

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of 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

The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020* (the Determination) prescribes 73 temporary items to allow care recipients of a residential aged care facility to increase the amount of selected Medicare subsidised chronic disease management plan allied health services. The Determination also enables care recipients in residential aged care facilities affected by the COVID-19 pandemic, or the measures taken to contain its spread, to access allied health group services.

On 1 December 2020, the Australian Government announced that it would invest a further \$132.2 million in its response to the Aged Care Royal Commission's recommendations on COVID-19. This includes \$12.1 million for additional individual allied health sessions under the Medicare chronic disease management plans and \$15.7 million for allied health group services for care recipients of a residential aged care facility which has been affected by the COVID-19 pandemic or the measures taken to contain its spread.

This proposal 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, new residential aged care facility MBS items will be available which replicate the existing face to face and telehealth items for allied health chronic disease management plan services, indigenous follow up services for eligible patients who have received a health assessment, and group assessment services. There will also be new temporary residential aged care facility MBS items that permit care recipients to access up to 10 services per calendar year for selected physical therapy services, including exercise physiology, occupational therapy and physiotherapy. In addition, new temporary face-to-face MBS items will be introduced for care recipients of a

residential aged care facility for longer initial individual allied health chronic disease management services and initial Indigenous follow up services.

The introduction of these new temporary MBS items will align chronic disease management support for care recipients in a residential aged care facility with the support provided to people living in the community. However, should a person's residential aged care subsidy cover the health treatment, it is intended that the aged care provider should remain responsible for the provision of that service.

Consultation

The Royal Commission into Aged Care Quality and Safety recommended the immediate creation of items under the MBS to facilitate access to additional health support for residents of aged care. The Government has received stakeholder advice supporting the expansion of health services for care recipients in a residential aged care facility and this advice was used to inform this policy.

Due to the short timeframe in drafting this legislative instrument to implement the new items, further consultation on the drafting of the legislative instrument was not undertaken

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 Chronic Disease Management Services for Care Recipients of 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 Chronic Disease Management Services for Care Recipients of 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 – Cessation

Section 4 provides that this instrument will cease on 30 June 2022, unless earlier revoked.

Schedule 1 - Amendments

Part 1 – preliminary

Section 5 - Definitions

Section 5 defines terms used in the Determination

Section 6 – Treatment of relevant services

Section 6 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a medical service and as if there were an item specified in the Table for the service.

Section 7 - References in this instrument to items include items prescribed under sections 3C and 4 of the Act

Section 7 provides that a reference in this instrument to an item includes a reference to an item:

- (a) relating to a health service that, under a determination in force under subsection 3C(1) of the Act;
- (b) relating to a professional service that, under the general medical services table in force under section 4 of the Act;

is treated as if there were an item in the Schedule that relates to the service.

Section 8 – Effect of election to claim private health insurance for an allied health service

Section 8 limits a service under an item in Parts 3 to 5 of this instrument from being claimed if a private health insurance benefit has been claimed for the service.

Section 9 – Limitation on admitted patients

Section 9 provides that an item in this instrument does not apply to a service performed for an admitted patient.

Part 2 – General practice planning and contribution items for care recipients in residential aged care facilities

Part 2 of this determination lists general practice planning and contribution items for care recipients in residential aged care facilities.

Section 10 lists general provisions for items in Part 2.

Subsection 10(1) prescribes that items listed in Part 2 can only be provided by a single practitioner on a single patient in the course of a personal attendance.

Subsection 10(2) prescribes the application of a flag fall amount for services. 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.

For the first patient attended by a general practitioner at one residential aged care facility, the fee for the service under item 93469 or 93470 applies plus \$66.75.

For the first patient attended by a medical practitioner at one residential aged care facility, the fee for the service under item 93475 or 93479 plus \$48.55.

Section 11 prescribes the application provisions for contribution to multidisciplinary care plan items for care recipients in residential aged care facilities.

