

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2024

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 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 (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2024* (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 March 2024. The Amendment Determination will:

- make minor amendments to the Telehealth and Telephone Determination to address administrative errors;
- amend items 93048 and 93061 in the Telehealth and Telephone Determination to make access to allied health telehealth and phone services easier for First Nations Australians with chronic disease arrangements or who have had a health assessment;
- implement the Government's response to the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) recommendations relating to psychiatry services;
- make an administrative change to replace references to the ceasing *Health Insurance (Allied Health Services) Determination 2014* (the Former Allied Health Determination) with references to the remade *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2024* (the Allied Health Determination), and update item descriptors referencing the Former Allied Health Determination.

Schedule 1 of the Amendment Determination amends subsection 7(1) to clarify requirements for telehealth and telephone service requirements in relation to admitted patients. Schedule 1 also makes amendments to telehealth and phone attendance items 93048 and 93061 for First Nations Australians in response to a recommendation from the Taskforce. These changes will make it easier for patients of Aboriginal or Torres

Strait Islander descent who have chronic disease arrangements (GP Management Plan and team care arrangements or a multidisciplinary care plan) or have had a health assessment to access allied health. Eligible patients will continue to have access to up to 10 allied health services under item 93000, 93013, 93048, 93061 or any item in Subgroup 1 of Group M3 or any item in Group M11 per a calendar year.

Changes included in Schedule 2 of the Amendment Determination relate to recommendations made by the Psychiatry Clinical Committee, which were endorsed by the Taskforce. These changes ensure psychiatry patients receive the highest quality clinical care under MBS funded services.

On 1 April 2024, the Former Allied Health Determination is due to sunset. Schedule 3 of the Amendment Determination will remove and replace references to the Former Allied Health Determination with the remade Allied Health Determination which is due to commence on 1 March 2024.

Consultation

Consultation for administrative changes (including amendments to address administrative errors, clarifying requirements for telehealth and telephone services for admitted patients, and removing references to the ceasing Former Allied Health Determination) was not undertaken as these amendments are machinery in nature and are intended to align legislation with existing government policy.

Consultation for amendments to telehealth and telephone attendance items for First Nations patients were undertaken with relevant peak bodies, including the Australian Medical Association (AMA), Indigenous Allied Health, Indigenous Urban Institute of Health, National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners, Royal Australian College of General Practitioners and Services for Australian Rural and Allied Health.

Consultation for the new and amended psychiatric telehealth and telephone items was undertaken with relevant psychiatric professional groups including the AMA and the Royal Australian and New Zealand College of Psychiatrists.

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

Sections 1 to 4 and Schedule 1 and 2 of the Amendment Determination commence on 1 March 2024. Schedule 3 of the Amendment Determination commences immediately after the registration of the Allied Health Determination.

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 (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (No. 1) Determination 2024*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 (No. 1) Determination 2024* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides that Sections 1 to 4 of the Amendment Determination commence the day after the instrument is registered. Section 2 also provides that Schedule 1 and 2 of the Amendment Determination commences on 1 March 2024, and that Schedule 3 of the Amendment Determination commences immediately after the registration of the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination).

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 General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (the Telehealth and Telephone Determination)

Item 1 makes an administrative amendment to paragraph 1.1.10(2)(b) of Schedule 1 to address an error in the item sequencing in this paragraph following amendments commencing on 1 November 2023.

Item 2 makes an administrative amendment to the item descriptor of item 92024 to address an error in the item range of the co-claiming restriction for this item following amendments commencing on 1 November 2023.

Item 3 inserts new clause 3.1.10, which provides that item 93000 or 93013 does not apply to a service if the patient has already received 10 services to which items item 93000, 93013, 93048 or 93061 or any item in Subgroup 1 of Group M3 or any item in Group M11 of the Allied Health Determination applies in the same calendar year. This new clause is intended to clarify that patients have access to a maximum of 10 services per calendar year to which item 93000, 93013,

93048 or 93061 or any item in Subgroup 1 of Group M3 or any item in Group M11 of the Allied Health Determination applies, providing greater certainty regarding access to allied health services for patients of Aboriginal and Torres Strait Islander descent following the changes to items 93048 and 93061.

Items 4 and 5 amend items 93048 and 93061 to make access to allied health services under the MBS easier for patients of Aboriginal and Torres Strait Islander descent who have chronic disease arrangements (GP Management Plan and team care arrangements or a multidisciplinary care plan) or who have had a health assessment. These changes will provide access to services under items 93048 and 93061 for patients of Aboriginal and Torres Strait Islander descent who have chronic disease arrangements in place and/or who have had a health assessment and will increase the maximum number of services available under the items per calendar year from five to 10. Eligible patients will continue to have access to a total of 10 services per calendar year to which item 93048, 93061, 93000, 93013 or any item in Subgroup 1 of Group M3 or any item in Group M11 of the Allied Health Determination applies (refer to **item 3**).

The amendments also make administrative changes to remove a reference to parts of the ceased Former Allied Health Determination and replace them with references to the relevant Subgroup and Group numbers, and to amend an item reference error in the descriptor of item 93061.

Schedule 2 – Psychiatry services

Item 1 amends subsection 7(1) to clarify telehealth and telephone service requirements in relation to admitted patients. The amendment clarifies that items in the in a Schedule apply to a service mentioned in the item if the service is provided to a patient, or in relation to a patient, who is an admitted patient.

