

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020*

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 diagnostic imaging 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 4AA(1) of the Act. The Table is currently prescribed in the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

#### **Purpose**

The purpose of the *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020* (the Determination) is to list one new item (57357) for computed tomography (CT) angiography of the pulmonary artery for an initial investigation for pulmonary embolism.

On 1 May 2020, CT angiography item 57350 was removed and replaced with three CT angiography items (57352, 57353 and 57354) which can be requested by either a specialist or consultant physician, or by a GP who has discussed the patient's case with a specialist or consultant physician. These services specify the following anatomical areas to accommodate different clinical circumstances:

- Arch of aorta, carotid arteries, vertebral arteries and their branches (head and neck) (57352).
- Ascending and descending aorta common iliac and abdominal branches including upper limbs (chest, abdomen and upper limbs) (57353).
- Descending aorta, pelvic vessels (aorto-iliac segment) and lower limbs (57354).

These changes were part of the Government's response to a number of recommendations of the clinician-led Medicare Benefits Schedule (MBS) Review Taskforce (the MBS Review Taskforce) to diagnostic imaging services. These changes were announced in the 2019-20 Budget under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

This Determination will list one new MBS item 57357 to cover the pulmonary arteries specifically. This service will enable GPs to request the item for an examination of the patient for pulmonary embolism. This new item will support patient access and enable GPs to request an initial examination for pulmonary embolism, which they currently cannot do without consulting a specialist or consultant physician first.

This change was announced in the 2020-21 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule Reviews – Minor Corrections* measure.

**Consultation**

Consultation was undertaken on the diagnostic imaging changes that were recommended by the MBS Review Taskforce, and announced in the 2019-20 Budget under *the Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

The MBS Review is conducted by expert committees and working groups focusing on specific areas of the MBS. The Taskforce endorsed reports were released for public comment prior to finalisation of the recommendations to Government. This was undertaken through the public consultation process during consideration by the Taskforce.

Individual practitioners who would provide or request CT angiography services were consulted on new item 57357, which this Determination implements.

Details of the Determination are set out in the Attachment.

The Determination commences on 1 November 2020.

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

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

**Details of the *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020***

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 November 2020.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Definitions

Section 4 defines terms used in the Determination.

Section 5 – Treatment of relevant services

Section 5 provides that a clinically relevant service provided in accordance with the Determination shall be treated, for relevant provisions of the *Health Insurance Act 1973* and *National Health Act 1953*, and regulations made under those Acts, as if it were both a professional service and a diagnostic imaging service and as if there were an item specified in the diagnostic imaging services table for the service.

Section 6 – Application of provisions of the diagnostic imaging services table

Section 6 specifies provisions of the diagnostic imaging services table that apply as if items in Schedule 1 of this Determination were specified in the relevant provisions of the diagnostic imaging services table.

Subsection 6(1) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.1.1 of the Table. Clause 1.1.1 of the Table provides that a reference to a diagnostic imaging service includes undertaking the diagnostic imaging procedure, which is used for rendering the service.

Subsection 6(2) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.1 of the Table. Clause 1.2.1 of the Table provides that an item cannot be claimed if the service is performed on old diagnostic imaging equipment that exceeds its applicable life age.

Subsection 6(3) of the Determination provides item 57357 of this Determination will be treated as if it was specified in clause 1.2.2 of the Table. Clause 1.2.2 of the Table provides the life age in years for new equipment and the maximum extended life age in years for upgraded

equipment, including for ultrasound equipment and nuclear medicine imaging equipment (other than positron emission tomography).

Subsection 6(4) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.3 of the Table. Clause 1.2.3 of the Table provides that diagnostic imaging premises which are located in an outer regional, remote and very remote area or in Norfolk Island are automatically able to claim an item for diagnostic imaging services rendered, regardless of the age of the equipment.

Subsection 6(5) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.4 of the Table. Clause 1.2.4 of the Table provides the meaning of relevant proprietor for diagnostic imaging equipment.

Subsection 6(6) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.5 of the Table. Clause 1.2.5 of the Table provides requirements for inner regional areas to apply for an exemption to be able to claim an item for diagnostic imaging services rendered on older equipment.

Subsection 6(7) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.6 of the Table. Clause 1.2.6 of the Table provides requirements for granting exemptions to inner regional areas in respect of diagnostic imaging equipment.

