EXPLANATORY STATEMENT

Issued by the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing Requirement and New Remote Attendance 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.*

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* (the Principal Determination) currently prescribes 244 temporary items that cover 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 coronavirus (COVID-19) pandemic. Expanding the consultation services available by telehealth is the next critical stage in the Government's response to COVID-19.

The *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing Requirement and New Remote Attendance Services) Determination 2020* (the Amendment Determination) has two purposes.

First, the Amendment Determination removes the requirement for specialist and consultant physicians, nurse practitioners, midwifes and allied health practitioners to bulk-bill attendances for certain patients. From 20 April 2020, these health professionals will be able to choose to bulk-bill or patient bill any attendance service in the Principal Determination.

GPs and medical practitioners in general practice must continue to bulk-bill services in the Principal Determination which are provided to:

- a patient at risk of COVID-19 virus;
- a person who is a concessional beneficiary; or
- a person who is under the age of 16.

Second, the Amendment Determination creates 28 additional telehealth and phone service items. These items relate to neurosurgery consultations, public health physician consultations, Aboriginal and Torres Strait Islander health practitioner consultations and group psychotherapy services performed by psychiatrists.

Consultation

Feedback was received from many specialist and allied health care stakeholders advocating for these changes. This included groups such as Australian Medical Association, Royal Australian and New Zealand College of Psychiatrists, the Australian Association of Consultant Physicians and a wide range of professional societies and medical colleges. Allied health stakeholders including Aboriginal and Torres Strait Islander representative groups were also consulted. These changes support the Government's health care package to protect all Australians from COVID-19 and ensures the continued viability of specialist and allied health services under Medicare.

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

The Amendment Determination commences on 20 April 2020.

The Amendment 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 (Bulk-billing Requirement and New Remote Attendance Services) 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 (Bulk-billing Requirement and New Remote Attendance Services) Determination 2020.*

Section 2 – Commencement

Sections 2 provides that the Amendment Determination commences on 20 April 2020.

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

Schedule 1 amends the Principal Determination.

Item 1
Item 1 repeals and substitutes the definition of 'multidisciplinary care plan' in subsection 5(1) to refer to the meaning given by clause 4.1.2 for new items 93201 and 93203. There is no change to the meaning of the term used in other parts of the Principal Determination.

Item 2
Subsection 8(4) was inserted by the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing) Determination 2020.* Subsection 8(4) provided that, where a service under an item in any Schedule in the Principal Determination is provided to a patient at risk of COVID-19, a person who is a concessional beneficiary or a person under the age of 16, the service must be bulk-billed.

Item 2 amends subsection 8(4) so that the requirement to bulk-bill certain patients only applies to a service provided under an item in Schedule 1 (general practice services). Subsection 8(4) will no longer apply to specialist, consultant physician and consultant psychiatrist services (Schedule 2), allied health services (Schedule 3) or nurse practitioner and midwife services (Schedule 4).

Items 3 and 4
Subsection 8(5) provides that an item in a Schedule only applies to a service that is an attendance by a single health professional on a single patient. Items 3 and 4 provide that the limitation in subsection 8(5) does not apply to items 92455 to 92457 and 92495 to 92497, as these items are for group psychotherapy services involving multiple patients.

Item 5
Subclause 2.1.1(1) provides that items in Subgroup 7, 8, 9, 18, 24, 26 or 32, which require an audio link only, do not apply if the rendering practitioner and the patient have the capacity to undertake an attendance by telehealth (which requires an audio and visual link). Item 5 amends this subclause to add the new public health (Subgroup 34) and neurosurgery phone attendances (Subgroup 36) of Group A40 to apply the same requirement.

Item 6
Item 5 inserts new clause 2.1.2. Clause 2.1.2 provides that clause 2.13.1 of the general medical services table has effect as if new items 92513 to 92516 and 92521 to 92524 were specified in the clause. Clause 2.13.1 of the general medical services table provides that items 410 to 417 only apply to an attendance on a patient by a public health physician if the attendance relates to one or more of the specified matters. Items 92513 to 92516 and 92521 to 92524 are phone and telehealth equivalents of items 410 to 413. Item 6 therefore applies the same limitations to the new phone and telehealth services as apply to the existing face-to-face services.

