

EXPLANATORY STATEMENT

Issued by the Minister for Health

Health Insurance Act 1973

*Health Insurance (Section 3C General Medical Services –COVID-19 Services)
Determination 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*.

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 of COVID-19, to receive health consultations remotely.

Since 13 March 2020, remote consultation services have been available under Medicare to provide services to patients who:

- have been diagnosed with COVID-19 (but have not been admitted to hospital or receiving hospital-substitute treatment); or
- are in isolation for possible COVID-19 infection; or
- are considered more susceptible to COVID-19; or
- meet the current national triage protocol criteria for suspected COVID-19 infection.

The services can be provided by GPs and other doctors in general practice, specialists and consultant physicians, consultant psychiatrists, participating nurse practitioners, participating midwives and obstetricians, and certain allied health providers, by telehealth or phone.

The new consultation services also enable health professionals who are in isolation for possible COVID-19 infection, or who have been diagnosed with COVID-19 but have not been hospitalised, to continue attending their patients remotely.

The purpose of the *Health Insurance (Section 3C General Medical Services –COVID-19 Services) Determination 2020* (the Determination) is to consolidate the Medicare items that currently prescribe the COVID-19 medical services in one legislative

instrument. The existing legislative instruments, the *Health Insurance (Section 3C General Medical Services - Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Determination 2020* and the *Health Insurance (Section 3C General Medical Services - GP and Allied Health COVID-19 Services) Determination 2020*, will be amended to cease the effect of their provisions upon commencement of the Determination.

The Determination will also expand the definition of “health professional at risk of COVID-19 virus” to align with patients who are at risk by expanding the definition to include health professionals at risk or meet the current national triage protocol criteria. This includes health professionals who are:

- at least 70 years old; or
- at least 50 years old and of Aboriginal or Torres Strait Islander descent; or
- pregnant; or
- a parent of a child under 12 months; or
- under treatment for chronic health conditions; or
- immune compromised; or
- meet the current national triage protocol criteria for suspected COVID-19 infection.

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 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 immediately after the instrument is registered.

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 –COVID-19 Services) Determination 2020Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services –COVID-19 Services) Determination 2020*.

Section 2 – Commencement

Section 2 provides for the Determination to commence immediately upon registration.

Section 3 – Cessation

Section 3 provides that the Determination will cease on 30 September 2020, unless earlier revoked.

Section 4 – Authority

Section 4 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

This includes the definitions of “patient at risk of COVID-19 virus” and “health professional at risk of COVID-19 virus”.

A person will meet the definition of a “patient at risk of COVID-19 virus” if they:

- (a) have been diagnosed with the virus (but not receiving hospital treatment); or
- (b) are in isolation for possible COVID-19 infection; or
- (c) meet the criteria for being considered more susceptible to the COVID-19 virus, being:
 - a. at least 70 years old; or
 - b. at least 50 years old and of Aboriginal or Torres Strait Islander descent; or
 - c. pregnant; or
 - d. a parent of a child under 12 months; or
 - e. under treatment for chronic health conditions or who are immune compromised;
 or
- (d) meet current national triage protocol criteria for suspected COVID-19 infection.

A person will meet the definition of a “health professional at risk of COVID-19 virus” if they can render the COVID-19 items and they:

- (a) have been diagnosed with the virus (but not receiving hospital treatment); or
- (b) are in isolation for possible COVID-19 infection; or
- (c) meet the criteria for being considered more susceptible to the COVID-19 virus, being:
 - a. at least 70 years old; or
 - b. at least 50 years old and of Aboriginal or Torres Strait Islander descent; or

- c. pregnant; or
 - d. a parent of a child under 12 months; or
 - e. under treatment for chronic health conditions or who are immune compromised;
or
- (d) meet current national triage protocol criteria for suspected COVID-19 infection.

The definition of “health professional at risk of COVID-19 virus” will help support the health workforce by enabling GPs, other doctors in general practice, specialists and consultant physicians, consultant psychiatrists, participating nurse practitioners, participating midwives and obstetricians, and certain allied health providers, to continue to provide services to patients by telehealth or phone.

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service provided in accordance with the Determination 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 Table for the service.

Section 7 – Application of items – general

Section 7 applies general application provisions.

Subsection 7(1) requires that a service in the Determination does not apply if the patient is an “admitted patient”, as defined in section 6.

Subsection 7(2) provides that the specialist, consultant physician and consultant psychiatrist items in Schedule 2 (other than items 91850, 91853, 91855 and 91857) shall be treated as if they were specified in clause 1.2.2 of the general medical services table. Clause 1.2.2 provides that the specified items do not apply if the patient does not have a referral within the period of validity.