Item 2 amends subsection 7(1A) to remove reference to a ceased Schedule and replace it with references to new telehealth psychiatry items 91874, 91875, 91876, 91877 and 91878 (refer to **items 11 and 12**). This amendment excludes these items from the application of subsection 7(1), allowing these services to be accessed where the service is related to a patient that is an admitted patient.

Items 3 to 10 amend the item descriptors of eight items (91827, 91828, 91829, 91830, 91831, 91837, 91838 and 91839) to insert a provision that aligns the co-claiming restrictions of psychiatric telehealth and telephone attendance items with equivalent face-to-face services.

Items 11 and 12 insert eleven new psychiatry telehealth items (91868, 91869, 91870, 91871, 91872, 91873, 91874, 91875, 91876, 91877 and 91878) and six new psychiatry phone items (91879, 91880, 91881, 91882, 91883 and 91884) to Subgroup 9 of Group A40. The amendments are intended to extend accessibility to psychiatry services by ensuring patients can access flexible, high quality clinical care.

Items 91868, 91869, 91870, 91871 and 91872 provide telehealth services for time tiered psychiatry attendances. These items apply to a service if the patient exceeds 50 services to which specified psychiatry items apply in the calendar year.

Item 91873 provides telehealth services for psychiatry attendances of at least 45 minutes where the patient’s clinical presentation indicates intensive psychotherapy is a clinically appropriate

and indicated treatment. This item applies to a service if the patient has received less than 160 services to which specified psychiatry items apply in the calendar year.

Items 91874, 91875, 91876, 91877 and 91878 provide time tiered telehealth services for an interview of a person other than the patient by a consultant physician in the practice of the consultant physician's specialty of psychiatry. These items apply to a service where the patient the service relates to is an admitted patient, attracting a Medicare benefit of 75 per cent of the schedule fee, or where the patient is not an admitted patient, attracting a Medicare benefit of 85 per cent of the schedule fee. Refer to **item 2** for the exemption for these items to the general rule that telehealth and phone items do not apply to services provide to, or in relation to, admitted patients.

Items 91879, 91880 and 91881 provide phone services for time tiered psychiatry attendances. These items apply to a service if the patient exceeds 50 services to which specified psychiatry items apply in the calendar year.

Items 91882, 91883 and 91884 provide time tiered phone services for an interview of a person other than the patient by a consultant physician in the practice of the consultant physician's specialty of psychiatry. These items apply to a service where the patient the service relates to is an admitted patient, attracting a Medicare benefit of 75 per cent of the schedule fee, or where the patient is not an admitted patient, attracting a Medicare benefit of 85 per cent of the schedule fee. Refer to **item 2** for the exemption for these items to the general rule that telehealth and phone items do not apply to services provide to, or in relation to, admitted patients.

Items 13 and 14 amend items 92435 and 92436 for the preparation and review of a management plan by a consultant physician in the practice of the consultant physician's specialty of psychiatry. This change is intended to strengthen the intent of the items and support clinical best practice. In addition, the amendments update the descriptors to remove stigma associated with specific diagnostic references.

A service provided to a patient under item 92435 or 291 is only available once in a 12 month period and a service under item 92436 or 293 is only available once in a 12 month period. To receive a service under item 92436, a patient must also have received a service under item 291 or 92435 in the previous 12 months.

These changes align with changes to equivalent face-to-face services (items 291 and 293), which will be implemented through the *Health Insurance Legislation Amendment (2024 Measures No. 1) Regulations 2024*.

Item 15 amends the item descriptor of item 92437 to clarify co-claiming restrictions for the item. The amendment will insert references to the new psychiatry items introduced by the Amendment Determination.

Items 16 to 18 repeal three psychiatry items (92458, 92459 and 92460), which will be made redundant with the introduction of the new psychiatric telehealth and telephone attendance items (refer to **items 11 and 12**).

Schedule 3 – Consequential amendments

Item 1 removes a reference to the Former Allied Health Determination, which is due to sunset on 1 April 2024, and replaces it with a reference to the remade Allied Health Determination. The Allied Health Determination is due commence on 1 March 2024.

Items 2 and 3 make administrative changes to item 93000 and item 93013 to remove references to specific Parts of the Former Allied Health Determination and replace them with a reference to the relevant Subgroup and Group of listed items. This is intended to ensure that the location of the items is sufficiently clear regardless of any further changes to the Allied Health Determination.

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 (No. 1) Determination 2024

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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The Amendment Determination will:

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- implement the Government’s response to the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) recommendations relating to psychiatry services;
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Changes included in Schedule 2 of the Amendment Determination relate to recommendations made by the Psychiatry Clinical Committee, which were endorsed by the Taskforce. These changes ensure psychiatry patients receive the highest quality clinical care under MBS funded services.

On 1 April 2024, the Former Allied Health Determination is due to sunset. Schedule 3 of the Amendment Determination will remove and replace references to the Former Allied Health Determination with the remade Allied Health Determination which is due to commence on 1 March 2024.

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 eligible patients with greater access to psychiatry and allied health services. The Amendment Determination advances these rights by introducing new psychiatric telehealth and telephone attendance items and increasing access to flexible arrangements for telehealth and telephone services for Aboriginal and Torres Strait Islander patients.

The changes to address administrative errors and to remove and replace references to ceasing instruments maintains the rights to health and social security and the right to equality of non-discrimination by ensuring consistent claiming of services under the MBS.

Conclusion

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

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