

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Inpatient psychiatry attendances) 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 (Inpatient psychiatry attendances) Determination 2024* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) from 1 November 2024 to insert six new temporary telehealth items for in-hospital psychiatry services.

These six telehealth items mirror existing face-to-face items and are available only where the patient is physically located at a hospital and has been referred by a referring medical practitioner to the consultant psychiatrist. In doing so, these items will ensure that patients who are physically located in a hospital due to requiring inpatient admission will still be able to receive telehealth psychiatrist services. These items will cease on 31 October 2026 at 11.59pm unless earlier revoked.

These amendments were agreed to by Government in the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule* measure.

Consultation

The Department of Health and Aged Care undertook consultation with the Private Healthcare Australia (PHA) and Australian Health Service Alliance (AHSA) who had both raised concerns about the new telehealth items. Following this consultation, the PHA and AHSA have agreed to work with the Department during the 2-year implementation period to manage any concerns.

The changes also have support from the Australian Private Hospitals Association, and clinical support from the Royal Australian and New Zealand College of Psychiatrists.

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

The Amendment Determination commences on 1 November 2024.

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 (Inpatient psychiatry attendances) 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 (Inpatient psychiatry attendances) Determination 2024* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence on 1 November 2024.

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 (Telehealth Determination)

Item 1 inserts new section 4 which provides that the six new temporary items being inserted into the Telehealth Determination (refer to **item 3**) will cease on 31 October 2026 at 11.59pm unless earlier revoked.

Item 2 amends subsection 7(1A) to ensure that the limitation at subsection 7(1) (whereby an item in a Schedule of the Telehealth Determination does not 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) will not apply to the six new temporary items being inserted into Telehealth Determination (refer to **item 3**).

Item 3 inserts new Schedule 6, which lists six new temporary items (92478, 92479, 92480, 92481, 92482 and 92483) to allow eligible patients to access telehealth psychiatry services in a hospital setting where clinically appropriate. These six items are available where the patient is physically located at a hospital and has been referred by the referring practitioner to the consultant psychiatrist (being a consultant physician in the practice of the consultant physician's specialty of psychiatry).

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 (Inpatient psychiatry attendances) 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

The purpose of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Amendment (Inpatient psychiatry attendances) Determination 2024* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) from 1 November 2024 to insert six new temporary telehealth items for in-hospital psychiatry services.

These six telehealth items mirror existing face-to-face items and are available only where the patient is physically located at a hospital and has been referred by a referring medical practitioner to the consultant psychiatrist. In doing so, these items will ensure that patients who are physically located in a hospital due to requiring inpatient admission will still be able to receive telehealth psychiatrist services. These items will cease on 31 October 2026 at 11.59pm unless earlier revoked.

These amendments were agreed to by Government in the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule* 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

The Amendment Determination advances the rights to health and social security and the right of equality and non-discrimination by providing eligible patients with temporary access to telehealth psychiatry services in a hospital setting where clinically appropriate, in addition to available face-to-face 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.

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