

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020.

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 2019*.

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 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result COVID-19, to receive health consultations remotely.

On 13 March 2020, new consultation services provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers were introduced to provide services remotely to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus. The services are also able to be provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers who are in isolation for possible COVID-19 infection. These items are prescribed in the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* (the Principal Determination).

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020* (Amendment Determination) is to amend the Principal Determination to include new MBS items to allow nurse practitioners and mental health allied health workers to provide these services via the phone when video conferencing is unavailable to

patients who have been diagnosed with the COVID-19 virus, or who are more vulnerable of contracting the COVID-19 virus.

The new services will also be able to be provided by nurse practitioners and mental health allied health workers who are in isolation for possible COVID-19 infection. This will allow eligible clinical psychologists (items 91181 and 91182), eligible psychologists (items 91183 and 81184), eligible occupational therapists (items 91185 and 91186), eligible social workers (items 91187 and 91188) and nurse practitioners (items 91189, 91190 and 91191) to provide certain health services to their patients during the period of their isolation.

The Amendment Determination also amends the Principal Determination to reflect the correct numbering of items in clause 1.1.1. In addition, the Amendment Determination also amends the Principal Determination to reference participating nurse practitioner items correctly.

The purpose of the Amendment Determination is to ensure patients can receive Medicare benefits whilst in home isolation or quarantine or whilst the health professional is in home isolation or quarantine, as a result of COVID-19 virus. To this effect, the amendments in the Schedule are taken to have commenced immediately after the Principal Determination commenced. This is to ensure that patients will continue to be able to receive Medicare benefits for these services and will not be disadvantaged during in home isolation or quarantine, as a result of COVID-19 virus. Although Schedule 1 applies retrospectively, it is not contrary to section 12 of the *Legislation Act 2003* as it does not disadvantage a person and only imposes applies a liability on the Commonwealth for the retrospective period.

Consultation

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Indigenous communities, from the coronavirus (COVID-19). Due to the nature of the emergency and the short timeframe in drafting this legislative instrument to implement this phase of the health package, it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument.

Details of the Determination are set out in the [Attachment](#).

The Determination commences on 13 March 2020.

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 – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020*

Section 2 – Commencement

Section 2 provides that the Determination commences on 13 March 2020.

Section 3 – Authority

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

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***Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020***

The purpose of the Amendment Determination is to include new MBS items to allow nurse practitioners and mental health allied health workers to provide services via the telephone to patients who have been diagnosed with the COVID-19 virus, or who are more vulnerable of contracting the COVID-19 virus or health professionals at risk of COVID-19 virus as defined in section 5 of the Principal Determination.

Item 1 – Definition

Section 5 of the Principal Determination provides a definitions for that instrument. Item 1 amends the Principal Determination to include a new class of patients to the definition of ‘patient at risk of COVID-19 virus’ which includes ‘or (d) the person meets the current national triage protocol criteria for suspected COVID-19 infection’.

This amendment is to incorporate services for people who require triage in line with the current national triage protocol criteria for suspected COVID-19 infection.

Item 2 – Application of COVID-19 medical practitioner telehealth services

Item 2 omits 1.1.1 Application of COVID-19 medical practitioner telehealth services of the Principal Determination and replaces it with a new 1.1.1 Application of COVID-19 medical practitioner telehealth services. During the drafting of the Principal Determination the items

were renumbered just before registration and clause 1.1.1 still referenced the original numbers. This clause will be revoked and a corrected clause 1.1.1 substituted.

Item 3 – Schedule 1 – Relevant Services Division 1.2 – Services and Fees – COVID-19 allied health telehealth services

Item 3 repeals the table under Subgroup 5 – COVID -19 nurse practitioner telehealth services and substitutes it with the correct table. The references to participating nurse practitioner items incorrectly referenced focussed psychological health services. Items 91178, 91179 and 91180 were intended to reflect nurse practitioner items 82220, 82221 and 82222 in the *Health Insurance (Midwife and Nurse Practitioner) Determination 2015* which does not refer to focussed psychological health services. These 3 items will be revoked and replaced without the reference to a focussed psychological health service.

