

## EXPLANATORY STATEMENT

Issued by the Minister for Health and Aged Care

*Health Insurance Act 1973*

*Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025*

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 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 Schedule 1 of the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* (the Amendment Determination) is to amend two principal instruments to clarify the word ‘telehealth’ is inclusive of video attendance and phone attendances from 1 March 2025, as recommended during the Medicare Benefits Schedule (MBS) Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items. The amendments separately define video and telephone attendances, while telehealth may be a collective term.

The principal instruments to be amended are the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination), and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination).

The purpose of Schedule 2 of the Amendment Determination is to amend the Telehealth Determination to make administrative amendments to five MBS items.

MBS items 92478, 92479, 92480, 92481 and 92482 are being amended to clarify the claiming restrictions in line with Government policy. The amendment makes it clear that the limitation in paragraph (d) of the item descriptors applies to the item itself in addition to the other referenced items. This will clarify the arrangements for patients and providers.

**Consultation**

The changes listed in Schedule 1 were informed by the findings and recommendations of the MRAC's post implementation review of MBS telehealth. Public consultation was a part of the post implementation review and more than 450 submissions from health experts, health organisations, relevant peak bodies, patients and providers. In relation to the proposed changes to clarify the word 'telehealth', consultation feedback was largely supportive with positive feedback received from the Australian Medical Association, Australian College of Nurse Practitioners, MSI Australia and Family Planning Australia.

Consultation was not undertaken for the changes listed in Schedule 2 of this instrument as the amendments are considered administrative and machinery in nature as it clarifies the original policy intent. There is no change to the arrangements for patients and health professionals, and Medicare will continue to subsidise the service.

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

The Determination commences on 1 March 2025.

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

Authority: Subsection 3C(1) of the  
*Health Insurance Act 1973*

## ATTACHMENT

**Details of the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* (the amendment Determination)

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 March 2025.

Section 3 – Authority

Section 3 provides that the 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 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.

Schedule 1 – Telehealth Amendments

**Items 1 to 4** amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination) to make a minor and machinery change to the short title of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination).

**Items 5 to 121 (other than item 63)** amend the Telehealth Determination to:

- Clarify that ‘telehealth’ is inclusive of video attendances and phone attendances;
- For references in items, groups, subgroups and clauses that applied to attendances performed by video, use the term ‘video attendance’ consistently.

**Item 63** makes a minor and machinery amendment to correct the title of a referenced legislative instrument.

Schedule 2 – Inpatient Psychiatry Amendments

**Item 1** amends MBS items 92478, 92479, 92480, 92481 and 92482 to address a drafting omission in this paragraph following the introduction of the items on 1 November 2024.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025***

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 Schedule 1 of the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* (the Amendment Determination) is to amend two principal instruments to clarify the word ‘telehealth’ is inclusive of video attendance and phone attendances from 1 March 2025, as recommended during the Medicare Benefits Schedule (MBS) Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items. The amendments separately define video and telephone attendances, while telehealth may be a collective term.

The principal instruments to be amended are the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination), and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination).

The purpose of Schedule 2 of the Amendment Determination is to amend the Telehealth Determination to make administrative amendments to five MBS items.

MBS items 92478, 92479, 92480, 92481 and 92482 are being amended to clarify the claiming restrictions in line with Government policy. The amendment makes it clear that the limitation in paragraph (d) of the item descriptors applies to the item itself in addition to the other referenced items. This will clarify the arrangements for patients and providers.

#### **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 makes no change to the rights to health and social security and the right of equality and non-discrimination. This instrument simply makes an administrative change to clarify the word ‘telehealth’ is inclusive of video attendance and phone attendances from 1 March 2025, as recommended by the Medicare Benefits Schedule (MBS) Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items. There is no change in substance to the Medicare items that are prescribed in the principal determinations.

#### **Conclusion**

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

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