

## 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 (Expansion of Specialist 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*.

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* (the Principal Determination) 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 the coronavirus (COVID-19) pandemic. Expanding the consultation services available by telehealth is the next critical stage in the response to COVID-19.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Expansion of Specialist Services) Determination 2020* (the Amendment Determination) is to expand the range of non-GP specialist services available to support patient access to these attendances in a safe and timely manner. This will assist to reduce the risk of COVID-19 for health professionals and for patients.

From 6 April 2020, 22 new items will be listed. These include four targeted attendance items which will enable patients 65 years of age or older to see a geriatrician by telehealth or phone, where appropriate to do so.

**Consultation**

The Government has been expanding access to telehealth services in partnership with key stakeholders in the sector, including the Australian Medical Association, Royal Australian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists. Consultation is continuing to identify relevant services to help protect and support Australians who are vulnerable to COVID-19. The inclusion of the services specified in the Amendment Determination will support patient access and is supported by consultant physician representative groups. These services were identified throughout broad engagement with stakeholders whilst services are being identified for possible future expansion.

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

The Amendment Determination commences immediately after the commencement of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 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 Telephone Attendances) Amendment (Expansion of Specialist Services) 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 (Expansion of Specialist Services) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences immediately after the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 2020*.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under subsection 3C(1) of the Act.

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**

Item 1 amends the note in section 5 to include a reference to the definition of ‘consultant physician’ in the Act.

**Item 2**

Item 2 amends the definition of ‘psychiatrist assessment and management plan’ in subsection 5(1) to include a plan made under item 92435 or 92475. These items are the phone and telehealth equivalents of item 291.

**Item 3**

Item 3 amends subsection 5(1) to incorporate the definition of ‘single course of treatment’ in clause 1.1.5 of the *Health Insurance (General Medical Services Table) Regulations 2019* (the general medical services table regulations). This definition is relevant to new items 92423 and 92432.

**Item 4**

Subclause 1.1.10(2) provides that a service for an item in Subgroup 17 or 18 of Group A40 must not be provided to a patient if a service under Subgroup 17 or 18 of Group A40 or items 135, 137, 139 or 289 has previously been provided to the patient. Item 4 amends the subclause to include references to the new phone and telehealth equivalents of item 289.

**Item 5**

Item 5 amends paragraph (7)(b) to remove the reference to a plan being made under item 291 of the general medical services table. This limitation is provided for in the definition of 'psychiatrist assessment and management plan' in subsection 5(1).

**Item 6**

Item 6 amends items 92114, 92120, 92126 and 92132 of the table under subclause 1.1.12(2) to replace references to a 'Psychiatrist Assessment and Management Plan' with references to a 'psychiatrist assessment and management plan'. This is consistent with the use of lowercase letters in other references to the term in the instrument.

**Item 7**

Item 7 repeals subclause (1) of Division 2.1. Subclause (1) applied the definition of 'single course of treatment' in clause 1.1.5 of the general medical services table to items 91826 and 128932 to 91836. Item 3 inserts a definition of this term in subsection 5(1), making subclause (1) redundant.

**Item 8**

Item 8 includes a reference to new Subgroup 32 of Group A40 in subclause 2.1.1(1). Subclause 2.1.1(1) provides that items in Subgroup 7, 8, 9, 18, 24, 26 or 32, which require an audio link only, do not apply if the rendering practitioner and the patient have the capacity to undertake an attendance by telehealth (which requires an audio and visual link).

**Item 9**

Item 9 inserts new subclause (2) in clause 2.1.1. Subclause (2) applies the definitions of 'eligible allied health provider' and 'risk assessment' in clause 2.1.5 of the general medical services table to new items 92434 and 92474.

**Items 10 to 14**

Items 10 to 14 insert 22 new items in the table in Schedule 2.

Item 10 inserts the telehealth equivalent items of item 132 and 133 in Subgroup 5 of Group A40 (items 92422 and 92423). Telehealth services require an audio and visual link. Item 12 inserts the equivalent phone services in Subgroup 8 of Group A40 (items 92431 and 92432). Phone services require an audio link only.

Item 11 inserts the telehealth equivalent items of item 289, 291, 293, 296, 348, 350 and 352 in Subgroup 6 of Group A40 (items 92434, 92435, 92436, 92437, 92458, 92458, 92459 and 92460). Item 13 inserts the equivalent phone services in Subgroup 9 of Group A40 (items 92474, 92475, 92476, 92477, 92498, 92499 and 92500).

New Subgroup 31 of Group A40 prescribes two new geriatric medicine services by telehealth (items 92623 and 92624). These services are the telehealth equivalents of items 141 and 143.

New Subgroup 32 of Group A40 prescribes the equivalent phone services (items 92628 and 92629).

**Items 15 to 30**

Items 15 to 30 amend provisions in Division 3.1 to include references to new phone and telehealth items inserted by the instrument, as well as references to existing phone and telehealth items previously specified in the Principal Determination. These amendments ensure that, where the provision refers to an existing item in the general medical services table, it will also refer to the equivalent phone and telehealth item.

## 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 (Expansion of Specialist 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**

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* (the Principal Determination) currently prescribes 222 temporary items that covers many general practice, specialist and consultant physician, nurse practitioner, midwife, and allied health attendances.

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The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Expansion of Specialist Services) Determination 2020* (the Amendment Determination) is to expand the range of non-GP specialist services available to support patient access to these attendances in a safe and timely manner. This will assist to reduce the risk of COVID-19 for health professionals and for patients.

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#### **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 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**