

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022

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 2021*.

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 temporary access to Medicare benefits for certain medical services to protect Australians during the coronavirus (COVID-19) pandemic. From 1 January 2022, patient access to certain general practitioner, specialist and allied health telehealth and phone services was continued in the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Principal Determination).

General practitioners (GPs) and other medical practitioners (OMPs) working in general practice can only perform these telehealth or phone services if they have an existing relationship with the patient. An existing relationship is defined as:

- the medical practitioner who performs the service has provided a face-to-face service to the patient in the last 12 months; or
- the medical practitioner who performs the service is located at a medical practice, and the patient has a face-to-face service arranged by that practice in the last 12 months. This can be a service performed by another doctor located at the practice, or a service performed by another health professional located at the practice (such as a practice nurse or Aboriginal and Torres Strait Islander health worker); or
- the medical practitioner who performs the service is a participant in the Approved Medical Deputising Service (AMDS) program, and the AMDS provider that employs the medical practitioner has a formal agreement with a medical practice that has provided at least one face-to-face service to the patient in the last 12 months.

This requirement does not apply to a person who is under the age of 12 months, a person who is experiencing homelessness, a person who is required to quarantine or

isolate under a State or Territory Government public health order, or a person who receives the service from a medical practitioner located at an Aboriginal Medical Service or an Aboriginal Community Controlled Health Service.

Some GP telehealth and phone items for specific services or for the management of specific health conditions also do not require an existing clinical relationship, including GP items for urgent after-hours (unsociable hours) services, pregnancy counselling services, blood-borne viruses and sexual or reproductive health consultations, mental health consultations and nicotine cessation services.

On 11 April 2022, the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption) Determination 2022* (the Natural Disaster No. 1 Amendment Determination) amended the Principal Determination to replace the definition of ***person who is in a flood affected area*** with the definition of ***person who is in a natural disaster area***.

The Natural Disaster No. 1 Amendment Determination was intended to introduce an exemption to the requirement for patients to have an existing relationship with their medical practitioner to access a general practice telehealth or phone service where the patient is located within a natural disaster area. This new exemption would have replaced the existing exemption for patients in a flood affected area. However, due to a drafting error, this change could not be incorporated into the Principal Determination.

The purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022* (the Amendment Determination) is to amend the Principal Determination to remove the requirement for patients to have an existing relationship with their medical practitioner to access a general practice telehealth or phone service if the patient is located within a State or Territory local government area which is declared as a natural disaster area by a State or Territory Government. This change will be retrospectively applied from 11 April 2022 to align with the changes made in the Natural Disaster No. 1 Amendment Determination.

Consultation

Targeted consultation regarding the emergency telehealth services in response to natural disasters occurred with key stakeholders, including the Australian Medical Association, Royal Australian College of General Practitioners, Australian College of Rural and Remote Medicine and the Rural Doctors' Association of Australia, ahead of the Government's commitment to the permanent retention of telehealth items introduced in response to COVID-19, agreed in the 2021-22 Mid-Year Economic and Fiscal Outlook. The unanticipated and rapid deterioration of infrastructure and significant impact of the 2022 East Coast Floods prompted approval of the relevant regulatory changes ahead of the 2022-23 Budget.

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

The Amendment Determination commences retrospectively on 11 April 2022.

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 – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 11 April 2022.

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 – Telehealth and Telephone Attendances) Determination 2021

Amendment item 1 repeals and replaces subparagraph 7(6)(a)(vi) to provide a person who is in a natural disaster affected area as an exemption to the requirement for patients to have an existing relationship with the medical practitioner providing the service to access general practice telehealth and phone services.

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 – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022

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 Amendment Determination

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. From 1 January 2022, patient access to certain general practitioner, specialist and allied health telehealth and phone services was continued in the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Principal Determination).

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The purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Natural Disaster Exemption No. 2) Determination 2022* (the Amendment Determination) is to amend the Principal Determination to remove the requirement for patients to have an existing relationship with their medical practitioner to access a general practice telehealth or phone service if the patient is located within a State or Territory local government area which is declared as a natural disaster area by a State or Territory Government. This change will be retrospectively applied from 11 April 2022 to align with the changes made in the Natural Disaster No. 1 Amendment Determination.

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

This instrument advances the rights to health and social security and the right of equality and non-discrimination by ensuring that patients affected by natural disasters continue to have access to general practitioner telehealth and phone services even in circumstances where the medical practitioner providing the service does not have an existing relationship with the patient.

Conclusion

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

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