EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) 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

Since 13 March 2020, the Australian Government has been providing Medicare benefits to assist patients to receive remote health consultations by telehealth or phone in certain circumstances. The *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* currently prescribes 222 temporary items that covers many general practice, specialist and consultant physician, nurse practitioner, midwife, and allied health attendances. These items ensure that telehealth can be used as a key weapon in the fight against the coronavirus (COVID-19) pandemic.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment Determination 2020* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal Determination) to correct typographical and other minor errors.

Consultation

Consultation was not undertaken because the amendments just correct typographical and other minor errors in the Principal Determination.

Details of the Amendment Determination are set out in the Attachment.

Sections 1 to 4 of the Amendment Determination and the amendments in Schedule 1 are taken to have commenced retrospectively from immediately after the

commencement of the Principal Determination. The amendments in Schedule 2 commence the day after the Amendment Determination is registered. 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.*

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 – COVID-19 Telehealth and Telephone Attendances) Amendment Determination 2020*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Amendment Determination 2020*.

Section 2 – Commencement

Section 2 provides that sections 1 to 4 of the Amendment Determination, and the amendments in Schedule 1, are taken to have commenced retrospectively from immediately after the commencement of the Principal Determination. The amendments in Schedule 2 commence on the day after the Amendment Determination is registered.

Section 3 – Authority

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

Schedule 1 - Amendments

Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020 (the Principal Determation).

Schedule 1 corrects typographical and other minor errors in the Principal Determination.These amendments are taken to have commenced retrospectively from the day of the commencement of the Principal Determation.

Item 1 corrects a spelling error in the definition of *admitted patient* in section 5.

Item 2 corrects a minor error in the definition of *eating disorder psychological treatment service* in section 5.

Item 3 inserts a definition of *focussed psychological strategies* in section 5, by reference to the definition of the term in the Table. This ensures that the types of strategies available under the telephone and telehealth attendance are consistent with those available during face-to-face attendances.

Item 4 corrects an erroneous reference to the Table in paragraph 8(3)(b) to the Other Medical Practitioner Determination, which is defined in the Principal Determination to be the *Health Practitioner (Section 3C General Medical Services - Other Medical Practitioner) Determination 2018*.

Items 5 and 6 amend subclause 1.1.1 of Schedule 1 to remove subclause (2), because this subclause is unnecessary in light of clause 1.1.3 of Schedule 1, and consequentially to renumber the subclauses in clause 1.1.1.

Item 7 corrects a typographical error in subclause 1.1.3(1)(b) of Schedule 1.

Items 8 to 11 amend subclause 1.1.3A(1) of Schedule 1 of the Principal Determination so that it specifies all of the relevant items in the Principal Determination. Subclause 1.1.3A deals with items for care planning for patients, and clarifies expectations on practitioners when providing these services by telehealth or telephone, including that the services should only be provided where the practitioner can provide the full service safely and in accordance with professional standards.

Item 12 amends subclause 1.1.4(1) of Schedule 1 so that the limitations on the telehealth and telephone services in items 92024 to 92028 and 92068 to 92072 are consistent with the corresponding face-to face items. This corrects an error in the Principal Determination and removes a limitation for items 92924 and 92068 that the patient requires ongoing care from at least 3 other people that are not family carers of the patient.

Item 13 corrects a typographical error in the table at subclause 1.1.6(2) of Schedule 1.

Item 14 amends item 4 of the table at subclause 1.1.6(2) of Schedule 1 to add reference to telehealth and telephone attendance items 92056, 92057, 92100, 92101 and 92072. Item 4 of the table sets out limitations on the application of items 92027 and 92071 of the Principal Determination.

Item 15 corrects a typographical error in subclause 1.1.8(1) of Schedule 1.

Item 16 amends subclause 1.1.8(2) of Schedule 1 so that the limitations on the telehealth and telephone services in items 92055 to 92059 and 92099 to 92103 are consistent with the corresponding face-to-face items. The effect of the amendment is to remove limitations on these items, for example, for item 92055, that the patient is an in-patient in a private hospital or is not a public in-patient or resident in a residential aged care facility.

Items 17 to 19 amend the table at subclause 1.1.9(3) of Schedule 1 of the Principal Determination to add reference to items that were accidentally omitted from the ‘Circumstances’ column in the Principal Determination.

Item 20 removes references to items that do not exist from subclause 1.1.11 of Schedule 1 of the Principal Determination.

Items 21 to 24 omit subclause 1.1.11(9) of Schedule 1 and renumber the subsequent subclauses in that clause. Subclause 1.1.11(9) erroneously limited the application of some items to surgery consultations.

Item 25 amends the title of Group A40 to “COVID-19 services”.

