

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (Extend Cessation Date of Temporary COVID-19 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 or the pathology services table (the tables) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the respective table.

The general medical services table is set out in the regulations made under subsection 4(1) of the Act and the pathology services table is set out in the regulations made under subsection 4A(1) of the Act. The most recent version of these regulations are the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020* and the *Health Insurance (Pathology Services Table) Regulations 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 temporary access to Medicare benefits for certain medical services to protect Australians during the coronavirus (COVID-19) pandemic.

This includes providing Medicare benefits for temporary remote service options to enable patients to access telehealth and phone consultation services. These services can be provided by general practitioners (GPs), other doctors in general practice, specialists, consultant physicians, nurse practitioners and allied health professionals.

The Government is also providing Medicare benefits for severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) pathology testing, commonly known as COVID-19, to ensure adequate capacity to provide accessible and rapid laboratory testing. The SARS-CoV-2 test is available for persons who may have contracted COVID-19 and for screening essential workers in the Victorian aged care sector and interstate heavy vehicle drivers.

The temporary items are due to cease on 30 September 2020. The purpose of the *Health Insurance Legislation Amendment (Extend Cessation Date of Temporary COVID-19 Items) Determination 2020* is to extend the availability of the items for six months until 31 March 2021. This extension accords with the advice of the Australian Health Protection Principal Committee which recommended an extension of the temporary access to Medicare benefits for telehealth and phone consultation items and specific COVID-19 pathology testing items to support quarantine and infection control measures.

The Determination will also make two policy changes from the existing arrangements:

- The SARS-COV-2 pathology testing item for essential workers will be expanded to include people who travel interstate as a rail crew member. This amendment will take effect upon commencement of the Determination.
- The telehealth and phone consultation services provided by GPs and other doctors in general practice will be amended to remove the requirement to bulk-bill attendances for certain patients. When the amendment takes effect on 1 October 2020, these doctors will be able to choose to bulk-bill or patient bill any temporary COVID-19 telehealth and phone attendance service.

### **Consultation**

As part of its health care package to protect all Australians from COVID-19, the Australian Government is consulting broadly with the medical sector.

Targeted consultation has been undertaken on extending the availability of the COVID-19 Medicare benefit items and on removing the mandatory requirement to bulk-bill certain telehealth and phone consultation services provided by GPs and other doctors in general practice with the Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine and the Rural Doctors Association of Australia.

Details of the Determination are set out in the [Attachment](#).

The Determination commences the day after this instrument is registered. The amendments in Schedule 2 commence on 1 October 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 Legislation Amendment (Extend Cessation Date of Temporary COVID-19 Items) Determination 2020***

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Extend Cessation Date of Temporary COVID-19 Items) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination will commence the day after the instrument is registered. The amendments in Schedule 2 commence on 1 October 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 commencing the day after registration

Item 1 of Schedule 1 of the Determination changes the sunset date of the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* from 30 September 2020 to 31 March 2021. This will extend the availability of the temporary remote service options to enable patients to access telehealth and phone consultation services. These services can be provided by general practitioners (GPs), other doctors in general practice, specialists, consultant physicians, nurse practitioners and allied health professionals.

Item 2 of Schedule 1 of the Determination clarifies that medical practitioners employed by accredited Medical Deputising Services and GPs employed by Approved Medical Deputising Service providers are deemed to be the ‘patient’s usual medical practitioner’ in specified circumstances. GPs and other medical practitioners working in general practice must only perform a telehealth or phone service where they have an existing and continuous relationship with the patient (per the definition of the patient’s usual medical practitioner) or the service is exempt from that general requirement, per subsection 8(10) of the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination*.

Item 3 of Schedule 1 of the Determination will extend the availability of the temporary telehealth or phone additional Better Access services in the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* from 30 September 2020 to 31 March 2021.

Item 4 of Schedule 1 of the Determination changes the sunset date of the *Health Insurance (Section 3C Pathology Services – COVID- 19) Determination 2020* from 30 September 2020 to 31 March 2021. This will extend the availability of the temporary SARS-CoV-2 pathology testing which is available for persons who may have contracted COVID-19 and for screening essential workers in the Victorian aged care sector and interstate heavy vehicle drivers.

Items 5 and 6 of Schedule 1 of the Determination amends the *Health Insurance (Section 3C Pathology Services – COVID- 19) Determination 2020* to expand the category of essential workers eligible for SARS-COV-2 testing item to include people who travel interstate as a rail crew member.

#### Schedule 2 – Amendments commencing on 1 October 2020

Items 1 and 2 of Schedule 2 of the Determination amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* to remove the requirement for GPs and other doctors in general practice to bulk-bill remote attendances for certain patients. Upon commencement of these amendments, these doctors will be able to choose to bulk-bill or patient bill any temporary COVID-19 telehealth and phone attendance service.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Health Insurance Legislation Amendment (Extend Cessation Date of Temporary COVID-19 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 temporary access to Medicare benefits for certain medical services to protect Australians during the coronavirus (COVID-19) pandemic.

This includes providing Medicare benefits for temporary remote service options to enable patients to access telehealth and phone consultation services. These services can be provided by general practitioners (GPs), other doctors in general practice, specialists, consultant physicians, nurse practitioners and allied health professionals.

The Government is also providing Medicare benefits for severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) pathology testing, commonly known as COVID-19, to ensure adequate capacity to provide accessible and rapid laboratory testing. The SARS-CoV-2 test is available for persons who may have contracted COVID-19 and for screening essential workers in the Victorian aged care sector and interstate heavy vehicle drivers.

The temporary items are due to cease on 30 September 2020. The purpose of the *Health Insurance Legislation Amendment (Extend Cessation Date of Temporary COVID-19 Items) Determination 2020* is to extend the availability of the items for six months until 31 March 2021. This extension accords with the advice of the Australian Health Protection Principal Committee which recommended an extension of the temporary access to Medicare benefits for telehealth and phone consultation items and specific COVID-19 pathology testing items to enable quarantine and infection control measures.

The Determination will also make two policy changes from the existing arrangements:

- The SARS-COV-2 testing item for essential workers will be expanded to include people who travel interstate as a rail crew member. This amendment will take effect upon commencement of the Determination.
- The telehealth and phone consultation services provided by GPs and other doctors in general practice will be amended to remove the requirement to bulk-bill attendances for certain patients. When the amendment takes effect on 1 October 2020, these doctors will be able to choose to bulk-bill or patient bill any temporary COVID-19 telehealth and phone attendance service.

### 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 extending the availability of the temporary telehealth and phone consultation items and specific COVID-19 pathology testing items to enable quarantine and infection control measures. Although this instrument removes the requirement that GPs and other doctors in general practice 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 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 advances the right to health and the right to social security.

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