

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (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 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 *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2025* (the Amendment Determination) amends the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* (Principal Determination) to make three minor administrative changes. The first change is to reflect updated fees for Medicare Benefits Schedule (MBS) items 82110 and 82135. The second change is to clarify the policy intention for item 82104. The third change is to clarify the service requirements for item 82140. The first change is to take effect immediately after registration of the Amendment Determination on the Federal Register of Legislation (FRL). The second and third changes are to commence from 1 July 2025.

The changes to the schedule fees for items 82110 and 82135 are intended to resolve administrative errors in the *Health Insurance (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025*, which incorrectly listed the current schedule fees for items 82110 and 82135 in the Principal Determination. As a result, the amendments to the schedule fees were not legally effected. The changes in the Amendment Determination would omit the current fees for items 82110 and 82135 of \$55.55 and \$81.70, respectively, and replace these with the updated fees thereby, aligning the schedule fees for these items with the original policy intention.

The amendment to item 82104, which is a service for long postnatal professional attendance by a participating midwife, makes a minor change to the item descriptor to clarify the intent of the service. Specifically, to clarify that the service is to be provided within 6 weeks after birth. This aligns item 82104 with related items 82130 and 82135,

which also specify that the services in those items are provided “within 6 weeks after birth”.

Additionally, the Amendment Determination makes a change to item 82140 for postnatal professional attendance by a participating midwife, to clarify the requirements of the service. Specifically, the amendment to item 82140 provides that where a patient declines a mental health assessment and/or a referral to a primary carer, the requirements of the service are still satisfied if the participating midwife records the patient’s decisions in the clinical notes.

Policy authority was not sought for the changes listed in the Amendment Determination, as these changes are administrative in nature.

Consultation

Consultation on these changes was not undertaken as these are administrative in nature.

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

Sections 1 to 4 and Schedule 1 of the Amendment Determination commence immediately after registration on the FRL. Schedule 2 of the Amendment Determination is to commence 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 Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2025*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2025* (Amendment Determination).

Section 2 – Commencement

Section 2 provides that Sections 1 to 4 and Schedule 1 of the Amendment Determination are to commence immediately after registration. Schedule 2 of the Amendment Determination is 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 – Fee Amendments

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020

Item 1 updates the schedule fee for MBS item 82110 from the current fee of \$55.55 to the new fee of \$84.70.

Item 2 updates the schedule fee for MBS item 82135 from the current fee of \$81.70 to the new fee of \$124.50.

Schedule 2 – Amendments

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020

Item 1 makes a minor change to the descriptor of item 82104 to clarify the intent of the service, aligning the item descriptor with related items 82130 and 82135 by specifying that item 82104 is available “within 6 weeks after birth”.

Item 2 amends the descriptor of item 82140 to clarify the requirements of the service. Specifically, this amendment provides that where a patient declines a mental health assessment and/or a referral to a primary carer, the requirements of the service are still satisfied if the participating midwife records the patient's decisions in the clinical notes.

Statement of Compatibility with Human Rights

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

*Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment
(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 *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2025* (the Amendment Determination) amends the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* (Principal Determination) to make two minor administrative changes. The first change is to reflect updated fees for Medicare Benefits Schedule (MBS) items 82110 and 82135. The second change is to clarify the policy intention for item 82104. The first change is to take effect immediately after registration of the Amendment Determination on the Federal Register of Legislation (FRL). The second change is to commence from 1 July 2025.

The changes to the schedule fees for items 82110 and 82135 are intended to resolve administrative errors in the *Health Insurance (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025*, which incorrectly listed the current schedule fees for items 82110 and 82135 in the Principal Determination. As a result, the amendments to the schedule fees were not legally effected. The changes in the Amendment Determination would omit the current fees for items 82110 and 82135 of \$55.55 and \$81.70, respectively, and replace these with the updated fees thereby, aligning the schedule fees for these items with the original policy intention.

The amendment to item 82104, which is a service for long postnatal professional attendance by a participating midwife, makes a minor change to the item descriptor to clarify the intent of the service. Specifically, to clarify that the service is to be provided within 6 weeks after birth. This aligns item 82104 with related items 82130 and 82135, which also specify that the services in those items are provided “within 6 weeks after birth”.

Policy authority was not sought for the changes listed in the Amendment Determination, as these changes are administrative in nature.

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 maintains the rights to health and social security and the right of equality and non-discrimination by resolving an administrative error relating to schedule fees of two MBS services (82110 and 82135), and clarifying the policy intention of item 82104.

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.

Louise Riley
Assistant Secretary
MBS Policy and Reviews Branch
Medicare Benefits and Digital Health Division
Health Resourcing Group
Department of Health and Aged Care