

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 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 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 of the Act. The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 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 *Health Insurance Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 2024* (the Amendment Determination) amends the *Health Insurance (Section 3C Diagnostic Imaging – Conjunctive Thallium-201 Nuclear Medicine Imaging Service) Determination 2023* (the Thallium Determination) and the *Health Insurance (Section 3C Diagnostic Imaging Services – Conjunctive Gallium-67 Nuclear Medicine Imaging Service) Determination 2022* (the Gallium Determination) to increase the schedule fees for Medicare Benefits Schedule (MBS) temporary items 61470 and 61477.

The one-off schedule fee increases for non-positron emission tomography (non-PET) nuclear medicine imaging MBS items address discrepancies between the fees and the costs of providing these services. The fee increases will support practices, particularly in regional and remote areas, to remain viable whilst further work is being done on longer term funding arrangements for radiopharmaceuticals. Patients will benefit from continued and affordable access to these services. A reduction in service availability of nuclear medicine imaging significantly impacts the most vulnerable patients suffering from a wide range of conditions including cancers, cardiac disease, neurological (including Alzheimer's disease) and orthopaedics.

Consultation

The Department of Health and Aged Care consulted with the Australasian Association of Nuclear Medicine Specialists (AANMS), the Australian and New Zealand Society of Nuclear Medicine (ANZSNM), the Rural Alliance in Nuclear Scintigraphy (RAINS) and the Royal Australian and New Zealand College of Radiologists (RANZCR) on the MBS fee increases for non-PET nuclear medicine imaging items.

Stakeholders have been advocating for MBS fee increases and indexation to nuclear medicine services and are 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 Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 2024

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 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 Diagnostic Imaging Services – Conjunctive Gallium-67 Nuclear Medicine Imaging Service) Determination 2022

Item 1 increases the schedule fee for item 61477 from \$962.00 to \$995.65. This change will support practices, particularly in regional and remote areas, to remain viable and continue to deliver services to patients whilst further work is being done on longer term funding arrangements for radiopharmaceuticals.

Health Insurance (Section 3C Diagnostic Imaging – Conjunctive Thallium-201 Nuclear Medicine Imaging Service) Determination 2023

Item 2 increases the schedule fee for item 61470 from \$1,463.80 to \$1,515.05. This change will support practices, particularly in regional and remote areas, to remain viable and continue to deliver services to patients whilst further work is being done on longer term funding arrangements for radiopharmaceuticals.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 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 *Health Insurance Legislation Amendment (Nuclear Medicine Imaging Services) Determination (No. 2) 2024* amends the *Health Insurance (Section 3C Diagnostic Imaging – Conjunctive Thallium-201 Nuclear Medicine Imaging Service) Determination 2023* (the Thallium Determination) and the *Health Insurance (Section 3C Diagnostic Imaging Services – Conjunctive Gallium-67 Nuclear Medicine Imaging Service) Determination 2022* (the Gallium Determination) to increase the schedule fees for Medicare Benefits Schedule (MBS) temporary items 61470 and 61477.

The one-off MBS fee increases for non-Positron Emission Tomography (non-PET) nuclear medicine imaging items address discrepancies between the fees and the costs of providing these services. The fee increases will support practices, particularly in regional and remote areas, to remain viable and continue to deliver services to patients whilst further work is being done on longer term funding arrangements for radiopharmaceuticals. A reduction in service availability of nuclear medicine imaging significantly impacts the most vulnerable patients suffering from a wide range of conditions including cancers, cardiac disease, neurological (including Alzheimer's disease) and orthopaedics.

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 right of equality and non-discrimination by increasing the benefits paid to patients accessing specified nuclear medicine services on the MBS. The instrument will continue to support patients to access clinically relevant health 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. The changes advance rights by ensuring access to clinically relevant health services are appropriately covered by the MBS.

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