

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) 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 (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 (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* from 1 March 2025.

The Amendment Determination will:

- list two new participating nurse practitioner attendance items (82216 and 91206) lasting at least 60 minutes;
- amend three existing participating nurse practitioner attendance items (82205, 91178 and 91189) to include a minimum appointment time of six minutes;
- list three new face-to-face participating midwife attendance items (82102, 82103, and 82104); and
- amend six face-to-face (82100, 82105, 82110, 82130, 82135, and 82140), four video (91211, 91212, 91214, and 91215), and four phone (91218, 91219, 91221 and 91222) participating midwife antenatal and postnatal attendance items.

These changes will also make administrative amendments to replace “telehealth” with “video” for clarity of language.

The changes relating to participating nurse practitioner items were made to align with recommendations of the Strengthening Medicare Taskforce Report and the Nurse Practitioner Workforce Plan, which highlight the importance of multidisciplinary

healthcare. The new long attendance items will support patients requiring longer attendance time to receive the care they require.

The changes relating to participating midwives items implement recommendations of the MBS Review Taskforce Report on Primary Care, relating to participating midwives. These changes support participating midwives to deliver high quality maternity care through the continuity of care model.

### **Consultation**

The Department of Health and Aged Care (the department) consulted with Australian College of Nurse Practitioners (ACNP) on the changes relating to nurse practitioners items. ACNP were supportive of the proposed changes listed in the Amendment Determination relating to nurse practitioner items.

The department consulted on changes relating to participating midwives items through an Implementation Liaison Group (ILG). The ILG consisted of peak bodies including the Australian College of Midwives, Australian Nursing and Midwifery Federation, Private Hospitals Australia and the National Association of Specialist Obstetrics and Gynaecologists. Stakeholders were supportive of these changes listed in the Amendment Determination relating participating midwife items.

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 Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025***Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025* (the Amendment Determination).

Section 2 – Commencement

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

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 – Nurse Practitioner Amendments*Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020*

**Item 1** repeals and replaces the heading row for item tables to include further headings for columns 1 (“Item”), column 2 (“Service”) and column 3 (“Fee (\$”).

**Item 2** amends participating nurse practitioner item 82205 to insert a minimum professional attendance duration of at least 6 minutes.

**Item 3** inserts new participating nurse practitioner item 82216 with a minimum professional attendance duration of at least 60 minutes.

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

**Item 4** amends participating nurse practitioner item 91178 to replace “Telehealth” with “Video” in line with changes being made through the *Health Insurance Legislative Amendment (2025 Measures No.1) Determination 2025* on 1 March 2025, and to insert a minimum video attendance duration of at least 6 minutes.

**Item 5** inserts new participating nurse practitioner item 91206 with a minimum video attendance duration of at least 60 minutes.

**Item 6** amends participating nurse practitioner item 91189 to insert a minimum phone attendance duration of at least 6 minutes.

#### Schedule 2 – Midwife Amendments

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

**Item 1** inserts new section 6B (‘Meaning of symbol (H)’) to prescribe that an item in this instrument including the symbol “(H)” applies only to a service performed or provided in a hospital.

**Item 2** inserts new subsection 10(6) clarifying that a separate antenatal attendance can be claimed on the same day, provided that the subsequent attendance is not a continuation of the first attendance, both services are clinically relevant and distinct, and the item requirements are met for both attendances.

**Items 3 and 4** repeal and replace the existing descriptor text and fee for participating midwife item 82100 to amend the minimum professional attendance duration from 40 minutes to 60 minutes, and to remove the reference to the discussion about and recording of collaborative arrangements for the patient’s maternity care. The new fee for this item is \$84.70.

**Item 5** inserts three new face-to-face participating midwife attendance items (82102, 82103, and 82104) for long antenatal attendance lasting at least 90 minutes; complex antenatal attendance lasting at least 3 hours (in hospital); and long postnatal attendance lasting at least 90 minutes.

**Item 6** amends the descriptor text for participating midwife item 82105 to amend the required professional attendance duration from a maximum of 40 minutes to a minimum of 10 minutes.

**Items 7 and 8** amend the descriptor text and fee for participating midwife item 82110 to replace “Long” with “Routine”. The new fee for this item is \$84.70.

**Item 9** amends the existing descriptor text for participating midwife item 82130 to amend the required professional attendance duration from a maximum of 40 minutes to a minimum of 20 minutes.

**Items 10 and 11** amend the descriptor text and fee for participating midwife item 82135 to replace “Long” with “Routine”. The new fee for this item is \$124.50.

**Item 12** repeals and replaces the existing descriptor text for participating midwife item 82140 to include a minimum professional attendance duration of 60 minutes, amend the required timeframe for the attendance to be not less than 4 weeks but not more than 8 weeks after birth of a baby, and include a labour and birth debrief and a mental health assessment. If the patient declines a mental health assessment and/or does not consent to a referral back to a primary carer these decisions must be recorded in the patient’s clinical notes.

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

**Item 13** repeals and replaces the descriptor text for participating midwife items 91211, 91212, 91214, and 91215 to replace all references to “telehealth” with “video”, replace references to “long” with “routine” (items 91212 and 91215), update fee amounts (items 91212 and 91215), and amend the required attendance durations (91211 and 91214).

**Item 14** repeals and replaces the descriptor text for participating midwife items 91218, 91219, 91221 and 91222) to replace references to “long” with “routine” (items 91219 and 91222), update fee amounts (items 91219 and 91222), and amend the required attendance durations (91218 and 91221).

## Statement of Compatibility with Human Rights

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

*Health Insurance (Section 3C Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) 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 Participating Nurse Practitioner and Midwife Services – Attendances and Other Changes) Amendment Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020* and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* from 1 March 2025.

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These changes will also make administrative amendments to replace “telehealth” with “video” for clarity of language.

The changes relating to participating nurse practitioner items were made to align with recommendations of the Strengthening Medicare Taskforce Report and the Nurse Practitioner Workforce Plan, which highlight the importance of multidisciplinary healthcare. The new long attendance items will support patients requiring longer attendance time to receive the care they require.

The changes relating to participating midwives items implement recommendations of the MBS Review Taskforce Report on Primary Care, relating to participating midwives. These changes support participating midwives to deliver high quality maternity care through the continuity of care model.

### 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 supports the right to health, the right to social security and the right of equality and non-discrimination by creating greater clinical care opportunities for people living in the rural and remote areas who face difficulty in gaining access to appropriate maternity services in their community.

#### **Conclusion**

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

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