

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (MyMedicare) Determination 2023

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

On 1 November 2023, the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023* introduced six phone items (91900, 91903, 91906, 91910, 91913 and 91916) for longer general practice attendances, to patients registered under *MyMedicare* with the billing practice. The introduction of these new items was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

Usually, a patient must have an established clinical relationship with the medical practitioner, meaning one face to face service in a 12 month period, before they are eligible to receive telehealth or phone consultations (known as the usual medical practitioner rule or the UMP rule), however, there are exemptions to this rule.

The *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (MyMedicare) Determination 2023* (the Amendment Determination) will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) to remove the requirement for the services provided under the six new items to be provided by a patient's usual medical practitioner under the UMP rule. These items will be available to patients who are registered in *MyMedicare* with their registered practice.

Consultation

No direct consultation was undertaken regarding the reinstatement of longer phone items (initially implemented in 2020) or the changes in the Amendment Determination. The sector has however advocated for reinstatement of these longer phone items since removal. In addition, this change aligns with the Strengthening Medicare Taskforce recommendation to support better continuity of care through MyMedicare and will ensure these items align with the original policy intention.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Determination commences the day after registration of this instrument.

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

Authority: Subsection 3C(1) of the
Health Insurance Act 197

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (MyMedicare) Determination 2023*Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (MyMedicare) Determination 2023* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence the day after registration of this instrument.

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 Services – Telehealth and Telephone Attendances) Determination 2021

Item 1 amends subsection 7(6) to repeal and replace paragraph (b) and introduce new paragraph (c). Paragraph (c) removes the requirement for patients to have an existing relationship with a medical practitioner (under the UMP rule) to access general practice phone services under items 91900, 91903, 91906, 91910, 91913 and 91916.

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 and Telephone Attendances) Amendment (MyMedicare) Determination 2023

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 Amendment Determination

On 1 November 2023, the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023* introduced six phone items (91900, 91903, 91906, 91910, 91913 and 91916) for longer general practice attendances, to patients registered under *MyMedicare* with the billing practice. The introduction of these new items was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

Usually, a patient must have an established clinical relationship with the medical practitioner, meaning one face to face service in a 12 month period, before they are eligible to receive telehealth or phone consultations (known as the usual medical practitioner rule or the UMP rule), however, there are exemptions to this rule. The *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (MyMedicare) Determination 2023* (the Amendment Determination) will amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) to remove the requirement for the services provided under the six new items to be provided by a patient's usual medical practitioner under the UMP rule. These items will be available to patients who are registered in *MyMedicare* with their registered practice.

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 rights to health and social security and the right of equality and non-discrimination by providing greater patient access to longer general practice phone services for patients registered under MyMedicare with their registered practice.

Conclusion

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

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