

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2018 (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 2018 (No. 2)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No. 1)* (the Principal Rules) to reduce the minimum benefits for 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 in relation to prostheses benefits. It requires there to be a benefit for hospital treatment covered under the policy that is 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. The benefit must be at least the amount set or worked out in accordance with the Principal Rules (the minimum benefit). If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply to covered hospital-substitute treatment that is the provision of a listed prosthesis.

Listed prostheses and their minimum benefits are currently set out in the Schedule to the Principal Rules. The list of prostheses is commonly referred to as the Prostheses List.

The Amendment Rules implement the final Prostheses List benefit reductions for 2018 as outlined in the Government's Agreement with the Medical Technology Association of Australia (MTAA). The first benefit reductions, of 80% of the agreed 2018 reductions, were implemented on 1 February 2018. The reductions are an important step in improving the value of benefits on the Prostheses List, and are a part of broader reforms to the private health system. Reductions in the minimum benefits for medical devices for common surgeries are expected to be a factor in delivering better value private health insurance for consumers.

Expenditure on prostheses accounts for 14 per cent of private health insurance hospital benefits paid annually. Prostheses List benefits are generally inflated when compared to the equivalent prices paid for devices in the public sector. Reducing prostheses expenditure places downward pressure on premium increases. Private health insurers will benefit from reduced expenditure on prostheses and consumers will benefit from lower private health insurance premium increases. Prostheses List benefit reductions will also result in a small saving to government through reduction in expenditure by the Department of Veterans' Affairs, which uses the Prostheses List as the basis for its benefit payments for prostheses provided to veterans.

Private health insurers have publicly stated that every \$200 million in prostheses benefit reductions will decrease private health insurance premiums by one per cent. The 2018 round of benefit reductions (consisting of the 1 February 2018 and 1 August 2018 reductions) is estimated to save private health insurers \$188 million on prostheses expenditure in the 2018 private health insurance premium round. Further reductions to some devices' benefits will also occur on 1 February 2019 and 1 February 2020. This phased approach allows prostheses manufacturers, sponsors, private health insurers, hospitals, medical specialists and other stakeholders' time necessary to modify their various systems and business models around the benefit changes. Total estimated savings to private health insurers over the next four premium years (2018 to 2021) are more than a billion dollars. It is anticipated that these savings will be passed on to consumers through reduced premiums.

The series of benefit reductions implements an agreement between the Government and the MTAA. The MTAA is the national association representing companies in the medical technology industry. The intent of the agreement is to:

- promote the sustainability of privately insured health care through rebalancing the costs of medical devices to privately insured patients, to help keep private health insurance affordable for all Australians;
- improve the value of private health insurance for consumers by reducing benefits for prostheses on the Prostheses List; and
- support a viable, innovative and diverse medical technology sector in Australia supporting local jobs.

The Government and MTAA agreed that the first round of benefit reductions would be phased in with 80% of the reductions being implemented on 1 February 2018, and the remaining 20% of reductions being implemented on 1 August 2018. The Amendment Rules implement the remaining 20% of the 2018 reductions.

The Amendment Rules reduce the benefits of 10,519 prostheses. 292 listed prostheses have not had a benefit reduction. This is because:

- the applied reduction rounded to the nearest dollar results in no benefit change;
- the sponsor of the prostheses has nominated a minimum benefit lower than the benefit reduction applied to the group of prostheses in which the prosthesis is listed;
- no change to particular groups of prostheses were agreed to as part of the agreement between the Government and the MTAA; or
- the prostheses are active middle ear implant devices, for which there is no benefit reduction.

The Amendment Rules will vary the Principal Rules by repealing and replacing Part A of the Schedule to the Principal Rules and repealing and replacing Part C of the Schedule to the Principal Rules. The changes to Part A and Part C of the Schedule implement the second of three reductions to benefits. A summary of the reductions applied under the Amendment Rules is as follows:

01 – Ophthalmic:

- reduce benefits for foldable products by 1.8240%;
- reduce benefits for viscoelastic products by 2.1739%; and
- reduce all other benefits by 1.0417%.

02 – Ear, Nose and Throat:

- reduce all benefits by 1.0417%, except subgroup 02.01.05.05 – Active Middle Ear Implants, for which there is no benefit reduction.

03 – General Miscellaneous:

- reduce benefits for balloon based infusion pumps, haemostatic sponges and pliable patches, internal adhesives, ligating devices and staples and tackers by 1.595%; and
- reduce all other benefits by 1.0417%, except group 03.01.01 – Hepatic, Yttrium 90, Standard Dose, for which there is no benefit reduction.

