

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 4BA - Pathologist-Determinable Services) Amendment (Ribonucleic Acid Testing for Hepatitis C) Determination 2026

Section 16A of the *Health Insurance Act 1973* (the Act) specifies the requirements that must be met for the payment of Medicare benefits in relation to pathology services. Subsection 16A(3) provides that a pathology service must be requested by the treating practitioner, unless it is a pathologist-determinable service. A pathologist-determinable service is a service which has not been requested by the treating practitioner.

Section 4BA of the Act provides that the Minister for Health and Ageing may, by legislative instrument, determine that a particular pathology service, or pathology services included in a class of pathology services, are pathologist-determinable services, after consultation with Royal College of Pathologists of Australasia (RCPA). A determination that a service is a pathologist-determinable service allows Medicare benefit to be paid for a pathology service in specified circumstances.

This instrument is made pursuant to subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that a power to make a legislative or administrative instrument includes the power to repeal, rescind, revoke, amend, or vary any such instrument in the same manner and subject to the same conditions.

Purpose

The purpose of the *Health Insurance (Section 4BA - Pathologist-Determinable Services) Amendment (Ribonucleic Acid Testing for Hepatitis C) Determination 2026* (the Amendment Determination) is to amend the *Health Insurance (Section 4BA - Pathologist-Determinable Services) Determination 2025* (the Principal Determination) from 1 July 2026.

The Medical Services Advisory Committee (MSAC) Executive, at its 18 July 2025 meeting, supported the amendment of the Principal Determination to determine that Medicare Benefits Schedule (MBS) items 69499 and 69500 for ribonucleic acid (RNA) testing in patients with suspected hepatitis C (HCV) are pathologist-determinable services. The MSAC Executive considered that it is appropriate for pathologists to determine if HCV RNA testing is required following one HCV serology test result (either positive or inconclusive), without needing another test request from the treating practitioner. The change will reduce the time to treatment for patients.

Consultation

The following organisations were consulted regarding MBS items 69499 and 69500 being determined to be pathologist-determinable services and were supportive of the change:

- The RCPA
- Australian Pathology

- Public Pathology Australia

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

The Amendment Determination commences on 1 July 2026.

Details of the Amendment Determination are set out in the Attachment.

Authority: Section 4BA of the
Health Insurance Act 1973

Details of the *Health Insurance (Section 4BA - Pathologist-Determinable Services) Amendment (Ribonucleic Acid Testing for Hepatitis C) Determination 2026*

Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 4BA - Pathologist-Determinable Services) Amendment (Ribonucleic Acid Testing for Hepatitis C) Determination 2026* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides for the Amendment Determination to commence on 1 July 2026.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under section 4BA of the *Health Insurance Act 1973*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to the 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 the Amendment Determination has effect according to its terms.

Schedule 1 – Amendments

Health Insurance (Section 4BA - Pathologist-Determinable Services) Determination 2025

Item 1 of Schedule 1 inserts MBS items 69499 and 69500 and the associated originally requested referred services (69475, 69478, 69481, 69484, 69405, 69408, 69411, 69413 and 69415) in new item 8 to the table at paragraph 7(c), after table item 7.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 4BA - Pathologist-Determinable Services) Amendment (Ribonucleic Acid Testing for Hepatitis C) Determination 2026

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

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Human rights implications

This instrument engages Articles 2, 3, 9, 12, 16, and 26 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to equality and non-discrimination, 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 right to health and social security through determining that MBS items 69499 and 69500 in the Principal Determination are pathologist-determinable services. This will reduce time to treatment for patients. The Amendment Determination also maintains the right of equality and non-discrimination, as a Medicare-eligible person (as defined in the Act) maintains access to all Medicare services based on clinical need consistent with a universal health insurance program.

Conclusion

This instrument is compatible with human rights; it maintains the rights to health, social security as well as equality and non-discrimination.

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