

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical Services – Optometric Services) Amendment Determination 2025*

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 (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 – Optometric Services) Amendment Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* (the Principal Determination) to implement Medicare Benefits Schedule (MBS) Review Taskforce recommendations to optometry services from 1 March 2025. The changes to the Principal Determination are intended to support the provision of optometry services to patients living in residential aged care homes (RACHs) or who are receiving care at home, and to align current services with best clinical practice.

The Amendment Determination will insert 2 new items (10938 and 10939) for computerised perimetry testing for patients with glaucoma, amend 21 items (10907, 10910, 10911, 10913, 10914, 10916, 10918, 10942, 10921, 10924, 10926, 10927, 10928, 10929, 10931, 10940, 10941, 10942, 10943 and 10944) to allow optometrists to provide services in domiciliary environments such as RACHs and in patient homes, to expand patient choice following provision of a contact lens prescription and to make consequential amendments to existing items to support these changes. Additionally, the Amendment Determination will repeal 6 existing items (10912, 10922, 10923, 10925, 10932 and 10933) as the services covered by the items will be incorporated into the new and amended services.

The changes included in the Amendment Determination were agreed to as part of the 2024-25 Budget.

**Consultation**

As with all changes implemented relating to MBS Review Taskforce recommendations, the Department consulted on changes relating to optometric items through an Optometry Implementation Liaison Group (ILG). The Optometry ILG includes representatives from several stakeholder groups and peak bodies including:

- Australian College of Optometry
- Australian Medical Association
- Glaucoma Australia
- Optometry Australia
- Orthoptics Australia
- Royal Australian College of General Practitioners (RACGP)
- Royal Australian and New Zealand College of Ophthalmologists (RANZCO)
- Vision 2020

The changes were broadly supported by the ILG.

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

The Amendment Determination commences on 1 March 2025.

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 – Optometric Services) Amendment Determination 2025***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Optometric Services) Amendment Determination 2025* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 March 2025.

Section 3 – Authority

Section 3 provides that the 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 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 Determination has effect according to its terms.

Schedule 1 – Amendments

*Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* (the Principal Determination)

**Item 1** removes reference to items 10932 and 10933 from the title of section 8 as both items will be repealed by **items 28** and **29** respectively.

**Item 2** removes reference to items 10932 and 10933 in section 8 as both items will be repealed by **items 28** and **29** respectively.

**Item 3** amends the application provision at section 9 of the Principal Determination to add reference to new perimetry items (see **item 30**). The amendment to section 9 clarifies that where relevant, it is acceptable for an optometrist rendering perimetry services to utilise an assistant to operate the perimeter to ensure a patient is properly positioned for the service to be completed.

**Items 4** and **5** make minor and machinery changes to repeal conditions which relate to item 10943. These conditions will be continued in the item descriptor rather than a clause (see **item 34**). **Item 5** will also repeal subsection 11(2) which requires that item 10942 may only be rendered on any particular patient no more than twice in a 12 month period. This amendment will repeal this condition which will be continued in the item descriptor of item 10942 (see **item 33**).

**Item 6** removes a reference to item 10912 from section 12 as the item will be repealed by **item 12**.

**Item 7** updates the heading row of the table in the schedule to include reference to “Column 1”, “Column 2” and “Column 3” before “Item”, “Service” and “Fee (\$)” respectively. This administrative change will align the table heading to be consistent with formatting in the GMST.

**Items 8 and 9** amend item 10907 to remove reference to item 10912 which will be repealed by **item 12**, and remove reference to previously ceased item 10900.

**Items 10 and 11** amend items 10910 and 10911 respectively to remove references to item 10912 which will be repealed by **item 12**, and remove references to previously ceased item 10900.

**Item 12** repeals item 10912 for professional attendance of a patient who has suffered a significant change of visual function requiring comprehensive reassessment. The service will be incorporated into existing item 10913 by **item 13**.

**Item 13** amends item 10913 to expand the service to include professional attendance of a patient who has suffered a significant change of visual function requiring comprehensive reassessment, which was previously provided under item 10912. Item 10912 will cease on 1 March 2025 (see **item 12**). The amendment to item 10913 also removes a restriction that the service needs to be performed at the same practice where an initial consultation to which the item or item 10905, 10907, 10910, 10914 or 10915 applies was rendered. Additionally, **item 13** makes administrative changes to item 10913 to remove reference to previously ceased item 10900.

**Item 14** makes administrative amendments to item 10914 for professional attendance of a patient who has a progressive optometric disorder requiring comprehensive reassessment, to remove reference to ceasing item 10912 (see **item 12**), and to remove reference to previously ceased item 10900.

