

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment (Consequential) 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

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment (Consequential) Determination 2020* (the Determination) is to make consequential amendments to the:

- *Health Insurance (Allied Health Services) Determination 2014* (the Allied Health Determination);
- *Health Insurance (General Medical Services – Other Medical Practitioner) Determination 2018* (the Other Medical Practitioner Determination);
- *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019* (the Eating Disorders Services Determination); and
- *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the COVID-19 Determination).

The COVID-19 Determination currently prescribes 272 temporary telehealth and telephone items that cover many general practice, specialist and consultant physician, nurse practitioner, midwife, and allied health attendances. These new items include telehealth and telephone attendance items equivalent to the ‘face-to-face’ items specified in the Allied Health Determination, Other Medical Practitioner Determination and the Eating Disorders Services Determination. The introduction of these new items necessitates consequential amendments to the above instruments to ensure that definitions, limitation provisions and referral pathways are applied consistently so the equivalent face-to-face and remote items can operate together. The Determination also makes tidying up amendments to these instruments.

Consultation

The Government has been expanding access to temporary telehealth and telephone services in partnership with key stakeholders in the sector, including representatives of general practice, specialist and allied health professionals. Consultation was not undertaken on the Determination because it is consequential in nature.

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

The Determination commences immediately after registration.

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 (Consequential) Determination 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 (Consequential) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences immediately after registration.

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 to the *Health Insurance (Allied Health Services) Determination 2014*

Item 1 inserts a definition for ‘COVID-19 Determination’, for ease of reference throughout the instrument.

Items 2 to 8 amend definitions to include the telehealth and telephone equivalents of the face-to-face items specified.

Items 9 to 14 and 17 to 24 amend the application provisions to include the telehealth and telephone equivalents of the face-to-face items specified.

Item 18 also inserts item 792, which is the other medical practitioner equivalent of item 4001, into the item descriptions for items 81000 and 81005.

Item 15 amends the reference to the Audiological Society of Australia to its new title, Audiology Australia.

Item 16 removes the reference to “participating optometrist” in item 11 of Schedule 1.

Schedule 2 – Amendments to the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*

Item 1 inserts a definition for ‘COVID-19 Determination’, for ease of reference throughout the instrument.

Items 2 to 10 insert the telehealth and telephone equivalents of face-to-face items specified.

Item 7 also amends clause 1.9.3 to:

- remove references in paragraphs (2)(c) and (d), and subparagraph 3(a)(iii) to transitional items that no longer exist
- correct paragraph 3(b) to make this limitation consistent with the equivalent item in the general medical services table (see clause 2.22.6(4)(b)).

Schedule 3 – Amendments to the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*

Item 1 inserts a definition for ‘COVID-19 Determination’, for ease of reference throughout the instrument.

Items 2 and 3 amend the definitions of ‘eating disorder psychological treatment’ and ‘eating disorder treatment and management plan’ to include the telehealth and telephone equivalents of the face-to-face items specified. This will flow through to the limitations on the face-to-face items, which incorporate these definitions.

Items 4 to 7 amend the application provisions in sections 7, 9 and 11 to include the telehealth and telephone equivalents of the face-to-face items referred to.

Schedule 4 – Amendments to the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*

Making references to other Determinations consistent

Schedule 4 amends the COVID-19 Determination to simplify how the Allied Health Determination, Other Medical Practitioner Determination and Eating Disorders Services Determination are referred to in the instrument:

- Item 1 inserts new definitions in relation to the Allied Health Determination and Eating Disorders Services Determination, consistent with the definition of the Other Medical Practitioner Determination already in subsection 5(1) of the COVID-19 Determination.
- Items 11 to 17, 26 to 37, 44 to 61, 68 to 70, 76 and 77 make amendments to specific clauses and item descriptors so that every time an item in the Allied Health Determination, Other Medical Practitioner Determination or Eating Disorders Services Determination is referred to the relevant determination is specified consistently using the defined terms.
- Items 82 to 84 remove the references to the full titles of the Allied Health Determination, Other Medical Practitioner Determination and Eating Disorders Services Determination and replace them with the new defined terms throughout the COVID-19 Determination.

Inserting limitations on eating disorders services

Items 1, 24 and 25 insert definitions and the application and limitation provisions for eating disorder services in the Eating Disorders Services Determination, so that the requirements for

GP and medical practitioner eating disorder services provided by telehealth and telephone are the same as when provided face-to-face. These limitations were mistakenly not included in the COVID-19 Determination when made.

General corrections

Item 1 inserts the definition for “Aboriginal and Torres Strait Islander health practitioner”, which was mistakenly omitted.

