EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2025 Measures No. 4) 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 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 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. 4) Determination 2025* (the Amendment Determination) is to amend from 1 November 2025 the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination) and the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* (the Telehealth Determination).

The purpose of Schedule 1 of the Amendment Determination is to amend the Allied Health Determination and Telehealth Determination to implement recommendations from the Better Access Evaluation. These changes are intended to enhance continuity of care by linking the preparation of a Mental Health Treatment Plan (MHTP), referrals for treatment, and reviews of a MHTP to a patient's General Practitioner (GP) or Prescribed Medical Practitioner (PMP) at a patient's MyMedicare practice or their usual medical practitioner. They will also better integrate a patient's physical and mental health care needs, with MHTP review and mental health consultation items being removed from the Medicare Benefits Schedule, with GPs and PMPs able to use general attendance items to undertake these services.

The purpose of Schedules 2 and 3 of the Amendment Determination is to amend the Telehealth Determination in line with the broader findings of the Medicare Benefits Schedule (MBS) Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items. Schedule 2 will update and extend the eligibility criteria for MBS GP telehealth items to include MyMedicare as an alternative pathway for patients to qualify for MBS GP telehealth consultations. Through this change, a patient will be eligible to access GP telehealth if they either meet the eligible

telehealth practitioner requirement or the service performed is with their registered MyMedicare practice.

Also under Schedule 2 of the Amendment Determination, Nurse Practitioners (NP) will now be subject to the eligible telehealth practitioner criteria unless the service is exempt. Relevant exemptions are Blood Borne Virus and Sexual and Reproductive Health consultations. The change will more closely align patient eligibility requirements and exemptions for NP and GP telehealth consultations that are similar. The inclusion of nurse practitioners in what was formally known in legislation as the "usual medical practitioner rule", will now be amended to "eligible telehealth practitioner". This is not only to include nurse practitioners, but also to reduce confusion as another rule is titled, "usual medical practitioner" in the GMST for chronic condition management and better access.

The purpose of Schedule 4 is to make minor administrative amendments to clarify the operation of clause 1.1.06 of the Telehealth Determination, which deals with conditions relating to timing of services where exceptional services do not exist.

Consultation

The changes in Schedule 1 to the Amendment Determination were informed by the former Mental Health Reform Advisory Committee, which supported the government response to the Better Access evaluation by considering mental health reforms from a whole of system perspective. Advice on implementing the Schedule 1 changes has been sought from the sector through an Implementation Liaison Group that was established to support communications with affected professions. Stakeholder feedback was largely supportive of the changes.

The changes listed in Schedules 2 and 3 were informed by the MRAC's *Telehealth Post-Implementation Review Report* (June 2024) which noted that overall, telehealth and face-to-face consultations could have equal efficacy for ongoing management of known conditions for a known patient. Consultation was undertaken with peak bodies for the changes in Schedules 2 and 3 through the MRAC's consultation process (with more than 450 submissions received), as well as targeted stakeholder discussions who were all generally supportive of the MRAC recommendations.

Consultation was not undertaken on the changes in Schedule 4, as these changes are considered administrative in nature.

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

The Amendment Determination commences immediately after the commencement of the *Health Insurance Legislation Amendment (2025 Measures No. 3) Regulations 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 Legislation Amendment (2025 Measures No. 4) Determination 2025*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance Legislation Amendment (2025 Measures No. 4) 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. 3) Regulations 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 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—Better Access Redesign Amendments

Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024 (Allied Health Determination)

Item 1 inserts a definition for "MyMedicare" into subsection 4(1) of the Allied Health Determination.

Item 2 repeals and replaces section 12 of the Allied Health Determination, which deals with referral requirements for allied health and other primary health care services, to:

- update the title of the section to reflect language used by the sector;
- insert subsection (1A), which provides for transitional arrangements for referrals prepared on or after 1 November 2025 for specified services;
- update the definition of "referring practitioner" at paragraph (5)(a) to include additional requirements for MBS items listed in Group M6 or Subgroup 1 of Group M7;
- insert paragraph (5)(c) to define that "usual medical practitioner" has the meaning given by clause 7.1.1 of the general medical services table; and
- insert subsection (7A) to provide that referrals for services listed in Group M6 or Subgroup 1 of Group M7 are valid until the maximum number of sessions recommended by the referring practitioner is completed.

