

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) 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* (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 (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth and Telephone Determination) from 1 November 2023. The Amendment Determination will:

- apply an indexation factor of 0.5 per cent to relevant items in the Telehealth and Telephone Determination;
- introduce three telehealth items (91920, 91923 and 91926) for general practice attendances lasting 60 minutes or more;
- introduce six phone items (91900, 91903, 91906, 91910, 91913 and 91916) for longer general practice attendances, where the patient is registered under *MyMedicare* with the billing practice, and repeal two existing phone items (91894 and 91895);
- amend three telehealth items (91800, 91805 and 91808) to introduce appropriate minimum and maximum consultation times; and
- remove references to the *Health Insurance (Section 3C General Medical Services - Other Medical Practitioner) Determination 2018* (the Other Medical Practitioner Determination), which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

On 1 July 2023, annual fee indexation of 3.6 per cent was applied to most services under the Medicare Benefits Schedule (MBS). On 9 May 2023, as part of the 2023-24 Budget, the Government announced changes to the indexation methodology applying

to Government programs, including the MBS, to better align with changes in economic conditions. Schedule 1 of the Amendment Determination will increase the fees for relevant MBS items in the Telehealth and Telephone Determination by applying an indexation rate of 0.5 per cent from 1 November 2023, to align these MBS services with the updated indexation methodology. This increase of the schedule fees means that patients will receive an increased Medicare benefit for the affected services.

Schedule 2 of the Amendment Determination provides the new and amended telehealth and phone items for general practice attendances, consistent with recommendations from the MBS Review Taskforce, which were supported by the Strengthening Medicare Taskforce. These changes to the Telehealth and Telephone Determination were announced in the 2023-24 Budget under the *Strengthening Medicare* and *A Modern and Clinically Appropriate Medicare Benefits Schedule* measures.

On 1 November 2023, the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* is due to incorporate items currently in the Other Medical Practitioner Determination (except for Subgroup 10 in Group A7 and any related provisions) into the GMST. Schedule 3 of the Amendment Determination will make consequential amendments to the Telehealth and Telephone Determination to remove references to the Other Medical Practitioner Determination relating to items that will be incorporated into the GMST.

Consultation

No consultation was undertaken regarding the indexation changes in the Amendment Determination, as they are intended to align relevant MBS items in the Telehealth and Telephone Determination with the Government's policy on Medicare indexation, following the announcement in the 2023-24 Budget of revisions to the indexation methodology.

Consultation was undertaken as part of the MBS Review Taskforce for the new and amended telehealth items.

No direct consultation was undertaken regarding the reinstatement of Level C and Level D longer phone items (initially implemented in 2020). The sector has however advocated for reinstatement of these longer phone items since removal. In addition, this change aligns with the Strengthening Medicare Taskforce (SMT) recommendation to support better continuity of care through MyMedicare.

No consultation was undertaken regarding the removal of references to the Other Medical Practitioner Determination relating to items that will be incorporated into the GMST, as these changes are administrative in nature.

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

Sections 1 to 4 and Schedule 1 of the Amendment Determination commence on 1 November 2023 and Schedule 2 of the Amendment Determination commences immediately after the commencement of Schedule 1. Schedule 3 of the Amendment Determination commences immediately after the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measure No. 3) Regulations*.

The Amendment 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 (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023* (Amendment Determination).

Section 2 – Commencement

Section 2 provides that Sections 1 to 4 and Schedule 1 of the Amendment Determination commence on 1 November 2023 and Schedule 2 of the Amendment Determination commences immediately after the commencement of Schedule 1. Section 2 also provides that Schedule 3 of the Amendment Determination commences immediately after the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measure No. 3) Regulations*.

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 – Indexation amendments

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

Schedule 1 increases the fees for relevant Medicare Benefit Schedule (MBS) items in the Telehealth and Telephone Determination by 0.5 per cent from 1 November 2023, to align these MBS services with updates to the Medicare indexation methodology. This will increase the Medicare benefit paid to patients for these services. The indexation figures are calculated as per section 10 of the *Health Insurance Act 1973*.

Item 1 amends subsection 8(1) of the Telehealth and Telephone Determination to apply an indexation rate of 0.5 per cent from 1 November 2023 to the schedule fees of relevant items.

Items 2 and 3 amend the fees for listed items in Schedules 1 and 5 of the Telehealth and Telephone Determination to apply an indexation rate of 0.5 per cent. The fees for the items listed are calculated to reflect 80 per cent of the schedule fee for the equivalent GP item.

Schedule 2 – General practice amendments

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

Item 1 amends subsection 5(1) of the Telehealth and Telephone Determination to insert the definition for **MyMedicare**. This term is relevant to the six new phone items for longer general practice attendances (refer to **item 10**).

Item 2 amends paragraph 8(2)(a) of the Telehealth and Telephone Determination to insert references to the nine new telehealth and phone items for general practice attendances (refer to **items 9 and 10**) and to remove reference to ceased item 92747. Paragraph 8(2)(a) provides the list of items excluded from application of the indexation provision at subsection 8(1). The new items listed in paragraph 8(2)(a) (refer to **items 9 and 10**) are for services provided by non-vocationally registered medical practitioners, which have fees that are calculated to reflect 80 per cent of the schedule fee for the equivalent GP item or are not indexed.

