EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2025 Measures No. 5) 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* (GMST).

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 Legislation Amendment (2025 Measures No. 5) Determination 2025* (Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024,* the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* and the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024* from 1 November 2025 to:

- support Aboriginal and Torres Strait Islander health workers, practitioners and their communities by adopting terminology used by the profession and broader health care sector; and
- make minor administrative amendments for chronic condition management Medicare Benefits Schedule (MBS) items to align with changes to chronic condition management referral requirements that were implemented on 1 July 2025.

<u>Changes to terminology for Aboriginal and Torres Strait Islander health worker and practitioner services</u>

Updating the terminology used by the Aboriginal and Torres Strait Islander health professions will help to promote and distinguish these professions so they are appropriately recognised for providing holistic primary health care services to Aboriginal and Torres Strait Islander people. At present in the legislation, Aboriginal and Torres Strait Islander health workers and practitioners are categorised as allied health professionals. This categorisation does not accurately reflect the holistic health services that Aboriginal and Torres Strait Islander health workers and practitioners provide under existing MBS items.

Consultation
The National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners have championed this change and have provided supporting documentation from the Royal Australian College of General Practitioners, the Australian Indigenous Doctors Association, Indigenous Allied Health Australia and the Australian Health Practitioner Regulation Agency.

Administrative amendments to chronic condition management items
On 1 July 2025, arrangements for chronic condition management planning by general practitioners and prescribed medical practitioners under the MBS were modernised, streamlined and simplified.

The Amendment Determination will update chronic condition management referral requirements for MBS allied health and other primary health care telehealth and phones services to align with the 1 July 2025 changes to chronic condition management arrangements.

Consultation
The changes to chronic condition management arrangements were endorsed by the MBS Review Taskforce on the recommendation of the General Practice and Primary Care Clinical Committee and were announced by Government in the 2023-24 Budget under the *A Modern and Clinically Appropriate Medicare Benefits Schedule* measure.

The new referral requirements for allied health and other primary care services were agreed to by Government as part of the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule (MBS)* measure.

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

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 Amendment (2025 Measures No. 5) Determination 2025*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance Legislation Amendment (2025 Measures No. 5) Determination 2025* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence immediately after the commencement of the *Health Insurance Legislation Amendment (2025 Measures No.4) Determination 2025* on 1 November 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 changes the determination name to *Health Insurance (Section 3C General Medical Services – Allied Health and other Primary Health Care Services) Determination 2024*.

Item 2 inserts a definition for the term ***Aboriginal and Torres Strait Islander health and wellbeing service*** to mean a health service of the same definition as specified by section 12 of the *Health Insurance Regulations 2018*.

Item 3 inserts a definition for the term ***Aboriginal and Torres Strait Islander primary health care professional,*** for the provision of an Aboriginal and Torres Strait Islander health and wellbeing service, to mean a person who meets the qualification requirements set out in Schedule 1; and whose name is entered in the register, kept by the Chief Executive Medicare, of Aboriginal and Torres Strait Islander primary health care professionals.

Item 4 amends the term "Aboriginal and Torres Strait Islander health service" to "Aboriginal and Torres Strait Islander health and wellbeing service" under the definition of a case conference service.

Item 5 repeals and replaces the definition of ***clinically relevant service*** to mean a service rendered by an allied health professional, nurse practitioner or Aboriginal and Torres Strait Islander primary health care professional that is generally accepted in the relevant health profession (as the case may be) as being necessary for the appropriate treatment of the patient to whom it is rendered.

Item 6 repeals and replaces the definition of ***eligible Aboriginal and Torres Strait Islander health practitioner*** to mean a person who is an Aboriginal and Torres Strait Islander primary health care professional in relation to the provision an Aboriginal and Torres Strait Islander health and wellbeing service and/or a mental health service.

Item 7 repeals and replaces the definition of ***eligible Aboriginal and Torres Strait Islander health worker*** *to* mean a person who is an Aboriginal health worker; or Aboriginal and Torres Strait Islander health worker; or Torres Strait Islander health worker, who is an Aboriginal and Torres Strait Islander primary health care professional in relation to the provision an Aboriginal and Torres Strait Islander health and wellbeing service and/or a mental health service.

Item 8 inserts "Aboriginal and Torres Strait Islander primary health care professional" into the definition of an ***eligible mental health worker***.

Item 9 repeals and replaces the heading in section 6 to "**Treatment of allied health and Aboriginal and Torres Strait Islander health and wellbeing services**".

Item 10 inserts "or an Aboriginal and Torres Strait Islander primary health and wellbeing service" into section 6 on the treatment of relevant health services under subsection 3C(1) of the Act.

