

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021

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 GMST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST.

The GMST 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 (No. 2) 2020*.

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 (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021* (the Amendment Determination) is to extend access to certain medical practitioner and allied health telehealth and phone services until 31 December 2021, change the types of general practice telehealth and phone services available to patients, and to apply annual indexation of Medicare benefits.

Telehealth and Phone Services

Since 13 March 2020, the Australian Government has been providing temporary access to Medicare benefits for certain medical services to protect Australians during the coronavirus (COVID-19) pandemic.

On 11 May 2021, the Government announced an additional \$204.6 million in funding to support access to certain telehealth and phone services for all Australians until 31 December 2021 to ensure patients will have continued access to essential health services during the COVID-19 pandemic. Schedule 1 of the Amendment Determination will implement this change.

Schedule 3 of the Amendment Determination will also change the types of general practice telehealth and phone services available to patients, including:

- listing 24 new telehealth and phone services, exempt from the requirement of an ‘existing relationship’ with the doctor, related to attendances for blood borne viruses, sexual or reproductive health consultations;

- removing the requirement for patients to have an ‘existing relationship’ with their doctor to receive a general practice telehealth or phone service related to pregnancy support counselling services to improve patient access;
- deleting 44 phone services and replacing them with four items for short and long phone attendances. This will enable patients to continue accessing phone attendances where it is not possible for the service to be performed in person or by telehealth.

Indexation

Schedule 2 of the Amendment Determination will increase the fees of specified items in three legislative instruments by 0.9 per cent from 1 July 2021. The schedule fees relate to attendances for certain medical practitioner and allied health telehealth and phone services and COVID-19 vaccine assessments. This reflects the Government’s policy regarding Medicare indexation and means that patients will receive an increased Medicare benefit for these services.

Schedule 4 of the Amendment Determination will correct an incorrect schedule fee in the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*.

Consultation

In the 2021-22 Budget under the *COVID 19 Response Package – guaranteeing Medicare and access to medicines— extension* measure, the Government announced the changes to telehealth and phone services.

Consultation was undertaken with relevant stakeholders on the changes to temporary telehealth and phone services. This included consultation on the new telehealth and phone items for the provision of services for blood borne viruses, sexual or reproductive health. Relevant stakeholders were also consulted regarding medical termination of pregnancies, resulting in the exemption of pregnancy consulting items from the requirement of an established clinical relationship to access these services.

The Department also consulted peak bodies, including the Royal Australian College of General Practitioners and Australian Medical Association, in relation to the changes to GP phone items.

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare – Medicare Benefits Schedule – indexation* measure. The Amendment Determination will continue the Government’s policy regarding indexation by indexing the schedule fees of certain attendances.

No consultation was undertaken on the indexation component of this instrument as it continues the business-as-usual implementation of the Government’s policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year. The complete list of all indexed schedule fees will be distributed to stakeholders through the Medicare Benefits Schedule (MBS) xml data file which is available at www.mbsonline.gov.au.

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

Sections 1 to 4 of the Amendment Determination commence immediately after registration, Schedule 1 commences the day after registration, Schedules 2 and 3 commence on 1 July 2021 and Schedule 4 commences immediately after commencement of the *Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021*.

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 Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021*.

Section 2 – Commencement

Sections 1 to 4 of the Amendment Determination commence immediately after registration, Schedule 1 commences the day after registration, Schedules 2 and 3 commence on 1 July 2021 and Schedule 4 commences immediately after commencement of the *Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021*.

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 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 – Extend sunset provisions

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

Item 1 amends Section 4 of the Principal COVID-19 Telehealth and Telephone Determination to extend the items listed in the principal determination from 30 June 2021 until 31 December 2021. This will extend the availability of temporary telehealth and telephone services which can be provided remotely to support patient access in a safe and timely manner during the COVID-19 pandemic.

Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020 (Principal Expansion of GP and Allied Health Services Determination)

Item 2 amends paragraph 4(a) of the Principal Expansion of GP and Allied Health Services Determination to extend items listed in Schedule 2 of that determination from 30 June 2021 until 31 December 2021.

Schedule 2 lists telehealth and phone mental health treatment plan preparation and review services as well as psychological therapy and focussed psychological strategy services.

Schedule 2 – Indexation

Principal COVID-19 Telehealth and Telephone Determination

Principal Expansion of GP and Allied Health Services Determination

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021

The amendments in Schedule 2 index the schedule fee for items which are listed in the specified determinations by 0.9 per cent from 1 July 2021.

