EXPLANATORY STATEMENT

*Health Insurance Act 1973*

*Health Insurance Legislation Amendment (Section 3C General Medical Services – Cease GP Mental Health Treatment Plan Phone Services) 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 AIAprovides 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. In the 2021-22 Budget, the Government announced changes to temporary telehealth and phone services, including the cessation of certain GP phone services. These changes were announced as part of the *COVID-19 Response Package – guaranteeing Medicare and access to medicines - extension*measure.

The purpose of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Cease GP Mental Health Treatment Plan Phone Services) Determination 2021* (the Amendment Determination) is to repeal eight temporary items providing general practitioner (GP) phone attendance services for the preparation of GP mental health treatment plans from the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* (the Principal Determination). These services were available for residents of aged care facilities. The Amendment Determination also makes consequential amendments to the Principal Determination due to the cessation of these items.

**Consultation**

The Department consulted peak bodies, including the Royal Australian College of General Practitioners and Australian Medical Association, in relation to the changes to GP phone items.

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

The Amendment Determination commences on 7 August 2021.

The Amendment 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 – Cease GP Mental Health Treatment Plan Phone Services) Determination 2021*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Cease GP Mental Health Treatment Plan Phone Services) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 7 August 2021.

Section 3 – Authority

Section 3 provides that the Amendment 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 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* (the Principal Determination)

**Amendment Item 1** amends the definition of ***GP mental health treatment plan*** in the Principal Determination to remove references to repealed general practitioner (GP) phone attendance items (see **Amendment Item 3**).

**Amendment Item 2** amends subsections 10(3) and (4) in the Principal Determination to remove references to repealed GP phone attendance items. Subsections 10(3) and (4) relate to the application of items in Group A42 (see **Amendment Item 3**).

**Amendment Item 3** repeals items 93408, 93409, 93410, 93411, 93439, 93440, 93441 and 93442, which provided GP phone attendance services for the preparation of GP mental health treatment plans.

**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 – Cease GP Mental Health Treatment Plan Phone Services) 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. In the 2021-22 Budget, the Government announced changes to temporary telehealth and phone services, including the cessation of certain GP phone services. These changes were announced as part of the *COVID-19 Response Package – guaranteeing Medicare and access to medicines - extension*measure.

The purpose of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Cease GP Mental Health Treatment Plan Phone Services) Determination 2021* (the Amendment Determination) is to repeal eight temporary items providing general practitioner (GP) phone attendance services for the preparation of GP mental health treatment plans from the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* (the Principal Determination). These services were available for residents of aged care facilities. The Amendment Determination also makes consequential amendments to the Principal Determination due to the cessation of these items.

**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.

Analysis

Despite the cessation of eight temporary phone attendance items, this instrument maintains the rights to health and social security and the right of equality and non-discrimination as patients in residential aged care facilities will continue to have access to services for the preparation of GP mental health treatment plans provided by a GP in person and via telehealth. This is consistent with the advice from the MBS Review Taskforce that telehealth is the preferred remote service substitute for in person consultations to facilitate safe and quality services during the COVID-19 pandemic. To avoid barriers to timely mental health care, patients in residential aged care facilities can continue to access general practice phone attendance services for short and long general purpose consultations.

**Conclusion**

This instrument is compatible with human rights as it maintains the right to health, the right to social security and the right of equality and non-discrimination.

**Megan Keaney**

**Acting First Assistant Secretary**

**Medical Benefits Division**

**Health Resourcing Group**

**Department of Health**