

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone GP Attendances) Amendment (Patient’s Usual Medical Practitioner) 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.

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 coronavirus (COVID-19).

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 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 COVID-19 pandemic.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone GP Attendances) Amendment (Patient’s Usual Medical Practitioner) Determination 2020* (the Amending Determination) is to amend the Principal Determination to introduce a requirement that GPs and other medical practitioners working in general practice must only perform a remote service where they have an existing relationship with the patient. An existing relationship is defined as:

- the medical practitioner who performs the service has provided a face-to-face service to the patient in the last 12 months; or
- the medical practitioner who performs the service is located at a medical practice, and the patient has a face-to-face service arranged by that practice in the last 12 months. This can be a service performed by another doctor located at the practice,

- or a service performed by another health professional located at the practice (such as a practice nurse or Aboriginal and Torres Strait Islander health worker); or
- the medical practitioner who performs the service is a participant in the Approved Medical Deputising Service (AMDS) program, and the Approved Medical Deputising Service provider (AMDS provider) that employs the medical practitioner has a formal agreement with a medical practice that has provided at least one face-to-face service to the patient in the last 12 months.

This requirement does not apply to a person who is under the age of 12 months, a person who is experiencing homelessness, a person who is in a COVID-19 impacted area, a person receiving an urgent after-hours service (in unsociable hours), or a person who receives the service from a medical practitioner located at an Aboriginal Medical Service or an Aboriginal Community Controlled Health Service.

This will ensure patients continue to receive quality, ongoing care from a GP or other medical practitioner who knows their medical history and needs. This change also responds to advice from medical experts, such as the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP).

### **Consultation**

As part of its health care package to protect all Australians from COVID-19, the Government is consulting broadly with the medical sector including the AMA, RACGP, the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia.

Consultation was undertaken with these representatives of general practice to inform the definition of a “patient’s usual medical practitioner” to maintain patient access to clinically relevant services while encouraging continuity and quality of care.

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

The Amending Determination commences on 20 July 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 – COVID-19 Telehealth and Telephone GP Attendances) Amendment (Patient’s Usual Medical Practitioner) 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 – COVID-19 Telehealth and Telephone GP Attendances) Amendment (Patient’s Usual Medical Practitioner) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Amending Determination commences on 20 July 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.

Schedule 1 – Amendments

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

Item 1 inserts the definitions of ‘*person who is experiencing homelessness*’ and ‘*person who is in a COVID-19 impacted area*’. These terms are being defined for the purposes of newly inserted subsection 8(9). See item 2.

A person who is in a COVID-19 impacted area would include a person located in areas of Victoria subject to stay at home restrictions. A list of these areas is available at [www.dhhs.vic.gov.au/victorias-restriction-levels-covid-19](http://www.dhhs.vic.gov.au/victorias-restriction-levels-covid-19).

Item 2 inserts the requirement that services in Schedule 1 of the Principal Determination can only be performed by a “patient’s usual medical practitioner”. This is defined as:

- (a) the medical practitioner who performs the service has provided a face-to-face service to the patient in the last 12 months; or
- (b) the medical practitioner who performs the service is located at a medical practice, and the patient has a face-to-face service arranged by that practice in the last 12 months. This can be a service performed by another doctor located at the practice, or a service

performed by another health professional located at the practice (such as a practice nurse or Aboriginal and Torres Strait Islander health worker); or

- (c) the medical practitioner who performs the service is a participant in the Approved Medical Deputising Service (AMDS) program, and the Approved Medical Deputising Service provider (AMDS provider) that employs the medical practitioner has a formal agreement with a medical practice that has provided at least one face-to-face service to the patient in the last 12 months.

This requirement does not apply to a person who is under the age of 12 months, a person who is experiencing homelessness, a person who is in a COVID-19 impacted area, a person receiving an urgent after-hours service (in unsociable hours), or a person who receives the service from a medical practitioner located at an Aboriginal Medical Service or an Aboriginal Community Controlled Health Service.

## 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 GP Attendances) Amendment (Patient’s Usual Medical Practitioner) 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 coronavirus (COVID-19).

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 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 COVID-19 pandemic.

The purpose of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone GP Attendances) Amendment (Patient’s Usual Medical Practitioner) Determination 2020* (the Amending Determination) is to amend the Principal Determination to introduce a requirement that GPs and other medical practitioners working in general practice must only perform a remote service where they have an existing and continuous relationship with the patient. An existing relationship is defined as:

- the medical practitioner who performs the service has provided a face-to-face service to the patient in the last 12 months; or
- the medical practitioner who performs the service is located at a medical practice, and the patient has a face-to-face service arranged by that practice in the last 12 months. This can be a service performed by another doctor located at the practice, or a service performed by another health professional located at the practice (such as a practice nurse or Aboriginal and Torres Strait Islander health worker); or
- the medical practitioner who performs the service is a participant in the Approved Medical Deputising Service (AMDS) program, and the Approved Medical Deputising Service provider (AMDS provider) that employs the medical practitioner has a formal agreement with a medical practice that has provided at least one face-to-face service to the patient in the last 12 months.

This requirement does not apply to a person who is under the age of 12 months, a person who is experiencing homelessness, a person who is in a COVID-19 impacted area, a person receiving an urgent after-hours service (in unsociable hours), or a person who

receives the service from a medical practitioner located at an Aboriginal Medical Service or an Aboriginal Community Controlled Health Service.

This will ensure patients continue to receive quality, ongoing care from a GP or other medical practitioner who knows their medical history and needs. This change also responds to advice from medical experts, such as the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP).

### **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

The Amending Determination maintains the right to health and the right to social security by ensuring access to clinically relevant services while encouraging continuity and quality of care for publicly subsidised health services. Requiring COVID-19 video and telephone services are linked to a patient's usual GP or practice will support continuity of care and quality general practice. This change also responds to advice from medical experts, such as the Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP).

**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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