

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 2019

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The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year.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 2019* (the Determination) is to introduce new items for the provision of general practice services delivered by video conference to patients in flood affected areas in Queensland.

Currently, doctors can provide general practice 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 early March 2019, patients in flood affected local government areas in Queensland will be given temporary access to general practice services via video conference. This change will support the mental health, well-being and health of patients who may have had their access to general practice services affected by flooding.

Consultation

Consultation was undertaken with the Rural Doctors Association of Australia (RDAA) regarding the Determination. The RDAA, which is a peak professional body representing rural and remote doctors, recommended the listing of temporary video conference general practice items to allow flood affected patients to continue accessing general practice services.

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

The Determination commences the day after registration and is repealed at the end of 30 June 2019.

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 2019*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 2019*.

Section 2 – Commencement

Section 2 provides that the Determination commences the day 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 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 the Determination is repealed at the end of 30 June 2019. This reflects that the new general practice video conferencing services are designed to improve access to general practice services for patients who have been affected by the floods in Queensland.

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)

Amendment 1 – Subsection 4(1) (below the definition of *drought affected eligible area*)

Subsection 4(1) of the Principal GP Determination provides definitions for that instrument. Amendment 1 amends the Principal GP Determination to add a definition of ‘flood affected eligible area’. A flood affected area means an area that is a local government area of Burdekin, Burke, Charters Towers, Cloncurry, Cook, Doomadgee, Douglas, Flinders, McKinlay, Palm Island, Richmond, Townsville, Winton, and Wujal Wujal in Queensland.

Amendment 2 – Schedule 1 (after item 2196)

Amendment 2 inserts the four new items (2095, 2144, 2180 and 2193) which allow patients in a ‘flood affected eligible area’ to access general practice services via video conference.

The four new items have the same time and clinical requirements of the equivalent face-to-face consultation items in group A1 of the Table (known as 'Level A to D' attendances). The Medicare benefit of the new items is equivalent to the relevant item in group A1 of the Table.

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

Amendment 3 – Subsection 4(1) (below the definition of *eligible area*)

Section 4 of the Principal OMP Determination provides definitions for that instrument. Amendment 3 amends the Principal GP Determination to add a definition of 'flood affected eligible area'. A flood affected area means an area that is a local government area of Burdekin, Burke, Charters Towers, Cloncurry, Cook, Doomadgee, Douglas, Flinders, McKinlay, Palm Island, Richmond, Townsville, Winton, and Wujal Wujal in Queensland.

Amendment 4 – Division 1.12 (after item 898)

Amendment 4 inserts the four new items (899, 901, 905 and 906) which allow patients in a 'flood affected eligible area' to access general practice services, provided by other medical practitioners, via video conference.

The four new items have the same time and clinical requirements as the equivalent face-to-face consultation items in group A7 (subgroup 2) of the Principal OMP Determination (known as 'Level A to D' attendances). The Medicare benefit of the new items is equivalent to the relevant item in group A7 (subgroup 2) of the Principal OMP Determination.

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 2019

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 2019* (the Determination) is to introduce new items for the provision of general practice services delivered by video conference to patients in flood affected areas in Queensland.

Currently, doctors can provide general practice 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 early March 2019, patients in flood affected local government areas in Queensland will be given temporary access to general practice services via video conference. This change will support the mental health, well-being and health of patients who may have had their access to general practice services affected by flooding.

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 patients in flood affected areas of Queensland can continue to access Medicare-eligible general practice services.

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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