

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 5)

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. 5)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to reduce the minimum benefits of a number of prostheses listed in Part A and Part C of the Schedule 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 will vary the Principal Rules as follows:

- Repeal and replace Part A of the Schedule to the Principal Rules; and
- Repeal and replace Part C of the Schedule to the Principal Rules.

The changes to Part A and Part C of the Schedule reduce the minimum benefits payable in respect of prostheses in the following product categories as follows:

- 01 – Ophthalmic:
 - reduce benefits for foldable products by 6.8%
 - reduce benefits for viscoelastic products by 8%
 - reduce all other benefits by 4%
- 02 – Ear, Nose and Throat:
 - reduce benefits by 4%
- 03 – General Miscellaneous:
 - reduce benefits for balloon based infusion pumps, haemostatic sponges and pliable patches, internal adhesives, ligating devices and staples and tackers by 6%
 - reduce all other benefits by 4% other than:
 - 03.01.01 – Hepatic, Yttrium 90, Standard Dose where there is no benefit reduction
- 04 – Neurosurgical:
 - reduce benefits by 4%

- 05 – Urogenital:
 - reduce benefits by 4%
- 06 – Special Orthopaedic:
 - reduce benefits for screws, surgical accessories and bone cement by 8%
 - reduce all other benefits by 4%
- 07 – Plastic and Reconstructive:
 - reduce benefits by 2%
- 08 – Cardiac:
 - reduce benefits for 08.13.01 – Cardiac Defect Occluders, reduce benefits by 8%
 - reduce all other benefits by 16% other than:
 - 08.13.03 – Left Atrial Appendage Closure where there is no benefit reduction
 - 08.17.01 – Transcatheter Aortic Valve Implantation where there is no benefit reduction
- 09 – Cardiothoracic:
 - reduce benefits by 4%
- 10 – Vascular:
 - 10.07 – Arterial Closure Devices, reduce benefits by 8%
 - 10.08.01 – Particle, reduce benefits by 8%
 - 10.08.02 – Coil, Peripheral, reduce benefits by 8%
 - 10.08.03 – Polymer, reduce benefits by 8%
 - 10.08.06 – Delivery Device for Occlusion Media, reduce benefits by 8%
 - 10.09 – Long Term Vascular Access Devices, reduce benefits by 8%
 - reduce all other benefits by 4%
- 11 – Hip:
 - reduce benefits by 4%
- 12 – Knee:
 - reduce benefits by 2.6%
- 13 – Spinal:
 - reduce benefits by 3%

In total, the minimum benefits for 10,571 prostheses have been reduced.

The reductions are an important 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 1 February 2018.

Consultation

The Minister for Health consulted with the Medical Technology Association of Australia, as advocates for Australia's innovative medical technology sector, as well as numerous individual sponsors.

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. 5)

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. 5)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to reduce the minimum benefits payable for prostheses listed in Part A and Part C of the Schedule to 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 replacing Part A and Part C of the Schedule with a new Part A and Part C and reduce the minimum benefits payable for 10,571 prostheses. 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.

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 assists 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 10,571 prostheses.

The reduction in minimum benefits is intended to facilitate a reduction in private health insurance premium increases. The increasing payment of benefits for prostheses by private health insurers has been identified as a contributing factor to the need for insurers to increase insurance premiums.

The reductions are important in improving the value of benefits on the Prostheses List, and are part of broader reforms to the private health system.

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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