

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) 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 Table is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020* (GMST).

Purpose

Since 7 August 2020, the Australian Government has been providing Medicare benefits to assist certain people to receive additional mental health support services under the Medicare Benefits Schedule (MBS).

The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* (the Principal Determination) prescribes 36 temporary items to allow certain patients to access up to an additional 10 mental health treatment services under the ‘Better Access’ initiative (also known as ‘Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule’).

On 30 November 2020, the Australian Government announced it will provide temporary, additional support through the Better Access initiative to aged care residents whose mental health and wellbeing has been affected by the COVID-19 pandemic or the measures taken to contain its spread. This change also addresses recommendation three in the special report on aged care and COVID-19 handed to Government on 30 September 2020 by the Royal Commission into Aged Care Quality and Safety. It also extends on the Government’s earlier commitment of \$12.4 million to support the mental health and wellbeing of aged care recipients and their families through the Grief and Trauma Response Package.

From 10 December 2020 until 30 June 2022, eligibility requirements for the Better Access initiative will be expanded to permit care recipients of a residential aged care facility to access up to 20 individual psychological services each calendar year, where their medical practitioner working in general practice or psychiatrist determines they would clinically benefit from additional mental health support. Should a person’s residential aged care subsidy cover mental health treatment, it is intended that the aged care provider should remain responsible for the provision of that service.

The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) Determination 2020* (the Determination) will list 50 new items for mental health treatment planning and review for care recipients in an aged care facility. This will align mental health support for care recipients in an aged care facility with support for people living in the community.

The new items will be available to people who are a care recipient in a residential aged care facility and will allow access to additional mental health treatment services under the Better Access initiative.

Consultation

The Royal Commission into Aged Care Quality and Safety recommended the immediate creation of items under the MBS to facilitate access to additional mental health supports for residents of aged care. Consultation was undertaken with relevant stakeholders to inform this measure.

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

The Determination commences on 10 December 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

ATTACHMENT

Details of the Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) Determination 2020

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the instrument commences on 10 December 2020.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Schedule

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 – Expansion of GP and Allied Health Mental Health Services) Determination 2020 (Principal Determination)

Items 1 and 2 insert the definition of *care recipient* and *preparation of a GP mental health treatment plan* into the Principal Determination. Both of these definitions are defined in the general medical services table.

Care recipient means a person to whom residential care (as defined in section 41-3 of the *Aged Care Act 1997*) is provided.

Preparation of a GP mental health treatment plan has the meaning given by clause 2.20.3. Clause 2.20.3 provides the requirements for the preparation of a GP mental health treatment plan.

Item 3 amends subsection 5(1) of the Principal Determination to include the new items in the definition of *GP mental health treatment plan*.

Item 4 repeals and substitutes subsection 7(2) of the Principal Determination to provide that an item in Schedule 1 or Schedule 2 of this instrument does not apply if the person has received 10 better access subsequent services for that calendar year.

Item 5 repeals subsection 8(1) of the Principal Determination. This subsection has been repealed as the contents of this subsection have been added to the relevant item descriptors.

Item 6 repeals and replaces subsection 8(2) of the Principal Determination to insert new items 93287, 93288, 93291 and 93292 into the subsection. Subsection 8(2) requires that the general practitioner or other medical practitioner working in general practice who renders the service must be registered with the Chief Executive Medicare and have appropriate mental health treatment training and skills requirements.

Item 7 repeals and substitutes subsection 8(4) of the Principal Determination to include the new telehealth and phone items (93404 to 93411 and 93435 to 93442) in the patient's usual medical practitioner rule. This rule requires that general practitioners and other medical practitioners working in general practice must only perform a telehealth or phone attendance service where they have an existing relationship with the patient, as defined by the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

As per subsection 8(5) of the Principal Determination, 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, 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 arrangement is consistent with the arrangements which apply to the initial Better Access general practice focussed psychological strategy treatment services performed by telehealth or phone.

Item 8 repeals section 9 and inserts new sections 9, 10 and 11. Section 9 limits a service under items in Groups M25, M26, M27 and M28 from being claimed if a private health insurance benefit has been claimed for the service.

Section 10 applies the application of items in Group A42, which is for mental health planning for care recipients of a residential aged care facility. Subsection 10(1) requires that items 93400, 93401, 93402, 93403, 93421, 93431, 93432, 93433, 93434 and 93451 apply only in the course of personal attendance by a single medical practitioner on a single patient.

Subsection 10(2) provides that items in Subgroup 1, 2, 3 and 4 of Group A42 apply only to a patient with a mental disorder. Mental disorder is defined in the Principal Determination.

