most recent ASGS.

The Amending Determination will also make consequential changes to the instruments in Schedules 1 and 2 to fix drafting errors and omissions. The consequential amendments will have effect immediately following commencement of the principal instruments.

## Consultation

The Government established the Distribution Working Group (DWG) in 2017 to address challenges relating to the distribution of the health workforce in rural and remote communities. The DWG membership included:

- Australian Antarctic Division;
- Australian College of Rural and Remote Medicine;
- Australian Indigenous Doctors Association;
- Australian Medical Association;

- Monash University, School of Rural Health;
- National Rural Health Alliance;
- National Rural Health Commissioner;
- Royal Australian College of General Practitioners;
- Rural Doctors Association of Australia;
- Rural Health Workforce Australia;
- Rural Workforce Agency Victoria;
- University of Newcastle, Department of Rural Health;
- University of Melbourne, Melbourne Institute of Applied Economic and Social Research;  
and
- University of Queensland, Rural Clinical School.

The DWG met six times and subsequently made a number of recommendations to Government including that the MMM should be updated. The MMM was endorsed as part of a strategy to better target financial incentives to attract and retain medical staff in rural and remote areas.

Details of the Amending Determination are set out in the Attachment.

Sections 1 to 4 of the Amending Determination commence the day after registration on the Federal Register of Legislation.

Schedule 1 of the Amending Determination commences immediately after commencement of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*, which will commence on 1 November 2019.

Schedule 2 of the Amending Determination commences immediately after commencement of the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination (No. 2) 2019*. That instrument will commence immediately after commencement of Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019*, which will have effect on 1 November 2019.

Schedule 3 of the Amending Determination commences on 1 January 2020.

The Amending 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 – Other Medical Practitioner and Telehealth) Amendment (Australian Statistical Geography Standard) Determination 2019***

Section 1 – Name

Section 1 provides that the Amending Determination is the *Health Insurance (Section 3C – Other Medical Practitioner and Telehealth) Amendment (Australian Statistical Geography Standard) Determination 2019*.

Section 2 – Commencement

Sections 1 to 4 of the Amending Determination commence the day after registration on the Federal Register of Legislation.

Schedule 1 of the Amending Determination commences immediately after commencement of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*, which will commence on 1 November 2019.

Schedule 2 of the Amending Determination commences immediately after commencement of the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination (No. 2) 2019*. That instrument will commence immediately after commencement of Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019*, which will have effect on 1 November 2019.

Schedule 3 of the Amending Determination commences on 1 January 2020.

Section 3 – Authority

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

Section 4 – Schedule

Section 4 provides that each instrument specified in a Schedule to the Amending Determination is amended as provided for in that Schedule.

Schedule 1

The *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019* (the Eating Disorders Determination) sets out details of various medical practitioner services to be made available for the management and treatment of eating disorders, providing item numbers, descriptions and fees.

In subsection 4(1) of the Eating Disorders Determination, ‘eating disorder psychological treatment service’ is defined as comprising various items listed in the Medicare Benefits

Schedule. Paragraph (d) of the definition currently refers to items contained in Groups M7 and M16 of the of the *Health Insurance (Allied Health Services) Determination 2014* (the Allied Health Determination), with the exception of items 82350 and 82351. The Amending Determination seeks to expand the scope of paragraph (d) by adding a reference to Group M6 of the Allied Health Determination. Group M6 comprises eight items covering psychological therapy services performed by eligible clinical psychologists under the Better Access initiative.

This amendment resolves an omission in the drafting of the Eating Disorders Determination. There is no change to the policy intent that a patient cannot access more than 40 'eating disorder psychological treatment services' in a 12 month period. These treatment services include Medicare mental health treatment services currently provided to patients under the Better Access initiative, and from 1 November 2019, will include mental health services provided to patients with an eligible eating disorder.

Subsection 7(2) of the Eating Disorders Determination provides that items for the development and review of an eating disorder management plan (items in Subgroups 1 and 3 of Schedule 1 of that instrument), performed by a medical practitioner working in general practice, cannot be performed in association with a GP mental health consultation service (item 2713 of the Table).

The Amending Determination omits "2713" and substitutes with "279 or 2713" to include the mental health consultation service which can be performed by medical practitioners in general practice without vocational training (known as 'other medical practitioners'). This amendment resolves an omission with the drafting of the Eating Disorders Determination, and there has been no change to the intended policy.

## Schedule 2

The *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (OMP Determination) sets out details of OMP consultation services providing item numbers, descriptions and fees. The fees for the consultation items are set at 80% of the equivalent general practitioner item.

The *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination (No. 2) 2019* amends the OMP Determination from 1 November 2019 to list four new telehealth services provided by OMPs for patients in rural and remote areas (Modified Monash 6 or 7), including item 2483.

The Amending Determination repeals and substitutes item 2483 to resolve a minor drafting error by clarifying the service is to be rendered by a medical practitioner.

## Schedule 3

The amendments in this Schedule update the definition of the Australian Statistical Geography Standard to incorporate the latest July 2016 edition. This edition will exist as at 1 January 2020 and is published on the Australian Bureau of Statistics' website [www.abs.gov.au](http://www.abs.gov.au).

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (Section 3C – Other Medical Practitioner and Telehealth) Amendment (Australian Statistical Geography Standard) 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**

Under the Australian Statistical Geography Standard (ASGS), published by the Australian Bureau of Statistics (the ABS), Australia is divided into various categories of Remoteness Area (RA). The Department of Health uses the ASGS-RA structure as the basis of its own Modified Monash Model (MMM), which further classifies areas according to population size, RA and proximity to other population centres.

The MMM categorises these areas in Australia into seven remoteness categories. It was developed to identify health access issues in remote and smaller communities, allowing health workforce programs and Medicare benefits to be better targeted.

The purpose of the *Health Insurance (Section 3C – Other Medical Practitioner and Telehealth) Amendment (Australian Statistical Geography Standard) Determination 2019* (the Amending Determination) is to update the ASGS to reference the July 2016 edition, which uses the latest available Census data, from 1 January 2020. The new MMM is based upon this most recent ASGS.

The Amending Determination will also make consequential changes to the instruments in Schedules 1 and 2 to fix drafting errors and omissions. The consequential amendments will have effect immediately following commencement of the principal instruments.

#### **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

The change effected by the instrument will correct minor fix drafting errors and omissions and will also ensure that incentives directed at rural and remote areas are contemporary and based on latest Census data.

#### **Conclusion**

This instrument is compatible with human rights as it does not change the existing right to health and the right to social security. There is no change to the existing entitlements for patients on the Medicare Benefits Schedule.

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