

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Amendment (Mental Health Case Conferencing Services and Indexation) Determination 2023*

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 purpose of the *Health Insurance Amendment (Mental Health Case Conferencing Services and Indexation) Determination 2023* (the Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the AHS Determination) and the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the OMP Determination) to:

- apply annual fee indexation by increasing the schedule fees of the Medicare Benefits Schedule (MBS) items listed in these principal determinations by 3.6 per cent;
- introduce nine items to enable case conferencing for patients being treated under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS* (Better Access) initiative or an eating disorder treatment and management plan; and
- allow patients being treated under the Better Access initiative or an eating disorder treatment and management plan to access services for the creation and review of team care arrangements by other medical practitioners.

The increase of the schedule fees for items in the AHS Determination and OMP Determination reflects the Australian Government's policy regarding Medicare indexation and means that patients will receive an increased Medicare benefit for these services.

The new mental health case conferencing items, and the changes to allow patients being treated under the Better Access initiative or an eating disorder treatment and management plan to access services for the creation and review of team care

arrangements, were announced in the 2022-23 March Budget under the *Prioritising Mental Health* measure.

### **Consultation**

No consultation was undertaken regarding annual indexation, as these changes continue business-as-usual implementation of the Government's policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year.

Representatives from the below organisations, as well as consumer and carer representatives, were given the opportunity to comment on the MBS changes related to mental health case conferences and team care arrangements:

- Royal Australian College of General Practitioners (RACGP);
- Australian Medical Association (AMA);
- Australian College of Rural and Remote Medicine (ACRRM)
- Royal Australian and New Zealand College of Psychiatrists (RANZCP);
- Australian Psychological Society (APS);
- Australian Clinical Psychology Association (ACPA);
- Australian Association of Psychologists Inc (AAPi);
- Australian Association of Social Workers (AASW);
- Occupational Therapy Australia (OTA);
- headspace National;
- Emerging Minds;
- Gidget Foundation Australia; and
- Orygen.

Details of the Determination are set out in the [Attachment](#).

Schedule 1 of the Determination commences on 1 July 2023 and Schedule 2 commences immediately after the commencement of Schedule 1.

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

Authority: Subsection 3C(1) of the  
*Health Insurance Act 1973*

## **Details of the *Health Insurance Amendment (Mental Health Case Conferencing Services and Indexation) Determination 2023***

### Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Amendment (Mental Health Case Conferencing Services and Indexation) Determination 2023* (the Determination).

### Section 2 – Commencement

Section 2 provides for the Schedule 1 of the Determination to commence on 1 July 2023 and Schedule 2 to commence immediately after the commencement of Schedule 1.

### Section 3 – Authority

Section 3 provides that the 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 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 Determination has effect according to its terms.

### Schedule 1 – Indexation

#### ***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

**Item 1** amends subsection 17(1) of the AHS Determination to apply annual indexation to allied health services from 1 July 2023. This will increase the benefit paid to patients for these services, which is calculated as a percentage of the fee per section 10 of the *Health Insurance Act 1973*. Indexation will be applied by 3.6 per cent, which is represented as 1.036.

#### ***Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018 (OMP Determination)***

**Items 2 to 6** amend the OMP Determination to apply annual indexation to specified services by increasing the schedule fees by 3.6 per cent from 1 July 2023. The fees for other medical practitioner items are calculated to reflect 80 per cent of the schedule fee for the equivalent general practitioner item.

### Schedule 2 – Mental health case conferencing services

#### ***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

**Item 1** amends subsection 14(1) of the AHS Determination to insert references to the three new allied health items for mental health case conference services (for items 80176, 80177 and

80178, refer to **item 4** of Schedule 2 of the Determination). Section 14 provides general requirements for case conference items.

**Item 2** amends subsection 14(2) of the AHS Determination to insert the definition of *mental health case conference*.

**Item 3** inserts new section 15A, which provides limitations for allied health mental health case conference services (for items 80176, 80177 and 80178, refer to **item 4** of Schedule 2 of the Determination).

Items 80176, 80177 and 80178 will only apply to a service if:

- the patient is not an admitted patient of a hospital and:
  - is referred for a psychological therapy health or focussed psychological strategies health service; or
  - has an eating disorder treatment and management plan; and
- a service under item 80176, 80177 or 80178 has not been performed for the patient in the last three months;
- the service is provided by an allied health professional who meets the qualification requirements outlined in Schedule 1 of the AHS Determination in relation to the provision of a:
  - psychological therapy health service;
  - focussed psychological strategies health service; or
  - dietetics health service.