Item 26 removes unnecessary words included in the description of item 92028 in Subgroup 13 of Schedule 1.

Items 27 and 28 remove references to items that do not exist in various item descriptions in Subgroup 13 of Schedule 1.

Items 29 and 30 amend the reference to “Telehealth contribution” in items 92057 and 92058 in Subgroup 13 of Schedule 1 of the Principal Determination to “Contribution … by telehealth” for consistency with other item descriptions in the Principal Determination. This has no effect on the operation of the items.

Item 31 corrects the fee for item 92059 in Subgroup 13 of Schedule 1 from $68.55 to $68.85. This amendment will increase the Medicare benefit paid to patients for services rendered from 30 March 2020.

Items 32, 33 and 35 remove references to items that do not exist in various item descriptors in Subgroup 14 of Schedule 1 of the Principal Determination. This has the effect of removing limitations on the application of the relevant items.

Item 34 removes unnecessary words included in the description of item 92072 in Subgroup 14 of Schedule 1. This has no effect on the operation of the item.

Item 36 corrects the fee for item 92103 in Subgroup 14 of Schedule 1 from $68.55 to $68.85. This amendment will increase the Medicare benefit paid to patients for services rendered from 30 March 2020.

Item 37 amends the title of Group A40 to “COVID-19 services”.

Item 38 amends the description for item 91838 in Subgroup 9 of Schedule 2 of the Principal Determination to remove the requirement that the patient not be an admitted patient. This is redundant as subsection 8(1) of the Principal Determination provides that all items in the Schedule do not apply if the patient is an admitted patient.

Item 39 removes the reference in the description for item 92179 of Subgroup 26 of Schedule 2 of the Principal Determination to the service being conducted ‘at consulting rooms’. This restriction is not required for telehealth and telephone attendances.

Items 40 and 42 amend 'telehealth service' to 'telehealth attendance' in the descriptors of items 91850 and 91855 in Group T4 for consistency.

Items 41 and 43 remove the redundant reference in the descriptors for items 91852 and 91857 of Group T4 that required the attendance to not be an ‘attendance at consulting rooms, a hospital or a residential aged care facility’.

Item 44 amends the heading of subgroup 12 of Group M18 in Schedule 3 of the Principal Determination for consistency.

Items 45 and 46 amend the descriptors for items 93026 and 93029 of Schedule 2 of the Principal Determination to remove the restriction that they cannot be provided to a patient as an admitted patient of a hospital. This text is redundant because of subclause 8(1) of the Principal Determination.

Item 47 amends the descriptor of items 93033 and 93036 in Subgroup 15 of Group M18 to include "optometrist" in the list of allied health practitioners eligible to provide the service.

Item 48 amends the descriptor of items 93041 and 93044 in Subgroup 15 of Group M18 to include "optometrist" in the list of allied health practitioners eligible to provide the service.

Item 49 amends the heading of subgroup 18 of Schedule 3 for consistency.

Schedule 2

Items 1 and 2 amend subclauses 1.1.5 and 1.1.8(1) of Schedule 1 of the Principal Determination so that the application of telehealth and telephone services in items 92024, 92025, 92028, 92068, 92055, 92056, 92059, 92069, 92072, 92099, 92100 and 92103 is consistent with the corresponding face-to-face items.

Items 3 and 4 amend the description of items 91792, 91803, 91804 and 91805 and 91797, 91812, 91813 and 91814, respectively, to exclude general practitioners, specialist or consultant physicians from rendering services intended for medical practitioners without vocational training in general practice. This does not limit patient access as there are general attendance telehealth and telephone service items for general practitioners, specialists and consultants in the Principal Determination.

Items 5 and 6 amend the item descriptors of items 91850 and 91855 in the Principal Determiantion to remove the requirement that the service be provided at, or from, a practice location in a regional, rural or remote area.

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 – COVID-19 Telehealth and Telephone Attendances) 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

Since 13 March 2020, the Australian Government has been providing Medicare benefits to assist patients to receive remote health consultations by telehealth or phone in certain circumstances. The *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* currently prescribes 222 temporary items that covers many general practice, specialist and consultant physician, nurse practitioner, midwife, and allied health attendances. These items ensure that telehealth can be used as a key weapon in the fight against the coronavirus (COVID-19) pandemic.

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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 corrects typographical and other minor errors in the Principal Determination. The two retrospective fee increases to Medicare items in Schedule 1 will increase the Medicare benefit paid to patients. The amendments in Schedule 2 which amend the description of certain items to exclude general practitioners, specialist or consultant physicians from rendering services intended for medical practitioners without vocational training in general practice. This will not affect patient access because there are general attendance telehealth and telephone items for general practitioners, specialists and consultants available in the Principal Determination.

Conclusion

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

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