

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance Act 2007

Private Health Insurance (Accreditation) Rules 2011

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make the Private Health Insurance (Accreditation) Rules providing for matters required or permitted by section 81-1 or necessary or convenient in order to carry out or give effect to that section of the Act.

Section 81-1 of the Act provides that an insurance policy meets the quality assurance requirements in Division 81 of the Act if the policy prohibits the payment of private health insurance benefits for a treatment that does not meet the standards in the Private Health Insurance (Accreditation) Rules. An insurance policy must meet the quality assurance requirements in Division 81 where it is offered by a private health insurer as a complying health insurance policy in accordance with section 63-10 of the Act.

Purpose

The *Private Health Insurance (Accreditation) Rules 2011* (the Rules) revoke and remake the *Private Health Insurance (Accreditation) Rules 2008* (the Previous Rules). The Rules differ from the Previous Rules by changing rule 8 and consequentially changing the definition rule, rule 4.

Rule 8 sets the standard for treatment of a kind practised by a podiatric surgeon. The standard set by the Previous Rules was that the treatment must be provided by a podiatric surgeon who has been accredited under section 3AAA of the *Health Insurance Act 1973* (the HI Act). Under section 3AAA of the HI Act, the Minister may determine guidelines for making a decision as to whether a podiatrist is to be accredited. Those guidelines are the *Health Insurance (Accreditation of Podiatric Surgeons) Guidelines 2004* (the Guidelines). Section 3AAA of the Act was inserted by the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* for the purpose of enabling private health insurers to provide private health insurance benefits for hospital treatment costs associated with foot surgery performed on admitted patients by accredited podiatrists.

On 1 July 2010, the National Law commenced to set a uniform method of registration across the States and Territories for, amongst other things, practice in the specialty of podiatric surgery. The National Law is a term that collectively refers to the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as it applies to the States and Territories other than Western Australia, and to the *Health Practitioner Regulation National Law (WA) Act 2010*. The National Law provides a mechanism for referring to those podiatrists who practise the specialty of podiatric surgery that can be used in relevant delegated legislation under the PHI Act instead of the current references to podiatrists accredited under section 3AAA of the HI Act. The Accreditation Rules and other relevant delegated legislation are adopting this mechanism, thereby rendering section 3AAA, and the Guidelines made under it, redundant. Accordingly, the Guidelines will now be revoked. The

revocation of the Guidelines removes the administrative burden associated with podiatric surgeons applying to the Minister for accreditation under section 3AAA of the HI Act.

The revocation of the Guidelines means that consequential changes need to be made to rule 8 of the Previous Rules. Accordingly, rule 8 of the Rules changes the standard described in rule 8 of the Previous Rules to prospectively require that, for the kind of treatment practised by a podiatric surgeon, the standard is that the treatment of that kind must be provided by a podiatric surgeon who holds specialist registration in the specialty of podiatric surgery under the National Law. A definition of 'National Law' has been inserted in rule 4 of the Rules.

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

Background

On 26 April 2006, as part of significant changes to private health insurance, the Commonwealth Government announced that it would introduce industry-wide safety and quality requirements to ensure that, from 1 July 2008, all privately insured services are provided by accredited and/or suitably qualified providers.

The Rules decline to set standards for the provision of treatment in relation to some areas of healthcare. This purpose is achieved by excluding these areas in the definition of 'treatment' in rule 4 of the Rules. Private health insurers may continue to pay private health insurance benefits under complying health insurance policies for those treatments that are excluded by the Rules, provided such payment is otherwise permitted under the legislation.

The Rules align with the standards set for providers in the public health system where applicable. Where applicable, the standards set out in the Rules align with those standards that apply before a Medicare Benefit becomes payable.

Other providers for whom standards are not currently set by Medicare or regulated by a centralised body (generally complementary therapists) are required under the Rules to be a member of a national, professional association that assesses the provider's qualifications, administers a continuing professional development scheme, and enforces a code of conduct and disciplinary procedure for members.

The Act places the obligation on private health insurers to ensure that providers for whom private health insurance benefits are paid meet the standards as set out in the Rules. Private health insurers have the discretion to determine how a provider's compliance with the Rules is evidenced. Private health insurers also have the discretion to choose those providers with whom they enter into commercial arrangements. Private health insurers are not obliged to enter into arrangements with providers simply because those providers meet the standards in the Rules.

Consultation

In April 2011, the Department of Health and Ageing consulted with the Podiatry Board of Australia and the Australasian College of Podiatric Surgeons about aligning the criteria for the accreditation of podiatrists for private health insurance purposes with those standards for registration in the specialty of podiatric surgery which are set out in the National Law. No objections were raised. As the method by which this was achieved was to refer to the National Law in rule 8 rather than to section 3AAA of the HI Act, no further consultation was necessary.

The Act does not specify any conditions that need to be met before the power to make the Rules may be exercised.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The *Private Health Insurance (Accreditation) Rules 2011* commence on the day after the date of registration on the Federal Register of Legislative Instruments.