**Item 4** introduces items 80176, 80177 and 80178 for participation in a mental health case conference service by an eligible allied health practitioner. The three items are time-tiered.

***Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018 (OMP Determination)***

**Item 5** amends subsection 4(1) of the OMP Determination to insert the definition for *eating disorder treatment and management plan*.

**Items 6 to 8** amend clause 1.6.1 of OMP Determination to insert references to six new items for mental health case conference services (refer to **item 12** of Schedule 2 of the Determination) and insert the definition of **mental health case conference**. Clause 1.6.1 provides definitions for terms used in items in Division 1.6 of the OMP Determination.

**Item 9** amends subclause 1.6.2(5) of the OMP Determination to insert a reference to subclause 2.16.9(1A) of the general medical services table. Subclause 1.6.2(5) applies clause 2.16.9 of the general medical services table, which provides restrictions for GP management plan and team care arrangement services, to items in the OMP Determination.

Subclause 2.16.9(1A) of the general medical services table will provide access to services for coordinating the development of team care arrangements, or coordinating a review of team care arrangements, for the patient, if the patient:

- is referred for a psychological therapy health or focussed psychological strategies health service; or
- has an eating disorder treatment and management plan.

**Item 10** amends the table at clause 1.6.3 of the OMP Determination to update the frequency limitations for services provided under items 230 and 233.

The new patient cohort eligible for services under items 230 and 233 in accordance with subclause 2.16.9(1A) of the general medical services will be able to access:

- one service under item 230 or 723 of the general medical services table in a 12 month period; and
- one service under item 233 or 732 of the general medical services table in a 3 month period.

Accessing services under items 230 and 233 in accordance with subclause 2.16.9(1A) of the general medical services table will not reduce how often a patient may access services under items 230 and 233 in accordance with 2.16.9(1) of the general medical services table. For example, a patient has received one service under item 230 in the last 12 months to create team care arrangements for their medical condition that is likely to last six months. However, the patient also has an eating disorder treatment and management plan, and their medical practitioner would like to create team care arrangements in relation to this using item 230. The change to the table at clause 1.6.3 will allow item 230 to be claimed a second time in 12 months in these circumstances.

**Item 11** inserts new clause 1.6.4 which provides application provisions for the six new mental health case conference items (refer to **item 12** of Schedule 2 of the Determination). Items 969, 971, 972, 973, 975 and 986 will only be available if the patient:

- is referred for a psychological therapy health or focussed psychological strategies health service; or
- has an eating disorder treatment and management plan.

**Item 12** introduces items 969, 971, 972, 973, 975 and 986 for other medical practitioner mental health case conference services.

## Statement of Compatibility with Human Rights

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

*Health Insurance Amendment (Mental Health Case Conferencing Services and Indexation)  
Determination 2023*

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 Amendment (Mental Health Case Conferencing Services and Indexation) Determination 2023* (the Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the AHS Determination) and the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the OMP Determination) to:

- apply annual fee indexation by increasing the schedule fees of the Medicare Benefits Schedule (MBS) items listed in these principal determinations by 3.6 per cent;
- introduce nine items to enable case conferencing for patients being treated under the *Better Access to Psychiatrists, Psychologists and General Practitioners through the MBS* (Better Access) initiative or an eating disorder treatment and management plan; and
- allow patients being treated under the Better Access initiative or an eating disorder treatment and management plan to access services for the creation and review of team care arrangements by other medical practitioners.

The increase of the schedule fees for items in the AHS Determination and OMP Determination reflects the Australian Government's policy regarding Medicare indexation and means that patients will receive an increased Medicare benefit for these services.

The new mental health case conferencing items, and the changes to allow patients being treated under the Better Access initiative or an eating disorder treatment and management plan to access services for the creation and review of team care arrangements, were announced in the 2022-23 March Budget under the *Prioritising Mental Health* measure.

### 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 advances the rights to health and social security and the right of equality and non-discrimination by increasing the Medicare benefit patients will receive when accessing the services listed in the determinations specified. This will assist patients to continue accessing clinically relevant health services. This instrument also advances these right by providing patients with access to mental health case conference services.

### **Conclusion**

This instrument is compatible with human rights as it advances the right to health, the right to social security and the right of equality and non-discrimination.

**Daniel McCabe**  
**First Assistant Secretary**  
**Medicare Benefits and Digital Health Division**  
**Health Resourcing Group**  
**Department of Health and Aged Care**