

Shaping the future of insurance law

Telehealth trend may lead to increased exposures for health practitioners

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AT A GLANCE

- In response to the challenges caused by the pandemic, the Australian Government amended the Medicare Benefits Schedule (MBS) to provide rebates for telehealth consultations.
- The initiative was progressively expanded and currently includes 283 items.
- Between March and November 2020, 40 million telehealth consultations attracted a Medicare rebate.
- The rapid and ongoing uptake of telehealth potentially creates an increased exposure to claims against health professionals.
- If telehealth is subsidised beyond the current expiry date of 30 June 2021, insurers and healthcare practitioners may need to reassess their risk management practices.

COVID-19 has changed many aspects of everyday life. After a year of living with a declared pandemic, some of our focus has shifted to distilling the long-term changes from the overall mix of temporary adjustments.

One area on the cusp of permanent change is remote access to healthcare. The main focus is telehealth, which allows a patient to attend a consultation by phone or videoconference with their healthcare professional. Once a limited service offered by necessity to patients in very remote areas of Australia, telehealth consultations are now in high demand.

BACKGROUND

In March 2020, governments around Australia began to introduce social distancing measures and implement plans to increase the capacity of health systems. Part of this response was the Commonwealth Government's decision to amend the Medicare Benefits Schedule (MBS) to provide rebates for some telehealth consultations. This was designed to achieve the dual goals of ensuring continuity of care, while limiting the need to physically attend a consultation.

Initially, the MBS was amended to subsidise telehealth consultations with a general practitioner in circumstances where either the patient or the doctor was required to isolate. The initiative was progressively expanded to allow for "whole of population telehealth" for medical and allied health as a "key weapon in the fight against the COVID-19 pandemic".¹

The decision to subsidise telehealth services under the MBS has led to a significant change in the way healthcare services are delivered in Australia. Between March and November 2020, 40 million telehealth consultations attracted a Medicare rebate.² This number represents approximately 27% of all consultations subsidised under the MBS in a nine month period. By comparison, just 0.2% of consultations were conducted by videoconference in February 2020.

The MBS currently includes 283 items to subsidise a diverse range of telehealth services, including:

- psychology and occupational therapy sessions
- social worker attendances
- pregnancy support counselling
- antenatal attendances by a midwife
- early intervention autism management, and
- dietician services for the management of type 2 diabetes.

UNDERSTANDING AND ADDRESSING THE RISING RISK

The key issue for insurers is whether the challenges posed by telehealth will lead to an increased exposure to claims against health professionals. This risk may include civil proceedings for allegedly missed diagnoses, disciplinary complaints stemming from difficulties with communication, and notifications to state and federal regulators for privacy breaches.

¹<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covid-19-whole-of-population-telehealth-for-patients-general-practice-primary-care-and-other-medical-services>

²<https://coh.centre.uq.edu.au/telehealth-and-coronavirus-medicare-benefits-schedule-mbs-activity-australia>

The Australian Health Practitioner Regulation Agency (AHPRA) has published guidelines for all health practitioners engaged in telehealth³. These complement guidance provided by the Commonwealth Department of Health and MBS.⁴



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Many professional obligations and aspects of best practice apply equally to telehealth consultations and face-to-face healthcare delivery. This includes the requirements to keep contemporaneous records, obtain informed consent from the patient and maintain professional boundaries. However, the digital and remote nature of telehealth poses some unique challenges for health practitioners and insurers. Questions practitioners should consider include:

- Is telehealth appropriate for this consultation, or is an in-person physical examination necessary?
- Can privacy and confidentiality be guaranteed for the patient (in the physical environment of both the health practitioner and patient, as well as the digital environment)?
- Without the benefit of a face-to-face discussion, including body language cues and eye contact, is there a diminished ability to communicate effectively with the patient?
- Is it necessary to record the consultation, and can the patient's consent effectively be recorded without a signed form?
- Overall, is there anything lacking from the telehealth consultation that could or should be more effectively provided in a face-to-face consultation?

³<https://www.ahpra.gov.au/News/COVID-19/Workforce-resources/Telehealth-guidance-for-practitioners.aspx>

⁴<http://www.mbsonline.gov.au/internet/mbsonline/publishing.nsf/Content/Factsheet-TempBB>

A LONG-TERM CHANGE OR A SHORT-TERM SOLUTION?

The dramatic shift to telehealth was clearly driven by necessity. However, the ongoing number of telehealth consultations and the benefits offered by the flexibility of remote appointments means this mode of healthcare is almost certainly here to stay. It's a trend healthcare practitioners and insurers should not ignore, as they may need to review their approach to factor in a permanently increased proportion of telehealth consultations.

At this stage, the sun will set on telehealth as an MBS subsidised component of the Australian healthcare system on 30 June 2021. Given the significant uptake of telehealth services, time will tell whether this flexible option remains a subsidised option for patients after June 2021 and beyond the context of the COVID-19 pandemic.

Need to know more?

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