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

Item 3 amends the definition of "MyMedicare" to refer to the correct clause in the *Health Insurance (General Medical Services Table) Regulations 2021* containing the definition.

Item 4 repeals and replaces section 9 of the Telehealth Determination, which deals with referral requirements for allied health and other primary health care services, to:

- update the title of the section to reflect language used by the sector;
- insert subsection (1A), which provides for transitional arrangements for referrals prepared on or after 1 November 2025 for specified services;
- update the definition of "referring practitioner" at paragraph (5)(a) to include additional requirements for MBS items listed in Subgroups 1, 2, 3, 4, 6, 7, 8 and 9 of Group M18;
- insert paragraph (5)(c) to define that "usual medical practitioner" has the meaning given by clause 7.1.1 of the general medical services table; and
- insert subsection (7A) to provide that referrals for services listed in Subgroups 1, 2, 3, 4, 6, 7, 8 and 9 of Group M18 are valid until the maximum number of sessions recommended by the referring practitioner is completed.

Item 5 repeals and replaces clause 1.1.12 of Schedule 1, which deals with the application of specified items, to:

- remove reference to Subgroup 20 of Group A40, as all items within Subgroup 20 are being ceased by amendment item 7 of Schedule 1 to the Amendment Determination;
- insert a definition of "usual medical practitioner" for items listed in Subgroup 19 of Group A40;
- remove the definition of "associated general practitioner" for items listed in Subgroup 19 of Group A40;
- remove the definition of "associated medical practitioner" for items 92118 and 92133;
- remove reference to items being ceased by amendment item 7 of Schedule 1 to the Amendment Determination; and
- Inserts subsection (5)(b), which specifies that an item in Subgroup 19 of Group 40 applies where a service meets the requirement for it to be provided by a general practitioner or prescribed medical practitioner at a patient's MyMedicare registered practice or their usual medical practitioner.

Item 6 repeals clause 1.1.13 to remove the limitations on eating disorder services.

Item 7 repeals MBS items 92114, 92115, 92120, 92121, 92126, 92127, 92132 and 92133, which are for video and phone attendances in relation to a review of a GP Mental Health Treatment Plan and mental health consultation items, as clinicians will now use the most appropriate general attendance item to deliver these services.

Item 8 repeals the subheading of "Subgroup 20 – GP Mental Health Treatment Plan - Phone Service", as all items within Subgroup 20 are ceased by amendment item 7.

Item 9 repeals and replaces the heading of clause 3.1.5 of Schedule 3to remove reference in this provision to referrals by general practitioners as this clause relates to provision of referrals by specialists and consultant physicians.

Item 10 repeals and replaces clause 3.1.9, and splits the clause to apply the application of psychological therapy and focussed psychological strategies health services to items 91166 to 91177, 91181 to 91188 and 91194 to 91205, which provides the meaning of "referring practitioner". Clause 3.1.9A provides for the application of psychological therapy and focussed psychological strategies health services provided to a person other than the patient.

Item 11 to 14 amends paragraphs (a), (b), (c), and (d) of MBS items 91166, 91167, 91169, 91170, 91172, 91173, 91175, 91176, 91181, 91182, 91183, 91184, 91185, 91186, 91187 and 91188 to align with their equivalent face to face MBS items.

Schedule 2— Eligible Telehealth Amendments

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

Item 1 adds Group M18, Subgroup 5 to subsection 7(5), which is intended to ensure that an item in Group M18 Subgroup 5 and Subgroup 10 (in addition to an item in Schedule 1 or 8 of the Telehealth Determination) also applies to a service performed by the patient's eligible telehealth practitioner.

