

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### ***Health Insurance (Section 3C Midwife and Nurse Practitioner Services) 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) or in 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 subsections 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 section 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 2024* (the Amendment Determination) is to amend the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* (Midwife and Nurse Practitioner Determination) to:

- make amendments related to the removal of the requirement for collaborative arrangements for professional attendances by participating nurse practitioners and participating midwives; and
- introduce one new nurse practitioner pathology item (73825) for point of care testing for detection of neisseria gonorrhoea (NG), chlamydia trachomatis (CT) and trichomonas vaginalis (TV).

#### Amendments relating to the removal of collaborative arrangements

On 1 November 2024, the *Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Act 2024* will amend the Act to remove the requirement for a collaborative arrangement between a participating nurse practitioner or participating midwife and a medical practitioner. This amendment will mean that a participating nurse practitioner or participating midwife will no longer need to be working under a collaborative arrangement to provide Medicare eligible services.

As such, the Amendment Determination will make consequential amendments to the Midwife and Nurse Practitioner Determination to remove references for the purposes

of nurse practitioner and midwifery services. These changes include amendments to participating midwife items 82100 and 82115.

The removal of the requirement for collaborative arrangements for nurse practitioner and midwifery services aligns with recommendations from the Nurse Practitioner Workforce Plan, the Strengthening Medicare Taskforce Final Report, and findings from the Independent Review for Collaborative Arrangements. These changes are intended to strengthen patient access to these services, specifically in remote and very remote areas.

The removal of collaborative arrangements for participating nurse practitioners and participating midwives was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

#### New nurse practitioner item for point of care testing for sexually transmissible infections

The Amendment Determination will also introduce new item 73825 for for point of care testing for detection of NG, CT and TV. Services under new item 73825 must be performed by a nurse practitioner providing the service in a Modified Monash 6 or 7 area. It is expected that services rendered under new item 73825 are provided within an Aboriginal Medical Service (AMS) or Aboriginal Community Controlled Health Service (ACCHS).

The nurse practitioner providing a service under new item 73825 must be employed by an organisation that is participating in the First Nations Molecular Point-of-Care Testing Program, for example is an AMS or ACCHS. New item 73825 may not be used in a hospital setting.

Point of care testing for sexually transmissible infections in remote and very remote populations (MMM 6-7) was supported by the Medical Services Advisory Committee (MSAC) in November 2023. The new MBS item is intended to address a high prevalence of sexually transmissible infections and the serious consequences of untreated infections representing a significant public health issue for First Nations peoples. An equivalent item for point of care testing by, or on behalf of, a medical practitioner will be introduced on 1 November 2024 under the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024*.

New item 73825 was announced as part of the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule (MBS) measure*.

#### **Consultation**

The removal of collaborative arrangements for participating nurse practitioners and participating midwives was announced as part of the 2023-24 Budget under the *Strengthening Medicare* measure. Peak stakeholders including the Australian Medical Association, Australian College of Nurse Practitioners, Australian College of Midwives and Royal Australian College of General Practitioners were consulted through the Independent Review of Collaborative Arrangements and Nurse Practitioner Workforce Plan.

MSAC consulted publicly with stakeholders in considering point of care testing for sexually transmissible infections by AMS and ACCHS in remote and very remote areas including First Nations stakeholders. Responses were received from nine individuals and twelve organisations, many of whom are healthcare providers to First Nations' peoples. All feedback was supportive of the changes.

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*

**Details of the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) 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 Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2024* (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* (the Act).

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*

**Item 1** amends subsection 7(1) to repeal the definition of *collaborative arrangement* as collaborative arrangements will no longer be a requirement for provision of midwifery or nurse practitioner services following the commencement of the *Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Act 2024* (the Act Amendment) on 1 November 2024.

**Item 2** repeals section 9, which relates to collaborative arrangements for midwifery services, as the requirement for collaborative arrangements will no longer apply to midwifery services listed in Schedule 1 following the commencement of the Act Amendment on 1 November 2024.

**Item 3** repeals and replaces the heading of section 15 to remove the reference to “collaborative arrangements”, as the requirement for collaborative arrangements will no longer apply to nurse practitioner services listed in Schedule 2 following the commencement of the Act Amendment on 1 November 2024.

**Item 4** repeals and replaces subsection 15(1) to remove requirements relating to collaborative arrangements for nurse practitioner services as this requirement will no longer apply to nurse practitioner services listed in Schedule 2 following the commencement of the Act Amendment on 1 November 2024.

**Item 5** repeals subsection 15(2), which defines *collaborative arrangements* for the purposes of section 15, as the requirement for collaborative arrangements will no longer apply to nurse practitioner services listed in Schedule 2 following the commencement of the Act Amendment on 1 November 2024.

