

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) 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 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*.

Purpose

The purpose of the *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025* (the Determination) is to implement the National Lung Cancer Screening Program (NLCSP), announced by the Minister for Health and Aged Care on 2 May 2023.

The NLCSP is a cancer screening program using low-dose computed tomography (low-dose CT) scans to detect lung cancer in high-risk individuals who are asymptomatic, with the intent of improving health outcomes and quality of life. The aim of the NLCSP is to identify lung cancer early while it is more treatable and in turn, reduce deaths from lung cancer.

The Determination implements the NLCSP by incorporating new items 54710 and 54713 for low-dose CT scans of the chest into the Medicare Benefits Schedule. Individuals will receive a request from their healthcare provider to a radiology provider, who will then perform the services for eligible individuals. Patients are eligible to participate in the NLCSP if they:

- are aged between 50 years and 70 years and 364 days; and
- are asymptomatic (show no signs or symptoms of lung cancer); and
- currently smoke or have quit smoking in the past 10 years; and
- have a history of cigarette tobacco smoking of at least 30 pack-years.

Mobile screening services will be used to support eligible NLCSP participants in remote areas who do not have access to fixed radiology infrastructure.

The creation of a NLCSP was recommended by the Medical Services Advisory Committee at a meeting in July 2022.

Consultation

In 2020, Cancer Australia completed an enquiry into the prospects, process and delivery of a NLCSP in Australia. Cancer Australia consulted with clinicians, health professionals and consumers, and conducted targeted consultation with Aboriginal and Torres Strait Islander communities and health professionals.

Consultation on the development of the MBS items also occurred with the National Aboriginal Community Controlled Health Organisation and Cancer Australia; peak bodies such as the Royal Australian and New Zealand College of Radiologists, Thoracic Society of Australia and New Zealand, Australian Diagnostic Imaging Association, Lung Foundation Australia, Australian Medical Association, Royal Australian College of General Practitioners, the NLCSP Expert Advisory Committee, and state and territory governments.

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

The Determination commences on 1 July 2025.

Details of the 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 Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025*.

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 July 2025.

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 general medical service and as if there were an item specified in the diagnostic imaging services table for the service.

Section 6 – Eligibility for services

Section 6(1) specifies the circumstances in which a patient is eligible to receive a service described in items 57410 and 57413 for low-dose CT scan of the chest for the National Lung Cancer Screening Program:

- Paragraph 6(1)(a) requires a patient to receive a request for the service when they are aged between 50 and 70 years and 364 days.
- Paragraph 6(1)(b) provides that a patient does not demonstrate signs or symptoms of lung cancer at either the time of receiving a request, or the time of receiving the service.
- Paragraph 6(1)(c) requires a patient to be a current smoker, or to have quit smoking in the past ten years from the date they are enrolled in the Program.
- Paragraph 6(1)(d) requires a patient to have a history of cigarette tobacco smoking of no less than 30 pack-years (as defined in section 4).

Section 6(2) specifies that a patient assessed as eligible to receive a service described in items 57410 and 57413 remains eligible to receive these services until they turn 71 years and 364 days.

Section 7 – Limitations on services

Section 7 establishes an exemption to the current supervision requirement in clause 2.2.1 of the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* for a CT service to be performed under the supervision of a diagnostic radiologist, in circumstances where the service is provided to an eligible patient as part of a mobile screening service located more than 30 kilometres from a hospital that provides computed tomography services or a free-standing computed tomography facility.

Schedule 1- Specified health services

Schedule 1 of the Determination specifies the services and the associated fees for item 57410 and item 57413.

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 – National Lung Cancer Screening Program) 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 – National Lung Cancer Screening Program) Determination 2025* (the Determination) is to implement the National Lung Cancer Screening Program (NLCSP) announced by the Minister for Health and Aged Care on 2 May 2023.

The NLCSP is a cancer screening program using low-dose computed tomography (CT) scans to detect lung cancer in high-risk individuals who are asymptomatic, with the intent of improving health outcomes and quality of life. The aim of the NLCSP is to identify lung cancer early while it is more treatable and in turn, reduce deaths from lung cancer.

The Determination implements the NLCSP by incorporating new items 54710 and 54713 for low-dose CT scans of the chest into the Medicare Benefits Schedule. Individuals will receive a request from their healthcare provider to a radiology provider, who will then perform the services for eligible individuals.

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 instrument also engaged the right to equality and non-discrimination provided in Articles 2, 16, and 26 of the International Covenant on Civil and Political Rights (ICCPR).

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, rather it 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 ICCPR. These 3 articles 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 will reflect contemporary clinical practice to ensure that patients continue to have access to health and social security through relevant subsidised diagnostic imaging services on the Medicare Benefits Schedule.

Conclusion

This instrument is compatible with human rights as it maintains the right to health and the right to social security and does so in a way that upholds the right to equality and non-discrimination. The implementation of the NLCSP will provide greater access to preventive measures for patients.

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