

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (2024 Measures No. 2) 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 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 Legislation Amendment (2024 Measures No. 2) Determination 2024* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Allied Health Services) Determination 2024* (the Allied Health Determination), the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2022* (the Midwife and Nurse Practitioner Determination), and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) from 1 July 2024.

Schedule 1 of the Amendment Determination will apply annual Medicare Benefits Schedule (MBS) fee indexation by increasing the schedule fee for relevant items listed in the Allied Health Determination, the Midwife and Nurse Practitioner Determination, and the Telehealth Determination by 3.5 per cent.

Schedule 2 of the Amendment Determination will apply an increase of 30 per cent to the schedule fees for four nurse practitioner items in the Midwife and Nurse Practitioner Determination and eight nurse practitioner items in the Telehealth Determination from 1 July 2024. An indexation factor of 3.5 per cent has also been applied to the increased fees for the 12 nurse practitioner items in accordance with annual MBS fee indexation.

These amendments to nurse practitioner services were announced in the 2023-24 Budget under the *Strengthening Medicare* measure. These changes will strengthen patient access to nurse practitioner services, especially in rural and remote areas, with

the 30 per cent fee increase aiming to reduce the out of pocket costs for patients by encouraging nurse practitioners to bulk bill their services.

Schedule 3 of the Amendment Determination will make minor administrative changes to the Telehealth Determination to address previous administrative errors.

Schedule 4 of the Amendment Determination will insert nurse practitioner as an eligible allied health practitioner for case conference services provided under items 10955, 10957 and 10959.

This inclusion of nurse practitioners as eligible allied health practitioners for the purpose of case conference services for chronic disease management was announced in the 2023-24 Budget under the *Strengthening Medicare* measure. These changes align with the recommendations of the Strengthening Medicare Taskforce reform and the Nurse Practitioner Workforce Plan which highlights the significant opportunity to increase utilisation of nurse practitioners to meet consumer needs.

Consultation

No consultation was undertaken for the changes in Schedule 1 relating to annual indexation, as these comprise business as usual implementation of Government policy on MBS indexation, which is understood by stakeholders to be applied on 1 July of each year.

Consultation was undertaken for the nurse practitioner changes in Schedule 2 and Schedule 4 with relevant peak bodies through the Nurse Practitioner Workforce Plan, including the Australian College of Nurse Practitioner's (ACNP), who were very supportive of these changes.

No consultation was undertaken regarding Schedule 3 as these amendments are minor administrative changes intended to address previous administrative errors and align the items with the original policy intent.

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

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

Sections 1 to 4 (together with anything in this instrument not elsewhere covered by this section) of the Amendment Determination will commence the day after registration of this instrument, Schedule 1 commences on 1 July 2024, and Schedules 2, 3 and 4 commence immediately after the commencement of Schedule 1 of the Amendment Determination.

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

Details of the *Health Insurance Legislation Amendment (2024 Measures No. 2) Determination 2024*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (2024 Measures No. 2) Determination 2024* (Amendment Determination).

Section 2 – Commencement

Section 2 provides for sections 1 to 4 (together with anything in this instrument not elsewhere covered by this section) of the Amendment Determination to commence the day after registration of this instrument, Schedule 1 to commence on 1 July 2024, and Schedules 2, 3 and 4 to commence immediately after the commencement of Schedule 1 of the Amendment 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 – Indexation Amendments

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

Item 1 inserts section 11 to apply annual Medicare Benefit Schedule (MBS) fee indexation to items listed in the Allied Health Determination. This section will apply an indexation factor of 3.5 per cent, which is represented as 1.035, from 1 July 2024.

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

Item 2 amends subsection 6A(1) to apply annual MBS fee indexation to items listed in the Midwife and Nurse Practitioner Determination. This section will apply an indexation factor of 3.5 per cent, which is represented as 1.035, from 1 July 2024.

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

Item 3 amends subsection 8(1) to apply annual MBS fee indexation to relevant items listed in the Telehealth Determination. This section will apply an indexation factor of 3.5 per cent, which is represented as 1.035, to relevant items from 1 July 2024.

