

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021

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 2021*.

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.

Currently, patients can receive a Medicare benefit for general practice phone services for short consultations (attendances less than six minutes) and consultations six minutes or longer. Patients can access these services through a doctor at their usual general practice if they have visited the practice in the last 12 months (known as the ‘usual medical practitioner’ rule), or they meet the list of exemptions specified in the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal Determination), one of which is that the patient is in a COVID-19 impacted area.

The Government is implementing a longer general practice telephone service to provide an increased Medicare benefit for patients who are located in an area declared as a COVID-19 hotspot by the Commonwealth Chief Medical Officer or are subject to a public health order that requires the person to be in isolation or quarantine. The list of hotspots declared by the Chief Medical Officer is currently available on [health.gov.au](https://www.health.gov.au) and currently includes local government areas in the Sydney region and Melbourne.

The purpose of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021* (the Amendment Determination) is to list two items to enable patients to receive a Medicare benefit for these services rendered by a GP or another medical practitioner working in general practice, and to amend the definition of a COVID-19 impacted area.

Exemption from usual medical practitioner rule

The Australian Government has been providing patients with temporary access to Medicare benefits for a range of general practice telehealth and phone items during the COVID-19 pandemic. As a condition of access, most of these services are subject to the usual medical practitioner rule.

The Amendment Determination will change the list of exemptions to the usual medical practitioner rule to apply a nationally consistent approach. The current test for exempting patients who are in a COVID-19 impacted area that the patient has had their movement restricted by a State and Territory public health order, will be replaced with three separate criteria: the patient is in isolation because of a State or Territory public health order; the patient is in quarantine because of a State or Territory public health order; or the patient is located in an COVID-19 hotspot as declared by the Commonwealth Chief Medical Officer.

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.

This legislative instrument is intended to minimise disruptions to patients' access to essential health care services by supporting general practices to provide medical services to Medicare eligible patients.

Considering the nature of the instrument and due to the short timeframe in drafting this legislative instrument, it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument.

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

The Amending Determination commences immediately following registration the instrument.

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 Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the instrument commences immediately after registration.

Section 3 – Authority

Section 3 provides that the instrument 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 instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

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

Amendment item 1 repeals the definition of *person who is in a COVID-19 impacted area* and inserts the definition of *person who is in a COVID-19 Commonwealth declared hotspot* in the Principal Determination.

Amendment item 2 amends paragraph (c) of subsection 8(9) of the Principal Determination to exempt patients who are in a COVID-19 Commonwealth declared hotspot, in COVID-19 isolation or in COVID-19 quarantine because of a State or Territory public health order from the ‘usual medical practitioner’ rule in subsection 8(8), which requires patients to have an existing relationship with their medical practice to receive most general practice telehealth or phone services.

Subsection 8(10) of the Principal Determination specifies groups of general practice telehealth and phone services that are exempt from the usual medical practitioner rule. **Amendment item 3** amends subsection 8(10) of the Principal Determination to include the two new phone items in Subgroup 41 (see **amendment item 6**) that are not applicable to the requirements of subsection 8(8). This amendment allows eligible patients to access the new longer general practice consultation items without having an existing relationship with the doctor.

Clause 1.1.5 of the Principal Determination restricts the specified general practice chronic disease management items, which are performed by GPs, from being performed on the same occasion for the same patient as items with the specified general practice items relating to Level A to D attendances in paragraphs (a) to (c). **Amendment item 4** will amend that clause to insert the two new phone items in Subgroup 41 (see **amendment item 6**) into paragraph (c).

Clause 1.1.8 of the Principal Determination is equivalent to clause 1.1.5 but relates to specified general practice chronic disease management items, which are performed by other medical practitioners. **Amendment item 5** will amend that clause to insert the two new phone items in Subgroup 41 (see **amendment item 6**) into paragraph (c).

Amendment item 6 lists Subgroup 41 into Group A40 of Schedule 1 of the Principal Determination, which relates to COVID-19 impacted general practice phone services. Subgroup 41 prescribes one new GP and one new OMP phone consultation item (92746 and 92747) which are available to patients who meet the definition of a COVID-19 Commonwealth declared hotspot (see **amendment item 1**) or are in COVID-19 isolation or in COVID-19 quarantine because of a State or Territory public health order. The services provided by items 92746 and 92747 must last at least 20 minutes in duration.

Amendment item 7 amends subclause 3.1.3(3) in Schedule 3 of the Principal Determination to insert references to the new general practice phone consultation items (see **amendment item 6**). Clause 3.1.3(3) provides the general practice referral pathways for certain allied health telehealth and phone services related to autism and pervasive developmental disorders.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021

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.

Currently, patients can receive a Medicare benefit for general practice phone services for short consultations (attendances less than six minutes) and consultations six minutes or longer. Patients can access these services through a doctor at their usual general practice if they have visited the practice in the last 12 months (known as the ‘usual medical practitioner’ rule), or they meet the list of exemptions specified in the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (the Principal Determination), one of which is that the patient is in a COVID-19 impacted area.

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The purpose of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Phone Consultation for COVID-19 Hotspots) Determination 2021* (the Amendment Determination) is to list two items to enable patients to receive a Medicare benefit for these services rendered by a GP or another medical practitioner working in general practice, and to amend the definition of a COVID-19 impacted area.

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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.

The right of equality and non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The right of equality and non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Analysis

This instrument advances the rights to health and social security and the right of equality and non-discrimination by providing greater access to general practice phone consultation services for patients impacted by COVID-19.

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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