

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) 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 GMST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST.

The GMST 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 *Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

The Amendment Determination will enable certain Medicare Benefits Schedule (MBS) services to be rendered by eligible dietitians and exercise physiologists for patients with complex neurodevelopmental disorders and eligible disabilities. Specifically, these changes will affect face-to-face items 82030 and 82035, and telehealth items 93033, 93036, 93041 and 93044.

These changes will benefit patients with complex neurodevelopmental disorders and eligible disabilities by providing access and integration of clinically relevant exercise and dietary components into their treatment and care.

The addition of eligible exercise physiologists and dietitians to the allied health complex neurodevelopmental disorders and eligible disabilities items was approved as part of MYEFO 2024-25 under *New and amended Medicare Benefits Schedule (MBS) listings*. These changes align with changes recommended by the MBS Review Taskforce (the Taskforce).

Consultation

Consultation was undertaken with the Taskforce's Allied Health Reference Group which included:

- Audiology Australia;
- Australian College of Physiotherapy;
- Australian Primary Health Care Nurse Association;
- Breast Cancer Network Australia, Cancer Australia;
- Chiropractors Association of Australia;
- Dietitians Association of Australia;
- Osteopathy Australia; and
- the Royal Australian College of General Practitioners.

The Taskforce endorsed the changes listed in the Amendment Determination.

The Allied Health Reference Group also sought targeted stakeholder feedback on its review prior to recommending changes to Government. These stakeholders included:

- Audiology Australia;
- Australian Paediatric Society;
- Australian Physiotherapy Association;
- Dietitians Association of Australia;
- Exercise and Sports Science Australia;
- Indigenous Allied Health Australia;
- The Royal Australian College of General Practitioners; and
- Services for Australian Rural and Remote Allied Health.

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

The Amendment Determination commences on 1 July 2025.

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

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

ATTACHMENT

Details of the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) Determination 2025*Section 1 – Name

Section 1 provides for this instrument to be referred to as the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) Determination 2025* (the Amendment Determination).

Section 2 – Commencement

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

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 – Allied Health Services) Determination 2024

Item 1 makes an administrative change to remove the word “or” in subparagraph (a)(vi) of the definition of *course of assessment* to reflect the change made in **item 2**.

Item 2 adds eligible dietitians and eligible exercise physiologists to the definition of *course of assessment* as it relates to complex neurodevelopmental disorder services.

Item 3 is an administrative change to remove the word “or” in subparagraph (b)(vi) of the definition of *course of assessment* to reflect the change made in **item 4**.

Item 4 adds eligible dietitians and eligible exercise physiologists to the definition of *course of assessment* as it relates to disability services.

Item 5 adds eligible dietitians and eligible exercise physiologists to the definition of *course of treatment* as it relates to complex neurodevelopmental disorder services.

Item 6 adds eligible dietitians and eligible exercise physiologists to the definition of *course of treatment* as it relates to disability services.

Item 7 makes an administrative change to remove the word “or” in clause 5.1.5 to reflect the change made in **item 8**.

Item 8 adds eligible dietitians and eligible exercise physiologists to the list of eligible allied health practitioners in subclause 5.1.5(4).

Items 9 to 13 insert reference to dietetic and exercise physiology services and providers into the item descriptors of items 82030 and 82035 to reflect changes being made in **items 2, 4, 5, 6 and 8**.

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021

Item 14 inserts reference to dietetic and exercise physiology services and providers into the item descriptor of item 93033 to reflect changes being made in **items 2, 4, 5, 6 and 8**.

Items 15 and 16 insert reference to dietetic and exercise physiology services and providers into the item descriptor of item 93036 to reflect changes being made in **items 2, 4, 5, 6 and 8**.

Item 17 inserts reference to dietetic and exercise physiology services and providers into the item descriptor of item 93041 to reflect changes being made in **items 2, 4, 5, 6 and 8**.

Item 18 and 19 insert reference to dietetic and exercise physiology services and providers into the item descriptor of item 93044 to reflect changes being made in **items 2, 4, 5, 6 and 8**.

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 – Allied Health Services)
Amendment (Eligible Providers) 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 Amendment Determination

The purpose of *Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

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These changes will benefit patients with complex neurodevelopmental disorders and eligible disabilities by providing access and integration of clinically relevant exercise and dietary components into their treatment and care.

The addition of eligible exercise physiologists and dietitians to were announced as part of MYEFO 2024-25 under *New and amended Medicare Benefits Schedule (MBS) listings*. These changes align with changes recommended by the MBS Review Taskforce (the Taskforce).

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 will advance the right to health, right to social security and the right of equality and non-discrimination by expanding access for certain MBS items to exercise physiologists and dietitians. This expands the services claimable under the MBS for patients with complex neurodevelopmental disorders and eligible disabilities.

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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