Item 3 amends subclause 1.1.01(1) of Schedule 1 of the Telehealth and Telephone Determination to insert references to new items 91906, 91916 and 91926 (refer to **items 9 and 10**) into this subclause. Clause 1.1.01 provides the definition for **eligible area** for general practice telehealth and phone items.

Items 4 and 5 amend subclauses 1.1.05(1) and 1.1.08(1) of Schedule 1 of the Telehealth and Telephone Determination to insert references to the new telehealth and phone items for general practice attendances (refer to **items 9 and 10**) to align these items with the arrangements for face-to-face equivalent items. The changes also update these subclauses to remove references to the *Health Insurance (Section 3C General Medical Services - Other Medical Practitioner) Determination 2018* (the Other Medical Practitioner Determination), which is due to be incorporated into the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST) by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023. Subclauses 1.1.05(1) and 1.1.08(1) provide same day co-claiming restrictions for services provided under items 92024, 92025 or 92028 and items 92055, 92056 or 92059 respectively.

Item 6 amends telehealth item 91800 to insert a minimum consultation time of at least six minutes for services provided under this item.

Items 7 and 8 amend telehealth items 91805 and 91808 to insert a maximum consultation time not more than 60 minutes for services provided under these items. These changes will also align the language used in the item descriptors for items 91805 and 91808 with similar telehealth items and will ensure appropriate claiming of time-tiered general practice telehealth items.

Item 9 inserts three new telehealth items (91920, 91923 and 91926) for general practice attendances lasting 60 minutes or more.

Item 10 inserts six new phone items (91900, 91903, 91906, 91910, 91913 and 91916) for longer general practice attendances where the patient receiving the service is registered under MyMedicare with the billing practice.

Item 11 repeals phone items 91894 and 91895, which currently provide patients in rural and remote areas with access to longer general practice phone consultation items. Patients in rural and remote areas will continue to have access to longer general practice phone services where they are registered under MyMedicare with the billing practice.

Schedule 3 – Consequential amendments

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

Items 1, 3 and 4 amend provisions in Schedule 1 of the Telehealth and Telephone Determination to remove references to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Item 2 amends subclause 1.1.01(1) in Schedule 1 of the Telehealth and Telephone Determination to specify the meaning of **eligible area** in relation to items 91794, 91806, 91807 and 91808. This amendment removes a reference to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Items 5 and 6 amend tables at subclause 1.1.06(2) and 1.1.09(3) of Schedule 1 of the Telehealth and Telephone Determination to remove references to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Items 7 to 12 amend provisions in Schedule 1 of the Telehealth and Telephone Determination to remove references to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023. These amendments also remove reference to ceased items 92124, 92125, 92128, 92129, 92130, 92131, 92134 and 92135.

Items 13 to 16 amend provisions in Schedule 1 of the Telehealth and Telephone Determination to remove reference to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Items 17 to 29 amends items 92024, 92025, 92026, 92027, 92028, 92055, 92056, 92057, 92058, 92059, 92136, 92137, 92138 and 92139 to remove reference to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Item 30 amends subclause 4.1.1(1) of Schedule 1 of the Telehealth and Telephone Determination to remove reference to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Item 31 amends subclause 5.1.1(1) of Schedule 5 of the Telehealth and Telephone Determination to specify the meaning of *eligible area* in relation to items 92717, 92720, 92723, 92726, 92733, 92736, 92739 and 92742. This amendment removes a reference to the Other Medical Practitioner Determination, which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) 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 Amendment Determination

The purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (General Practice) Determination 2023* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth and Telephone Determination) from 1 November 2023. The Amendment Determination will:

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- amend three telehealth items (91800, 91805 and 91808) to introduce appropriate minimum and maximum consultation times; and
- remove references to the *Health Insurance (Section 3C General Medical Services - Other Medical Practitioner) Determination 2018* (the Other Medical Practitioner Determination), which is due to be incorporated into the general medical services table by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* on 1 November 2023.

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Schedule 2 of the Amendment Determination provides the new and amended telehealth and phone items for general practice attendances, consistent with recommendations from the MBS Review Taskforce, which were supported by the Strengthening Medicare Taskforce. These changes to the Telehealth and Telephone Determination were announced in the 2023-24 Budget under the *Strengthening Medicare* and *A Modern and Clinically Appropriate Medicare Benefits Schedule* measures.

On 1 November 2023, the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* is due to incorporate items currently in the Other Medical Determination (except for Subgroup 10 in Group A7 and any related provisions) into the GMST. Schedule 3 of the Amendment Determination will make consequential amendments to the Telehealth and Telephone Determination to remove references to the Other Medical Practitioner Determination relating to items that will be incorporated into the GMST.

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 Amendment Determination advances the rights to health and social security and the right of equality and non-discrimination by providing patients with greater access to remote service

options, introducing nine new general practice telehealth and phone items. The Amendment Determination also maintains these rights by providing greater clarity regarding the minimum and maximum consultation times for general practice telehealth services and removing superseded general practice phone items.

Conclusion

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

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