Item 4 amends paragraph 8(2)(a) to remove a reference to MBS item 91895 which has ceased, and remove references to 47 items for services provided by a medical practitioner other than a general practitioner, specialist or consultant physician (a prescribed medical practitioner) (items 91794, 91806, 91807, 91808, 91820, 91821, 91844, 91845, 92011, 92055, 92056, 92057, 92058, 92059, 92137, 92139, 92118, 92119, 92120, 92121, 92122, 92123, 92132, 92133, 92150, 92151, 92152, 92153, 92171, 92177, 92186, 92188, 92198, 92200, 92211, 92717, 92720, 92723, 92726, 92733, 92736, 92739, 92742, 91807, 91808, 91906, 91916 and 91926). Paragraph 8(2)(a) provides the list of items to which the indexation factor specified in subsection 8(1) does not apply. From 1 July 2024, these 47 prescribed medical practitioner items will be indexed in line with subsection 8(1) of the Telehealth Determination.

The initial fees for prescribed medical practitioner items were calculated at 80 per cent of the fee for the equivalent general practitioner (GP) service. Previously, indexation for these items has been calculated according to this methodology, applying indexation to the equivalent GP item and calculating 80 per cent of the indexed amount. However, these items will be indexed in their own right moving forward.

Schedule 2 – Nurse practitioner amendments

The changes in Schedule 2 were announced in the 2023-24 Budget under the *Strengthening Medicare* measure and align with the recommendations of the Strengthening Medicare Taskforce reform and the Nurse Practitioner Workforce Plan.

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

Item 1 increases the schedule fee for nurse practitioner items 82200, 82205, 82210 and 82215 by 30 per cent and applies annual fee indexation of 3.5 per cent. This change aligns with the recommendations of the Strengthening Medicare Taskforce’s final report to expand multidisciplinary models of care.

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

Item 2 increases the schedule fee for nurse practitioner items 91192, 91178, 91179, 91180, 91193, 91189, 91190, and 91191 by 30 per cent and applies annual fee indexation of 3.5 per cent. This change aligns with the recommendations of the Strengthening Medicare Taskforce’s final report to expand multidisciplinary models of care.

Schedule 3 – Telehealth amendments

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

Item 1 amends subparagraph 1.1.12(8)(a) of Schedule 1 to remove the full stop at the end of the paragraph and replace it with “; or”. This change is intended to address a previous administrative error and is administrative in nature.

Item 2 amends subclause 1.1.17(2)(b) of Schedule 1 to omit the word “Determination” to address an administrative error from a previous change to replace references to the “Other Medical Practitioner Determination” with “general medical services table”. This change is administrative in nature.

Item 3 amends subclause 1.1.17(2)(c) of Schedule 1 to omit the word “Determination” to address an administrative error from a previous change to replace references to “Other Medical Practitioner Determination” with “general medical services table”. This change is administrative in nature.

Item 4 amends the item descriptor for item 92173 to replace “30 minutes” with “20 minutes”. This change will ensure that the requirements for telehealth item 92173 mirror the equivalent face-to-face item 90267, aligning with the original policy intent for telehealth services.

Schedule 4 – Case conferencing amendments

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

The changes in Schedule 4 were announced in the 2023-24 Budget under the *Strengthening Medicare* measure and align with the recommendations of the Strengthening Medicare Taskforce reform and the Nurse Practitioner Workforce Plan.

Item 1 amends subsection 4(1) to update the definition of *case conference service* to include a nurse practitioner service.

Item 2 amends the note at subsection 4(1) to include “participating nurse practitioner” in the list of terms that are defined in subsection 3(1) of the *Health Insurance Act 1973*.

Item 3 amends paragraph 1.1.2(6) of Schedule 2 to include “participating nurse practitioner” as an eligible allied health practitioner for the purposes of case conference services for chronic disease management performed under MBS items 10955, 10957 and 10959.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (2024 Measures No. 2) 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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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 schedule fees for nurse practitioner attendances under the MBS, providing access to Medicare benefits for participation by eligible nurse practitioners in case conference services for chronic disease management, and applying annual indexation to the schedule fees for relevant MBS services.

This instrument maintains the rights to health and social security and the right of equality and non-discrimination as it implements administrative and machinery changes.

Conclusion

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

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