

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) 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 GMST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the GMST.

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 General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Determination 2024* (the Principal Determination) to insert two new radiography items for cleft and craniofacial services (items 75010 and 75011) into the Medicare Benefits Schedule (MBS) from 1 July 2025.

The new items will allow dental practitioners to deliver multiple orthodontic radiography services with one consultation service at the same attendance to patients with an eligible cleft or craniofacial condition without duplicating payments for the consultation. Previously, consultation payments were duplicated for attendances where dental practitioners needed to bill existing items 75009 and 75012 or 75015 to deliver multiple imaging procedures with one consultation at the same attendance. To prevent duplication of the consultation components, a co-claiming restriction was applied to items 75009, 75012 and 75015 from 1 March 2024. The restriction resulted in patients being required to attend on separate occasions to claim benefits for two imaging procedures. The introduction of the two new items 75010 and 75011 will allow patients to receive MBS benefits for multiple imaging procedures with benefits for one consultation at the same attendance.

The introduction of the two new MBS items was agreed by the Minister for Health and Aged Care through authority to approve certain Medical Services Advisory Committee (MSAC) recommendations outside of a budget process.

Consultation

Consultation was undertaken as part of the initial MSAC application, which was approved on 27 September 2024. Consultation occurred with a Medical Officer and Dental Officer within the Department of Health and Aged Care (the department), as well as with the MSAC Executive, Services Australia and Department of Finance.

The MSAC Executive supported the department's recommendation to create two new items to allow dentists to claim a combination of required imaging components while receiving a payment for only one consultation at the same attendance and, thereby, removing the previous duplication of payments for the consultation components of the items. It was agreed that this would provide a more streamlined approach of providing benefits to patients.

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

The Amendment Determination commences on 1 July 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 General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) Determination 2025*

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) Determination 2025*.

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence on 1 July 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 – Amendments

Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Determination 2024 (the Principal Determination)

Item 1 inserts reference to two new Medicare Benefits Schedule (MBS) items 75010 and 75011 (see **item 2**) into subsection 7(2) of the Principal Determination. **Item 1** will provide that new MBS items 75010 and 75011 apply to a service provided by a dental practitioner.

Item 2 inserts two new MBS items 75010 and 75011 for cleft and craniofacial services into Group C1 of Schedule 1. Item 75010 will allow for dental practitioners to provide orthodontic radiography services where either anteroposterior or lateral cephalometric radiography applies (including any consultation on the same occasion), and item 75011 will allow for dental practitioners to provide orthodontic radiography services where both anteroposterior and lateral cephalometric radiography applies (including any consultation on the same occasion).

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) 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 General Medical Services – Cleft and Craniofacial Services) Amendment (Orthodontic Radiography) Determination 2025* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Cleft and Craniofacial Services) Determination 2024* (the Principal Determination) to insert two new radiography items for cleft and craniofacial services (items 75010 and 75011) into the Medicare Benefits Schedule (MBS) from 1 July 2025.

The new items will allow for dental practitioners to deliver orthodontic radiography services to patients with an eligible cleft or craniofacial condition. Previously, dental practitioners needed to bill existing items 75009 and 75012 or 75015 to deliver multiple imaging procedures with one consultation at the same attendance. To prevent duplication of the consultation components, a co-claiming restriction was applied to items 75009, 75012 and 75015 from 1 March 2024. The restriction resulted in patients being required to attend on separate occasions to claim benefits for two imaging procedures. The introduction of new items 75010 and 75011 will allow patients to receive MBS benefits for multiple imaging procedures with one consultation at the same attendance.

The introduction of the two new MBS items were agreed to by the Minister for Health and Aged Care through authority to approve certain Medical Services Advisory Committee recommendations outside of a budget process.

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

The Amendment Determination advances the rights to health and social security and the right of equality and non-discrimination by providing eligible patients with greater access to subsidised orthodontic radiography services under the MBS.

Conclusion

This instrument is compatible with human rights as it advances the right to health and the right to social security and the right of equality and non-discrimination. The new items will limit the need for patients to attend multiple attendances for imaging procedures that can be rendered under one consultation, and limit related out-of-pocket patient expenditure.

Mary Warner
Assistant Secretary
Diagnostic Imaging and Pathology Branch
Medicare Benefits and Digital Health Division
Health Resourcing Group
Department of Health and Aged Care