

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022*

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**

The purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022* (the Determination) is to introduce a new item (294), which will provide a 50 per cent loading to bulk-billed psychiatry attendance items delivered via video conference to eligible patients from 1 November 2022, when claimed with specified professional consultant psychiatry services.

This new item will provide continuity of patient care by ensuring that eligible patients have affordable access to appropriate telehealth psychiatry consultation services for mental health support under the Medicare Benefits Schedule (MBS). New item 294 applies a 50 per cent loading to bulk-billed psychiatry attendances provided by video conference to which items 291, 293, 296, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 319, 348, 350 or 352 apply if the patient is:

- located within Modified Monash area 2 to 7 and at least 15 kilometres away from the provider; or
- a care recipient in a residential aged care facility; or
- a patient of an Aboriginal Medical Service or an Aboriginal Community Controlled Health Service.

The Determination will commence on 1 November 2022.

#### **Consultation**

The Department has consulted with key stakeholders, including members of the Royal Australian and New Zealand College of Psychiatrists, Australian Medical Association, Royal Australian College of General Practitioners, Australian Rural and Remote College of Medicine, National Association of Practising Psychiatrists and Lived Experience.

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

The Determination commences on 1 November 2022.

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 (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022***

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 2022.

Section 3 – Authority

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

Section 4 – Definitions

Section 4 defines terms used in the Determination.

Section 5 – Treatment of Relevant Services

Section 5 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.

Section 6 – Application of provisions of the general medical services table

Subsection 6(1) of the Determination provides that item 294 will be treated as if it was specified in subclauses 1.2.2(1). Clause 1.2.2 applies restrictions to certain items for attendances by specialists and consultant physicians without referrals.

Subsection 6(2) of the Determination provides that item 294 will be treated as if it was specified in subclause 1.2.6(1) and paragraph 1.2.6(3)(b). Clause 1.2.6 provides application requirements for personal attendances by medical practitioners generally with paragraph 1.2.6(3)(b) referring to participation in video conferencing consultations.

Subsection 6(3) of the Determination provides that item 294 will be treated as if it was specified in subclause 1.2.7(1) and paragraph 1.2.7(4)(b). Clause 1.2.7 provides application requirements for personal attendances by medical practitioners with paragraph 1.2.7(4)(b) referring to participation in video conferencing consultations.

Subsection 6(4) of the Determination provides that item 294 will be treated as if it was specified for the purpose of clause 1.2.12 of the general medical services table. Clause 1.2.12

provides a restriction for items where the service involves a video conference between a patient and medical practitioner separated by at least 15 km.

Schedule 1 – Relevant services

The Schedule specifies the service and the associated fee for the new item 294.

## 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 Services – Telehealth Psychiatry Attendance Service) Determination 2022*

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 purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth Psychiatry Attendance Service) Determination 2022* (the Determination) is to introduce a new item (294), which will provide a 50 per cent loading to bulk-billed psychiatry attendance items delivered via video conference to eligible patients from 1 November 2022, when claimed with specified professional consultant psychiatry services.

This new item will provide continuity of patient care by ensuring that eligible patients have affordable access to appropriate telehealth psychiatry consultation services for mental health support under the Medicare Benefits Schedule (MBS). New item 294 applies a 50 per cent loading to bulk-billed psychiatry attendances provided by video conference to which items 291, 293, 296, 300, 302, 304, 306, 308, 310, 312, 314, 316, 318, 319, 348, 350 or 352 apply if the patient is:

- located within Modified Monash area 2 to 7 and at least 15 kilometres away from the provider; or
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The Determination will commence on 1 November 2022.

### 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

This instrument advances the existing rights to health and social security and the right of equality and non-discrimination by enabling continuity of patient care, that ensures eligible patients have affordable access to appropriate MBS telehealth psychiatry consultation services. This Determination assists patients who face affordability and access challenges due to their location in regional and rural areas with access to mental health support.

#### **Conclusion**

This instrument is compatible with human rights as it advances the right to health, the right to social security and the right of equality and non-discrimination, by delivering affordable telehealth psychiatry consultation services through the MBS to regional and rural patients.

**Travis Haslam**  
**Acting First Assistant Secretary**  
**Medical Benefits Division**  
**Health Resourcing Group**  
**Department of Health and Aged Care**