**Item 6** inserts new section 20A, which provides the requirements for services provided under new item 73825 (refer to **item 9**).

New section 20A provides that a service under new item 73825 must be provided by a nurse practitioner who is providing the service in a Modified Monash 6 or 7 area. The nurse practitioner providing the service must also be employed by an organisation which delivers health services and is participating in the First Nations Molecular Point-of-Care (POC) Testing Program.

New section 20A also provides that services under new item 73825 must be conducted by a nurse practitioner who has achieved competency as a PoC operator by the First Molecular PoC Testing Program for the test(s) performed. New item 73825 must give valid patient results for a patient benefit to be payable.

**Item 7** amends item 82100 to remove the requirement for collaborative arrangements for services provided under this item, repealing paragraph (f) and amending paragraph (e) to remove the semi-colon (;).

**Item 8** amends item 82115 to remove the requirement for collaborative arrangements for services provided under this item, repealing subparagraph (c)(v) and amending the subsequent subparagraphs to be sequential under paragraph (c).

**Item 9** introduces new item 73825 in Schedule 2 for detection by a nurse practitioner of CT chlamydia trachomatis (CT) or neisseria gonorrhoeae (NG), and trichomonas vaginalis (TV) via molecular point-of-care testing for the diagnosis of CT, NG infection and TV infection, where the nurse practitioner has determined this service to be necessary for the patient under their care. Item 73825 is subject to the requirements set out in new section 20A (refer to **item 6**).

## 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 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 Midwife and Nurse Practitioner Services) Amendment (No. 1) Determination 2024* (the Amendment Determination) is to amend the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* (Midwife and Nurse Practitioner Determination) to:

- make amendments related to the removal of the requirement for collaborative arrangements for professional attendances by participating nurse practitioners and participating midwives; and
- introduce one new nurse practitioner pathology item (73825) for point of care testing for detection of neisseria gonorrhoea (NG), chlamydia trachomatis (CT) and trichomonas vaginalis (TV).

#### Amendments relating to the removal of collaborative arrangements

On 1 November 2024, the *Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Act 2024* will amend the Act to remove the requirement for a collaborative arrangement between a participating nurse practitioner or participating midwife and a medical practitioner. This amendment will mean that a participating nurse practitioner or participating midwife will no longer need to be working under a collaborative arrangement to provide Medicare eligible services.

As such, the Amendment Determination will make consequential amendments to the Midwife and Nurse Practitioner Determination to remove references for the purposes of nurse practitioner and midwifery services. These changes include amendments to participating midwife items 82100 and 82115.

The removal of the requirement for collaborative arrangements for nurse practitioner and midwifery services aligns with recommendations from the Nurse Practitioner Workforce Plan, the Strengthening Medicare Taskforce Final Report, and findings from the Independent Review for Collaborative Arrangements. These changes are intended to strengthen patient access to these services, specifically in remote and very remote areas.

The removal of collaborative arrangements for participating nurse practitioners and participating midwives was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

#### New nurse practitioner item for point of care testing for sexually transmissible infections

The Amendment Determination will also introduce new item 73825 for for point of care testing for detection of NG, CT and TV. Services under new item 73825 must be performed by a nurse practitioner providing the service in a Modified Monash 6 or 7 area. It is expected that services

rendered under new item 73825 are provided within an Aboriginal Medical Service (AMS) or Aboriginal Community Controlled Health Service (ACCHS).

The nurse practitioner providing a service under new item 73825 must be employed by an organisation that is participating in the First Nations Molecular Point-of-Care Testing Program, for example is an AMS or ACCHS. New item 73825 may not be used in a hospital setting.

Point of care testing for sexually transmissible infections in remote and very remote populations (MMM 6-7) was supported by the Medical Services Advisory Committee (MSAC) in November 2023. The new MBS item is intended to address a high prevalence of sexually transmissible infections and the serious consequences of untreated infections representing a significant public health issue for First Nations peoples. An equivalent item for point of care testing by, or on behalf of, a medical practitioner will be introduced on 1 November 2024 under the *Health Insurance (Section 3C Pathology Services – Point-of-Care Testing Services) Determination 2024*.

New item 73825 was announced as part of the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule (MBS) 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

This instrument advances the rights to health and social security and the rights of equality and non-discrimination by strengthening patient access to Medicare benefits for nurse practitioner and midwifery services and providing access to Medicare benefits for additional nurse practitioner pathology services for First Nations peoples in Modified Monash 6 and 7 areas.

### **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.

**Mary Warner**  
**Assistant Secretary**  
**Diagnostic Imaging and Pathology Branch**  
**Medicare Benefits and Digital Health Division**  
**Health Resourcing Group**  
**Department of Health and Aged Care**