

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination 2018

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The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2018*.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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 – General Practice Telehealth Services) Amendment Determination 2018* (the Determination) is to introduce new items for the provision of general practice mental health services delivered by video conference to patients in drought affected areas.

Currently, doctors in rural and remote areas can provide mental health and well-being services to patients as part of the time tiered attendance items. General practitioners and other medical practitioners working in general practice can provide these services for face-to-face attendances.

From 1 November 2018, doctors in Modified Monash areas 3 to 7 will be able to provide mental health services via video conference in drought affected areas in New South Wales, Queensland and Victoria, if:

- the doctor has an existing relationship with the patient; and
- the patient is at least 15km, by road, from the doctor's place of practice.

This change will support the mental health, well-being and resilience of farming communities in drought affected areas. It is intended to provide patients in affected areas temporary access to telehealth mental health and well-being services from their doctor by removing barriers to access, such as travel and time away from work.

This change will not affect the provision of mental health services under Better

Access, which provides patients with a diagnosed mental illness access to mental health professionals.

Consultation

Consultation was undertaken with key medical groups such as the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 November 2018.

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 – General Practice Telehealth Services) Amendment Determination 2018*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination 2018*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 2018.

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 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.

Section 5 – Repeal

Section 5 provides that that the Determination is repealed from 1 July 2020. This reflects that the new general practice video conferencing services are designed to improve access to mental health and well-being services for patients in drought affected areas.

Schedule 1 – Amendments to instruments made under section 3C of the Act

Health Insurance (Section 3C General Medical Services - General Practitioner Telehealth Services) Determination 2018 (Principal GP Determination)

Item 1 – Subsection 4(1) (below the definition of *Act*)

Subsection 4(1) of the Principal GP Determination provides definitions for that instrument. Item 1 amends the Principal GP Determination to add a definition of ‘drought affected eligible areas’. A drought affected area is a location in New South Wales, Queensland or Victoria that is within Modified Monash areas 3 to 7.

Modified Monash is a geographical classification system developed by the Department of Health (the Department) for categorising metropolitan, regional, rural and remote locations according to both geographical remoteness and population size, based on population data published by the Australian Bureau of Statistics. The Department uses the Australian Statistical Geography Standard (ASGS) system as published by the Australian Bureau of Statistics in July 2011, but

has different numbering system. Maps of the Modified Monash areas and the Department's remoteness classification are available at www.doctorconnect.gov.au.

Item 2 – Section 6 (below the heading)

Section 6 of the Principal GP Determination provides that the video conferencing focussed psychological items (2729 and 2731) do not apply if the patient or general practitioner travels to satisfy the distance requirement.

Item 2 amends the Principal GP Determination to add the three new general practice mental health services (2121, 2150 and 2196) to the distance requirement rule. These items are subject to the same limitation as they can be delivered by video conference to patients in drought affected areas.

Item 3 – Section 7 (below the heading)

Section 7 of the Principal GP Determination specifies that items in Schedule 1 of that instrument (items 2729 and 2731) are treated as if they were specified in clause 2.22.7 of the general medical services table. Clause 2.22.7 is relevant to focussed psychological items.

As the new items are not focussed psychological items, item 3 amends the Principal GP Determination to change the application of section 7 from all items in Schedule 1 to items 2729 and 2731 only.

Item 4 – Schedule 1 (below items 2729 and 2731)

Item 4 inserts the three new items for the provision of general practice mental health services delivered by video conference to patients in drought affected areas. General practitioners in Modified Monash areas 3 to 7 will be able to provide these service if:

- the doctor has an existing relationship with the patient; and
- the patient is at least 15km, by road, from the doctor's place of practice.

The three new items have the same time requirements and Medicare benefits as the equivalent face-to-face consultation items in group A1 of the general medical services table (known as 'Level B to D' attendances).

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

Item 5 – Subsection 4(1) (below the definition of ASGS)

Section 4 of the Principal OMP Determination provides definitions for that instrument. Item 5 amends the Principal GP Determination to add a definition of 'drought affected eligible areas'. A drought affected area is a location in New South Wales, Queensland or Victoria that is within Modified Monash areas 3 to 7.

Item 6 – Paragraph 1.12.3(1)(a) of Division 1.12

Paragraph 1.12.3(1)(a) of the Principal OMP Determination specifies that items in Division 1.12 of that instrument are treated as if they were specified in subclause 2.20.1(1) of the general medical services table. Subclause 2.20.1(1) is relevant to patient support video conferencing items.

As the new items are not patient support video conferencing items, item 6 amends the Principal OMP Determination to change the application of paragraph 1.12.3(1)(a) from all items in

Division 1.12 to the items for patient support video conferencing services only.

Item 7 – Clause 1.12.4, after paragraph b, of Division 1.12

Item 7 will amend the Principal OMP Determination to insert new subclause 1.2.4(2) which provides that the three new mental health items (894, 896 and 898) do not apply if the patient or medical practitioner travels to satisfy the distance requirement.

Item 8 – Division 1.12 (after item 892)

Item 8 inserts the three new items for the provision of general practice mental health services delivered by video conference to patients in drought affected areas. Medical practitioners, as defined in section 4 of the Principal OMP Determination, will be able to provide these service if they are practising in in Modified Monash areas 3 to 7, and:

- the doctor has an existing relationship with the patient; and
- the patient is at least 15km, by road, from the doctor's place of practice.

The three new items have the same time requirements and Medicare benefits as the equivalent face-to-face consultation items in group A7 (subgroup 2) of the Principal OMP Determination (known as 'Level B to D' attendances).

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 – General Practice Telehealth Services) Amendment Determination 2018

This Determination 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 – General Practice Telehealth Services) Amendment Determination 2018* (the Determination) is to introduce new items for the provision of general practice mental health services delivered by video conference to patients in drought affected areas.

Currently, doctors in rural and remote areas can provide mental health and wellbeing services to patients as part of the time tiered attendance items. General practitioners and other medical practitioners working in general practice can provide these services for face-to-face attendances.

From 1 November 2018, doctors in Modified Monash areas 3 to 7 will be able to provide mental health services via video conference in drought affected areas in New South Wales, Queensland and Victoria, if:

- the doctor has an existing relationship with the patient; and
- the patient is at least 15km, by road, from the doctor's place of practice.

This change will support the mental health, wellbeing and resilience of farming communities in drought affected areas. It is intended to provide patients in affected areas temporary access to remote mental health and well-being services from their doctor by removing barriers to access, such as travel and time away from work.

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 Determination advances the right to health and the right to social security by ensuring access to publicly subsidised health services which are clinically effective, safe and cost-effective.

Conclusion

This Determination is compatible with human rights as it has a positive effect on the right to health and the right to social security.

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