Item 2 repeals and substitutes subsection 7(6), which sets out circumstances in which subsection 7(5) does not apply. The former paragraphs 7(6)(b), (d) and (e) are moved into the new subsection 7(6A) (described below in amendment item 3 to Schedule 2 of the Amendment Determination), and the former paragraph 7(6)(c) is deleted. The new subsection 7(6) extends the operation of paragraph 7(6)(e) to include a nurse practitioner. Additionally, the new subsection 7(6) excludes references to Subgroups 19 and 20of Group A40, as this provision will no longer apply to items in Subgroup 19 of Group A40 and items in Subgroup 20 of Group A40 are being ceased by amendment item 7 of Schedule 1 to the Amendment Determination .

Item 3 inserts new subsections 7(6A), (6B) and (6C). New subsection 7(6A) contains further circumstances in which subsection 7(5) does not apply, which were moved from the former paragraphs 7(6)(b), (d) and (e). New subsection (6B) provides that subsection 7(5) does not apply to Blood Borne Virus, Sexual and Reproductive Health Services for items in Subgroup 5 and 10 of Group M18, excluding if the service is provided to a patient for the purpose of, or in relation to, assisted reproductive technology or antenatal care. Finally, new subsection 7(6C) sets out the requirement that the provider of the service must, for the purposes of subsections 7(6), 7(6A), and (6B), document which exemption has been used and the relevant clinical justification.

Item 4 repeals and replaces subsection 7(7) to amend the definition of a "patient's eligible telehealth practitioner" to extend to a nurse practitioner, and to expand eligibility to a include a service performed to a patient registered in MyMedicare.

Schedule 3—Subsequent Phone Items Amendments

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

Item 1 inserts reference to item 92440 into the co-claiming restriction for MBS item 92423 (column 2, paragraph (c)).

Item 2 inserts reference to item 92443 into the co-claiming restriction for MBS item 92423 (column 2, paragraph (f)).

Item 3 inserts reference to item 92444 into the co-claiming restriction for MBS item 92436 (column 2, paragraph (g)).

Item 4 inserts new MBS items 92440 and 92443 into the Telehealth Determination, which are for subsequent phone attendance by a consultant physician in the practice of the consultant physician's specialty (other than psychiatry). These items are inserted into existing Subgroup 8 of Group A40.

Item 5 inserts new MBS items 92441 and 92442 into the Telehealth Determination, which are for subsequent phone attendance by a consultant physician in the practice of the consultant physician's specialty of psychiatry. These items are inserted into a new Subgroup 26 of Group A40.

Item 6 repeals and replaces MBS item 92624 to:

- remove reference to MBS item 92448, which ceased on 1 July 2022; and
- insert reference to items 143 and 92448 into the co-claiming restriction for MBS item 92624 (column 2, paragraph (e)).

Item 7 inserts new MBS items 92445, 92446 and 92447 into the Telehealth Determination, which are for subsequent phone attendance by a specialist in the practice of neurosurgery. These items are inserted into existing Subgroup 36 of Group A40.

Item 8 inserts MBS item 92444 into the Telehealth Determination, which is for subsequent phone attendance by a consultant physician in the practice of the consultant physician's specialty of psychiatry. Item 92444 is inserted into existing Subgroup 9 of Group A40.

Item 9 inserts new MBS item 92448 into the Telehealth Determination, which is for subsequent phone attendance for geriatric medicine for review of a management plan by a consultant physician or specialist in the practice of the consultant physician's or specialist's specialty of geriatric medicine. Item 92448 is inserted into new Subgroup 32 of Group A40.

Schedule 4—Administrative Amendments

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

Item 1 amends the heading of clause 1.1.06 to more accurately reflect the content of the clause, aligning it with the equivalent clause 2.16.12 of the *Health Insurance (General Medical Services Table) Regulations 2021* (which lists restrictions for the face to face equivalent MBS items).

Item 2 amends subclause 1.1.06(1) to clarify that "This clause" refers to subclause 1.1.06(2).

Item 3 repeals and replaces subclause 1.1.06(2) to clarify that the table at subclause 1.1.06(3) lists relevant MBS items and the circumstances in which those items apply.

