

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

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

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.

Since 13 March 2020, remote consultation services have been available under Medicare to provide services to patients who:

- have been diagnosed with COVID-19 (but have not been admitted to hospital or receiving hospital-substitute treatment); or
- are in isolation for possible COVID-19 infection; or
- are considered more susceptible to COVID-19; or
- meet the current national triage protocol criteria for suspected COVID-19 infection.

The services can be provided by GPs and other doctors in general practice, specialists and consultant physicians, consultant psychiatrists, participating nurse practitioners,

participating midwives and obstetricians, and certain allied health providers, by telehealth or phone.

The new consultation services also enable health professionals who are in isolation for possible COVID-19 infection, or who have been diagnosed with COVID-19 but have not been hospitalised, to continue attending their patients remotely.

On 23 March 2020, the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020* was made to expand the definition of “health professional at risk of COVID-19 virus” to include health professionals considered more susceptible to the virus and consolidate the list of COVID-19 medical services in one legislative instrument. That legislative instrument will commence the day after registration.

The purpose of the *Health Insurance (Section 3C General Medical Services – Application of GP and Allied Health COVID-19 Services and Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Amendment Determination 2020* (the Amending Determination) is to amend the two principal instruments which have given legal authority for the COVID-19 Medicare medical service items since 13 March 2020.

The Amending Determination will limit the application of items in the Schedules of those instruments to services rendered from 13 March 2020 until the commencement of the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020*.

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

The Amending Determination commences immediately after the commencement of the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 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 (Section 3C General Medical Services – Application of GP and Allied Health COVID-19 Services and Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Amendment Determination 2020***

Section 1 – Name

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

Section 2 – Commencement

Section 2 provides that the Amending Determination commences immediately after the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020*.

Section 3 – Authority

Section 3 provides that the Amending 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 Amending 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 Amending Determination has effect according to its terms.

Schedules

Schedule 1 will amend the *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* to include an application provision that limits the items in its Schedule to a period from 13 March 2020 to commencement of the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020*.

The *Health Insurance (Section 3C General Medical Services – GP and Allied Health COVID-19 Services) Determination 2020* prescribed COVID-19 telehealth and phone consultation services provided by GPs, other doctors in general practice, participating nurse practitioners, participating midwives, eligible clinical psychologists, eligible psychologists, eligible occupational therapists and eligible social workers.

Schedule 2 will amend the *Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Determination 2020* to include an application provision that limits the items in its Schedule to a period from 13 March 2020 to commencement of the *Health Insurance (Section 3C General Medical Services – COVID-19 Services) Determination 2020*.

The *Health Insurance (Section 3C General Medical Services – Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) Determination 2020* prescribed COVID-19 telehealth and phone consultation services provided by specialists, consultant physicians and consultant psychiatrists. It also includes obstetric services.

## 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 – Application of GP and Allied Health COVID-19 Services and Specialist, Consultant Physician and Consultant Psychiatrist COVID-19 Telehealth Services) 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**

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.

Since 13 March 2020, remote consultation services have been available under Medicare to provide services to patients who:

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### **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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