

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendments (Usual Medical Practitioner) 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 GMST is set out in the *Health Insurance (General Medical Services Table) Regulations 2021*.

This instrument is made under subsection 33(3) of the *Acts Interpretation Act 1901* (AIA), which provides that a power to make a legislative or administrative instrument includes the power to repeal, rescind, revoke amend, or vary any that instrument in the same manner and subject to the same conditions.

Purpose

The purpose of the *Health Insurance Legislation Amendments (Usual Medical Practitioner) Determination 2025* (Amendment Determination) is to retrospectively amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (COVID-19 Determination) and the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* (Telehealth Determination).

Schedule 1 reinserts paragraphs 8(11)(c), (d) and (e) into the COVID-19 Determination, which were previously removed by the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021* (COVID-19 Amendment Determination) from 1 July 2021. At the time, the change was made as the paragraphs were considered to be redundant, and it was considered that appropriate Approved and accredited Medical Deputising Services (AMDS) telehealth access would be covered under Subgroup 29 (GP and Other Medical Practitioner - Urgent After-Hours Service in Unsociable Hours - Video Services). However, it was subsequently identified that this change inadvertently impacted AMDS access to non-urgent after-hours telehealth services (services other than those in Subgroup 29).

Schedule 2 inserts paragraphs 7(7)(b), (c) and (d) into the Telehealth Determination from the date of its commencement on 1 January 2022. These paragraphs are identical to those being inserted into the COVID-19 Determination. When video and phone MBS services became permanent rather than temporary, the Telehealth Determination was implemented and the COVID-19 Determination was ceased on 31 December 2021. However, these paragraphs were not included in the Telehealth Determination when it was introduced, as they were not in the COVID-19 Determination at the time it was ceased. As such, this amendment will introduce the paragraphs as if they had been in the Telehealth Determination from commencement.

Although the amendments have retrospective effect, the retrospectivity will not disadvantage any person's rights or impose liabilities on a person other than the Commonwealth. Instead, the retrospective operation will address any inadvertent impacts on AMDS access to non-urgent after-hours telehealth services, and will ensure that any claims of affected MBS telehealth items based on the AMDS clauses that were inadvertently removed will be validated. As such, the Amendment Determination does not trespass unduly on personal rights and liberties, in alignment with principle (h) of the Senate Standing Committee for the Scrutiny of Delegated Legislation Guidelines (the Guidelines).

Consultation

Consultation was not undertaken in relation to this change, as the amendments are considered administrative in nature and are giving effect to the original policy intent. There is no impact on the practical arrangements for services provided under restrictions to a patient's usual medical practitioner, and Medicare will continue to subsidise these services. This aligns with principle (d) of the Guidelines, which requires justification where consultation has not occurred with stakeholders likely to be affected.

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. Schedule 1 is taken to have commenced immediately after the commencement of the COVID-19 Amendment Determination, which was on 1 July 2021. Schedule 2 is taken to have commenced immediately after commencement of the Telehealth Determination, which was on 1 January 2022.

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 Legislation Amendments (Usual Medical Practitioner) Determination 2025*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendments (Usual Medical Practitioner) Determination 2025* (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) to commence the day after registration of this instrument. Schedule 1 is taken to have commenced immediately after the commencement of the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021*, on 1 July 2021. Schedule 2 is taken to have commenced immediately after the commencement of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (Telehealth Determination), on 1 January 2022.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*. This authorises the Minister to determine health services for inclusion in the Medicare Benefits Schedule (MBS) via legislative instrument.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the 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 the Amendment Determination has effect according to its terms.

Schedule 1—COVID-19 Telehealth and Telephone Amendments

Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020 (COVID-19 Determination)

Item 1 amends subsection 8(11) in the COVID-19 Determination to reinstate paragraphs (c), (d) and (e), which were previously removed by the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021*. This is intended to maintain the definition of a “patient’s usual medical practitioner” in line with original policy intent.

Schedule 2—Telehealth Amendments

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

Item 1 amends subsection 7(7) in the Telehealth Determination to insert paragraphs (c), (d) and (e), which are identical to the paragraphs being inserted into the COVID-19 Determination by item 1 of Schedule 1. This amendment is necessary to align with the original policy intent of allowing Approved and accredited Medical Deputising Service (AMDS) programs and providers, as approved providers for the purposes of the definition of a “patient’s usual medical practitioner”, to bill appropriate and clinically relevant services.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendments (Usual Medical Practitioner) 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 the *Health Insurance Legislation Amendments (Usual Medical Practitioner) Determination 2025* (Amendment Determination) is to retrospectively amend the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* (COVID-19 Determination) and the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* (Telehealth Determination).

Schedule 1 reinserts paragraphs 8(11)(c), (d) and (e) into the COVID-19 Determination, which were previously removed by the *Health Insurance Legislation Amendment (Section 3C General Medical Services – Medicare Indexation and Extension of Remote Service Options) Determination 2021* (COVID-19 Amendment Determination) from 1 July 2021. At the time, the change was made as the paragraphs were considered to be redundant, and it was considered that appropriate Approved and accredited Medical Deputising Services (AMDS) telehealth access would be covered under Subgroup 29 (GP and Other Medical Practitioner - Urgent After-Hours Service in Unsociable Hours - Video Services). However, it was subsequently identified that this change inadvertently impacted AMDS access to non-urgent after-hours telehealth services (services other than those in Subgroup 29).

Schedule 2 inserts paragraphs 7(7)(b), (c) and (d) into the Telehealth Determination from the date of its commencement on 1 January 2022. These paragraphs are identical to those being inserted into the COVID-19 Determination. When video and phone MBS services became permanent rather than temporary, the Telehealth Determination was implemented and the COVID-19 Determination was ceased on 31 December 2021. However, these paragraphs were not included in the Telehealth Determination when it was introduced, as they were not in the COVID-19 Determination at the time it was ceased. As such, this amendment will introduce the paragraphs as if they had been in the Telehealth Determination from commencement.

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 reflect contemporary clinical practice by reinstating paragraphs into the definition of “patient’s usual medical practitioner” to align the definition with the policy intention, to ensure that patients continue to have access to health and social security through relevant subsidised pathology services on the Medicare Benefits Schedule.

Although the amendments have retrospective effect, the retrospectivity will not disadvantage any person’s rights or impose liabilities on a person other than the Commonwealth. Instead, the retrospective operation will address any inadvertent impacts on AMDS access to non-urgent after-hours telehealth services, and will ensure that any inadvertent claims of affected MBS telehealth items based on the AMDS clauses that were inadvertently removed will be validated. As such, the Amendment Determination does not trespass unduly on personal rights and liberties, in alignment with principle (h) of the Senate Standing Committee for the Scrutiny of Delegated Legislation Guidelines.

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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