

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2017 (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 2017 (No. 4)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to correct minor errors, and to add new product groups and billing codes to 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 vary the Principal Rules as follows:

- decreasing the minimum benefits payable in respect of four prostheses listed in Part A of the Schedule to reflect the correct minimum benefit for the prostheses;
- adding the listing details for three new prostheses in Part A of the Schedule to correct their omission in the Principal Rules;
- adding a new product group, 08.13.03 – Left Atrial Appendage to Part A of the Schedule, together with the listing details for one new prosthesis in that group;
- deleting a prosthesis from Part A of the Schedule and inserting the prosthesis details in Part C of the Schedule; and
- adding a new product group, 08.17 – Catheter Delivery, 08.17.01 – Transcatheter Aortic Valve Implantation to Part A of the Schedule, together with three new prostheses in that group.

The Amendment Rules commence on 1 November 2017.

Consultation

The Amendment Rules have been made having regard to recommendations made by the Prostheses List Advisory Committee (PLAC), which is a ministerially appointed committee comprised of members from health insurers, hospitals, clinicians, prostheses sponsors and consumer representatives. In making its recommendations, the PLAC was advised by Clinical Advisory Groups, other clinical experts, and the Health Economics Sub-committee.

In accordance with section 17 of the *Legislation Act 2003*, the Department consulted with listing applicants 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*.

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

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. 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 2017 (No. 4)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to correct and add listing details and add new product groups.

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 will vary the Rules as follows:

- decreasing the minimum benefits payable in respect of four prostheses listed in Part A of the Schedule to reflect the correct minimum benefit for the prostheses;
- adding the listing details for three new prostheses in Part A of the Schedule to correct their omission in the Principal Rules;
- adding a new product group, 08.13.03 – Left Atrial Appendage to Part A of the Schedule, together with the listing details for one new prosthesis in that group;
- deleting a prosthesis from Part A of the Schedule and inserting the prosthesis details in Part C of the Schedule; and
- adding a new product group, 08.17 – Catheter Delivery, 08.17.01 – Transcatheter Aortic Valve Implantation to Part A of the Schedule, together with three new prostheses in that group.

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 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 decrease the minimum benefits payable for four prostheses to accurately reflect the benefits, established by the Prostheses List Advisory Committee, and to align these prostheses with other similar products currently listed in the Schedule. The Amendment Rules also add three prostheses to the Schedule that were inadvertently omitted from the Schedule. The Amendment Rules create two new product groups that list four new prostheses. Further, the Amendment Rules move an entry from Part A to Part C of the Schedule for the purpose of correctly listing the entry with other similar prostheses. Each of these changes has a beneficial impact on the right to health in Australia, ensuring that minimum benefits are requirement 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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