Item 4 amends subclause 1.1.06(3) to clarify the subclause provides the definition of ***exceptional circumstances*** for the purposes of subclause 1.1.06(1).

Item 5 amends the heading of the table at subclause 1.1.06(3) to more accurately reflect the content of the table.

Item 6 amends table item 1, column 2, paragraph (a) of the table at subclause 1.1.06(3) to remove reference to MBS items 231 and 729. This is to reflect the intention that items 92026 and 92057 apply in circumstances where a service to which item 231 or 729 applies has not been provided to the patient in the preceding 12 months (rather than the preceding 3 months). Items 231 and 729 are the face to face equivalent services for MBS items 92026 and 92057 and are added to subparagraph (b)(ii) of column 2 of table item 1 by amendment item 8 of Schedule 4 to the Amendment Determination.

Item 7 amends item 1, column 2, subparagraph (b)(i) of the table at subclause 1.1.06(3) to remove reference to MBS items 231, 729 and 92026, as these items should only be listed in subparagraph (b)(ii) of column 2 of table item 1.

Item 8 amends item 1 column 2 subparagraph (b)(ii) of the table at subclause 1.1.06(3) to insert MBS items 231 and 729, as they are the face to face equivalent service for MBS items 92026 and 92057.

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. 4) 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. 4) Determination 2025* (the Amendment Determination) is to amend from 1 November 2025 the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination) and the *Health Insurance (Section 3C General Medical Services – Telehealth Attendances) Determination 2021* (the Telehealth Determination).

The purpose of Schedule 1 of the Amendment Determination is to amend the Allied Health Determination and Telehealth Determination to implement recommendations from the Better Access Evaluation. These changes are intended to enhance continuity of care by linking the preparation of a Mental Health Treatment Plan (MHTP), referrals for treatment, and reviews of a MHTP to a patient's General Practitioner (GP) or Prescribed Medical Practitioner (PMP) at a patient's MyMedicare practice or their usual medical practitioner. They will also better integrate a patient's physical and mental health care needs as the removal of these items clarifies that GPs and PMPs general attendance items can be used to undertake MHTP review and mental health consultation services.

The purpose of Schedules 2 and 3 of the Amendment Determination is to amend the Telehealth Determination in line with the broader findings of the Medicare Benefits Schedule (MBS) Review Advisory Committee (MRAC) post-implementation review of MBS telehealth items. Schedule 2 will update and extend the eligibility criteria for MBS GP telehealth items to include MyMedicare as an alternative pathway for patients to qualify for MBS GP telehealth consultations. Through this change, a patient will be eligible to access GP telehealth if they either meet the eligible telehealth practitioner requirement or the service performed is with their registered MyMedicare practice.

Also under Schedule 2 of the Amendment Determination, Nurse Practitioners (NP) will now be subject to the eligible telehealth practitioner criteria unless the service is exempt. Relevant exemptions are Blood Borne Virus and Sexual and Reproductive Health consultations. The change will more closely align patient eligibility requirements and exemptions for NP and GP telehealth consultations that are similar. The inclusion of nurse practitioners in what was formally known in legislation as the "usual medical practitioner rule", will now be amended to "eligible telehealth practitioner". This is not only to include nurse practitioners but also to reduce confusion as another rule is titled, "usual medical practitioner" in the GMST for chronic condition management and better access..

The purpose of Schedule 4 is to make minor administrative amendments to clarify the operation of clause 1.1.06 of the Telehealth Determination, which deals with conditions relating to timing of services where exceptional services do not exist.

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 implementing recommendations from the Evaluation of the Better Access initiative, and by amending the Telehealth Determination in line with the broader findings of the MRAC post-implementation review of MBS telehealth items. More specifically, this is through updating and extending the eligibility criteria for MBS GP telehealth items and introducing nine new MBS items for subsequent phone attendances for relevant consultant physicians and specialists. These changes ensure that

patients continue to have access to health and social security through relevant subsidised pathology services on the MBS.

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.

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