

EXPLANATORY STATEMENT

Issued by the Minister for Health and Aged Care

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Specialist Items and Other Changes) 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 the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances Amendment (Specialist Items and Other Changes) Determination 2025* (the Amendment Determination) is to introduce 21 new Medicare Benefits Schedule (MBS) items into the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Principal Determination). The 21 new MBS items will allow specialist and consultant physicians to bill the MBS for telehealth services equivalent to their face-to-face MBS items to ensure consistency across specialties. These new items were recommended during the MBS Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items.

The Amendment Determination is also intended to introduce two new MBS items to enable a gynaecologist to have longer consultations with patients with complex conditions, such as endometriosis. The two new items for a video attendance of 45-minute initial and subsequent attendances (MBS items 127 and 129, respectively) align with the MRAC Telehealth Principle that “options of telephone, video, and face-to-face consultations must be offered to patients”.

Additionally, the Amendment Determination changes the name of the Principal Determination to the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021*. It also makes minor administrative amendments following on from the changes made by the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* to clarify that the word “telehealth” is

inclusive of video and phone attendances as of 1 March 2025, changes four item descriptions to reflect referral to a “consultant physician” instead of “specialist”, and resolves grammatical errors in two MBS items that have been present since the introduction of the items on 30 March 2020 by the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

Consultation

The changes in Schedules 1, 2, and 4 in the Amendment Determination 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 were received from health experts, health organisations, relevant peak bodies, patients and providers. As Schedule 3 makes administrative amendments only, no consultation was undertaken.

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

Sections 1 to 4 of the Amendment Determination will commence the day after the registration of this instrument. Schedules 1, 2, and 3 commence on 1 July 2025, and Schedule 4 (which amends the name of the Principal Determination) commences immediately after the commencement of the provisions covered by table item 2 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 – Telehealth and Telephone Attendances) Amendment (Specialist Items and Other Changes) Determination 2025*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances Amendment (Specialist Items and Other Changes) Determination 2025* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for sections 1 to 4 (together with anything in the Amendment Determination not elsewhere covered by this section) of the Amendment Determination to commence the day after registration of this instrument. Schedules 1, 2, and 3 commence on 1 July 2025. Schedule 4 commences immediately after the commencement of the provisions covered by table item 3 on 1 July 2025, which ensures that the name of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Principal Determination) does not change until **after** other amendments are made to the Principal Determination.

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 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 – Telehealth services provided by specialist and consultant physicians

Item 1 introduces 21 new MBS items to the Principal Determination, which include:

- Two video and one phone item for occupational medicine;
- Three video and one phone item for pain medicine;
- Three video and one phone item for palliative medicine;
- Four video and one phone item for addiction medicine; and
- Four video and one phone item for sexual health medicine.

Schedule 2 – Gynaecology video services

Item 1 introduces two new items for gynaecology video attendances. New item 127 is for an initial attendance in a single course of treatment, while new item 129 is for a subsequent attendance in a single course of treatment.

Schedule 3 – Telehealth Clarification Amendments

Items 1 to 4 make minor administrative amendments to the item descriptors for 91824, 91825, 91826 and 91836. The wording is changed to provide that patients are referred to a “consultant physician” instead of a “specialist”. This was recommended by Services Australia for consistency with similar items.

Items 5 to 11 (except 8 and 9) make minor administrative amendments to clarify the names of Subgroup 17 of Group A40; Subgroup 20 of Group M18; Subgroup 23 of Group M18; Group M19; and Schedule 6. This is intended to accurately reflect the changes made in the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* (which commenced on 1 March 2025) that were not fully captured in that amendment instrument. These changes were recommended during the MRAC post-implementation review of MBS telehealth items.

Items 8 and 9 make minor grammatical amendments to MBS items 93092 and 93126 to replace the words “patient individually person” with “patient individually” within the item descriptions.

Schedule 4 – Telehealth Name Amendment

Item 1 updates the name of the Principal Determination (currently, the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*) to the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021*. The name change will take effect immediately after the commencement of the *Health Insurance Legislation Amendment (Indexation) Determination 2025*, the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Amendment (Eligible Providers) Determination 2025* and the *Health Insurance Legislation Amendment (2025 Measures No. 2) Regulations 2025*.

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 (Specialist Items and Other Changes) 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 the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Specialist Items and Other Changes) Determination 2025* (the Amendment Determination) is to introduce 21 new Medicare Benefits Schedule (MBS) items into the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Principal Determination). The 21 new MBS items will allow specialist and consultant physicians to bill the MBS for telehealth services equivalent to their face-to-face MBS items to ensure consistency across specialties. These new items were recommended during the MBS Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items.

The Amendment Determination also introduces two new MBS items to enable a gynaecologist to have longer consultations with patients with complex conditions, such as endometriosis. The two new items for a video attendance of 45-minute initial and subsequent attendances (MBS items 127 and 129, respectively) align with the MRAC Telehealth Principle that “options of telephone, video, and face-to-face consultations must be offered to patients”.

Additionally, the Amendment Determination changes the name of the Principal Determination to the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021*. It also makes minor administrative amendments, including further minor amendments following on from the changes made by the *Health Insurance Legislative Amendment (2025 Measures No. 1) Determination 2025* to clarify that the word “telehealth” is inclusive of video and phone attendances as of 1 March 2025, and resolving grammatical errors.

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

The Amendment Determination advances the rights to health and social security and the right of equality and non-discrimination by providing eligible patients with temporary access to telehealth psychiatry services in a hospital setting where clinically appropriate, in addition to available face-to-face services, and also by providing patients with gynaecology video services.

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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