

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Amendment (Further Expansion of Remote Attendance Items) 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 (No. 1) 2020*.

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 temporary 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 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 the coronavirus (COVID-19) pandemic.

The purpose of the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Amendment (Further Expansion of Remote Attendance Items) Determination 2020* (the Amendment Determination) is to expand the range of specialist and other health professional services available to support patient access to these attendances in a safe and timely manner. This will assist to reduce the risk of COVID-19 for health professionals and for patients. From 22 May 2020, nine new items will be listed. These include services by specialist anaesthetists, dietitians and dental practitioners.

The Amendment Determination also makes minor consequential amendments to the *Health Insurance (Allied Health Services) Determination 2014*.

Consultation

The Government has been expanding access to temporary telehealth services in partnership with key stakeholders in the sector, including the Australian Medical

Association, Australian Society of Anaesthetists, Dietitians Association of Australia and the Australian and New Zealand Association of Oral and Maxillofacial Surgery. Consultation is continuing to identify relevant services to help protect and support Australians who are vulnerable to COVID-19. As part of the consultation process, the inclusion of the services specified in the Amendment Determination were identified as necessary to support patient access during the pandemic.

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

The Amendment Determination commences on 22 May 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

Details of the Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Amendment (Further Expansion of Remote Attendance Items) Determination 2020

Section 1 – Name

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

Section 2 – Commencement

Section 2 provides that the Determination commences on 22 May 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 to the COVID-19 Determination

Schedule 1 amends the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

Item 1

Item 1 inserts “dental practitioner” into the note in subsection 5(1). This provides that the term “dental practitioner” is defined per subsection 3(1) of the *Health Insurance Act 1973*.

Item 2

Item 2 inserts a definition of “shared care plan” (after the definition of Schedule) into subsection 5(1). This is defined as having the same meaning as in section 9B of the *Health Insurance (Allied Health Services) Determination 2014*.

Item 3

Item 3 replaces subsection 8(7) to insert references to groups containing the new telephone attendance items. Subsection 8(7) provides that telephone attendance items are only available when the patient and the health professional do not have the capacity to undertake a telehealth attendance.

Item 4

Item 4 removes the restriction on specialist and consultant physicians from claiming items 91792, 91803, 91804 and 91805. Specialists and consultant physicians will now be able to

provide services under these items, equivalent to the arrangements for the mirror face-to-face items.

Item 5

Item 5 removes the restriction on specialist and consultant physicians from claiming these items 91797, 91812, 91813 and 91814. Specialists and consultant physicians will now be able to provide services under these items, equivalent to the arrangements for the mirror face-to-face items.

Item 6

Item 6 inserts four new items into Schedule 2 (after item 92621) for specialist anaesthetist attendances.

These items are the telehealth (Subgroup 37) and phone (Subgroup 38) equivalent of item 17615 in the general medical services table.

Item 7

Item 7 inserts three new items into Schedule 3 (after item 93137) for dietetics services.

The items in new Subgroup 25 are the telehealth equivalent of items 81120 and 81125 in the *Health Insurance (Allied Health Services) Determination 2014*.

New item 93286 is the phone equivalent of item 81120 in the *Health Insurance (Allied Health Services) Determination 2014*.

Item 8

Item 8 amends the heading of Schedule 4 so that it also refers to dental practitioner services.

Item 9

Item 9 amends the heading of subclause 4.1.1 to include reference to new dietetics items 93284 and 93286.

Item 10

Item 10 amends subclause 4.1.1(1) to include new dietetics items 93284 and 93286. This provides the definitions for terms used in these items.

Item 11

Item 11 inserts new division 4.3, which provides for four new items for dental practitioner services in Group O1.

These items are the telehealth (Subgroup 1) and phone (Subgroup 2) equivalents of items 51700 and 51703 in the general medical services table.

New clause 4.3.1 sets out the application of these new items.

Schedule 2 – Consequential amendments

Schedule 2 amends the *Health Insurance (Allied Health Services) Determination 2014* to include references to the new remote attendance equivalents of items 81120 and 81125 (items 93284, 93285 and 93286).

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 (Further Expansion of Remote Attendance Items) 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 temporary 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 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 the coronavirus (COVID-19) pandemic.

The purpose of the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Amendment (Further Expansion of Remote Attendance Items) Determination 2020* (the Amendment Determination) is to expand the range of specialist and other health professional services available to support patient access to these attendances in a safe and timely manner. This will assist to reduce the risk of COVID-19 for health professionals and for patients. From 22 May 2020, nine new items will be listed. These include services by specialist anaesthetists, dietitians and dental practitioners.

The Amendment Determination also makes minor consequential amendments to the *Health Insurance (Allied Health Services) Determination 2014*.

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 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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