

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) 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 (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*.

Purpose

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result COVID-19, to receive health consultations via video conference. This can be delivered through widely available video calling apps and software, such as Zoom, Skype or FaceTime.

The purpose of the *Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatry COVID-19 Telehealth Services) Determination 2020* (the Determination) is to provide ten new temporary Medicare Benefits Schedule (MBS) items to allow specialists, consultant physicians and consultant psychiatrists to provide these services by video conference to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus.

These services will also be able to be provided by specialists, consultant physicians and consultant psychiatrists who are in isolation for possible COVID-19 infection. This will allow specialists (item 91822 and 91823), consultant physicians (items 91824, 91825 and 91826) and consultant psychiatrists (items 91827, 91828, 91829, 91830 and 91831) to continue to provide certain health services to their patients during the period of their isolation.

The ten new MBS items will allow people to access essential health services in their home to support self-isolation and quarantine policies. These services will be available to a person who is at risk of the COVID-19 virus where at least one of the following apply:

- (a) the person has been diagnosed with COVID-19 virus but is not a patient of a hospital; or
- (b) the person has been required to isolate themselves in quarantine in accordance with home isolation guidance issued by Australian Health Protection Principal Committee; or
- (c) the person is considered more susceptible to the COVID-19 virus being a person who is:
 - (i) at least 70 years old; or
 - (ii) at least 50 years old and is of Aboriginal or Torres Strait Islander descent; or
 - (iii) is pregnant; or
 - (iv) is a parent of a child under 12 months; or
 - (v) is already under treatment for chronic health conditions or is immune compromised.

The new services can only be rendered if the treating practitioner chooses to accept the patient's Medicare benefit as full payment for the service (otherwise known as 'bulk-billing').

Consultation

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Indigenous communities, from the coronavirus (COVID-19). Due to the nature of the emergency and the short timeframe in drafting this legislative instrument to implement this phase of the health package, it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument.

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

The Determination commences on 13 March 2020 and ends on 30 September 2020.

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

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

Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Determination 2020

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 13 March 2020.

Section 3 – Cessation

Section 3 provides that the Determination will cease on 30 September 2020, unless earlier revoked.

Section 4 – Authority

Section 4 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 5 – Definitions

Section 5 defines terms used in the Determination.

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the general medical services table for the service.

Section 7 – Application of provisions of the general medical services table

Section 7 specifies provisions of the general medical services table that apply as if an item in Schedule 1 to the Determination were specified in the relevant provision in the general medical services table.

Subsection 7(1) of the Determination provides items 91822, 91823, 91824, 91825 and 91826 will be treated as if they were specified in subclause 1.1.5(1) of the general medical services table. Clause 1.1.5 provides the meaning of a ‘single course of treatment’ for a patient.

Subsection 7(2) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in clause 1.2.2 of the general medical services table. Clause 1.2.2 provides that the

specified specialist, consultant physician or consultant psychiatrist attendance item does not apply if the patient does not have a referral within the period of validity.

Subsection 7(3) of the Determination provides that an item in Schedule 1 will be treated as if it was specified in subclause 1.2.4(1) of the general medical services table. Clause 1.2.4 lists the requirements of a professional attendance service. A list of items where this clause applies are listed in subclause 1.2.4(1).

Schedule 1 – Relevant services

The purpose of the Determination is to create ten new items to allow specialists, consultant physicians and consultant psychiatrists to provide services via video-conference to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus.

Division 1.1 – Services and fees – specialist attendances via video conference

Division 1.1 of the Determination lists two new professional attendance items (91822 and 91823) that are to be provided by a specialist in the practice of the specialist's specialty by video conference to patients who are at risk of COVID-19 virus.

The patient at risk of COVID-19 virus needs to have a referral in order to access the new services and must not be an admitted patient of a hospital. The new services must bulk-billed.

