

EXPLANATORY STATEMENT

Issued by the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) 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*.

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

Since 13 March 2020, the Australian Government has been providing Medicare benefits to assist patients to receive remote health consultations by telehealth or phone in certain circumstances. The *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* currently prescribes 222 temporary items that covers many general practice, specialist and consultant physician, nurse practitioner, midwife and allied health attendances.

These items ensure that telehealth can be used as a key weapon in the fight against coronavirus (COVID-19) pandemic. Expanding the consultation services available by telehealth is the next critical stage in the Government's response to COVID-19.

On 29 March 2020, the Hon. Greg Hunt MP, Minister for Health announced that further changes will be introduced will allow GPs and other providers to apply their usual billing practices to telehealth consultations, while concessional and vulnerable patients will continue to receive services at no cost.

The purpose of the *Health Insurance (Section 3C General Medical Services –COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 2020* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal Determination) which was introduced on 30 March 2020. The Amendment Determination will amend from 6 April 2020 the bulk-billing requirements for the services listed in the Principal Determination. The amendment provides that where the service is provided to a patient at risk of COVID-19 virus, a

person who is a concessional beneficiary or a person under the age of 16 that the service must be bulk-billed. For all other patients the services may be bulk-billed.

Consultation

Changes made as part of the COVID-19 response package have been designed in partnership with key stakeholders in the sector, including the Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia on the Government's health care package to protect all Australians from COVID-19.

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

The Amendment Determination commences on 6 April 2020.

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 – COVID-19 Telehealth and Telephones Attendances) Amendment (Bulk-billing) Determination 2020*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 6 April 2020.

Section 3 – Authority

Section 3 provides that the Amendment 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 Amendment 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 Amendment Determination has effect according to its terms.

Schedule 1 - Amendments

Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020 (the Principal Determination).

Item 1 – Subsection 5(1) Definitions

Item 1 inserts the definition of ‘concessional beneficiary’. The introduction of this definition provides that references to ‘concessional beneficiary’ in the Principal Determination have the same meaning as in section 84(1) of the *National Health Act 1953*.

Item 1 also introduces a definition of ‘patient at risk of COVID-19 virus’ in the Principal Determination. A person will meet the definition of a “patient at risk of COVID-19 virus” if they:

- (a) are required to self-isolate or self-quarantine in accordance with guidance issued by the Australian Health Protection Principal Committee in relation to COVID-19; or
- (b) are at least 70 years old; or
- (c) identify as being of Aboriginal or Torres Strait Islander descent—and are at least 50 years old; or
- (d) are pregnant; or
- (e) are the parent of a child aged under 12 months; or

- (f) are being treated for a chronic health condition; or
- (g) are immune compromised; or
- (h) meet the current national triage protocol criteria for suspected COVID-19 infection.

Item 2 – Subsection 8(4) Applications of items - general

Item 2 repeals and substitutes Subsection 8(4) of the Principal Determination, which specifies that where a service is provided to a patient at risk of COVID-19, a concessional beneficiary or a person under the age of 16 that the patient must be bulk-billed for the service.

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 Telehealth and Telephone Attendances) Amendment (Bulk-billing) 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 29 March 2020, the Hon. Greg Hunt MP, Minister for Health announced that further changes will be introduced will allow GPs and other providers to apply their usual billing practices to telehealth consultations, while concessional and vulnerable patients will continue to receive services at no cost.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 2020* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal Determination) which was introduced on 30 March 2020. The Amendment Determination will amend from 6 April 2020 the bulk-billing requirements for the services listed in the Principal Determination. The amendment provides that where the service is provided to a patient at risk of COVID-19 virus, a person who is a concessional beneficiary or a person under the age of 16 that the service must be bulk-billed. For all other patients the services may be bulk-billed.

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 maintains 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 maintains the right to health and the right to social security.

Greg Hunt
Minister for Health