

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Allied Health Services) Amendment (Group Therapy Services) 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 (Allied Health Services) Amendment (Group Therapy Services) Determination 2022* (the Amendment Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the Principal Determination) to amend eight existing items and introduce 16 new items for group psychological therapy health (PTH) services and focussed psychological strategies (FPS) services under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule (MBS)* (Better Access) initiative.

The Amendment Determination will amend eight MBS items for delivering group PTH and FPS services to reduce the minimum number of participants from six to four. The 16 new MBS items for delivering group PTH and FPS services will be for attendances of at least 90 minutes or 120 minutes. The new and amended group PTH and FPS items will also apply to a service with only three participants, if four participants were due to attend and one of the participants is unable to attend.

These changes are intended to address recommendations from the MBS Review Taskforce and the Productivity Commission Inquiry into Mental Health and aim to encourage the uptake of group therapy as an effective and affordable treatment option for patients by:

- reducing the minimum number of participants to overcome difficulties associated with finding the required six participants (including in rural and remote areas, where people are faced with challenges related to travel, fluctuating participant motivation and wellness); and
- introducing new time-tiered MBS items to ensure appropriate benefits are paid for longer services.

Aligning with existing group therapy services under the Better Access initiative, new group PTH services can be delivered by eligible clinical psychologists and new group FPS services can be delivered by eligible psychologists, occupational therapists and social workers.

To continue to support general practitioners, other medical practitioners, psychiatrists and paediatricians to coordinate mental health treatment and care, the new and existing group therapy services can be provided to an eligible person who is referred by:

- a medical practitioner, as part of a GP Mental Health Treatment Plan (MHTP) or psychiatrist assessment and management plan;
- a specialist or consultant physician specialising in the practice of their field of psychiatry; or
- a specialist or consultant physician specialising in the practice of their field of paediatrics.

The changes in the Amendment Determination were announced in the 2021-22 Budget under the *Mental Health* measure as part of the \$2.3 billion investment (over four years from 2021-22) in the National Mental Health and Suicide Prevention Plan.

Consultation

These MBS changes were informed by recommendations of the Productivity Commission in its Inquiry into Mental Health and the MBS Review Taskforce. Public consultation was a key component of both these reform processes.

Representatives of the Royal Australian College of General Practitioners (RACGP), Australian Medical Association (AMA), Australian College of Rural and Remote Medicine (ACRRM), Royal Australian and New Zealand College of Psychiatrists (RANZCP), Australian Psychological Society (APS), Australian Clinical Psychology Association (ACPA), Australian Association of Psychologists Inc (AAPi), Australian Association of Social Workers (AASW) and Occupational Therapy Australia (OTA), as well as consumer and carer representatives, were given the opportunity to comment.

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

The Amendment Determination commences on 1 November 2022.

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

Details of the Health Insurance (Allied Health Services) Amendment (Group Therapy Services) Determination 2022

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Allied Health Services) Amendment (Group Therapy Services) Determination 2022*.

Section 2 – Commencement

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

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 – Group Therapy Amendments

Health Insurance (Allied Health Services) Determination 2014

Item 1 amends subsection 4(1) to insert the definition of ***admitted patient***.

Item 2 amends subsection 6A(2) to list the 16 new items for group psychological therapy health (PTH) services and focussed psychological strategies (FPS) services (refer to **items 8, 10, 11, 13, 14 and 17**) in this subsection. Subsection 6A(1) provides that an item listed in subsection 6A(2) only applies to a service described in the item if it is one of the first 10 services provided to the patient in the calendar year.

Item 3 inserts subsection 6A(4) which provides that an item for a PTH service or FPS service may apply where only three patients attend the service, if four patients were due to attend and one of the patients is unable to attend.

Items 4 and 5 amend section 6C, which provides limitations for group telehealth items. This change will apply section 6C to the eight new telehealth items for group PTH and FPS services, listing these items in subsection (1), and specify the 16 new group service items (refer to **items 8, 10, 11, 13, 14 and 17**) as relevant services for the purposes of the section.

Item 6 amends subsection 7(1) to include the 16 new items for group PTH services and FPS services (refer to **items 8, 10, 11, 13, 14 and 17**) in this subsection. Section 7 provides the requirements for referrals by psychiatrists and paediatricians for PTH and FPS services.

Item 7 amends existing PTH service items 80020 and 80021 to reduce the minimum number of participants from six to four for services under these items.

Item 8 introduces four new PTH service items (80022, 80023, 80024 and 80025) for attendances of at least 90 minutes or 120 minutes.

Items 9, 12, 15 and 16 amend existing FPS service items 80120, 80121, 80145, 80146, 80170 and 80171 to reduce the minimum number of participants from six to four for services under these items and fix a typographical error in item 80171.

Items 10, 11, 13, 14 and 17 introduces 12 new FPS service items (80122, 80123, 80127, 80128, 80147, 80148, 80152, 80153, 80172, 80173, 80174 and 80175) for attendances of at least 90 minutes or 120 minutes.

Statement of Compatibility with Human Rights

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

Health Insurance (Allied Health Services) Amendment (Group Therapy Services) 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

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These changes are intended to address recommendations from the MBS Review Taskforce and the Productivity Commission Inquiry into Mental Health and aim to encourage the uptake of group therapy as an effective and affordable treatment option for patients by:

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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.

Analysis

This instrument advances the rights to health and social security and the right of equality and non-discrimination by reducing the minimum number of participants required for group PTH and FPS services and providing patients with access to benefits for longer group PTH and FPS services. These changes aim to improve access to effective and affordable group therapy services

as recommended by the Productivity Commission in its Inquiry into Mental Health and the MBS Review Taskforce.

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.

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