

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 2)

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 2017 (No. 2)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 1)* (the Principal Rules) to correct 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 set out in the Schedule to the Private Health Insurance (Prostheses) Rules.

The Amendment Rules vary the Principal Rules by changing the listing details of 35 billing codes in Part B of the Schedule to reflect the correct minimum benefit of the prostheses to apply from 28 March 2017, the date of commencement of the Principal Rules.

The correction to the 35 billing codes will be published by the Department on the Private Health Insurance website to enable hospitals and insurers to update their systems before the date of commencement of the Principal Rules.

The Amendment Rules commence immediately after the commencement of the Principal Rules.

Consultation

As the Amendment Rules correct errors contained in the Principal Rules, no further consultation was undertaken in relation to the Amendment Rules.

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 2017 (No. 2)

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 2017 (No. 2)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 1)* (the Principal Rules) to correct 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 set out in the Schedule to the *Private Health Insurance (Prostheses) Rules*.

The Amendment Rules amend the Principal Rules by changing the listing details of 35 billing codes in Part B to reflect the correct minimum benefit of the prostheses.

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 minimum benefit payable for 35 prostheses. In each case, the correct minimum benefit is higher than the minimum benefit specified

in the Principal Rules. Each of these changes has a beneficial impact on the right to health in Australia, ensuring that 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.

Conclusion

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

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