Subsection 11(1) prescribes that a services under items 93469 and 93475 cannot be provided unless the person with the multidisciplinary care plan suffers from at least one medical condition that:

- (a) has been (or is likely to be) present for at least 6 months; or
- (b) is terminal.

Subsection 11(2) prescribes that a service under items 93469 and 93475 cannot be provided if:

- (a) the service is associated with a service to which items 235 to 240, 735 to 758, apply; or
- (b) the person has received a service to which item 229 to 233, 721, 723, 729, 731 or 732, 92024, 92025, 92026, 92027, 92028, 92055, 92056, 92057, 92058, 92059, 92068, 92069, 92070, 92071, 92072, 92099, 92100, 92101, 92102, 92103 applied in the previous 3 months;
- (c) unless there has been a significant change in the patient's clinical condition or care circumstances that necessitates the performance of the service for the patient.

Subsection 11(3) inserts the definitions of a *multidisciplinary care plan* and a *collaborating provider* for items 93469 and 93475.

Section 12 provides applications provisions for health assessment items for care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent.

Subsection 12(1) provides that items 93470 and 93479 cannot be claimed if the person has received a service under item 228, 715, 92004, 92011, 92016, or 92023 in the previous 9 months.

Subsection 12(2) provides that items 93470 and 93479 will be treated as if the items were specified in clause 2.15.14 of the general medical services table. Clause 2.15.14 of the Table specifies restrictions on health assessment services.

Part 2 lists two items (93469 and 93470) for planning and contribution services by a general practitioner and two items (93475 and 93479) for planning and contribution services by a medical practitioner.

Part 3 – Chronic disease management allied health items for care recipients in residential aged care facilities

Part 3 of this determination lists chronic disease management allied health items for care recipients in residential aged care facilities.

Section 13 prescribes the application of a flag fall amount for services. 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 allied health practitioners incur when providing professional services in residential aged care facilities.

For the first patient attended by an allied health practitioner at one residential aged care facility, the fee for the service under item in Part 3 of this Determination applies plus \$48.50. The flag fall fee does not apply to a service provided under item 93537 or 93538.

Section 14 provides claiming limitations for chronic disease management items for care recipients in residential aged care facilities. An item in subgroup 1 or 3 of Group M29 or M3 is not applicable more than 5 times in a calendar year (in total for all items). An item subgroup 2 of Group M29 is not applicable more than 5 times in a calendar year (in total for all items). An item in Group M3 or M29 is not applicable more than 10 times in a calendar year (in total for all items). Items in Group M3 are prescribed in the *Health Insurance (Allied Health Services) Determination 2014*.

Part 3 lists 13 items (93501, 93502, 93503, 93504, 93505, 93506, 93507, 93508, 93509, 93510, 93511, 93512 and 93513) for an initial allied health services that is at least 30 minutes in duration, three physical therapy items (93518, 93519 and 93520) that are at least 20 minutes in duration, 15 items (93524, 93525, 93526, 93527, 93528, 93529, 93530, 93531, 93532, 93533, 93534, 93535, 93536, 93537 and 93538) for a subsequent allied health service that are at least 20 minutes in duration.

Part 4 – Chronic disease management allied health items for care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent

Part 4 of this determination lists chronic disease management allied health items for care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent.

Section 15 prescribes the application of a flag fall amount for services. 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 allied health practitioners incur when providing professional services in residential aged care facilities.

For the first patient attended by an eligible allied health practitioner at one residential aged care facility, the fee for the service under item in Part 4 of this Determination applies plus \$48.50. The flag fall fee does not apply to a service provided under item 93592 or 93593.

Section 16 provides claiming limitations for chronic disease management items for care recipients in residential aged care facilities of Aboriginal and Torres Strait Islander descent. An item in subgroup 1 or 3 of Group M30 or M11 is not applicable more than 5 times in a calendar year (in total for all items). An item in subgroup 2 of Group M30 is not applicable more than 5 times in a calendar year (in total for all items). An item in Group M11 or M30 is not applicable more than 10 times in a calendar year (in total for all items). Items in Group M11 are prescribed in the *Health Insurance (Allied Health Services) Determination 2014*.