Item 11 inserts "or Aboriginal and Torres Strait Islander health and wellbeing service" into the heading at section 8.

Item 12 inserts "or Aboriginal and Torres Strait Islander health and wellbeing service" into subsection 8(1) which specifies that an MBS item for this service or an allied health service only applies if a private health insurance benefit has not been claimed for the service.

Item 13 changes the heading at subsection 10(7) to "*Attendance options for the eligible allied health practitioner or eligible Aboriginal and Torres Strait Islander primary health care professional"*.

Item 14 inserts into subsection 10(7) an "or eligible Aboriginal and Torres Strait Islander primary health care professional" attendance as one that may be provided in person, by phone or by video conference and may differ from the type of attendance provided by other members of the multidisciplinary case conference team.

Item 15 updates the terminology in the Note in subsection 11(1) to refer to the "Department of Health, Disability and Ageing's" MBS Online website.

Item 16 repeals and replaces the title of Schedule 1 to "**Schedule 1 – Qualification requirements for allied health and Aboriginal and Torres Strait Islander primary health care professionals**."

Item 17 repeals and replaces clause 1 of Schedule 1 to update terminology in relation to qualification requirements for Aboriginal and Torres Strait Islander primary health care professionals for the provision of an Aboriginal and Torres Strait Islander health and wellbeing service.

Item 18 inserts "or Aboriginal and Torres Strait Islander primary health care professional" into clause 9 of Schedule 1 in relation to qualification requirements for the provision of a mental health service.

Item 19 repeals and replaces paragraph 9(a) of Schedule 1 regarding qualification requirements for the provision of a mental health service to include the person meeting requirements for an Aboriginal and Torres Strait Islander primary health care professional in relation to the provision of an Aboriginal and Torres Strait Islander health and wellbeing service.

Item 20 amends the title of Schedule 2 to "Allied health and other primary health care services".

Item 21 amends the title of Division 1.1 of Schedule 2 to "Provisions related to individual chronic condition management services".

Items 22 and 23 insert "nurse practitioners, Aboriginal and Torres Strait Islander primary health care professionals" into subclause 1.1.2 (6) in relation to eligible health professionals.

Item 24 inserts "and Torres Strait Islander" after "Aboriginal" into paragraph 1.1.2(6)(a) of Schedule 2.

Items 25 and 26 insert "Aboriginal and Torres Strait Islander health and wellbeing" into the title of clause 1.1.3 of Schedule 2 and heading of the Group M3 table.

Item 27 amends clause 1.1.3 of Schedule 2, subgroup 1 heading in the Group M3 table to "Individual chronic condition management services".

Item 28 updates the terminology for MBS item 10950 in Schedule 2 to "Aboriginal and Torres Strait Islander health and wellbeing service provided to a patient by an eligible Aboriginal and Torres Strait Islander health worker or Aboriginal and Torres Strait Islander health practitioner".

Item 29 amends clause 1.1.3 of Schedule 2, subgroup 2 heading in the Group M3 table to "Individual chronic condition management services".

Item 30 inserts "or eligible Aboriginal and Torres Strait Islander primary health care professional" as an eligible health professional for provision of services under MBS items 10955, 10957, and 10959.

Item 31 amends the title of Division 5.1 of Schedule 2 to "Provisions related to complex neurodevelopmental disorder and disability services".

Items 32 and 33 insert "and eligible Aboriginal and Torres Strait Islander primary health care professionals" into paragraph 5.1.5 (4) of Schedule 2 in relation to eligible health professionals.

Item 34 inserts **"**and Torres Strait Islander" after "Aboriginal".

Item 35 inserts "or eligible Aboriginal and Torres Strait Islander primary health care professional" as an eligible health professional for services provided under MBS items 82001, 82002 and 82003.

Item 36 amends the title of Part 6, Schedule 2 to "Services and fees—Aboriginal and Torres Strait Islander health and wellbeing services".

Item 37 amends the title of Division 6.1 of Schedule 2 to "Aboriginal and Torres Strait Islander health and wellbeing services".

Items 38 amends the heading of clause 6.1.2 of Schedule 2 to "Items in Group M11 for Aboriginal and Torres Strait Islander health and wellbeing services".

Item 39 amends the heading of the Group M11 table in clause 6.1.2 of Schedule 2 to "Health services for Aboriginal and Torres Strait Islander people".

Items 40 and 41 update the terminology in the item descriptor for MBS item 81300 for Aboriginal and Torres Strait Islander health and wellbeing services provided by eligible Aboriginal and Torres Strait Islander health workers.

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

Item 42 changes all reference to the "Allied Health Determination" in Section 5 to the "Allied Health and other Primary Health Care Services Determination".

