

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement Desensitisation and Reprocessing) 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 current version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2019*, but on 1 May 2020 the Table will be remade by the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*. The clauses in the Table will be renumbered to reflect current drafting standards and formatting.

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 Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement and Desensitisation and Reprocessing) Determination 2020* (the Determination) is to amend a number of determinations made under subsection 3C(1) of the Act to refer to clauses in the Table as renumbered in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*, and to make other minor consequential amendments following the remake of these regulations.

The Determination updates references in the following determinations:

- *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*
- *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*
- *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020*
- *Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020.*

The Determination also adds “eye movement desensitisation and reprocessing” (EMDR) to the list of mental health care management strategies included in the available list of “focussed psychological strategies” services in the *Health Insurance (Allied Health Services) Determination 2014*. EMDR is a therapy used to treat patients with post-traumatic stress disorder. The addition of EMDR to the definitions will clarify that eligible patients can access EMDR therapy under items 80100 to 80170.

Consultation

Consultation was not undertaken on updating the references to the Table in the determinations as these changes are machinery in nature and do not alter existing arrangements. There is no change to the arrangements for patients or health professionals.

Consultation was undertaken on EMDR when the application was considered by the Medical Services Advisory Committee (application number 1441). MSAC reviews new or existing medical services or technology, and the circumstances under which public funding should be supported through listing on the MBS. As part of the MSAC process, consultation is undertaken with professional bodies, consumer groups, the public and clinical experts for applications put forward for consideration.

Details of the Determination are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Determination may be exercised.

The Determination commences on 1 May 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 Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement Desensitisation and Reprocessing) Determination 2020*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement Desensitisation and Reprocessing) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 May 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 to *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*

Item 1 repeals and replaces the definition of “general practitioner” so that it mirrors the definition of this term in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Items 2 and 5 to 9 amend references to the Table to reflect the numbering in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Items 3, 4 and 10 replace the definition and references to “residential care service” with “residential aged care facility”. This is consistent with the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*, which uses “residential aged care facility” instead of “residential care service”.

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

Items 1 to 22 and 24 to 37 amend references to the Table to reflect the numbering in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Items 18 and 23 make consequential changes so that the descriptions of services performed by other medical practitioners are consistent with the equivalent items for general practitioners in

the Table. Item 18 amends subclause 1.6.1(8) to remove the definition of “multidisciplinary discharge case conference in a residential aged care facility”. This term was repealed in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020* as the intent of this term was included in the amended item descriptors. Item 23 amends the descriptions for items 235, 236, 237, 238, 239 and 240 to include the intent of this term, consistent with the equivalent items in the Table (items 735, 739, 743, 747, 750 and 758) following commencement of the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

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

Items 1 to 25 and 27 amend references to the Table to reflect the numbering in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Items 26 and 28 amend Division 2.2 to remove the definition of “midwife” and insert the definition for “practice midwife” in subclause 2.2.1(1), and amend all references to “midwife” to “practice midwife”. This is consistent with the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*, which uses “practice midwife” instead of “midwife”.

Schedule 4 – Amendments to Health Insurance (Section 3C General Medical Services – Additional GP Bulk-billing Incentives) Determination 2020

Items 1 and 4 to 6 amend references to the Table to reflect the numbering in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*.

Items 2 to 4 make consequential changes so that the descriptions of items in this determination are consistent with the equivalent items in the Table. Item 2 amends subsection 5(1) to repeal the definition of “eligible area”. This term was repealed in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020* as the intent of this term was included in the amended item descriptors. Items 7 and 8 amend the descriptions for items 10981 and 10982 to include the intent of this term, consistent with the equivalent items in the Table (items 10991 and 10992) following commencement of the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*. Item 3 inserts definitions for terms now included in the descriptions for items 10981 and 10982 into subsection 5(1).

Schedule 5 – Amendments to Health Insurance (Allied Health Services) Determination 2014

Item 1 inserts “eye movement desensitisation and reprocessing” into the list of “focussed psychological strategies” defined in subsection 4(1) of this Determination.

Item 2 inserts “eye movement desensitisation and reprocessing” into the list of “focussed psychological strategies continuing professional development” defined in subsection 4(1) of this Determination.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement Desensitisation and Reprocessing) 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 Legislation Amendment (Consequential Change to Incorporated GMST Clauses and Eye Movement Desensitisation and Reprocessing) Determination 2020* (the Determination) is to amend a number of determinations made under subsection 3C(1) of the Act to refer to clauses in the Table as renumbered in the *Health Insurance (General Medical Services Table) Regulations (No. 1) 2020*, and to make other minor consequential amendments following the remake of these regulations.

The Determination updates references in the following determinations:

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Human rights implications

This Determination 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 rights to health and social security by ensuring access to publicly subsidised health services, which are clinically effective and cost-effective.

Conclusion

This instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

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