**Item 15** amends item 10916 to remove reference to ceasing items 10932 and 10933 (see **items 28 and 29**), and to insert reference to new items 10938 and 10939 which will be introduced on 1 March 2025 (see **item 30**). Additionally, **item 15** removes a claiming restriction for item 10916 with flag fall item 10931, and provides that item 10916 cannot be claimed where a service associated with a service to which new items 10938 and 10939 apply.

**Item 16** amends item 10918 to include reference to new items 10938 and 10939 (see **item 30**). **Item 16** provides that item 10918 cannot be claimed where a service associated with a service to which the new items applies.

**Item 17** amends item 10921 to specify that the the service is applicable where a prescription and fitting of contact lenses for optical correction applies for patients with either:

- myopia of 5.0 dioptries or greater (spherical equivalent) in at least one eye;
- manifest hyperopia of 5.0 dioptries or greater (spherical equivalent) in at least one eye;
- astigmatism of 3.0 dioptries or greater in at least one eye; or
- anisometropia of 3.0 dioptries or greater (difference between spherical equivalents).

These patient cohorts (other than those patients with myopia of 5.0 dioptries or greater which were already covered by item 10921) were previously covered by items 10922, 10923 and 10925 which will cease on 1 March 2025 (see **items 18, 19 and 21**). **Item 17** also specifies that item

10921 is applicable once for each condition listed in the item in a period of 36 months. Additionally, **item 17** makes consequential amendments to item 10921 to remove reference to ceasing item 10912 (see **item 12**).

**Item 18** repeals item 10922 for a professional attendance involving the prescription and fitting of contact lenses for patients with manifest hyperopia of 5.0 dioptres or greater. This service will be incorporated into item 10921 (see **item 17**).

**Item 19** repeals item 10923 for a professional attendance involving the prescription and fitting of contact lenses for patients with astigmatism of 3.0 dioptres or greater in one eye. This service will be incorporated into item 10921 (see **item 17**).

**Item 20** amends item 10924 for professional attendance for patients with irregular astigmatism in either eye to clarify certain requirements for patient eligibility, including that the item is applicable once for any of the listed conditions in a 36 month period. Additionally, **item 20** removes reference to ceasing item 10912 which will be repealed by **item 12**.

**Item 21** repeals item 10925 for a professional attendance involving the prescription and fitting of contact lenses for patients with anisometropia of 3.0 dioptres or greater (difference between spherical equivalents). This service will be incorporated into item 10921 (see **item 17**).

**Item 22** amends item 10926 for professional attendance for patients with corrected visual acuity of 0.7 logMAR (6/30) or worse in both eyes to clarify certain requirements for patient eligibility, including that the item is applicable once for any of the listed conditions in a 36 month period. Additionally, **item 22** removes reference to ceasing item 10912 which will be repealed by **item 12**.

**Item 23** amends item 10927 for professional attendance for patients for whom a wholly or segmentally opaque contact lens is prescribed for the alleviation of dazzle, distortion or diplopia to clarify certain requirements for patient eligibility, including that the item is applicable once for any of the listed conditions in a 36 month period. Additionally, **item 23** removes reference to ceasing item 10912 which will be repealed by **item 12**.

**Item 24** amends item 10928 for professional attendance for patients who, because of physical deformity, are unable to wear spectacles to clarify certain requirements for patient eligibility including that the item is applicable once in a 36 month period. Additionally, **item 24** removes reference to ceasing item 10912 which will be repealed by **item 12**.

**Item 25** amends item 10929 for professional attendance for patients who have a medical or optical condition requiring the use of a contact lens for correction to clarify certain requirements for patient eligibility, including that the item is applicable once in a 36 month period. Additionally, **item 25** removes reference to ceasing item 10912 which will be repealed by **item 12**.

**Item 24** amends item 10931 to specify the item is a flag fall service to which an item in Subgroup 1 of Group A10 of the schedule applies where a service is provided to one or more patients at a single location on a single occasion. Previously, separate patient loading items, items 10932 and 10933, were applicable where a service in Subgroup 1 of Group A10 is provided to 2 patients or 3 patients respectively. These items will be repealed by **items 26 and 27** and the services incorporated into item 10931.

Additionally, **item 26** removes a reference to item 10916 which will be amended to remove a claiming restriction with item 10931 (see **item 15**).

**Item 27** amends the schedule fee for item 10931.

**Item 28** repeals item 10932 for patient loading to which an item in Subgroup 1 of Group A10 of the schedule applies where a service is provided to 2 patients at a single location on a single occasion. The flag fall service will be incorporated into item 10931 (see **item 26**).

