

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 6)

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. 6)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to correct an error in the minimum benefit payable shown against one billing code, and correct an error made in the *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 5)* (the No.5 Amendment Rules), which are due to commence on 1 February 2018, regarding the product grouping and the minimum benefit payable against the same billing code.

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 No. 5 Amendment Rules will amend the Principal Rules from 1 February 2018 to reduce the minimum benefits payable in respect of prostheses in certain product categories.

The Amendment Rules will vary the Principal Rules as follows:

- upon registration of the Amendment Rules – against billing code DD005, omit the incorrect minimum benefit of \$1,325 and substitute \$3,969; and
- after commencement of the No. 5 Amendment Rules – repeal the entry for billing code DD005, and insert a new entry for billing code DD005 in the correct group with the correct minimum benefit.

Schedule 1 of the Amendment Rules commences on the day after registration on the Federal Register of Legislation. Schedule 2 of the Amendment Rules commences immediately after the commencement of the No. 5 Amendment Rules.

Consultation

The Department consulted with the applicant of the affected billing code and advised that the benefit would be corrected by amending the Principal 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*.

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. 6)

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. 6)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2017 (No. 2)* (the Principal Rules) to correct an error in the minimum benefit payable shown against one billing code and correct an error made in the *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 5)* (the No.5 Amendment Rules), which are due to commence on 1 February 2018, regarding the product grouping and the minimum benefit payable against the same billing code.

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 No. 5 Amendment Rules will amend the Principal Rules from 1 February 2018 to reduce the minimum benefits payable in respect of prostheses in certain product categories.

The Amendment Rules amend the Principal Rules by omitting the incorrect benefit of \$1,325 against billing code DD005, and substituting \$3,969. From 1 February 2018, following the commencement of the No. 5 Amendment Rules, they amend the Principal Rules by repealing the entry for billing code DD005, and inserting a new entry for billing code DD005 in the correct product group with the correct reduced minimum benefit amount. This provides for the correct minimum benefit to be payable for this prosthesis, delivering better value-for-money for holders of relevant private health insurance policies who require this prosthesis.

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 correction of the minimum benefit payable will provide better value-for-money to the holders of relevant private health insurance policies who require this 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
Assistant Secretary
Office of Health Technology Assessment
Technology Assessment and Access Division
Department of Health