

EXPLANATORY STATEMENT

Issued by the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No. 3 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

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 of COVID-19, to receive health consultations remotely.

On 13 March 2020, new Level B to D consultation services provided by GPs, other doctors in general practice and nurse practitioners were introduced to provide services remotely to patients who have been diagnosed with COVID-19, or who are vulnerable of contracting COVID-19.

The services are also able to be provided by health professionals who are in isolation for possible COVID-19 infection. These items are prescribed in the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* (the Principal Determination).

The purpose of the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No. 3 2020* (Amending Determination) is to amend the Principal Determination to list new Level A consultation services provided by GPs, other doctors in general practice, and nurse practitioners. These services are to be provided remotely (by telehealth or telephone).

The new services can only be rendered if the treating health professional 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 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 immediately after the commencement of the Schedule to the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 2020*. This will mean the legislative instrument has retrospective effect from 13 March 2020 to enable patients with COVID-19 to access Level A consultation services remotely. Subsection 3C(2) of the Act allows for retrospective commencement as it excludes subsection 12(2) of the *Legislation Act 2003* from applying to determinations made under section 3C(1) of the *Health Insurance Act 1973*. However, the provision is consistent with subsection 12(2) of the *Legislation Act 2003* as it does not disadvantage persons existing entitlements and only imposes retrospective liabilities on the Commonwealth.

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 – GP and Allied Health COVID-19 Services) Amendment Determination No. 3 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) Amendment Determination No. 3 2020*.

Section 2 – Commencement

The Determination commences immediately after the commencement of the Schedule to the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Amendment Determination No.1 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

Schedule 1 will amend the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* to list new Level A consultation items to enable patients at risk of COVID-19 to access remote general practice and nurse practitioner services.

Amendment 1 repeals and substitutes subclause 1.1.1(1) to add the two new regional other medical practitioner items (91794 and 91799). Subclause 1.1.1(1) incorporates the definition of “eligible area”, as defined in section 4 of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018*, as in force from time to time.

Amendments 2 to 7 list six new items 91790, 91792, 91794, 91795, 91797, 91799 that provide an equivalent Level A attendance service which can be performed remotely. Items 91790 and 91795 can be rendered by GPs and items 91792, 91794, 91797 and 91799 can be rendered by medical practitioners in general practice.

Amendments 8 and 9 list two new items 91192 and 91193 that provide an equivalent Level A participating nurse practitioner attendance service which can be performed remotely.

Amendment 8 also makes editorial changes to existing items 91178, 91179 and 91180 to clarify they are Level B to D equivalent services. Amendment 9 amends an error in the descriptor of item 91222 to replace “telehealth” with “phone”, consistent with the policy intent of the item.

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) Amendment Determination No. 3 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) Amendment Determination No. 3 2020* is to amend the Principal Determination to list new Level A consultation services provided by GPs, other doctors in general practice, and nurse practitioners. These services are to be provided remotely (by telehealth or telephone).

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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