04 – Neurosurgical:

- reduce all benefits by 1.0417%.

05 – Urogenital:

- reduce all benefits by 1.0417%.

06 – Special Orthopaedic:

- reduce benefits for screws, surgical accessories and bone cement by 2.1739%; and
- reduce all other benefits by 1.0417%.

07 – Plastic and Reconstructive:

- reduce all benefits by 0.5102%.

08 – Cardiac:

- reduce benefits for group 08.13.01 – Cardiac Defect Occluders by 2.1739%; and
- reduce all other benefits by 4.7619%, except:
 - : group 08.13.03 – Left Atrial Appendage Closure, for which there is no benefit reduction; and
 - : group 08.17.01 – Transcatheter Aortic Valve Implantation, for which there is no benefit reduction.

09 – Cardiothoracic:

- reduce all benefits by 1.0417%.

10 – Vascular:

- reduce benefits for group 10.07.01 – Arterial Closure Devices by 2.1739%;
- reduce benefits for group 10.08.01 – Particle by 2.1739%;
- reduce benefits for group 10.08.02 – Coil, Peripheral by 2.1739%;
- reduce benefits for group 10.08.03 – Polymer by 2.1739%;
- reduce benefits for group 10.08.06 – Delivery Device for Occlusion Media by 2.1739%;
- reduce benefits for assessment body 10.09 – Long Term Vascular Access Devices by 2.1739%; and
- reduce all other benefits by 1.0417%.

11 – Hip

- reduce all benefits by 1.0417%.

12 – Knee

- reduce all benefits by 0.6799%.

13 – Spinal

- reduce all benefits by 0.7732%

The *Private Health Insurance (Prostheses) Amendment Rules 2018 No. 2* commence on 1 August 2018.

Consultation

In reaching agreement on prostheses benefit reductions the Minister for Health consulted with the MTAA, as advocates for Australia’s innovative medical technology sector, as well as a number of individual sponsors of listed prostheses.

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 2018 (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 2018 (No. 2)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No. 1)* (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 in relation to prostheses benefits. It requires there to be a benefit for hospital treatment covered under the policy that is 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. The benefit must be at least the amount set or worked out in accordance with the Principal Rules (the minimum benefit).

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply to covered hospital-substitute treatment that is the provision of a listed prosthesis.

Listed prostheses are currently set out in the Schedule to the Principal Rules. The list of prostheses is commonly referred to as the Prostheses List.

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 which reduce the minimum benefits payable for 10,519 prostheses.

Expenditure on prostheses accounts for 14 per cent of private health insurance hospital benefits paid annually. Prostheses List benefits are generally inflated when compared to the equivalent prices paid for devices in the public sector. Reducing prostheses expenditure places downward pressure on premium increases. Private health insurers will benefit from reduced expenditure on prostheses and consumers will benefit from lower private health insurance premium increases.

Private health insurers have publicly stated that every \$200 million in prostheses benefit reductions will decrease private health insurance premiums by one per cent. The 2018 round of benefit reductions (1 February 2018 and 1 August 2018) is estimated to save private health insurers \$188 million on prostheses expenditure in the 2018 private health insurance premium round. Further reductions to some devices' benefits will also occur on 1 February 2019 and 1 February 2020. Total estimated savings to private health insurers over the next four premium years (2018 to 2021) are more than a billion dollars.

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 reduce the minimum benefits for 10,519 prostheses. 290 listed prostheses have not had a benefit reduction. This is because:

- the applied reduction rounded to the nearest dollar results in no benefit change;
- the sponsor of the prostheses has nominated a minimum benefit lower than the benefit reduction applied to the group of prostheses in which the prosthesis is listed;
- no change to particular groups of prostheses were agreed to as part of the agreement between the Government and the MTAA; or
- the prostheses are active middle ear implant devices, for which there is no benefit reduction.

Access to, and private health insurance benefits for, the prostheses that have not had benefit reductions are not diminished as a result of the benefit being unchanged.

The Amendment Rules implement the second series in the planned series of three reductions to minimum benefits. The first benefit reductions were implemented on 1 February 2018. The reductions are an important step in improving the value of benefits on the Prostheses List, and are a part of broader reforms to the private health system. Reductions in the minimum benefits for medical devices for common surgeries are expected to be a factor in delivering better value private health insurance for consumers.

Conclusion

The Rules are compatible with human rights because they advance the right to health by reducing expenditure on prostheses for private health insurers, consequently placing downward pressure on private health insurance premiums, making private health insurance more accessible to consumers.

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