

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Allied Health Services) Amendment (Eating Disorders) 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.

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 (Allied Health Services) Amendment (Eating Disorders) Determination 2019* (the Amending Determination) is to list 34 new treatment services performed by allied health providers for patients with an eating disorder. Schedule 1 of the Amending Determination will amend the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination) to commence the new items from 1 November 2019.

The Amending Determination will list the new items to provide Medicare benefits to assist patients with anorexia nervosa and other eligible eating disorders to access evidence-based treatment services, including:

- Dietetic services available to patients who have been recommended for treatment as part of their eating disorder treatment and management plan.
- Mental health treatment services available to patients who have been recommended for treatment as part of their eating disorder treatment and management plan. The services can be performed by various health providers, including eligible clinical psychologists, psychologists, occupational therapists and social workers.

The Amending Determination is part of a package of changes which will provide patients with an eating disorder treatment and management plan with access to:

- up to 40 ‘eating disorder psychological treatment services’ in a 12 month period from the date of the eating disorder treatment and management plan. An eating disorder psychological treatment services means any mental health treatment service provided by an allied health provider or a medical practitioner in general practice with appropriate mental health training.
- up to 20 ‘eating disorder dietetic treatment services’ in a 12 month period from the date of the eating disorder treatment and management plan. An eating disorder dietetic treatment service includes the 2 new dietetic services which will listed by the Amending Determination and dietetic item 10954 in the Principal Determination.

The *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*, which will commence from 1 November 2019, will introduce the new eating disorder services performed by medical practitioners, including the eating disorder treatment and management plan items.

The eating disorders change was recommended by the independent clinician-led Medicare Benefits Schedule (MBS) Review Taskforce. The Government agreed to the MBS Review Taskforce recommendation in the 2018-19 Mid-Year Economic and Fiscal Outlook under the *Guaranteeing Medicare – strengthening primary care* measure.

Schedule 2 of the Amending Determination will update the definition of the Australian Statistical Geography Standard to incorporate the latest July 2016 edition, as in existence when Schedule 2 commences on 1 January 2020. The Australian Statistical Geography Standard is published on the Australian Bureau of Statistics' website.

### **Consultation**

Consultation was undertaken on eating disorder items as part of the MBS Review Taskforce process. The MBS Review Taskforce establishes expert committees and working groups focusing on specific areas of the MBS to review how items on the MBS can be better aligned with contemporary clinical evidence and practice, and improve health outcomes for patients. The Eating Disorders Working Group was established in response to a request from the Minister of Health for the MBS Review Taskforce to investigate Medicare funding for the treatment of eating disorders. The report from the Eating Disorders Working Group was released for public consultation to inform the final MBS Review Taskforce report and recommendation to Government.

The Department established an Implementation Liaison Group (ILG) of expert medical, allied health, consumer and academic organisations with expertise in eating disorder treatment. The ILG was established to inform development of the new eating disorder services recommended by the MBS Review Taskforce and to represent the views of health professionals who will be providing the new services.

The Department has also consulted with the Royal Australian College of General Practitioners, the Australian Society of Psychologists, the InsideOut Institute and the Butterfly Foundation.

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

Sections 1 to 4 of the Amending Determination commence the day after registration on the Federal Register of Legislation. Schedule 1 of the Amending Determination commences on 1 November 2019 to coincide with the commencement of other components of the Australian Government's broader eating disorders strategy contained in the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. Schedule 2 of the Amending Determination commences on 1 January 2020.

The Amending 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 (Allied Health Services) Amendment (Eating Disorders) Determination 2019***Section 1 – Name

Section 1 provides that the Amending Determination is the *Health Insurance (Allied Health Services) Amendment (Eating Disorders) Determination 2019*.

Section 2 – Commencement

Section 2 provides that sections 1 to 4 of the Amending Determination commence the day after the instrument is registered. Schedule 1 commences on 1 November 2019 to coincide with the commencement of other components of the Australian Government's broader eating disorders strategy contained in the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. Schedule 2 commences on 1 January 2020.

Section 3 – Authority

Section 3 provides that the Amending Determination is made under subsection 3C(1) of the Act.

Section 4 – Schedules

Section 4 provides that each instrument specified in a Schedule is amended as provided for in that Schedule.

Schedule 1 – Amendments to the Principal Determination commencing 1 November 2019**Item [1] – Amendment to Interpretation**

This item inserts three new definitions into section 4 of the Principal Determination.

An 'eating disorder dietetic treatment services' means the two new eating disorder dietetic services which are introduced by this Amending Determination (items 82350 and 82351) and the current dietetic item 10954 in the Principal Determination. This definition is used in the new provisions to prevent a patient from having any more than 20 eating disorder dietetic treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided (refer to amendment item [3]).

