

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 3)

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Benefit Requirements) Rules* providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient to be provided in order to carry out or give effect to Part 3-3 of the Act.

The *Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 3)* (the Amendment Rules) amends Schedules 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules) which commenced on 1 November 2011.

Purpose

The Amendment Rules amends Schedule 3 of the Principal Rules to reclassify Medicare Benefit Schedule (MBS) item number 42738, an ophthalmology item, in Schedule 3, Part 2 which is currently listed in Part 3 of Schedule 3 of the Principal Rules.

In *Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No.1)* MBS item 42738 was moved from Schedule 3, Part 2 to Schedule 3, Part 3. It has subsequently been brought to the Department of Health and Ageing's attention that moving MBS item 42738 from Part 2 to Part 3 may inadvertently, and negatively, affect patients. The Department has decided to move MBS item 42738 back into Part 2, the case before *Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No.1)*, and will conduct further consultation on the most appropriate location for MBS item number 42738 in the Principal Rules.

Background

The Principal Rules, which commenced on 1 November 2011, provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatment. Schedules 1 to 5 of the Principal Rules set out the minimum levels of benefit which are payable for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), nursing-home type patients (Schedule 4) and second tier default benefits (Schedule 5).

Schedule 3 sets out MBS item numbers for the same day hospital accommodation benefits which are payable for privately insured patients in all states and territories. Schedule 3, Part 2, lists MBS items that normally require hospital treatment that does not include part of an overnight stay. Schedule 3, Part 3 lists MBS items numbers that normally do not require hospital treatment.

Private health insurers are required to pay a minimum same-day accommodation benefit, in respect of treatment covered under a private health insurance policy, for MBS items listed Schedule 3, Part 2 of the Principal Rules. Insurers are only required to pay and accommodation benefit for MBS items listed in Schedule 3, Part 3 of the Principal Rules, in circumstances where a medical practitioner certifies that because of a medical condition of a patient, or because of special circumstances, it would be contrary to accepted medical practice to provide the procedure to the patient unless the patient is given hospital treatment at a hospital.

Details

Details of the Amendment Rules are set out in the **Attachment**.

Consultation

The Department of Health and Ageing has consulted with medical specialists regarding this amendment. The Amendment Rules are a result of these consultations. The Department intends to consult further with medical practitioners, private health insurers and patients on the appropriate location of MBS item number 42738 in the Principal Rules.

The Amendment Rules commence on the day after registration.

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

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

ATTACHMENT

**DETAILS OF THE PRIVATE HEALTH INSURANCE (BENEFIT REQUIREMENTS)
AMENDMENT RULES 2012 (No. 3)****1. Name of Rules**

Section 1 provides that the title of the Rules is the *Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 3)* (the Amendment Rules).

2. Commencement

Section 2 provides that the Amendment Rules are to commence on the day after registration.

3. Amendment of *Private Health Insurance (Benefit Requirements) Rules 2011*

Section 3 provides that the Schedule to the Amendment Rules amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules) which commenced on 1 November 2011.

Schedule Amendments**Item 1 – Schedule 3, Part 3, Subclause 8, Category 3 (T8)**

Item 1 of the Schedule to the Amendment Rules deletes MBS item 42738 from Schedule 3, Part 3.

Item 2 – Schedule 3, Part 2, Subclause 5(1)

Item 2 of the Schedule to the Amendment Rules inserts MBS item 42738 in Schedule 3, Part 2 after item number 42692.

PRIVATE HEALTH INSURANCE BRANCH
DEPARTMENT OF HEALTH AND AGEING
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Statement of Compatibility with Human Rights

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

Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 3)

This Bill/Legislative 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 Bill/Legislative Instrument

The *Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 3)* amend schedule 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011* to correct an error in the listing of the Medicare Benefits Schedule (MBS) item number 42738, which was listed in part 3 of schedule 3 of the principal rules. Rather, item 42738 should have been listed in part 2 of schedule 3.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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