Subsection 7(3) provides that a patient cannot access the COVID-19 general practice focused psychological strategy services (items Subgroup 3 and 10 of Group A40) or the allied mental health treatment items (Subgroups 1 to 4, 6 to 9 of Group M18) if they have accessed more than 10 services through the Medicare Benefits Schedule Better Access initiative in a calendar year.

Schedule 1 – Relevant Services – GP, medical practitioner, allied health, participating nurse practitioner and participating midwife services

Schedule 1 prescribes the COVID-19 telehealth and phone consultation services provided by GPs, other doctors in general practice, participating nurse practitioners, participating midwives, eligible clinical psychologists, eligible psychologists, eligible occupational therapists and eligible social workers. These services can be rendered if a person is a patient at risk of COVID-19 virus or if the health professional is at risk of COVID-19 virus and it is appropriate to remotely attend a patient for an unrelated health matter.

The services can only be performed if the service is “bulk-billed”, as defined in section 6.

Division 1.1 of Schedule 1

Subgroups 1 and 2 of Group A40 prescribe 24 equivalent Level A to D attendance items that can be provided remotely by a GP or another medical practitioner in general practice.

Items in subgroup 1 prescribe 12 equivalent Level A to D general practice attendance services by telehealth, which requires an audio and visual link. This includes:

- Items 91790, 91800, 91801 and 91802 rendered by GPs.
- Items 91792, 91803, 91804 and 90805 rendered by medical practitioners in metropolitan areas.
- Items 91794, 91806, 91807 and 91808 rendered by medical practitioners in “eligible areas”.

Items in subgroup 2 prescribe 12 equivalent Level A to D general practice attendance services by phone, which requires an audio link only. This includes:

- Items 91795, 91809, 91810 and 91811 rendered by GPs.
- Items 91797, 91812, 91813 and 91814 rendered by medical practitioners in metropolitan areas.
- Items 91799, 91815, 91816 and 91817 rendered by medical practitioners in “eligible areas”.

Subclause 1.1.1(1) incorporates the definition of “eligible area” from the definition given by section 4 of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, as in force from time to time. This definition means an area that is within Modified Monash areas 2 to 7.

Subclause 1.1.1(2) incorporates the definition of “medical practitioner” from the definition given by section 4 of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, as in force from time to time. This definition excludes GPs, specialists and consultant physicians.

Subclause 1.1.1(5) requires that the rendering practitioner must not perform a service in subgroup 2 if the practitioner and the patient have the capacity to undertake an attendance by video conference.

Subclause 1.1.1(6) requires that person who is a “patient at risk of COVID-19” because of paragraph (c) of the definition (vulnerable patients) must have an existing relationship with the doctor (or medical practice who employs the doctor) to be eligible for the subgroup 1 and 2 items.

Items in subgroup 3 of Group A40 prescribe four equivalent general practice focussed psychological strategy mental health treatment services by telehealth, which require an audio and visual link. Subclauses 1.1.1(3) and (4) apply the same requirements on the telehealth items as apply to the existing face-to-face general practice focussed psychological strategy mental health treatment services. To access these services, a patient must have a GP mental health treatment plan or a psychiatrist assessment and management plan and the rendering practitioner must have appropriate mental health training. See Division 1.3 of Schedule 1 for the equivalent phone services, which requires an audio link only.

Division 1.2 of Schedule 1

Division 1.2 of Schedule 1 prescribe eight equivalent mental health treatment attendance items (subgroups 1 to 4 of Group M18) that can be performed by certain allied health providers by telehealth, which requires an audio and visual link. These services can be rendered by eligible clinical psychologists (items 91166 and 91167), eligible psychologists (items 91169 and 91170), eligible occupational therapists (items 91172 and 91173) and eligible social workers (items 91175 and 91176).

To access these services, a patient must have a relevant referral pathway under paragraph (b) of the item descriptor. See Division 1.4 (subgroups 6 to 9 of Group M18) of Schedule 1 for the equivalent phone services, which requires an audio link only.

In accordance with section 4 of the Determination, "eligible clinical psychologist", "eligible psychologist", "eligible occupational therapist" and "eligible social worker" have the same meaning as in section 4 of the *Health Insurance (Allied Health Services) Determination 2014*, as in force from time to time.