Part 4 lists 13 items (93546, 93547, 93548, 93549, 93550, 93551, 93552, 93553, 93554, 93555, 93556, 93557 and 93558) for an initial allied health services that is at least 30 minutes in duration, three physical therapy items (93571, 93572 and 93573) that are at least 20 minutes in duration, 15 items (93579, 93580, 93581, 93582, 93583, 93584, 93585, 93586, 93587, 93588, 93589, 93590, 93591, 93592 and 93593) for subsequent allied health services that are at least 20 minutes in duration.

Part 5 – Allied health group items for care recipients in residential aged care facilities

Part 5 lists allied health group items for care recipients in residential aged care facilities.

Section 17 prescribes the application of a flag fall amount for services. 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 allied health practitioners incur when providing professional services in residential aged care facilities.

For the first patient attended by an eligible allied health practitioner at one residential aged care facility, the fee for the service under item in Part 5 of this Determination applies plus \$48.50.

Section 18 provides claiming limitations for allied health group service items for care recipients in residential aged care facilities. An item in subgroup 1 or 3 of Group M31 or 81100, 81110 or 81120 is not applicable more than 1 time in a calendar year (in total for all items). An item in subgroup 3 of Group M31 or 81105, 81115 or 81125 is not applicable more than 8 times in a calendar year. An item in subgroup 3 of Group M31 is not applicable more than 2 times in a calendar year (in total for all items). Items in 81100, 81105, 81110, 81115, 81120 and 81125 are prescribed in the *Health Insurance (Allied Health Services) Determination 2014*.

Part 5 lists three assessment group items (93606, 93607 and 93608) for services that are at least 45 minutes in duration, three allied health group items (93613, 93614 and 93615) for services that are at least 60 minutes in duration, one physical therapy group items (93620) for a service that is at least 60 minutes in duration.

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 Chronic Disease Management Services for Care Recipients of 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

The *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Chronic Disease Management Services for Care Recipients of a Residential Aged Care Facility) Determination 2020* (the Determination) prescribes 73 temporary items to allow care recipients of a residential aged care facility to increase the amount of selected Medicare subsidised chronic disease management plan allied health services. The Determination also enables care recipients in residential aged care facilities affected by the COVID-19 pandemic, or the measures taken to contain its spread, to access allied health group services.

On 1 December 2020, the Australian Government announced that it would invest a further \$132.2 million in its response to the Aged Care Royal Commission's recommendations on COVID-19. This includes \$12.1 million for additional individual allied health sessions under the Medicare chronic disease management plans and \$15.7 million for allied health group services for care recipients of a residential aged care facility which has been affected by the COVID-19 pandemic or the measures taken to contain its spread.

This proposal 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, new residential aged care facility MBS items will be available which replicate the existing face to face and telehealth items for allied health chronic disease management plan services, indigenous follow up services for eligible patients who have received a health assessment, and group assessment services. There will also be new temporary residential aged care facility MBS items that permit care recipients to access up to 10 services per calendar year for selected physical therapy services, including exercise physiology, occupational therapy and physiotherapy. In addition, new temporary face-to-face MBS items will be introduced for care recipients of a residential aged care facility for longer initial individual allied health chronic disease management services and initial Indigenous follow up services.

The introduction of these new temporary MBS items will align chronic disease management support for care recipients in a residential aged care facility with the support provided to people living in the community. However, should a person's residential aged care subsidy cover the health treatment, it is intended that the aged care provider should remain responsible for the provision of that 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 providing care recipients of a residential aged care facility with an increase to the amount of selected Medicare subsidised chronic disease management plan allied health services and access to allied health group services. This will ensure care recipients of a residential aged care facility receive access to chronic disease management support under Medicare in the same way as older Australians residing in the community in recognition of the impacts of the COVID-19 pandemic and the measures taken to contain its spread.

Conclusion

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

**Paul McBride
First Assistant Secretary
Medical Benefits Division
Health Resourcing Group
Department of Health**