Subsection 6(8) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.7 of the Table. Clause 1.2.7 of the Table provides requirements for applying for an exemption for equipment that is unable to be replaced or upgraded before the end of its applicable life age.

Subsection 6(9) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.8 of the Table. Clause 1.2.8 of the Table provides requirements for granting exemptions for equipment that is unable to be replaced or upgraded before the end of its applicable life age.

Subsection 6(10) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.9 of the Table. Clause 1.2.9 of the Table provides requirements for applying for an extension to an exemption period for equipment that is unable to be replaced or upgraded before the end of its applicable life.

Subsection 6(11) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.10 of the Table. Clause 1.2.10 of the Table provides requirements for granting an extension to an exemption period for equipment that is unable to be replaced or upgraded before the end of its applicable life.

Subsection 6(12) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.11 of the Table. Clause 1.2.11 of the Table provides requirements for applying for a reconsideration of a decision to either refuse to grant an exemption period or to refuse to extend the exemption period for an exemption, in respect of diagnostic imaging equipment.

Subsection 6(13) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.12 of the Table. Clause 1.2.12 of the Table provides requirements for reconsidering a decision in relation to either refusing to grant an exemption period or refusing to extend the exemption period for an exemption, in respect of diagnostic imaging equipment.

Subsection 6(14) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.13 of the Table. Clause 1.2.13 of the Table provides that reconsideration decisions made in relation to exemptions in respect of diagnostic imaging equipment may be made to the Administrative Appeals Tribunal.

Subsection 6(15) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.14 of the Table. Clause 1.2.14 of the Table provides delegation powers to an SES employee or acting SES employee in the Department, in relation to granting or refusing exemptions in respect of diagnostic imaging equipment.

Subsection 6(16) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.16 of the Table. Clause 1.2.16 of the Table provides that a diagnostic imaging service is to be provided by a medical practitioner or by a person, other than a medical practitioner, who provides the service under the supervision of a medical practitioner in accordance with accepted medical practice.

Subsection 6(17) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in subclause 1.2.17(1) of the Table. Clause 1.2.17 of the Table provides that when a service is requested, the providing practitioner must provide a report of the service performed to the practitioner who requested the service.

Subsection 6(18) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.18 of the Table. Clause 1.2.18 of the Table provides that if services provided under certain items are not provided in a hospital and are bulk-billed, then the fee claimed for the service will be 95 per cent of the schedule fee of the item. This provision is applicable to services other than magnetic resonance imaging, including ultrasound services and nuclear medicine imaging services.

Subsection 6(19) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.21 of the Table. Clause 1.2.21 of the Table provides the calculation of fees if more than one diagnostic imaging service is provided on a patient on the same day.

Subsection 6(20) of the Determination provides that item 57357 of this Determination will be treated as it was specified in clause 1.2.22 of the Table. Clause 1.2.22 of the Table provides that a service cannot be provided to a patient at the same time as, or in connection with, an injection of blood or a blood product that is autologous.

Subsection 6(21) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 1.2.23 of the Table. Clause 1.2.23 of the Table provides that a service cannot be provided to a patient at the same time as, or in connection with, the harvesting, storage, in vitro processing or injection of non-haematopoietic stem cells.

Subsection 6(22) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 2.2.1 of the Table. Clause 2.2.1 of the Table provides that a computed tomography service is to be performed under the supervision of a specialist in the specialty of diagnostic radiology who is available to monitor and influence the conduct and diagnostic quality of the examination, is able to report on the service, and if necessary, is able to attend the patient personally. These requirements do not apply if the service is performed in an emergency or because of medical necessity, in a remote location.

Subsection 6(23) of the Determination provides that item 57357 of this Determination will be treated as if it was specified in clause 2.2.2 of the Table. Clause 2.2.2 of the Table provides that a computed tomography services does not apply if it is performed for the purpose of attenuation correction or anatomical correlation of another diagnostic imaging procedure.

#### Schedule 1 – Relevant services

The Schedule specifies the service and the associated fee for item 57357.

## Statement of Compatibility with Human Rights

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

*Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020*

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.

### Analysis

This instrument advances the right to health and the right to social security by listing one new item 57357 to enable GPs to request an initial investigation for pulmonary embolism. This will enable GPs to request an initial examination for pulmonary embolism and will support patient access.

### **Conclusion**

This instrument is compatible with human rights as it advances the right to health and the right to social security.

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