

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 3)

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 2016 (No. 3)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to correct minor 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 Principal 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 Principal 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:

- change the listing details of 13 billing codes on Part B to reflect the correct benefit of the prostheses; and
- correct the benefit recorded in error for a billing code in Part A, and insert the correct benefit.

The Amendment Rules commence on the day after registration.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Department consulted with the sponsors 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 are a legislative instrument for the purposes of the *Legislation 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 2016 (No. 3)

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 2016 (No. 3)* (the Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to correct minor 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 Principal 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 Principal 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 Amendment Rules amend the Principal Rules by:

- change the listing details of 13 billing codes on Part B to reflect the correct benefit of the prostheses; and
- correct the benefit recorded in error for a billing code in Part A, and insert the correct benefit.

Human rights implications

The Amendment 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 Amendment Rules correct the names of 2 prostheses and correct the minimum benefit for 1 prosthesis. Each of these changes has a beneficial impact on the right to health in Australia, ensuring that minimum benefits, or higher minimum benefits, are required to be paid for the provision of these prostheses under private health insurance policies covering hospital treatment, where relevant conditions are met.

The amendments made by the Amendment Rules do not reduce the minimum benefit payable for any listed prosthesis.

Conclusion

The Amendment Rules are compatible with human rights because they advance the protection of human rights, specifically the right to health.

Tracey Duffy
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