An 'eating disorder psychological treatment service' is defined to have the same meaning as in section 4 of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. It is defined with reference to the mental health treatment service provided by an allied health professional or a medical practitioner in general practice with appropriate mental health training. These treatment services include Medicare mental health treatment services currently provided to patients under the Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS ('Better Access') initiative, and from 1 November 2019, will include mental health services provided to patients with an eligible eating disorder. This definition is used in the new provisions to prevent a patient from having any more than 40 eating disorder psychological treatment

services in a 12 month period from the date the eating disorder treatment and management plan is provided (refer to amendment item [3]).

An ‘eating disorder treatment and management plan’ is defined to have the same meaning as in section 4 of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. It is defined as a service to which an item in Subgroups 1 or 2 of that instrument applies. This definition is used in the provisions that prevent a patient from having any more than 20 eating disorder dietetic treatment services and 40 eating disorder psychological treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided (refer to amendment item [3]).

### **Item [2] – Amendment to Definitions**

This item inserts a new definition into section 4 of the Principal Determination.

‘Eligible patient’ is defined to have the same meaning as in section 4 of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. It is used to define the two cohorts of patients who can access the new eating disorder services. The first cohort are patients who have been clinically diagnosed as having anorexia nervosa. The second cohort are patients who have been clinically diagnosed as having an eating disorder prescribed in paragraph (b) of the definition of ‘eligible patient’ and who meet the defined ‘eligibility criteria’. This will target the services to patients with eating disorders who have complex needs and are assessed as being at high-risk of repeat hospitalisation and serious medical and psychological complications. The MBS Review Taskforce identified these patients as the most suitable for intervention due to the risk factors and the likelihood that they have not responded to treatment at a lower level of intensity, such as Better Access initiative mental health services under Medicare.

### **Item [3] – After section 6A**

This amendment inserts new sections 6AA, 6AB and 6AC.

Subsection 6AA(1) provides a list of evidence-based psychological therapies which must be used as part of an eating disorder mental health treatment service for a Medicare benefit to be paid

Subsections 6AA(2) and (3) provide conditions on when, and how many, ‘eating disorder psychological treatment service(s)’ a patient may have (refer to amendment item [1] for the definition of the term).

Subsection 6AA(2) creates a review process to measure the effectiveness of the eating disorder psychological treatment services and the appropriateness of the intensity of treatment. The review services, which are defined in subsection 6AA(6) to be a service under an item in Subgroup 3 of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*, will involve a comprehensive assessment of the effectiveness of the patient’s treatment. To access a higher intensity of treatments (more services in a 12 month period), the rendering medical practitioner must determine that the patient needs additional treatment services and make the recommendation in writing. The 12 month period commences from the provision of an eating disorder treatment and management plan.

Paragraph 6AA(2)(a) provides that a patient must have a review (the ‘first’ review) of the eating disorder treatment and management plan before they can access more than 10 treatment services in a 12 month period. While it is expected that the review will be performed by the medical practitioner coordinating the patient’s care (usually their GP), it can be performed by an associated medical practitioner, paediatrician or psychiatrist.

Paragraph 6AA(2)(b) provides that a patient must have two subsequent reviews (the ‘second’ and ‘third’ review) before they can access more than 20 treatment services. These reviews are required to determine that the patient has not responded to treatment at the lower intensity levels. The second review must be performed by a medical practitioner in general practice, and the third review must be performed by a paediatrician or psychiatrist. Should both doctors recommend the patient requires more intensive treatment, the patient would be able to access more than 20 treatment services in a 12 month period.

Paragraph 6AA(2)(c) provides that a patient must have a further review (the ‘fourth’ review) of the eating disorder treatment and management plan before they can access more than 30 treatment services in a 12 month period. While it is expected that the review will be performed by the medical practitioner coordinating the patient’s care (usually their GP), it can be performed by an associated medical practitioner, paediatrician or psychiatrist.

Subsection 6AA(3) provides that a patient can have no more than 40 eating disorder psychological treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided.

Subsection 6AA(4) provide conditions on when, and how many, ‘eating disorder dietetic treatment service(s)’ a patient may have (refer to amendment item [1] for the definition of the term). The subsection provides that a patient can have no more than 20 eating disorder dietetic treatment services in a 12 month period from the date the eating disorder treatment and management plan is provided. There is no requirement to have a review to access more than 10 dietetic services in a 12 month period.

Subsection 6AA(5) provides that that the new allied health eating disorder services in Part 8 (refer to amendment item [8]) do not apply if more than 12 months have passed since the patient was provided an eating disorder treatment and management plan. Patients requiring further treatment will need a new eating disorder treatment and management plan to provide a comprehensive and coordinated treatment plan for the next 12 month.

Section 6AB provides a reporting requirement that allied health professionals providing eating disorder services must comply with in order for a Medicare benefit to be paid for an item in Part 8 of Schedule 2. A report is to be provided to the referring medical practitioner after the first service, as clinically required during subsequent services, and after the final service. The reports are to detail assessments carried out, treatment provided and recommendations for future management of a patient’s condition.