Items 2 and 4 repeal and replace the definitions of “eating disorder psychological treatment service” and “patient review” (respectively) so that the COVID-19 Determination adopts the definitions for these terms in the Eating Disorders Services Determination.

Item 3 amends the reference to clause 4.1.2 in the definition of “multidisciplinary care plan” following the renumbering of that provision (see item 79 below).

Item 5 inserts the definition for “residential aged care facility”, which was mistakenly omitted.

Item 6 amends subsection 8(3) to include the telehealth and telephone service items in the 10 service per year limit.

Item 10 inserts a new subclause 1.1.1(2) so that the limitation in subparagraph 2.22.7(2)(a) of the general medical services table applies to items 91818, 91819, 91842 and 91843. This is consistent with the limitations on the face-to-face equivalents of these items (items 2729 and 2731). The other requirements in clause 2.22.7 are already reflected in the COVID-19 Determination as follows:

- the requirement in clause 2.22.7(1) is reflected in clause 1.1.2, and
- the requirement in clause 2.22.7(2)(b) is reflected in section 8(3).

Items 18 to 21 correct errors in the defined terms in subclause 1.11.1(2). Items 22 and 23 insert references to equivalent items into subclauses 1.1.11(3) and (6).

Item 26 amends the descriptors for the telehealth services in items 92024 to 92027 to include the items in the Other Medical Practitioner Determination which are equivalent to items 735 to 757 of the general medical services table. These items are already included in the descriptors for the equivalent telephone service items (items 92068 to 92071).

Items 27 and 32 amend the descriptors for items 92028 and 92072 (respectively) to insert references to equivalent telehealth and telephone service items.

Item 62 repeals and replaces clause 2.2.1 to:

- insert the definition of “nurse” for items in Subgroups 1 and 2 of Group T4 into subclause 2.2.1(1)
- amend subclause 2.2.1(2) to insert references to the bulk-billing incentive items in the *Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020* into paragraph (c), and to insert references to the equivalent face-to-face item in paragraph (d).

Item 63 amends the descriptors for items 91852 and 91857 to insert the telehealth and telephone equivalents of items 82130 and 82135, and to indicate which determination these face-to-face items are in.

Items 67 and 68 amend subclause 3.1.2 to insert the equivalent telehealth and telephone service items for items 342, 344 and 346.

Items 71 to 74 amend clauses 3.1.3 and 3.1.5 to insert the telehealth and telephone equivalents of the face-to face items referred to.

Item 75 inserts an additional application requirement for items in Subgroups 19 to 22 of Group M18 which was mistakenly omitted.

Items 76 and 77 amend the descriptors of items 93026 and 93029 (respectively) to insert the telehealth and telephone equivalents of the face-to face items referred to.

Miscellaneous amendments

Items 7, 10, 42, 43, 62, 66 and 78 to 81 move the limitation on the application of telephone attendance services to circumstances where the rendering practitioner and the patient do not have the capacity to undertake an attendance by telehealth from each of the divisions of the COVID-19 Determination to the general application provisions.

Items 8, 9, 40, 41, 64 and 65 amend Division and clause headings for consistency.

Items 38 and 39 amend an autonumbering issue in the descriptors for items 92176 and 92177 by renumbering subparagraphs (b)(iii) and (b)(iv).

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 (Consequential) 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

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment (Consequential) Determination 2020* (the Determination) is to make consequential amendments to the:

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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 makes amendments to the Allied Health Determination, Other Medical Practitioner and Eating Disorders Services Determinations consequential to the creation of equivalent telehealth and telephone attendance items in the COVID-19 Determination. To the extent that these changes restrict patient eligibility or access to Medicare benefits for services, these restrictions are consistent with the current limitations on face-to-face attendance items. For example, if a patient was entitled to 10 face-to-face attendances for a particular service, they are now entitled to 10 attendances by any means (face-to-face, telehealth or telephone) for that type of service.

Similarly, the amendments to the COVID-19 Determination insert or amend the limitations which operate on telehealth and telephone attendance items so that they are consistent with the limitations on face-to-face items.

The amendment to clause 1.9.3 of the Other Medical Practitioner Determination amends that limitation on items 272, 276, 281 and 282 so that it is consistent with the equivalent item in the general medical services table.

The other general tidying amendments to the instruments do not affect who is entitled to Medicare benefit, or arrangements for practitioners.

Conclusion

This instrument is compatible with human rights as it maintains the right to health and the right to social security. The limitations imposed on eligibility for Medicare benefits are consistent with the limitations that currently operate for face-to-face attendances.

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