

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

*Health Insurance (Section 3C Diagnostic Imaging – Nuclear Medicine Services)
Determination 2019*

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 shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the diagnostic imaging services table.

The diagnostic imaging services table is set out in the regulations made under subsection 4AA(1) of the Act.

Purpose

The purpose of the *Health Insurance (Section 3C Diagnostic Imaging – Nuclear Medicine Services) Determination 2019* (the Determination) is to allow patients continued access to certain nuclear medicine services in the Medicare Benefits Schedule (MBS) during a shortage in supply of radiopharmaceuticals. Medicare benefits will be available for these items on the day the Determination is registered.

Consultation

The Department of Health has consulted with the Australasian Association of Nuclear Medicine Specialists, the Australian Diagnostic Imaging Association, and the Rural Alliance in Nuclear Scintigraphy in the development of the Determination.

Details of the Determination are set out in the [Attachment](#).

The Determination commences immediately after registration of this Determination.

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

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

Details of the Health Insurance (Section 3C Diagnostic Imaging – Nuclear Medicine Services) Determination 2019

Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C Diagnostic Imaging – Nuclear Medicine Services) Determination 2019*.

Section 2 – Commencement

Section 2 provides that the Determination commences immediately after registration of this Determination.

Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

Section 4 – Definitions

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

Section 6 – Application of items in Schedule 1

Subsection 6(1) of the Determination applies clause 2.4.1 of the diagnostic services imaging table to item 61333. Clause 2.4.1 of the diagnostic imaging services table applies performance requirements to nuclear medicines services which are not performed by positron emission tomography (PET). Paragraph 2.4.1(b) requires that a service must be performed by a specialist or consultant physician who is a credentialed specialist under section 4 and who is included in a register held by the Chief Executive of Medicare.

Paragraph 2.4.1(c) requires that the final report of the service is compiled by the specialist or consultant physician who performed the preliminary examination of the patient and the estimation and administration of the dosage of radiopharmaceuticals.

Subsection 6(2) of the Determination applies paragraphs 2.4.1(b) and (c) to items in Schedule 1 (other than item 61333). Paragraph 2.4.1(a) will not apply to these items as the services can be performed with positron-emission radio-isotopes or performed with a PET scanner.

Schedule – Relevant services

The Schedule lists item 61311, 61332, 61333, 61336, 61337 and 61341.

Item 61333 mirrors item 61348 but substitutes the radioactive gas technegas with galligas and ^{68}Ga -MAA.

Items 61311, 61332, 61336, 61337 and 61341 mirror items 61330, 61307, 61402, 61421 and 61425 but must be performed by PET.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C Diagnostic Imaging – Nuclear Medicine Services) Determination 2019

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 Diagnostic Imaging – Nuclear Medicine Services) Determination 2019* (the Determination) is to allow patients continued access to certain nuclear medicine services in the Medicare Benefits Schedule (MBS) during a shortage in supply of radiopharmaceuticals. Medicare benefits will be available for these items on the day the Determination is registered.

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.

Analysis

This instrument will maintain rights to health and social security by ensuring patients can continue to access to subsidised nuclear medicine services on the Medicare Benefits Schedule.

Conclusion

This instrument is compatible with human rights as it has a positive effect on the right to health and the right to social security.

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