

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) 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 GMST) or the pathology services table (the PST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST or PST.

The GMST 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*.

The PST is set out in the regulations made under subsection 4A of the Act. The most recent version of the regulations is the *Health Insurance (Pathology Services Table) Regulations 2020*.

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 (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2023* (Amendment Determination) is to amend the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* (Midwife and Nurse Practitioner Determination) to:

- specify that items 82200, 82205, 82210 and 82215 do not apply to a service described in the item if the service is provided at the same time as, or in connection with, a non-medicare service;
- amend the item descriptor for item 73826 so that it aligns with the title of the Royal Australian College of General Practitioners (RACGP) Standards for point-of-care testing; and
- remove a reference to a ceased legislative instrument.

Nurse practitioner items

The Amendment Determination inserts a new provision to specify that items 82200, 82205, 82210 and 82215 do not apply to a service described in the item if the service is provided

at the same time as, or in connection with, a non-medicare service. This is an administrative amendment to ensure appropriate claiming of nurse practitioner services under the Medicare Benefits Schedule (MBS). This change is intended to clarify existing arrangements for MBS services provided by nurse practitioners.

Amendments to pathology provisions

On 1 November 2021, item 73812 was introduced by the *Health Insurance (Section 3C Pathology Services – HbA1c Point of Care Testing) Determination 2021* (Point of Care Testing Determination). On 1 July 2023, item 73812 was incorporated into the PST and the Point of Care Testing Determination was repealed. This amendment is administrative in nature to reflect the incorporation of item 73812 into the PST, removing a reference to the now ceased Point of Care Testing Determination.

An administrative amendment was also made to item 78326 to align the item descriptor with the title of the RACGP Standards for point of care testing. This change will align the item descriptor for item 78326 (HbA1c point of care testing performed by a participating nurse practitioner) with the descriptor for similar item 73812 (HbA1c point of care testing performed by or on behalf of a medical practitioner).

Consultation

No consultation was undertaken regarding the changes in the Amendment Determination, as they are administrative in nature. These changes are intended to align the Midwife and Nurse Practitioner Determination with current RACGP standards, remove an obsolete reference to a repealed legislative instrument and ensure appropriate claiming of MBS services.

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

Sections 1 to 4 and Schedule 1 of the Amendment Determination commence the day after it is registered. Schedule 2 of the Amendment Determination commences on 1 November 2023.

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

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

Details of the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2023*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2023*.

Section 2 – Commencement

Section 2 provides that Sections 1 to 4 and Schedule 1 of the Amendment Determination will commence the day after the Amendment Determination is registered, and Schedule 2 will commence on 1 November 2023.

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

Amendment item 1 inserts a definition of *non-medicare service* in subsection 5(1). This definition provides that a non-medicare service is a service provided by a nurse practitioner that is not generally accepted in the nursing profession as being necessary for the appropriate treatment of the patient to whom it is rendered.

Amendment item 2 inserts subsection 16(6) to specify that items 82200, 82205, 82210 and 82215 do not apply to a service described in the item if the service is provided at the same time as, or in connection with, a non-medicare service.

Amendment item 3 amends paragraph 20(c) to remove a reference to *Health Insurance (Section 3C Pathology Services – HbA1c Point of Care Testing) Determination 2021*, which ceased on 1 July 2023. Item 73812 was incorporated into the *Health Insurance (Pathology*

Services Table) Regulations 2020 by the Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023.

Schedule 2 – Amendments commencing 1 November 2023

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020

Amendment item 1 amends item 73826 to align the item descriptor with the title of the Royal Australian College of General Practitioners Standards for point-of-care testing, and to align the item with similar item 73812.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Amendment (No. 1) 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

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- specify that items 82200, 82205, 82210 and 82215 do not apply to a service described in the item if the service is provided at the same time as, or in connection with, a non-medicare service;
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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

The changes in the Amendment Determination will maintain the rights to health and social security, and the rights of equality and non-discrimination by supporting appropriate claiming of services under the Medicare Benefits Schedule for nurse practitioners. As changes are

administrative and do not affect services available, patient access to health services and social security is not impacted.

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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