EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 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 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*.

**Purpose**

The Australian Government has unveiled a comprehensive $2.4 billion 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).

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 of COVID-19, to receive health consultations remotely.

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* (the Determination) is to list new remote consultation services provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers. The services include:

* New telehealth attendance items provided by GPs (items 91800, 91801 and 91802) and other doctors in general practice (items 91803, 91804, 91805, 91806, 91807 and 91808).
* New phone attendance items by GPs (items 91809, 91810 and 91811) and other doctors in general practice (items 91812, 91813, 91814, 91815, 91816 and 91817). These services are to be provided by telephone. GPs and other doctors in general practice can only perform these services in instances where the attendance could not be performed by telehealth.
* New telehealth mental health treatment items provided by GPs (items 91818 and 91819), other doctors in general practice (items 91820 and 91821) and allied health providers with appropriate mental health training (items 91166, 91167, 91169, 91170, 91172, 91173, 91175 and 91176).
* New telehealth attendance items provided by nurse practitioners (item 91178, 91179 and 91180).

The telehealth items are video conferencing services and require an audio and visual link. They can be delivered through widely available video calling apps and software, such as Zoom, Skype or FaceTime. The phone items can be provided by telephone and require an audio link only.

The new items will be available to patients at risk of COVID-19. A patient will be considered at risk of COVID-19 if they have been diagnosed with the disease (but not hospitalised for treatment) or are in isolation for possible COVID-19 infection. A person considered more susceptible to the COVID-19 virus is also defined as an at risk patient. This includes:

* patients 70 years of age or older;
* patients of Aboriginal or Torres Strait Islander descent who are 50 years of age or older;
* patients who are pregnant;
* patients who care for children under 12 months; and
* a person receiving treatment for chronic health conditions or who is immune comprised.

All new items will also allow health professionals who are in isolation for possible COVID-19 infection to continue providing services remotely to their patients.

GPs and other doctors working in isolation can continue to provide certain health services to their patients during the period of their isolation by telehealth (items 91800 to 91808 and 91818 to 91821) or telephone (items 91809 to 91817).

Allied health providers with appropriate mental health training can continue to provide certain health certain health services to their patients during the period of their isolation by telehealth (items 91166 to 91176).

All 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’). This will mean there will be no out-of-pocket for patients.

**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 COVID-19.

Due to 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 considering the nature of the emergency.

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*

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 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 – GP and Allied Health COVID-19 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 Table for the service.

Schedule 1 – Relevant services

Schedule 1 lists the new telehealth and phone consultation services provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers. The services can only be performed if the service is “bulk-billed”, as defined in section 4, and must not be performed for admitted hospital patients.

* Division 1.1

Division 1.1 of the Determination lists 22 new professional attendance items that can be provided by a GP or another medical practitioner in general practice.

Items in subgroup 1 of Division 1.1 provide general practice telehealth attendance services where:

* patients are at risk of COVID-19 virus, as defined in section 4; or
* the health professional is at risk for COVID-19 virus as defined in section 4; and
* the practitioner has had at least one face to face attendance with the patient who is more susceptible to COVID-19 in the previous 12 months.

These items are video conferencing services and require an audio and visual link.

Items in subgroup 2 of Division 1.1 provide general practice telephone attendance services where:

* patients are at risk of COVID-19 virus, as defined in section 4; or
* the health professional is at risk for COVID-19 virus as defined in section 4; and
* the practitioner has had at least one face to face attendance with the patient who is more susceptible to COVID-19 in the previous 12 months.

These items are telephone services and require an audio link only. Subclause 1.1.5(5) requires that the rendering practitioner must not perform a service in subgroup 2 if the practitioner and the patient have the capacity to undertake an attendance by video conference.

Items in subgroup 3 of Division 1.1. provide focussed psychological strategy treatment services for patients with a recognised mental health disorder who are at risk of COVID-19 virus. Items 91818 and 91819 can be rendered by GPs, items 91820 and 91821 can be rendered by medical practitioners in general practice.

* Division 1.2

Division 1.2 of the Determination lists 11 new professional attendance items that can be provided by certain allied health professionals.

Items in subgroups 1 to 4 provide mental health treatment items rendered by “eligible clinical psychologists” (items 91166 and 91167), “eligible psychologists” (items 91169 and 91170), “eligible occupational therapists” (items 91172 and 91173) and “eligible social workers” (items 91175 and 91176). The new items mirror the clinical and time requirements of the existing face-to-face focussed psychological strategy and psychological therapies in Groups M6 and M7, but allow them to be performed by telehealth for patients who are at risk of COVID-19 virus.

Allied health providers with appropriate mental health training who are in isolation for possible COVID-19 infection will also be able to continue to provide mental health services to their patients during the period of their isolation under items 91166, 91167, 91169, 91170, 91172, 91173, 91175 and 91176.

Items 91178, 91179 and 91180 in subgroup 5 mirror the requirements of the existing face-to-face nurse practitioner item in M14, but allows the service to be performed by telehealth for patients who are at risk of COVID-19 virus.

**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 – GP and Allied Health COVID-19 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**

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* (the Determination) is to list new remote consultation services provided by GPs, other doctors in general practice, nurse practitioners and mental health allied health workers. The services include:

* New telehealth attendance items provided by GPs (items 91800, 91801 and 91802) and other doctors in general practice (items 91803, 91804, 91805, 91806, 91807 and 91808).
* New phone attendance items by GPs (items 91809, 91810 and 91811) and other doctors in general practice (items 91812, 91813, 91814, 91815, 91816 and 91817). These services are to be provided by telephone. GPs and other doctors in general practice can only perform these services in instances where the attendance could not be performed by telehealth.
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The new items will be available to patients at risk of COVID-19. A patient will be considered at risk of COVID-19 if they have been diagnosed with the disease (but not hospitalised for treatment) or are in isolation for possible COVID-19 infection. A person considered more susceptible to the COVID-19 virus is also defined as an at risk patient. This includes:

* patients 70 years of age or older;
* patients of Aboriginal or Torres Strait Islander descent who are 50 years of age or older;
* patients who are pregnant;
* patients who care for children under 12 months; and
* a person receiving treatment for chronic health conditions or who is immune comprised.

All new items will also allow health professionals who are in isolation for possible COVID-19 infection to continue providing services remotely to their patients. GPs and other doctors working in isolation can continue to provide certain health services to their patients during the period of their isolation by telehealth (items 91800 to 91808 and 91818 to 91821) or telephone (items 91809 to 91817).

Allied health providers with appropriate mental health training can continue to provide certain health certain health services to their patients during the period of their isolation by telehealth (items 91166 to 91176).

All 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’). This will mean there will be no out-of-pocket for patients.

**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 people who have been affected by COVID-19 can access publicly subsidised health services without the risk of affecting other people or health professionals.

**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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