For the purpose of Division 1.1, a specialist has the same meaning as in the *Health Insurance Act 1973* (the Act). The meaning of specialist is a specialist, in relation to a particular specialty, which means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E of the Act, that the medical practitioner is recognised as a specialist in that specialty, or a medical practitioner who is taken to be so recognised under section 3D of the Act.

Division 1.2 – Services and fees – consultant physician (other than psychiatry) attendances via video conference

Division 1.2 of the Determination lists three new professional attendance items (91824, 91825 and 91826) that are to be provided by a consultant physician in the practice of the consultant physician's specialty (other than psychiatry) via video conference to patients who are at risk of COVID-19 virus.

The patient at risk of COVID-19 virus needs to have a referral from a referring practitioner in order to access the new services and must not be an admitted patient of a hospital. The new services must bulk-billed.

For the purpose of Division 1.2, a consultant physician has the same meaning as in the Act. The meaning of consultant physician is a consultant physician in relation to a particular specialty, which means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E of the Act, that the medical practitioner is recognised as a consultant physician in that specialty.

Division 1.3 – Services and fees – consultant psychiatrist attendances via video conference

Division 1.3 of the Determination lists five new professional attendance items (91827, 91828, 91829, 91830 and 91831) that are to be provided by a consultant physician in the practice of the consultant physician's specialty of psychiatry via video conference to patients who are at risk of COVID-19 virus.

The patient at risk of COVID-19 virus needs to have a referral from a referring practitioner in order to access the new services and must not be an admitted patient of a hospital. The new services must be bulk-billed.

For the purpose of Division 1.3, a consultant physician has the same meaning as in the Act. The meaning of consultant physician, is a consultant physician in relation to a particular specialty, which means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E of the Act, that the medical practitioner is recognised as a consultant physician in that specialty.

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 – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) 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

On 11 March 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a comprehensive \$2.4 billion health package to protect all Australians, including vulnerable groups such as the elderly, those with chronic conditions and Aboriginal and Torres Strait Islander communities, from the coronavirus (COVID-19).

As part of the package, the Government announced \$100 million to fund new Medicare services for people in home isolation or quarantine, as a result COVID-19, to receive health consultations via video conference. This can be delivered through widely available video calling apps and software, such as Zoom, Skype or FaceTime.

The purpose of the *Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatry COVID-19 Telehealth Services) Determination 2020* (the Determination) is to provide ten new temporary Medicare Benefits Schedule (MBS) items to allow specialists, consultant physicians and consultant psychiatrists to provide these services by video conference to patients who have been diagnosed with the COVID-19 virus, or who are vulnerable of contracting the COVID-19 virus.

These services will also be able to be provided by specialists, consultant physicians and consultant psychiatrists who are in isolation for possible COVID-19 infection. This will allow specialists (item 91822 and 91823), consultant physicians (items 91824, 91825 and 91826) and consultant psychiatrists (items 91827, 91828, 91829, 91830 and 91831) to continue to provide certain health services to their patients during the period of their isolation.

The ten new MBS items will allow people to access essential health services in their home to support self-isolation and quarantine policies. These services will be available to a person who is at risk of the COVID-19 virus where at least one of the following apply:

- (a) the person has been diagnosed with COVID-19 virus but is not a patient of a hospital; or
- (b) the person has been required to isolate themselves in quarantine in accordance with home isolation guidance issued by Australian Health Protection Principal Committee; or
- (c) the person is considered more susceptible to the COVID-19 virus being a person who is:
 - (i) at least 70 years old; or
 - (ii) at least 50 years old and is of Aboriginal or Torres Strait Islander descent; or
 - (iii) is pregnant; or
 - (iv) is a parent of a child under 12 months; or
 - (v) is already under treatment for chronic health conditions or is immune compromised.

The new services can only be rendered if the treating practitioner chooses to accept the patient's Medicare benefit as full payment for the service (otherwise known as 'bulk-billing').

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 providing publicly subsidised medical services via video conference to patients who have been diagnosed with the COVID-19 virus or who are vulnerable of contracting the COVID-19 virus.

Conclusion

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

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