Subsection 10(3) provides that items 93400 to 93411 and 93431 to 93442 do not apply in association with an allied health service under items 80020, 80021, 80120, 80121, 80145, 80146, 80170 or 80171.

Subsection 10(4) provides that items 93402, 93403, 93406, 93407, 93410, 93411, 93433, 93434, 93437, 93438, 93441 and 93442 can only be provided if the medical practitioner has successfully completed mental health skills training that is accredited by the General Practice Mental Health Standards Collaboration.

Subsections 10(5) provides a definition of an *associated general practitioner* for review items 93421, 93422 and 93423. An *associated general practitioner* means a general practitioner (not including a specialist or consultant physician) who, if not engaged in the same general practice as the general practitioner mentioned in that item, performs the service described in the item at the request of the patient (or the patient's guardian).

Subsection 10(6) provides a definition of an *associated medical practitioner* for review items 93451, 93452 and 93453. An associated medical practitioner means a medical practitioner who, if not engaged in the same general practice as the medical practitioner mentioned in the item, performs the service mentioned in the item at the request of the patient (or the patient or the patient's guardian).

Section 11 prescribes the application of a flag fall amount for services provided by general practitioners and other medical practitioners. Providers will receive a flag fall amount plus the standard attendance structure for each patient attendance, if the provider attends to the patient at the residential aged care facility. This amount is intended to reflect the costs doctors incur when providing professional services in residential aged care facilities.

Subsection 11(1) provides that for the first patient attended by a general practitioner at one residential aged care facility, the fee for the service under item 93400, 93401, 93402, 93403, 93421, 93287 and 93288 applies plus \$56.75.

Subsection 11(2) provides that for the first patient attended by a medical practitioner at one residential aged care facility, the fee for the service under item 93431, 93432, 93433, 93434, 93451, 93291 and 93292 applies plus \$41.25.

Item 9 repeals and substitute paragraph (b) of items 93300, 93303, 93306 and 93309 to clarify that the treatment service needs to be is clinically indicated under a GP mental health treatment plan or a psychiatrist assessment and management plan.

Item 10 inserts two new items (93287 and 93288) for the provision of focussed psychological strategies by a general practitioner. These new items are for people who are care recipients in a residential aged care facility.

Item 11 inserts two items (93291 and 93292) for the provision of focussed psychological strategies by a medical practitioner (not including a general practitioner, specialist or a consultant physician), four new items (93400, 93401, 93402 and 93403) for the preparation of a GP mental health treatment plan, one item (93421) for the review of a GP mental health treatment plan, four new items (93431, 93432, 93433 and 93434) for the preparation of a mental health treatment plan, and one item (93451) for a non-specialist practitioner review of a GP mental health treatment plan.

Item 12 inserts two items (93312 and 93313) for a psychological therapy health service provided by an eligible clinical psychologist for people who are care recipients in a residential aged care facility.

Item 13 inserts one new item (93316) for a focussed psychological strategies health service provided by an eligible clinical psychologist that is at least 20 minutes but less than 50 minutes in duration for people who are care recipients in a residential aged care facility.

Item 14 inserts one new item (93319) for a focussed psychological strategies health service provided by an eligible clinical psychologist that is at least 50 minutes in duration for people who are care recipients in a residential aged care facility.

Item 15 inserts two new items (93322 and 93323) for a focussed psychological strategies health service provided by an eligible occupational therapist for people who are care recipients in a

residential aged care facility. Item 93322 is for a service that is at least 20 minutes but less than 50 minutes duration. Item 93323 is for a service that is at least 50 minutes in duration.

Item 16 inserts two new items (93326 and 93327) for a focussed psychological strategies health service provided by an eligible social worker for people who are care recipients in a residential aged care facility. Item 93326 is for a service that is at least 20 minutes but less than 50 minutes duration. Item 93327 is for a service that is at least 50 minutes in duration.

Item 17 repeals and substitute paragraph (b) of items 93301, 93302, 93304, 93305, 93307, 93308, 93310 and 93311 to clarify that the treatment service needs to be clinically indicated under a GP mental health treatment plan or a psychiatrist assessment and management plan.

Item 18 inserts eight new items (93404, 93405, 93406, 93407, 93408, 93409, 93410 and 93411) for a GP mental health treatment plan, two items (93422 and 92423) for a GP mental health treatment plan review, eight new items (93435, 93436, 93437, 93438, 93439, 93440, 93441 and 93442) for a mental health treatment plan by a non-specialist practitioner and two new items (93452 and 93453) for a review of a mental health treatment plan by a non-specialist practitioner. These new items are for teleconference and phone services for people who are care recipients in a residential aged care facility.

