

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2025 Measures No. 6) Determination 2025

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) enables the Minister to determine, by legislative instrument, 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 established under the regulations made pursuant to subsection 4(1) of the Act. The current 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*, which provides that a power to make a legislative or administrative instrument includes the power to repeal, rescind, revoke, amend, or vary any such instrument in the same manner and subject to the same conditions.

Purpose

The purpose of the *Health Insurance Legislation Amendment (2025 Measures No. 6) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* and the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020*. The amendments are intended to make consequential changes pursuant to the commencement of the *Aged Care Act 2024* on 1 November 2025, which includes removing provisions that are no longer necessary.

No policy authority was sought for the changes in the Amendment Determination as the changes are administrative and machinery in nature.

Consultation

No consultation was undertaken on the changes in the Amendment Determination, as the changes are administrative and machinery in nature.

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

The Amendment Determination commences immediately after commencement of the *Aged Care Act 2024*.

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. 6) Determination 2025*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance Legislation Amendment (2025 Measures No. 6) Determination 2025* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence immediately after the commencement of the *Aged Care Act 2024*.

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 Midwife and Nurse Practitioner Services) Determination 2020 (the Midwife and Nurse Practitioner Determination)

Item 1 repeals section 6 of the Midwife and Nurse Practitioner Determination, as the section sets out definitions relating to provisions of the Midwife and Nurse Practitioner that have now been repealed (Part 2 of Schedule 1 or Part 3 of Schedule 2) and are therefore redundant.

Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020 (the Optometric Determination)

Item 2 amends subsection 5(1) of the Optometric Determination to repeal the definition of *care recipient*, as the term *care recipient* does not appear elsewhere in the Optometric Determination.

Item 3 amends subsection 5(1) of the Optometric Determination to amend the definition of *residential aged care facility* to align with the meaning given by the *Health Insurance (General Medical Services Table) Regulations 2021*.

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. 6) 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 Amendment (2025 Measures No. 6) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* and the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020*. The amendments are intended to make consequential changes pursuant to the commencement of the *Aged Care Act 2024* on 1 November 2025, which includes removing provisions that are no longer necessary.

No policy authority was sought for the changes in the Amendment Determination as the changes are administrative and machinery 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 does not affect the rights to health and social security and the right of equality and non-discrimination, as its sole purpose is to make administrative amendments to the Optometric Determination and the Midwife and Nurse Practitioner Determination from 1 November 2025. There is no change to existing Medicare arrangements for patients or health providers.

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, Disability and Ageing**