Authority: Section 333-20 of the *Private Health Insurance Act 2007*

PRIVATE HEALTH INSURANCE BRANCH
DEPARTMENT OF HEALTH AND AGEING
OCTOBER 2011

DETAILS OF THE *PRIVATE HEALTH INSURANCE (ACCREDITATION) RULES 2011***Part 1 Preliminary****1. Name of Rules**

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Accreditation) Rules 2011*.

2. Commencement

Subrule 2(1) provides that the Rules are to commence on the day following the date of the registration of the Rules on the Federal Register of Legislative Instruments.

Subrule 2(2) provides that the Rules revoke the *Private Health Insurance (Accreditation) Rules 2008* (the Previous Rules).

3. Application

Rule 3 provides that the Rules apply in respect of all policies existing on, or issued on or after 1 July 2008.

The effect of rules 2 and 3 of the Rules is to ensure that the new standard in rule 8 of the Rules (i.e. the standard for treatment which is of a kind practised by a podiatric surgeon) applies prospectively from the commencement date of the Rules to all policies existing on, or issued on or after 1 July 2008.

4. Definitions

The note to Rule 4 provides that terms used in the Rules have the same meaning as in the *Private Health Insurance Act 2007*.

Rule 4 defines terms used in the Rules. Rule 4 of the Rules differs from the Previous Rules by inserting the term “National Law”.

Part 2**5. Standards**

Subrule 5(1) provides that the Rules specify the standards for section 81-1 of the Act for treatment covered by a complying health insurance policy.

Subrule 5(2) provides that if a health care provider provides more than one type of treatment, that provider must meet the applicable standard in the Rules for each type of treatment they provide.

6. Treatments provided by hospitals and health care organisations

Subrule 6(1) specifies the scope of treatment that is considered treatment provided by a hospital or treatment provided by a health care organisation.

Paragraph 6(2)(a) provides that the standard of treatment for a hospital is met where it has permission of, or approval of, or is registered in the relevant State or Territory in which it operates as a hospital or provides treatment.

Subparagraph 6(2)(b)(i) provides that the standard of treatment for a health care organisation (including where the organisation is providing treatment on behalf of a hospital) is where it has the following:

- permission of, or approval of, or is registered in the relevant State or Territory as required by law; and
- is accredited, certified, or in the process of being accredited or certified by an appropriate accrediting body.

An 'appropriate accrediting body' is defined in rule 4.

Paragraph 6(2)(c) provides that the standard of treatment provided by health care providers must be the standard specified in these Rules which are relevant to the provision of that treatment.

7. Treatments by health care providers regulated under state and territory laws

Subrule 7(1) provides that the standard of treatment for a health care provider who provides a treatment in a State or Territory is that the health care provider must have the relevant permission, approval or registration as required by law.

Subrule 7(2) provides that if a health care provider has the requisite permission, approval or registration under subrule 7(1) of the Rules but also provides a type of treatment referred to in rules 8, 9 or 10 of the Rules, the person must also comply with the standard in the rules 8, 9 or 10 respectively.

8. Treatments provided by podiatric surgeons

Rule 8 provides that, if the treatment is of a kind practised by a podiatric surgeon, the standard for that kind of treatment is that it must be provided by a podiatric surgeon who holds specialist registration in the specialty of podiatric surgery under the National Law.

Rule 8 of the Rules differs from rule 8 of the Previous Rules by inserting this new standard and by removing the previous requirement that a podiatric surgeon must be accredited under section 3AAA of the *Health Insurance Act 1973*. The change means that the standard of treatment required to be provided by podiatric surgeons to enable payments of private health insurance benefits to be made under a complying health insurance policy for treatment provided by such a surgeon now aligns with the standard for practice in the specialty of podiatric surgery under State and Territory law.

9. Treatments provided by allied health professionals

Rule 9 outlines the standard for treatment provided by allied health professionals.

Subrule 9(1) provides that the standard for a treatment that falls within a field mentioned in regulation 3A of the *Health Insurance Regulations 1975* is that the treatment must be provided by an allied health professional who is qualified in that field. The provider does not have to be providing medicare-billable services, but must meet the same qualification requirement as if they were.

Subrule 9(2) provides that an allied health professional will be qualified in his or her field under subrule 9(1) if he or she meets the qualification requirements as specified in Schedule 1 of the *Health Insurance (Allied Health Services) Determination 2007*. This is the same standard as that required to be eligible for the Medicare Benefits Scheme. However, the provider does not have to be providing medicare-billable services.

Subrule 9(3) provides that if the treatment is provided by an allied health professional practising in a field not mentioned in subrule (1), the allied health professional must be a member of a professional organisation that covers that field and is also an ordinary member of Allied Health Professions Australia Ltd.

10. Treatments provided by other health care providers

Rule 10 provides that the standard of treatment provided by a health care provider who is not referred to in rules 7(1), 8 or 9 is that he or she must be a member of a professional organisation who covers the relevant field and who also satisfies the following requirements:

- is a national entity which has membership requirements for the profession;
- assesses the health care provider with respect to training and education;
- administers a continuing professional development scheme in which the member is required to participate;
- maintains a code of conduct which the member must uphold; and
- maintains a formal disciplinary procedure.

11. Premises where treatments are provided

Rule 11 provides that if a state or territory law requires premises in which treatment is provided to have a permission or approval to provide a treatment of that kind, the premises must have the permission or approval under that law.