

## 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 (No. 2) 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The Table is set out in the regulations made under subsection 4(1) of the Act, which is repealed and re-made each year.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 2019*.

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

From 1 November 2019, medical practitioners will be able to provide video conferencing services for patients in rural and remote areas. The *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* will introduce new general practice consultation services provided via video conferencing to patients in rural and remote areas. This change was announced in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) measure *Guaranteeing Medicare – strengthening primary care* to assist patients with access to general practice services.

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination (No. 2) 2019* (the Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Principal Determination) to list four new telehealth services provided by other medical practitioners (OMP) for patients in rural and remote areas (Modified Monash 6 or 7).

The four services have the same requirements as the equivalent face-to-face attendance services (179, 185, 189, 203), including the clinical time and fee components.

To access the video conference services, the patient will need to have received at least three face-to-face attendances from the medical practitioner providing the service in the preceding 12 months. This confirms that the video conferencing attendance services can only be rendered by a medical practitioner with an existing clinical relationship with the patient.

### Consultation

As part of the development of the Determination, key industry representatives were invited to provide feedback on the draft item descriptors for this new measure.

Stakeholder feedback was also received from the Australian Medical Association, the Royal Australian College of General Practice, the Australian College of Rural and Regional Medicine, the Rural Doctors Association of Australia, and the Royal Flying Doctor Service Queensland Section.

Stakeholders support the measure, which will expand patient access to general practice services in rural and remote areas.

Details of the Determination are set out in the Attachment.

The Determination commences immediately after Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* commences.

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 (No. 2) 2019***Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services) Amendment Determination (No. 2) 2019*.

Section 2 – Commencement

Section 2 provides that the instrument commences immediately after Schedule 1 of the *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* commences.

Section 3 – Authority

Section 3 provides that the instrument 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 instrument 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

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

**Item 1 – After Division 1.12 of Schedule 1**

Item 1 insert a new Division 1.13 which creates four new items (2480, 2481, 2482 and 2483) for the provision of telehealth services provided to patients in rural and remote areas (as defined by Modified Monash areas 6 to 7). The four items will sit under *Group A30 – Medical practitioner video conferencing consultation, Subgroup 7 – Non Specialist Practitioner video conferencing consultation for patients in rural and remote areas*.

The four services have the same requirements as the equivalent face-to-face attendance services (179, 185, 189, 203), including the clinical time and fee components.

Clause 1.13.1 will provide limitations for the provision of services provided under the four new items. At the time of the video conferencing attendance, both the patient and the medical practitioner will need to be located at least 15km by road from each other. The patient or the medical practitioner cannot travel to a place to satisfy this requirement. The patient will also need to have received at least three face-to-face attendances from the practitioner who is providing the video conferencing service in the preceding 12 months.

**Item 2 – Division 1.13 of Schedule 1 (heading)**

Item 2 will renumber Division 1.13 of the Principal Determination to Division 1.14.

**Item 3 – Clause 1.13.1 of Division 1.13 of Schedule 1 (heading)**

Item 3 will renumber clause 1.13.1 of the Principal Determination to clause 1.14.1.

## 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 (No. 2) 2019***

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**

From 1 November 2019, medical practitioners will be able to provide video conferencing services for patients in rural and remote areas. The *Health Insurance Legislation Amendment (2019 Measures No. 1) Regulations 2019* will introduce new general practice consultation services provided via video conferencing to patients in rural and remote areas. This change was announced in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) measure *Guaranteeing Medicare – strengthening primary care* to assist patients with access to general practice services.

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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.

### Analysis

This instrument 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. This instrument will expand access to all patients living in rural and remote areas (Modified Monash 6 or 7) by providing telehealth attendance services to these patients.

### **Conclusion**

This instrument is compatible with human rights as it maintains the right to health and the right to social security.

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