**Item 29** repeals item 10933 for patient loading to which an item in Subgroup 1 of Group A10 of the schedule applies where a service is provided to 3 patients at a single location on a single occasion. The flag fall service will be incorporated into item 10931 (see **item 26**).

**Item 30** inserts two new items, 10938 and 10939, for computerised perimetry where indicated by the presence of glaucoma with a high risk of significant progression. Item 10938 is applicable where a bilateral assessment and report applies, and item 10939 is applicable where a unilateral assessment and report applies. Items 10938 and 10939 cannot be claimed where a service associated with a service to which item 10916 or 10918 applies. Additionally, **item 30** provides that the new items are applicable once per patient in a 12 month period where the patient has already received two services to which item 10940 or 10941 applies.

**Item 31** amends item 10940 to remove reference to ceasing items 10932 and 10933 (see **item 28** and **29**), and remove reference to 10931 to remove a claiming restriction between the two items (see **item 26**). Additionally, **item 31** specifies that item 10940 only applies where the patient has received fewer than two perimetry services to which the item or item 10941 applies in a 12 month period.

**Item 32** amends item 10941 to remove reference to ceasing items 10932 and 10933 (see **item 28** and **29**), and remove reference to 10931 to remove a claiming restriction between the two items (see **item 26**). Additionally, **item 32** specifies that item 10941 only applies where the patient has received fewer than two perimetry services to which the item or item 10940 applies in a 12 month period.

**Item 33** amends item 10942 to clarify certain requirements for patient eligibility and to make administrative amendments to the item to remove reference to ceasing items 10922, 10923 and 10925 which will be repealed by **items 18, 19** and **21** respectively. **Item 33** will also amend the descriptor of item 10942 to continue the frequency limitation of a maximum of two services for any particular patient in a 12 month period. This was previously provided in subsection 11(2) of the Principal Determination which will be repealed by **item 5**.

**Item 34** amends item 10943 to remove reference to ceasing items items 10922, 10923 and 10925 which will be repealed by **items 18, 19** and **21** respectively. This amendment will also include two conditions in the descriptor of item 10943 which were previously prescribed by clauses. This includes:

- a limitation that the service cannot be performed for the purpose of assessing learning difficulties or learning disabilities. This was previously provided in section 10 of the Principal Determination which will be repealed by **item 4**; and

- a limitation that the service can only be received by a patient a maximum of once in a 12 month period. This was previously provided in subsection 11(1) of the Principal Determination which will be repealed by **item 5**.

**Item 35** amends item 10944 to specify eligibility criteria for the service. **Item 35** provides that item 10944 is applicable where an embedded foreign body is fully removed from the cornea, or, if the patient is referred to an Ophthalmologist or other appropriately trained practitioner for further assessment and management after a second attendance results in partial removal. Additionally, **item 35** applies a claiming restriction to item 10944 that provides that the item cannot be claimed where a service associated with a service to which items 10905, 10907, 10910, 10911, 10913, 10914, 10915, 10916 or 10918 applies.

## 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 – Optometric Services) Amendment Determination 2025*

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 – Optometric Services) Amendment Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* (the Principal Determination) to implement Medicare Benefits Schedule (MBS) Review Taskforce recommendations to optometry services from 1 March 2025. The changes to the Principal Determination are intended to support the provision of optometry services to patients living in residential aged care homes (RACHs) or who are receiving care at home, and to align current services with best clinical practice.

The Amendment Determination will insert 2 new items (10938 and 10939) for computerised perimetry testing for patients with glaucoma, amend 21 items (10907, 10910, 10911, 10913, 10914, 10916, 10918, 10942, 10921, 10924, 10926, 10927, 10928, 10929, 10931, 10940, 10941, 10942, 10943 and 10944) to allow optometrists to provide services in domiciliary environments such as RACHs and in patient homes, to expand patient choice following provision of a contact lens prescription and to make consequential amendments to existing items to support these changes. Additionally, the Amendment Determination will repeal 6 existing items (10912, 10922, 10923, 10925, 10932 and 10933) as the covered by the items will be incorporated into the new and amended services.

The changes included in the Amendment Determination were agreed to as part of the 2024-25 Budget.

### 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 will support patient access to optometry services by expanding the appropriate settings for the services to be performed to include domiciliary settings such as residential aged care facilities (RACFs) and in the home. The instrument also supports patient access to optometry services by introducing additional services available for patients who have received a contact lens prescription.

**Conclusion**

This instrument is compatible with human rights as it advances the right to health and the right to social security and the right of equality and non-discrimination. The instrument will provide patients with greater access to subsidised optometry services, including new MBS items for computerised optometry, and supporting access to optometry services in domiciliary settings.

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