

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination (No. 2) 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 DIST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in one of these tables.

The DIST is set out in the regulations made under subsection 4AA(1) of the Act. The DIST is currently prescribed in the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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 Legislation Amendment (Section 3C – Cardiac Services) Determination (No. 2) 2020* (the Determination) is to amend the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac Services) Determination 2020* to clarify that a co-claiming restriction between general ultrasound services and cardiac services is not required.

In the 2019-20 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare — Medicare Benefits Schedule — new and amended listings* measure, the Government agreed to recommendations made by the clinician-led Medicare Benefits Schedule Review Taskforce (the Taskforce) to cardiac services.

As part of these recommendations, co-claiming restrictions were removed for general ultrasound services (not including interventional services), obstetric, gynaecological and musculoskeletal ultrasound services with cardiac or vascular ultrasound services (with the exception of lower leg ultrasound), to enable ultrasound services to be performed on more than one area, when clinically necessary. This change commenced on 1 May 2020 and was implemented by the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 1) 2020*.

The Determination amends eight echocardiographic examination items (55126, 55127, 55128, 55129, 55132, 55133, 55134 and 55137) and four stress echocardiography focused study items (55141, 55143, 55145 and 55146) to remove the co-claiming restriction with general ultrasound items. This change is administrative in nature, ensuring that the cardiac services align with the policy intent of the Taskforce recommendations. To this effect, the amendments in Schedule 1 are taken to have commenced immediately after the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination 2020* commences. Section 3C(2) of the *Health Insurance Act 1973* allows for retrospective commencement as it excludes section 12(2) of the

Legislation Act 2003 from applying to determinations made under section 3C(1) of the *Health Insurance Act 1973*.

Consultation

Consultation was not undertaken on this Determination as it is machinery in nature. However, consultation was undertaken on the changes to diagnostic imaging services that were recommended by the Taskforce, and announced in the 2019-20 Budget under the *Guaranteeing Medicare – Medicare Benefits Schedule – new and amended listings* measure.

The Taskforce is conducted by expert committees and working groups focusing on specific areas of the Medicare Benefits Schedule (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.

Details of the Determination are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Determination may be exercised.

The Determination commences immediately after the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination 2020*.

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

The Determination 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* as set out in the attached Statement of Compatibility with Human Rights.

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination (No. 2) 2020*

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination (No. 2) 2020*.

Section 2 – Commencement

Section 2 provides that the Determination commences immediately after the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination 2020*.

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 Diagnostic Imaging Services – Cardiac Services) Determination 2020

Item [1] – Division 1.1 of Schedule 1 (below clause 1.1.2)

Item 1 repeals and replaces the table with a new table in Division 1.1 of Schedule 1. The new table includes amended item descriptors for items 55126, 55127, 55128, 55129, 55132, 55133, 55134, 55137, 55141, 55143, 55145 and 55146 to enable these items to be provided in association with a service to which item Subgroup 1 (except item 55054) applies, if required.

Statement of Compatibility with Human Rights

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

*Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination
(No. 2) 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

The purpose of the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination (No. 2) 2020* (the Determination) is to amend the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac Services) Determination 2020* to clarify that a co-claiming restriction between general ultrasound services and cardiac services is not required.

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Human rights implications

This Determination 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 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 community.

Analysis

This instrument maintains rights to health and social security by ensuring access to publicly subsidised health services, which are clinically effective and cost-effective.

Conclusion

This instrument is compatible with human rights because it maintains existing arrangements and the protection of human rights.

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