Division 1.2 also prescribe four equivalent Level A to D participating nurse practitioner attendance services by telehealth (items 91192, 91178, 91179 and 91180 in subgroup 5 of Group M18), which requires an audio and visual link. See Division 1.4 (subgroup 10 of Group M18) of Schedule 1 for the equivalent phone services, which requires an audio link only

Divisions 1.3 and 1.4 of Schedule 1

Divisions 1.3 and 1.4 of Schedule 1 prescribe the equivalent phone services, which requires an audio link only. This includes:

- Four equivalent general practice focussed psychological strategy mental health treatment services in Division 1.3 of Schedule 1 (items 91842, 91843, 91844 and 91845). Subclause 1.3.1(1) requires that the rendering practitioner must not perform a service in subgroup 10 of Group A40 if the practitioner and the patient have the capacity to undertake an attendance by video conference.
- Eight equivalent mental health treatment items professional attendance items in Division 1.4 of Schedule 1 that can be rendered by eligible clinical psychologists (91181 and 91182), eligible psychologists (91183 and 91184), eligible occupational therapists (items 91185 and 91186) and eligible social workers (91187 and 91188). Subclause 1.4.1(4) requires that the allied health provider must not perform a service in subgroups 6 to 9 of Group M18 if the provider and the patient have the capacity to undertake an attendance by video conference.
- Four equivalent Level A to D participating nurse practitioner attendance services in Division 1.4 of Schedule 1 (items 91193, 91189, 91190 and 91191). Subclause 1.4.1(4) requires that the participating nurse practitioner must not perform a service in subgroup 10 of Group M18 if the provider and the patient have the capacity to undertake an attendance by video conference.

Division 1.5 of Schedule 1

Division 1.5 of Schedule 1 prescribes eight equivalent antenatal and postnatal professional attendance items that can be performed remotely by participating midwives.

The four items in subgroup 1 of Group M19 are to be performed by telehealth, which requires an audio and visual link. The four items in subgroup 2 of Group M19 are to be performed by phone, which requires an audio link only. Subclause 1.5.1(1) requires that the rendering participating

midwife must not perform a service in subgroup 2 of Group M19 if the participating midwife and the patient have the capacity to undertake an attendance by video conference.

Schedule 2 – Relevant Services – specialist, consultant physician and consultant psychiatrist services

Schedule 2 prescribes the COVID-19 telehealth and phone consultation services provided by specialists, consultant physicians and consultant psychiatrists. It also includes obstetric services. These services can be rendered if a person is a patient at risk of COVID-19 virus or if the health professional is at risk of COVID-19 virus and it is appropriate to remotely attend a patient for an unrelated health matter.

The services can only be performed if the service is “bulk-billed”, as defined in section 6.

Division 1.1 of Schedule 2

Division 1.1 of the Schedule 2 prescribes two equivalent initial and subsequent specialist attendance services by telehealth (items 91822 and 91823), which requires an audio and visual link. See Division 1.4 of Schedule 2 for the equivalent phone services, which requires an audio link only (91832 and 91833).

Division 1.2 of Schedule 2

Division 1.2 of the Schedule 2 prescribes three equivalent initial, subsequent and minor consultant physician attendance services by telehealth (items 91824, 91825 and 91826), which requires an audio and visual link. See Division 1.5 of Schedule 2 for the equivalent phone services, which requires an audio link only (91834, 91835 and 91836).

Division 1.3 of Schedule 2

Division 1.3 of the Schedule 3 prescribes five equivalent consultant psychiatry attendance services by telehealth (items 91827, 91828, 91829, 91830 and 91831), which requires an audio and visual link. See Division 1.6 of Schedule 2 for the equivalent phone services (items 91837, 91838, 91839, 91840 and 91841), which requires an audio link only.

Divisions 1.4 to 1.6 of Schedule 2

Divisions 1.4 to 1.6 of Schedule 2 prescribe the equivalent phone services for specialists, consultant physicians and consultant psychiatrists, which requires an audio link only. Subclauses 1.4.1(1), 1.5.1(1) and 1.6.1(1) require that the rendering practitioner must not perform a service in subgroups 7 to 9 of Group A40 if the practitioner and the patient have the capacity to undertake an attendance by video conference.

Division 1.7 of Schedule 2

Division 1.7 of Schedule 2 prescribe eight equivalent obstetric antenatal and postnatal professional attendance items that can be performed remotely.

The four items in subgroup 1 of Group T4 are to be performed by telehealth, which requires an audio and visual link.

The four items in subgroup 2 of Group T4 are to be performed by phone, which requires an audio link only. Subclause 1.7.1(3) requires that the rendering practitioner must not perform a service in subgroup 2 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 –COVID-19 Services) Determination 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).

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- at least 70 years old; or
- at least 50 years old and of Aboriginal or Torres Strait Islander descent; or

- pregnant; or
- a parent of a child under 12 months; or
- under treatment for chronic health conditions; or
- immune compromised; or
- meet the current national triage protocol criteria for suspected COVID-19 infection.

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.

Greg Hunt
Minister for Health