Item 4 - Division 1.3 - Services and fees – COVID-19 medical practitioner attendances

Item 4 inserts an application of COVID-19 medical practitioner phone services whereby these items are provided by telephone and require an audio link only.

Division 1.4 of the Amendment Determination lists four new attendance items (91842, 91843, 91844 and 91845) that provide focussed psychological strategy treatment services for patients with a recognised mental health disorder to patients who are at risk of COVID-19 virus or by health professionals at risk of COVID-19 virus. Items 91842 and 91843 can be rendered by GPs, items 91844 and 91845 can be rendered by medical practitioners in general practice.

These items are telephone services and require an audio link only. Subclause 1.3.1(1) requires that the rendering practitioner must not perform a service in subgroup 10 if the practitioner and the patient have the capacity to undertake an attendance by video conference.

Item 5 - Division 1.4 - Services and fees – COVID-19 allied health telehealth services

Item 5 of the Amendment Determination inserts Division 1.4 Services and fees – COVID-19 allied health telehealth services which lists 11 new professional attendance items that can be provided by certain allied health professionals whereby these items are provided by telephone and require an audio link only.

Items in subgroups 6 to 9 provide mental health treatment items rendered by “eligible clinical psychologists” (items 91181 and 91182), “eligible psychologists” (items 91183 and 91184), “eligible occupational therapists” (items 91185 and 91186) and “eligible social workers” (items 91187 and 91188). The new items mirror the clinical and time requirements of the existing face-to-face focussed psychological strategy and psychological therapies in Groups M6 and M7, but allow them to be performed by telephone for patients who are at risk of COVID-19 virus.

Allied health providers with appropriate mental health training who are in isolation for possible COVID-19 infection will also be able to continue to provide mental health services to their patients during the period of their isolation under items 91181, 91182, 91183, 91184, 91185, 91186, 91187 and 91188.

For the purpose of Division 1.4, “eligible clinical psychologist”, “eligible psychologist”, “eligible occupational therapist” and “eligible social worker” have the meanings given by section 4 of the *Health Insurance (Allied Health Services) Determination 2014*.

Items in subgroup 10 (items 91189, 91190 and 91191) mirror the requirements of the existing face-to-face nurse practitioner item in M14, but allows the service to be performed by telephone for patients and practitioners who are at risk of COVID-19 virus.

For the purpose of Division 1.4, for items 91181 and 91189, sections 7 and 9 of the *Health Insurance (Allied Health Services) Determination 2014* shall have effect as if the items were also specified in those clauses.

These items are telephone services and require an audio link only. Subclause 1.4.1(1) requires that the rendering practitioner must not perform a service in subgroup 6,7,8,9 and 10 if the practitioner and the patient have the capacity to undertake an attendance by video conference.

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 – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020

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 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result COVID-19, to receive health consultations remotely.

On 13 March 2020, new consultation services provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers were introduced to provide services remotely to patients who have been diagnosed with the COVID-19 virus, or who are more vulnerable of contracting the COVID-19 virus. The services are also able to be provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers who are in isolation for possible COVID-19 infection. These items are prescribed in the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* (the Principal Determination).

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020* (Amendment Determination) is to amend the Principal Determination to include new MBS items to allow nurse practitioners and mental health allied health workers to provide these services via the phone when video conferencing is unavailable to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus.

The new services will also be able to be provided by nurse practitioners and mental health allied health workers who are in isolation for possible COVID-19 infection. This will allow eligible clinical psychologists (items 91181 and 91182), eligible psychologists (items 91183 and 81184), eligible occupational therapists (items 91185 and 91186), eligible social workers (items 91187 and 91188) and nurse practitioners (items 91189, 91190 and 91191) to provide certain health services to their patients during the period of their isolation.

The Amendment Determination also amends the Principal Determination to reflect the correct numbering of items in clause 1.1.1. In addition, the Amendment Determination also amends the Principal Determination to reference participating nurse practitioner items correctly.

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 advances the right to health and the right to social security by ensuring people who have been affected by COVID-19 can access publicly subsidised health services without the risk of affecting other people or health professionals.

Conclusion

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

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