Schedule 3 – GP telehealth and telephone services amendments

Principal COVID-19 Telehealth and Telephone Determination

Item 1 amends subsections 8(10) and (11) in the Principal COVID-19 Telehealth and Telephone Determination. The amendment to subsection 8(10) extends the GP and OMP telehealth and phone services exempt from the requirement of an existing relation with the doctor for patients to access telehealth and phone services. The GP and OMP telehealth and phone services exempt under subsection 8(10) include:

- existing pregnancy support counselling services; and
- new services relating to blood borne viruses, sexual or reproductive health consultations.

The amendment to subsection 8(11) maintains the definition of “patient’s usual practitioner” and makes a consequential change to text relating to exemptions for after-hours services. This text is redundant as subgroup 29 which provides for after-hours services by telehealth is exempt from the requirement of an existing relationship with a doctor to access telehealth and phone services under subsection 8(10). The Amendment Determination repeals subgroup 30 which provided for after-hours services by phone.

Item 2 amends subclause 1.1.1(1) in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination to remove references to repealed OMP phone attendance items and insert the eight new OMP phone attendance items relating to blood borne viruses, sexual or reproductive health consultation services for patients in eligible rural areas.

Item 3 amends paragraph (c) of subclause 1.1.5(1) in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination to remove references to repealed OMP phone attendance items, and to insert references to the two new OMP phone attendance items (91892 and 91893).

Item 4 amends paragraph (c) of subclause 1.1.8(1) in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination to remove references to repealed OMP phone attendance items and insert references to the two new OMP phone attendance items (91892 and 91893).

Item 5 inserts Clause 1.1.18 in Schedule 1, which prevents the use of the new blood borne viruses, sexual or reproductive health consultation items for services related to assisted reproductive technology or antenatal care. Clause 1.1.18 also requires these new services to be provided by a medical practitioner who is located at a medical practice or has a formal agreement with a medical practice to provide personal attendance services.

Item 6 repeals the items in subgroup 2 of Group A40 in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination, removing 12 GP and OMP phone attendance items, and inserts two new GP phone attendance items (91890 and 91891) and two new OMP phone attendance items (91892 and 91893).

Item 7 repeals subgroups 12, 14 and 18 of Group A40 in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination, which contain GP and OMP phone attendance services relating to health assessments for Aboriginal and Torres Strait Islander People, GP management plans, team care arrangements and multidisciplinary care plans, and autism services.

Item 8 repeals items 92124, 92125, 92126, 92128, 92129, 92130, 92131, 92134 and 92135 in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination, which are GP and OMP phone attendance services for mental health treatment plans.

Item 9 repeals subgroups 22 and 30 of Group A40 in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination, which contain GP and OMP phone attendance services for eating disorder treatment and management plans and urgent after-hours consultations.

Item 10 inserts 24 new GP and OMP telehealth and phone attendance items in Group A40 in Schedule 1 of the Principal COVID-19 Telehealth and Telephone Determination. Subgroups 39 and 40 of Group A40 list 24 equivalent Level A to D telehealth and phone items for blood borne viruses, sexual or reproductive health consultation services, including eight OMP telehealth and phone attendance services for patients in eligible rural areas.

Item 11 amends subclause 3.1.3(3) in Schedule 3 of the Principal COVID-19 Telehealth and Telephone Determination to remove references to repealed GP and OMP phone attendance items, and to insert references to the four new GP and OMP phone attendance items.

Schedule 4 – Fee amendment

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

Item 1 amends the schedule fee for item 282 from \$116.65 to \$111.65. This amendment is to correct the fee due to an administrative error. The new fee for this item is indexed at a rate of 0.9% above its schedule fee in the 2020-21 financial year (\$110.65).

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021

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

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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.

The Right of Equality and Non-Discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Analysis

For telehealth and phone services, this instrument maintains existing rights to health and social security and the existing right of equality and non-discrimination, ensuring continued access to remote service options for patients. Although certain general practice phone service items have been removed, this instrument maintains patient access to general practice phone attendance services through the new short and long general purpose phone consultation items. This instrument also furthers the right to health, the right to social security and the right of equality and non-discrimination by increasing the Medicare benefit patients will receive when accessing

the specified services. This will assist patients to continue accessing clinically relevant health services, consistent with the rights to health and social security.

Conclusion

This instrument is compatible with human rights as it maintains the right to health, the right to social security and the right of equality and non-discrimination.

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