**EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Magnetic Resonance Imaging for Patients 16 Years and Over) Determination 2013*

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides, in part, that the Minister may determine in writing that a health service not listed in the diagnostic imaging services table (the Table) shall, in specified circumstances and for specified statutory provisions, be treated as if it were so listed. The Table is set out in the *Health Insurance (Diagnostic Imaging Services Table) Regulation* (the DIST Regulation) which is remade each year.

**Purpose**

The *Health Insurance (Magnetic Resonance Imaging for Patients 16 Years and Over) Determination 2013* (the Determination) creates four new Magnetic Resonance Imaging (MRI) services. These new MRI items will allow medical practitioners, other than specialists and consultant physicians, to request Medicare eligible MRI services for patients 16 years and over for particular indications such as unexplained seizures or suspected cervical spinal trauma.

The key objective of this measure is to maintain patient access to affordable and convenient diagnostic imaging services, and to ensure that each diagnostic imaging service reflects best clinical practice and is performed by an appropriately qualified practitioner.

The Determination creates four new MRI services (items 63551, 63554, 63557 and 63560) that can be requested by medical practitioners (including general practitioners (GPs)) other than specialists and consultant physicians. The services may be provided to patients 16 years and over for scan of the head for seizures and unexplained headaches, scan of the spine where there is suspected cervical radiculopathy or cervical spinal trauma and scan of the knee for acute knee injury.

Section 7 of the Determination applies relevant rules in the DIST Regulation relating to MRI services to items 63551, 63554, 63557 and 63560:

* the items can be provided by an using equipment recognised as ‘eligible equipment’ or ‘partial eligible equipment’ for Medicare purposes;
* the items must be reported by, and provided under the professional supervision of, a specialist in diagnostic radiology who satisfies the Chief Executive Medicare that he or she is a participant in the Royal Australian and New Zealand College of Radiologists’ Quality and Accreditation Program, unless the service is provided in an emergency or must be provided in a remote location due to medical necessity;
* requests must be in writing and specify the clinical indications for the service;
* an MRI scan must include a minimum of 3 sequences; and
* the items cannot be claimed more than three times for a particular patient in a 12 month period.

The four new MRI services were to have been created through the annual remake of the DIST Regulation, which usually commences on 1 November. However, the remake has been delayed this year and will not commence until later in November 2013. The Determination will allow patients to access Medicare rebates in relation to the service from 1 November 2013. When the current *Health Insurance (Diagnostic Imaging Services Table) Regulation 2012* ceases or is repealed as part of the annual remake of the DIST Regulation, including the four new items, the Determination will cease. In accordance with section 4AA of the *Health Insurance Act 1973*, the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2012* will cease on the fifteenth sitting day of the House of Representatives after a period of 12 months from registration, unless earlier repealed.

The Determination commences on 1 November 2013.

**Consultation**

There has been significant consultation with the relevant craft groups through the MRI Expert Working Group. Stakeholders who have been consulted include the Royal Australian and New Zealand College of Radiologists, the Australian Medical Association, the Australian Medical Association, the Royal Australian College of General Practitioners, the Australian College of Rural and Remote Medicine.

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

**Statement of Compatibility with Human Rights**

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

***Health Insurance (Magnetic Resonance Imaging for Patients 16 Years and Over) Determination 2013***

This Legislative 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 Legislative Instrument**

The *Health Insurance (Magnetic Resonance Imaging for Patients 16 Years and Over) Determination 2013* (the Determination) enables the payment of Medicare benefits for four new Magnetic Resonance Imaging (MRI) services. These new MRI items (MBS items 63551, 63554, 63557 and 63560) will allow medical practitioners, other than specialists and consultant physicians, to request MRI services for patients 16 years and over for particular prescribed indications (eg. unexplained seizure or chronic headache).

The four new MRI services were to have been created through the annual remake of the *Health Insurance (Diagnostic Imaging Services Table) Regulation* (the DIST Regulation), which usually commences on 1 November 2013. However, the remake has been delayed this year. The Determination will allow patients to access Medicare rebates in relation to the service from 1 November 2013. When the annual remake of the DIST Regulation (including the four new items) takes effect the Determination will cease.

The Determination applies relevant rules in the DIST Regulation relating to MRI services to items 63551, 63554, 63557 and 63560:

* the items can be provided by an using equipment recognised as ‘eligible equipment’ or ‘partial eligible equipment’ for Medicare purposes;
* the items must be reported by, and provided under the professional supervision of, a specialist in diagnostic radiology who satisfies the Chief Executive Medicare that he or she is a participant in the Royal Australian and New Zealand College of Radiologists’ Quality and Accreditation Program, unless the service is provided in an emergency or must be provided in a remote location due to medical necessity;
* requests must be in writing and specify the clinical indications for the service;
* an MRI scan must include a minimum of 3 sequences; and
* the items cannot be claimed more than three times for a particular patient in a 12 month period.

The Determination will remain in force until the upcoming annual remake of the DIST Regulation takes effect and the current DIST Regulation ceases or is repealed. As part of the annual remake, all items included in the Determination will be listed directly in the new DIST Regulation and the Determination will be redundant.

**Human rights implications**

*The right to health*

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 International Covenant on Economic, Social and Cultural Rights (ICESCR). The UN Committee on Economic, Social and Cultural Rights (the Committee) has stated that health is a ‘fundamental human right indispensable for the exercise of other human rights’, and that the right to health is not to be understood as a right to be healthy, but rather entails 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 has stated that the notion of ‘the highest attainable standard of health’ takes into account both the conditions of the individual and the country’s available resources. The right may be understood as a right of access to a variety of public health and health care

MRI services for these indications are currently available to patients over the age of 16 years through request by a specialist and consultant physician. These services will now available through request by other medical practitioners such as GPs. In November 2012, services that can be requested by GPs were introduced for children under the age of 16 years.

The initiative was developed to ensure that patients have access to affordable and convenient services that reflect best clinical practice. As these items can be requested by GPs, patients will have better access to MRI services and faster diagnosis, as they will not be required to be referred to a specialist or consultant physician in order to get a Medicare funded MRI service.

There is no incompatibility with the right to health or social security because the legislation is for a legitimate objective and reasonable, necessary and proportionate in the circumstances.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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