

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 for Bushfires Response) Amendment Determination 2020

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 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

Under Medicare, doctors 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 to patients in person.

Since 1 November 2018, special arrangements have existed to support people in drought affected areas of New South Wales, Queensland and Victoria. People in Modified Monash areas 3 to 7 of these States can access general practice mental health services via video conference, if:

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

Three time tiered items are available to enable provision of services from general practitioners (items 2121, 2150 and 2196) and medical practitioners working in general practice (items 894, 896 and 898).

The purpose of the *Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services for Bushfires Response) Amendment Determination 2020* (the Determination) is to amend the drought items to enable people who have been affected by bushfires to access general practice mental health services by video conference.

From 10 January 2020, people who have had their mental health adversely affected by a bushfire which occurred in the 2019-20 financial year will be eligible for the video conference items.

Any patient who is considered to have had their mental health adversely affected will be eligible. Assessment of the impact on a patient's mental health may include a determination made by a health professional or a self-assessment by the patient.

Patients affected by bushfire will not need to have an existing relationship with the treating doctor to access the service, and there is no minimum requirement on the distance between the patient and the doctor. This will support patients residing in communities affected by bushfires to access mental health services, where required.

This change will not affect the existing arrangements for patients in drought affected areas.

Consultation

The legislative instrument is intended to provide immediate access to general practice mental health services by video conference to people suffering a deterioration in their mental health as a result of bushfires. This will enable patients who cannot access face-to-face services to immediately access mental health support and treatment. It was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument considering the nature of the emergency.

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

The Determination commences immediately after registration. The amendments in Schedule 1 will commence on 10 January 2020.

Should the instrument be registered after 10 January 2020, Schedule 1 is to apply retrospectively to ensure patients affected by bushfires can access mental health services from 10 January 2020. Subsection 3C(2) of the Act allows for retrospective commencement as it excludes subsection 12(2) of the *Legislation Act 2003* from applying to a legislative instrument made under subsection 3C(1) of the *Health Insurance Act 1973*. However, the effect of the amendments in Schedule 1 of the Determination is consistent with the intent of section 12 of the *Legislation Act 2003* as it does not disadvantage a person and only imposes a liability on the Commonwealth for the retrospective period.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

Details of the Health Insurance (Section 3C General Medical Services – General Practice Telehealth Services for Bushfires Response) Amendment Determination 2020

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 for Bushfires Response) Amendment Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences immediately after registration. Schedule 1 will commence on 10 January 2020.

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 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.

Schedule 1 – Amendments

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

Items 1 and 2 – Section 4

Section 4 of the Principal GP Determination provides definitions for that instrument. Item 1 amends the Principal GP Determination to add a definition of ‘affected by bushfire’. A person is ‘affected by bushfire’ if their mental health has been adversely affected from a bushfire which occurred in the 2019-20 financial year.

Item 2 inserts the definition of a Modified Monash 3 area. Modified Monash is a geographical classification system developed by the Department of Health to identify health access issues in remote and smaller communities, allowing health workforce programs and Medicare benefits to be better targeted. Maps of the Modified Monash areas and the Department’s remoteness classification are available at www.doctorconnect.gov.au.

Item 3 – Section 6 (below the heading)

Item 3 repeals section 6 of the Principal GP Determination and substitutes with the amended provisions in subsections 6(1) and 6(2). These amendments are consequential changes to ensure that there is no change to the existing arrangements for the Better Access video conferencing items (2729 and 2731) and the mental health video conferencing items (2121, 2150 and 2196)

for drought affected patients. Specifically, no Medicare benefit is payable if the patient or the general practitioner travel to satisfy the minimum distance requirement of 15 kilometres.

The distance requirement rule does not apply to bushfire affected patients accessing the mental health video conferencing items.

Item 4 – Schedule 1 (items 2121, 2150 and 2196)

Item 4 repeals and substitutes items 2121, 2150 and 2196 to allow patients affected by bushfire to access mental health services by video conference. These services are performed by a general practitioner.

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

Item 5 – Section 4

Section 4 of the Principal OMP Determination provides definitions for that instrument. Item 5 amends the Principal OMP Determination to add a definition of ‘affected by bushfire’. A person is ‘affected by bushfire’ if their mental health has been adversely affected from a bushfire which occurred in the 2019-20 financial year.

Item 6 – Schedule 1 (subclause 1.12.4(2))

Item 6 repeals and substitutes subclause 1.12.4(2). These amendments are consequential changes to ensure that there is no change to the existing arrangements for the mental health video conferencing items (894, 896 and 898) for drought affected patients. Specifically, no Medicare benefit is payable if the patient or the medical practitioner travel to satisfy the minimum distance requirement of 15 kilometres.

The distance requirement rule does not apply to bushfire affected patients accessing the mental health video conferencing items.

Item 7 – Schedule 1 (items 894, 896 and 898)

Item 7 repeals and substitutes items 894, 896 and 898 to allow patients affected by bushfire to access mental health services by video conference. These services are performed by a medical practitioner in general practice.

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 for Bushfires Response) Amendment Determination 2020

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 (Section 3C General Medical Services – General Practice Telehealth Services for Bushfires Response) Amendment Determination 2020* (the Determination) is to amend the drought items to enable people who have been affected by bushfires to access general practice mental health services by video conference.

From 10 January 2020, people who have had their mental health adversely affected by a bushfire which occurred in the 2019-20 financial year will be eligible for the video conference items.

This change will not affect the existing arrangements for patients in drought affected areas.

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 patients who have been affected by bushfires can access publicly subsidised mental health services which are clinically effective, safe and cost-effective.

Conclusion

This instrument 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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