Item 7
Item 92437 applies if the patient has not received an attendance under specified items, including items 300 to 346. Item 7 amends the descriptor of item 92437 to refer to the phone and telehealth equivalents of items 342, 344 and 346 (items 92455 to 93457 and 92495 to 92497).

Item 8
Item 8 inserts 3 new telehealth psychiatry items into Subgroup 6 of Group A40 (items 92455, 92456 and 92457). These items are the telehealth equivalents of items 342, 344 and 346.

Item 9
Item 92477 applies if the patient has not received an attendance under specified items, including items 300 to 346. Item 9 amends the descriptor of item 92477 to refer to the phone and telehealth equivalents of items 342, 344 and 346 (items 92455 to 93457 and 92495 to 92497).

Item 10
Item 10 inserts 3 new phone psychiatry items into Subgroup 9 of Group A40 (items 92495, 92496 and 92497). These items are the phone service equivalents of items 342, 344 and 346.

Item 11
Item 11 inserts four new Subgroups into the table under Schedule 2. Subgroups 33 and 34 contain the phone and telehealth equivalents of items 410 to 413. These items relate to attendance services rendered by public health physicians. Subgroups 35 and 36 contain the phone and telehealth equivalents of items 6007, 6009, 6011, 6013 and 6015. These items relate to attendance services rendered by neurosurgeons.

Item 12
Item 12 amends the heading of Schedule 4 to include a reference to Aboriginal and Torres Strait Islander health practitioner services.

Item 13
Item 13 replaces the heading of clause 4.1.1 to include a reference to Aboriginal and Torres Strait Islander health practitioner phone services.

Item 14
Subclause 4.1.1(1) provides that items in Subgroup 10 of Group M18, which require an audio link only, do not apply if the rendering practitioner and the patient have the capacity to undertake an attendance by telehealth (which requires an audio and visual link). Item 14 amends this subclause to add the new Aboriginal and Torres Strait Islander health practitioner phone attendance items (Subgroup 24 of Group M18) to apply the same requirement.

Item 15
Item 13 inserts new clause 4.1.2.

Subclause 4.1.2(1) defines the terms “GP management plan”, “multidisciplinary care plan” and “person with a chronic disease” for the purpose of items 93201 and 93203. These definitions determine patient eligibility for the items.

Subclause 4.2.1(2) prevents a patient from accessing items 93200 or 93202 if they have received 10 services for any combination of those items, or item 10987 of the general medical services table, in a calendar year.

Subclause 4.2.1(3) prevents a patient from accessing items 93201 or 93203 if they have received 5 services for any combination of those items, or item 10997 of the general medical services table, in a calendar year.

Item 16
Item 16 inserts two new subgroups into Group M18. Subgroups 23 and 24 contain the phone and telehealth equivalents of Aboriginal and Torres Strait Islander health practitioner items 10987 and 10997.

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 (Bulk-billing Requirement and New Remote Attendance 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

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* (the Principal Determination) currently prescribes 244 temporary items that cover many general practice, specialist and consultant physician, nurse practitioner, midwife and allied health attendances.

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The *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (Bulk-billing Requirement and New Remote Attendance Services) Determination 2020* (the Amendment Determination) has two purposes.

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- a patient at risk of COVID-19 virus;
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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 maintains the right to health and the right to social security by ensuring the continued viability of specialist and allied health service providers under Medicare. Although this instrument removes the requirement that specialists and consultant physicians, nurse practitioners, midwifes and allied health practitioners must bulk-bill attendances for certain patients, this change was considered necessary to support the continued viability of these sectors during the COVID-19 pandemic. The change is also consistent with the billing arrangements for the equivalent face-to-face services for these service types under Medicare. It will be at the discretion of the individual health professional to determine their own billing arrangements. This includes choosing to bulk-bill a service at no cost to the patient.

Conclusion

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

Greg Hunt

Minister for Health