Section 6AC concerns the new telehealth items in Part 8 of Schedule 2 (refer to amendment item [8]) which are listed in subsection 6AC(1). Subsection 6AC(2) provides that these items will not apply where a patient or the allied health professional has had to travel to satisfy the distance requirement that the patient be at least 15 km by road away from the allied health professional. The distance requirement is in the relevant item descriptors in Part 8 of Schedule 2.

#### **Item [4] – After section 8A**

This amendment inserts new section 8B to require that items in Part 8 of Schedule 2 do not apply unless the patient has a referral. Subsection 8B(2) provides that the referral must be issued by a medical practitioner who performs a service to which an item applies in Subgroups 1 to 3 of the *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*. This includes services for eating disorder treatment and management plan (Subgroups 1 and 2) and the patient review services (Subgroup 3).

### **Items [5, 6 and 7] – Correct references to eligible dietician**

These items amend the descriptors of items 10954, 81120, 81125 and 81320 to the omit references to ‘eligible dietician’ and substitute with ‘eligible dietitian’, which is the correct term.

### **Item [8] – After Part 7**

This item inserts Part 8 into Schedule 2 of the Principal Determination. Part 8 comprises 34 items which include, in Subgroup 1, two dietetic services (items 82350 and 82351) and, in Subgroup 2, 32 mental health treatment services. The items in Part 8 do not apply if the patient is an admitted patient in hospital.

- Items 82350 and 82351 (Subgroup 1: dietetics services)

These items cover dietetic services provided by eligible dietitians, as defined in section 4 of the Principal Determination. Item 82350 is for services performed in person and item 82351 is for services performed by video conferencing.

- Items 82352 to 82359 (Subgroup 2: eligible clinical psychologists services)

These items cover eating disorder psychological treatment services provided by eligible clinical psychologists, as defined in section 4 of the Principal Determination. There are 8 items covering a range of situations: services provided in consulting rooms, outside consulting rooms, and via video conference. The items cover services provided to individuals as well as group services.

- Items 82360 to 82367 (Subgroup 3: eligible psychologists services)

These items cover eating disorder psychological treatment services provided by eligible psychologists, as defined in section 4 of the Principal Determination. There are 8 items covering a range of situations: services provided in consulting rooms, outside consulting rooms and via video conference. The items cover services provided to individuals as well as group services, and services of varying duration.

- Items 82368 to 82375 (Subgroup 4: eligible occupational therapists services)

These items cover eating disorder psychological treatment services provided by eligible occupational therapists, as defined in section 4 of the Principal Determination. There are 8 items covering a range of situations: services provided in consulting rooms, outside consulting rooms and via video conference. The items cover services provided to individuals as well as group services, and services of varying duration.

- Items 82376 to 82383 (Subgroup 5: eligible social worker services)

These items cover eating disorder psychological treatment services provided by eligible social workers, as defined in section 4 of the Principal Determination. There are 8 items covering a range of situations: services provided in consulting rooms, outside consulting rooms and via video conference. The items cover services provided to individuals as well as group services, and services of varying duration.

Schedule 2 – Amendments to the Principal Determination commencing 1 January 2020

This amendment will repeal and substitute subsection 6D(2) to update the definition of the Australian Statistical Geography Standard to reference the July 2016 edition, as in existence at the time that this amendment commences (1 January 2020). The definition is used to determine a telehealth eligible area under subsection 6D(1).

The Australian Statistical Geography Standard brings together in one framework all of the regions which the Australian Bureau of Statistics (ABS) and many other organisations use to collect, release and analyse geographically classified statistics. The Australian Statistical Geography Standard is published on the Australian Bureau of Statistics' website:

<https://www.abs.gov.au> .

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (Allied Health Services) Amendment (Eating Disorders) Determination 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**

The purpose of the *Health Insurance (Allied Health Services) Amendment (Eating Disorders) Determination 2019* (the Amending Determination) is to list 34 new treatment services performed by allied health professionals for patients with an eating disorder. Schedule 1 of the Amending Determination will amend the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination) to commence the new items from 1 November 2019.

The Amending Determination will list the new items to provide Medicare benefits to assist patients with anorexia nervosa and other eligible eating disorders to access to evidence-based treatment services, including:

- 2 new dietetic services for patients with an ‘eating disorder treatment and management plan’.
- 32 new mental health treatment services for patients with an ‘eating disorder treatment and management plan’.

Schedule 2 of the Amending Determination will update the definition of the Australian Statistical Geography Standard (ASGS) to incorporate the latest July 2016 edition, as in existence when Schedule 2 commences on 1 January 2020. The ASGS is published on the Australian Bureau of Statistics’ website.

#### **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 will advance rights to health and social security by subsidising patient access to eating disorder services performed by certain categories of allied health professionals, namely eligible dietitians, eligible clinical psychologists, eligible psychologists, eligible occupational therapists, and eligible social workers.

**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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