

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2016 (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 2016 (No. 4)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to reduce the minimum benefit payable for prostheses in four categories.

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 by replacing Part A of the Schedule with a new Part A. Under the new Part A, the minimum benefits payable for devices in the following categories are reduced as follows:

- 01 – Ophthalmic – Intraocular Lenses, benefits reduced by 10%
- 08 – Cardiac, benefits reduced by 10%
- 11 – Hip, benefits reduced by 7.5%
- 12 – Knee, benefits reduced by 7.5%

In total, the minimum benefits for 2,440 prostheses have been reduced.

The reductions are an important first step to improve the value of benefits on the Prostheses List, and are part of broader reforms to the private health system. Reductions in the minimum benefits of medical devices for common surgeries are expected to deliver better value-for-money for consumers with private health insurance.

The Amendment Rules commence on 20 February 2017.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Department and Government consulted widely with the sponsors and other affected stakeholders regarding prostheses benefits, including holding an Industry Working Group on Private Health Insurance Prostheses Reform (the Industry Working Group).

The Industry Working Group was led by an independent Chair, Professor Lloyd Sansom, and included representatives from:

- Private Healthcare Australia
- HIRMAA
- Medical Technology Association of Australia
- Australian Private Hospitals Association
- Australian Day Hospital Association
- Consumers Health Forum
- Royal Australasian College of Surgeons
- Australian Medical Association
- Catholic Health Australia
- Cochlear Limited

The final report from the Industry Working Group noted that Prostheses List benefits for cardiac, intraocular lenses, hip and knee prostheses appear to be significantly higher, in many cases, than market prices based on available domestic and international data. The report states that, should Government be inclined to make immediate benefit reductions, these categories should be considered for the initial targets taking into account relative price disparities.

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. 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 2016 (No. 4)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to reduce the minimum benefits payable for prostheses in four categories.

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 replacing Part A of the Schedule with a new Part A. Under the new Part A, the minimum benefits payable for devices in the following categories or assessment bodies are reduced as follows:

- 01 – Ophthalmic – Intraocular Lenses, benefits reduced by 10%
- 08 – Cardiac, benefits reduced by 10%
- 11 – Hip, benefits reduced by 7.5%
- 12 – Knee, benefits reduced by 7.5%

In total, the minimum benefits for 2,440 prostheses have been reduced.

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 inclusion of prostheses on the Schedule to the Principal Rules (the Prostheses List) is to assist in patient choice in private hospital settings but this is an adjunct to the public health care and does not replace a patient's access to prostheses as a public patient in a public hospital.

The Amendment Rules reduce the minimum private health insurance benefit payable for a total of 2,440 prostheses in four categories.

The reduction in benefits to these four categories is intended to facilitate a legitimate objective, a reduction in private health insurance premium increases. Increasing expenditure on prostheses by private health insurers, particularly in these four categories, has been identified as a contributing factor to steadily increasing premiums.

Private health insurance premiums increased by 6.20%, 6.18% and 5.59% over the last three premium periods (weighted industry averages).

The reductions are an important first step to improve the value of benefits on the Prostheses List, and are part of broader reforms to the private health system. Reductions in the minimum benefits of medical devices for common surgeries are expected to deliver better value-for-money for consumers with private health insurance.

Conclusion

The Amendment Rules are compatible with human rights because, while they reduce minimum private health insurance benefits payable for some prostheses, this is an appropriate means to achieve the legitimate purpose of facilitating reductions in private health insurance premium increases.

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