

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 4)

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

The *Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 4)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2013 (No. 1)* (the Principal Rules) to correct drafting errors in the Principal Rules.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act provides for requirements that a complying health insurance policy that covers hospital treatment must meet. There must be a benefit for the provision of a prosthesis, of a kind listed in the *Private Health Insurance (Prostheses) Rules* (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a Medicare benefit is payable or those other circumstances which are set out in the *Private Health Insurance (Prostheses) Rules*.

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply.

Listed prostheses are currently set out in the Schedule to the Principal Rules.

The Amendment Rules will vary the Principal Rules as follows:

- correct errors in the product details for billing code WC312;
- remove redundant subheading from the Schedule;
- correct the amount of minimum benefit payable by insurers for billing codes BS082, MH014, MH015, BS171, OL009, WC213, OL010, ST884, BR005, BR006, SHV01, SHV 02 and SHV03;
- delete billing codes BI286, BI287 and BI264, at the request of the product sponsor;
- reinsert billing codes BH286, BH287 and BH264 following their inadvertent deletion from the Principal Rules;
- move billing code HW517 to its correct product group; and
- add billing codes OH467, SYN01, SYN02, SYN03, SYN04, SYN05, SYN06 and SYN07 that were incorrectly omitted from the Principal Rules.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, the Department consulted with the sponsor of each prosthesis affected by these amendments. There are no objections to the amendments. The Department has received a standing Regulatory Impact Statement exemption from the Department of Finance and Deregulation.

The Amendment Rules commence 8 November.

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

Statement of Compatibility with Human Rights

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

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 4)

This 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 Legislative Instrument

The Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 4) (the Rules) amend the *Private Health Insurance (Prostheses) Rules 2013 (No. 1)* (the Principal Rules) to correct drafting errors in the Principal Rules.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the *Private Health Insurance Act 2007* provides for requirements that a complying health insurance policy that covers hospital treatment must meet. There must be a benefit for the provision of a prosthesis, of a kind listed in the *Private Health Insurance (Prostheses) Rules* (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a Medicare benefit is payable or those other circumstances which are set out in the *Private Health Insurance (Prostheses) Rules*.

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply.

Listed prostheses, identified by billing code, are currently set out in the Schedule to the Principal Rules.

The Rules amend the Principal Rules by:

- correcting errors in the product details for billing code WC312;
- removing redundant subheading from the Schedule;
- correcting the amount of minimum benefit payable by insurers for billing codes BS082, MH014, MH015, BS171, OL009, WC213, OL010, ST884, BR005, BR006, SHV01, SHV02 and SHV03;
- deleting billing codes BI286, BI287 and BI264;
- reinserting billing codes BH286, BH287 and BH264 following their inadvertent deletion from the Principal Rules;
- moving billing code HW517 to its correct product group; and
- adding billing codes OH467, SYN01, SYN02, SYN03, SYN04, SYN05, SYN06 and SYN07 that were incorrectly omitted from the Principal Rules.

Human rights implications

The Rules engage the following human rights:

Right to Health

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 International Covenant on Economic Social and Cultural Rights (ICESCR). Whilst the UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The addition of eight new items to the Schedule of the Principal Rules and re-insertion of eight items inadvertently omitted from the Schedule of the Principal Rules as no gap prostheses or gap permitted prostheses will ensure that an insured person with appropriate cover will receive a minimum benefit for the provision of the prosthesis as hospital treatment or, where applicable hospital-substitute treatment, and:

- the prosthesis is provided in circumstances where a Medicare benefit is payable and any relevant conditions in the Rules are met; or
- the prosthesis is provided in other circumstances specified in the Rules and any relevant conditions are met.

The addition of new items will increase the amount of choice an insured person can have in relation to the type of prostheses for which they must receive a minimum benefit. This will impact positively on the right to health of insured persons.

The Rules also remove entries for three prostheses at the request of the sponsors of these prostheses. The sponsors of these prostheses are no longer supplying these prostheses for use to privately insured persons in Australia.

Generally the prostheses removed from the Rules have been replaced by newer models due to upgraded technologies or advancements in surgical procedures.

The benefit decrease to seven prostheses does not reduce Australians enjoyment of the right to health. The benefit is the amount payable by private health insurers for the use of a product in surgery. The benefit decrease will reduce costs to hospitals and insurers, and out-of-pocket expenses for patients.

A recent review of all prostheses established a single benefit levels for each group of like products. The group of prostheses products related to the benefit decrease can be separated into two clusters of products related to those that are either less or more expensive, based on the pre-review benefits. The significant benefit increase of the seven affected prostheses above their pre-review benefits passed substantial cost increases to hospitals, insurers and patients. The benefit decrease for the seven prostheses returns the benefits to pre-review levels for these items and reduces the unintended higher costs to hospitals, insurers and patients.

There is a relative equitable utilisation between the less and more expensive prostheses. Clinician preference and surgical requirements are the general drivers for the use of particular products. The benefit decrease will have no effect on Australians rights to health

Conclusion

The Rules are compatible with human rights because they advance the protection of human rights, specifically the right to health and, to the extent that right is limited the limitation is reasonable, necessary and proportionate.

Lyndall Moore
a/g First Assistant Secretary
Medical Benefits Division
Department of Health