Item 43 inserts the definition of ***allied health professional***, including qualifications and registration requirements.

Item 44 repeals and replaces the definition of the "Allied Health Determination" in Section 5 to the "***Allied Health and other Primary Health Care Services Determination***" to mean the *Health Insurance (Section 3C General Medical Services – Allied Health and other Primary Health Care Services) Determination 2024*.

Item 45 inserts the definition of an ***Aboriginal and Torres Strait Islander primary health care professional*** into section 5.

Item 46 updates the name of the "Department of Health, Disability and Ageing" under the definition of ***Commonwealth Urgent Care Clinic Program*** in section 5.

Item 47 updates the terminology for the definition of "eligible Aboriginal health worker" to "***eligible Aboriginal and Torres Strait Islander health worker***" in section 5.

Item 48 updates the list of health professionals under the definition of "eligible allied health practitioner".

Item 49 inserts a note on the definition of "eligible allied health practitioner" for subgroups 15 and 16 of Group M18.

Item 50 inserts the definition of "eligible optometrist" into section 5.

Item 51 updates the reference to the "Allied Health and other Primary Health Care Services Determination" in paragraph 7(2)(c).

Item 52 inserts ", Aboriginal and Torres Strait Islander primary health care professionals" into the Note in subsection 7(3) in relation to health professionals who can provide services under this instrument.

Item 53 updates the reference to the "Department of Health, Disability and Ageing's" MBS Online website in the Note in subsection 8(1).

Item 54 updates the terminology to refer to "Aboriginal and Torres Strait Islander health workers" in relation to the application of items in subgroup 11 of Group A40 in subclause 1.1.03(4) of Schedule 1.

Items 55 changes reference to the "Allied Health Determination" in Schedule 1 to the "Allied Health and other Primary Health Care Services Determination" in paragraph 1.1.10(2)(b).

Item 56 deletes references to the "Allied Health Determination" in the item descriptors for MBS items 92136, 92137, 92138 and 92139 in the Group A40 table in clause 1.1.19 of Schedule 1.

Items 57 amends the title of Schedule 3 to "Allied health and other Primary Health Care services".

Item 58 updates the reference to the "Allied Health Determination" to the "Allied Health and other Primary Health Care Services Determination" in subclause 3.1.10(1).

Items 59, 60, and 61 amend headings in the Group M18 table, in clause 3.1.10 of Schedule 3, to refer to "Allied health and other primary health care" telehealth services.

Items 62 and 63 amend the item descriptors for MBS items 93000 and 93013 to align with changes to referral requirements under chronic condition management arrangements; to update

the eligible health professionals to include Aboriginal and Torres Strait Islander primary health care professionals; and to update the title of the "Allied Health and other Primary Health Care Services Determination".

Item 64 deletes references to the "Allied Health Determination" and "general medical services table" in the item descriptors for MBS items 93026 and 93029.

Items 65 and 66 amend the item descriptors for MBS items 93048 and 93061 to align with changes to referral requirements under chronic condition management arrangements; to update the eligible health professionals to include Aboriginal and Torres Strait Islander primary health care professional; and to update the title of the "Allied Health and other Primary Health Care Services Determination".

Items 67, 68 and 69 delete references to the "Allied Health Determination" in the item descriptors for MBS items 93284, 93285 and 93286.

Item 70 amends the title of Schedule 4 to "Nurse practitioner, participating midwife, Aboriginal and Torres Strait Islander health practitioner and dental practitioner services".

Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024

Item 71 amends the name of the *Health Insurance (Section 3C General Medical Services – Allied Health and other Primary Health Care Services) Determination 2024* in the definition of ***eligible Aboriginal and Torres Strait Islander health practitioner*** in section 4.

Item 72 repeals the definition of "eligible Aboriginal health worker" and replaces it with the definition of an ***eligible Aboriginal and Torres Strait Islander health worker*** to have the same meaning as in the *Health Insurance (Section 3C General Medical Services – Allied Health and other Primary Health Care Services) Determination 2024*.

Item 73 repeals the definition of ***health professional*** and replaces it to mean a practice nurse, eligible Aboriginal and Torres Strait Islander health practitioner or eligible Aboriginal and Torres Strait Islander health worker.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (2025 Measures No. 5) 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 ***Error! No text of specified style in document.*** *Health Insurance Legislation Amendment (2025 Measures No. 5) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024,* the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* and the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024* from 1 November 2025 to:

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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 as it ensures patients continue to have access to Medicare benefits for allied health services related to chronic condition management and provides clarity relating to the referral requirements for allied health services.

Conclusion

This instrument is compatible with human rights as it maintains the right to health, 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, Disability and Ageing