Item 19 inserts new Schedule 3 which outlines the services and provisions for the new initial psychological therapy and focussed psychological strategies. Section 1 of Schedule 3 provides the limitations on items 93375, 93376, 93381, 93382, 93383, 93384, 93385 and 93386. A service under these items applies only if it is one of the first 10 relevant services that is provided to the patient in a calendar year.

A relevant service means a service to which any of items 2721 to 2727 of the general medical services table, or items 80000 to 80015, 80100 to 80115, 80125 to 80140, or 80150 to 80165 in the allied health services determination, or items 91166, 91167, 91169, 91170, 91172, 91173, 91175, 91176, 91181, 91182, 91183, 91184, 91185, 91186, 91187, 91188, 91818, 91819, 91820, 91821, 91842, 91843, 91844 and 91845 of the COVID 19 Determination, or items 283 and 286 in the Other Medical Practitioner Determination apply.

Section 2 of Schedule 3 provides items which apply as a referral pathway in order for a patient to be able to access a service under new items 93375, 93376, 93381, 93382, 93383, 93384, 93385 and 93386. A referral by a consultant physician specialising in psychiatry must be a referral for a service to which any of items 293 to 370 of the general medical services table or items 91827, 91828, 91829, 91830, 91831, 91837, 91838, 91839, 91840, 91841, 92436, 92437, 92458, 92459, 92460, 92476, 92477, 92498, 92499 and 92500 of the COVID 19 Determination applies.

A referral by a specialist in the practice of psychiatry or paediatrics must be a referral for a service to which any of items 104 to 109 of the general medical services table or items 91822, 91823, 91832 or 91833 of the COVID 19 Determination applies.

Section 3 provides a flag fall amount that is to be applied for the first patient during one attendance by an allied health professional at one residential aged care facility if a service is provided under relevant items 93312, 93313, 93316, 93319, 93322, 93323, 93326, 93327, 93375, 93376, 93381 to 93386.

Providers will receive a flag fall amount plus the standard attendance structure for each patient attendance if the provider attends to the patient at the residential aged care facility. This amount is intended to reflect the costs doctors incur when providing professional services in residential aged care facilities.

Schedule 3 lists two new items (93375 and 93376) for an initial psychological therapy health service provided by an eligible psychologist and six new items (93381, 93382, 93383, 93384, 93385 and 93386) for an initial focussed psychological strategies health service provided by an eligible psychologist. These new items are for people who are care recipients in a residential aged care facility.

Health Insurance (Allied Health Services) Determination 2014 (Allied Health Determination)

Item 20 amends subsection 6A(2) of the Allied Health Determination to provide an item listed in subsection (2) of the Allied Health Determination (item 80020, 80021, 80120, 80121, 80145, 80146, 80170 and 80171) does not apply if the mental health treatment plan was provided under items 93400 to 93411 and 93431 to 93442 of this Determination.

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 – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) 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 7 August 2020, the Australian Government has been providing Medicare benefits to assist certain people to receive additional mental health support services under the Medicare Benefits Schedule (MBS).

The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* (the Principal Determination) prescribes 36 temporary items to allow certain patients to access up to an additional 10 mental health treatment services under the ‘Better Access’ initiative (also known as ‘Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule’).

On 30 November 2020, the Australian Government announced it will provide temporary, additional support through the Better Access initiative to aged care residents whose mental health and wellbeing has been affected by the COVID-19 pandemic or the measures taken to contain its spread. This change also addresses recommendation three in the special report on aged care and COVID-19 handed to Government on 30 September 2020 by the Royal Commission into Aged Care Quality and Safety. It also extends on the Government’s earlier commitment of \$12.4 million to support the mental health and wellbeing of aged care recipients and their families through the Grief and Trauma Response Package.

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The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Amendment (Care Recipient in a Residential Aged Care Facility) Determination 2020* (the Determination) will list 50 new items for mental health treatment planning and review for care recipients in an aged care facility. This will align mental health support for care recipients in an aged care facility with support for people living in the community.

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 providing care recipients of a residential aged care facility to access up to 20 individual psychological services where their medical practitioner working in general practice or psychiatrist determines they would clinically benefit from additional mental health support. This will ensure care recipients of a residential aged care facilities receive access to mental health support under Medicare in the same way as older Australians residing in the community in recognition of the impacts of the COVID-19 pandemic.

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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