

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

*Private Health Insurance (Complying Product)
Amendment (Terminating Products) Rules 2018*

Authority

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Complying Product) Rules* providing for matters required or permitted by Chapter 3 and section 188-1 of the Act, or necessary or convenient in order to carry out or give effect to Chapter 3 and section 188-1 of the Act.

Purpose

The *Private Health Insurance (Complying Product) Amendment (Terminating Products) Rules 2018* (the Amendment Rules) insert new rule 9AA into the *Private Health Insurance (Complying Product) Rules 2015* (the Principal Rules).

Background

These Amendment Rules implement consumer protections in cases where health insurance products are terminated and consumers are transferred to new policies. Previously there were no specific Rules to ensure consumers have the information needed to assist them in transferring to new policies when products are terminated by insurers.

Private health insurers must make available complying health insurance products. One of the criteria for being a complying product involves meeting the requirements for policy portability. Paragraph 78-1(5A)(c) of the Act will be inserted in the Act by *the Private Health Insurance Legislation Amendment Act 2018* (the Amendment Act 2018), and will introduce a new portability requirement. It will compel insurers to provide to an insured adult information set out in the Principal Rules when the insurer proposes to terminate a product or product subgroup and the consequent transfer of the insured adult to a new policy.

New rule 9AA will specify the matters about which an insurer must inform an adult insured under the policy, in writing, if the product or product subgroup is being terminated, and as a result the adult is to be transferred to a new policy. Paragraph 78-1(5A)(c) of the Act, and the new rule 9AA in the Amendment Rules, will provide important consumer information should an insurer choose to terminate a product. Based on the information required to be provided, policyholders can choose a new policy, or will be transferred to a default policy as set out in the information provided to them.

Details

Details of the Amendment Rules are set out in the **Attachment**.

Consultation

On 16 July 2018 an exposure draft of the Amendment Rules was released by the Department as part of the public consultation process for the 2018 private health insurance reform package. The consultation period concluded on 3 August 2018. In addition to making the exposure draft available on its website, the Department invited feedback from a large number

of stakeholders, including private health insurers, consumer and health care provider groups. The Amendment Rules incorporate a technical amendment recommended during the consultation process.

Sections 1-4 of the Amendment Rules commence on the day after it is registered in the Federal Register of Legislation. Schedule 1 to the Amendment Rules will commence at the same time as Part 4 of Schedule 5 of the Amendment Act 2018, that is, the day after that Act receives Royal Assent.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

DETAILS OF THE *PRIVATE HEALTH INSURANCE (COMPLYING PRODUCT) AMENDMENT (TERMINATING PRODUCTS) RULES 2018*

Section 1 Name of Rules

Section 1 provides that the instrument is the *Private Health Insurance (Complying Product) Amendment (Terminating Products) Rules 2018* (the Amendment Rules).

Section 2 Commencement

Section 2 sets out the commencement dates for the Amendment Rules. The technical provisions in sections 1 to 4 commence on the day after the Amendment Rules are registered on the Federal Register of Legislation. The active provisions in Schedule 1 of the Amendment Rules will commence at the same time as Part 4 of Schedule 5 to the *Private Health Insurance Legislation Amendment Act 2018* commences (the day after the Act receives Royal Assent).

Section 3 Authority

Section 3 provides that the Authority for the Amendment Rules is section 333-20 of the *Private Health Insurance Act 2007* (the Act).

Section 4 Schedules

Section 4 provides that the Schedule to the Amendment Rules amends the *Private Health Insurance (Complying Product) Rules 2015*.

Schedule 1 – Amendments

Private Health Insurance (Complying Product) Rules 2015

Item 1 – Rule 9AA

Rule 9AA is expressed as being made for the purpose of subparagraph 78-1(5A)(c) of the Act, and sets out the following matters that an insurer must communicate to the adult insured under a policy where the insurer proposes terminating a product or product subgroup and transferring an adult to a new policy:

- (a) advice that their policy is part of a product or product sub-group that is terminating;
- (b) that people insured under the policy are to be transferred to another insurance policy and the date of transfer;
- (c) that the insured people may choose to transfer to a different policy, but if they do not choose a different policy by the transfer date they will be transferred to the specified default policy on the transfer date;
- (d) details about the default policy:
 - the relevant standard information statement;

- premium for the default policy, including any premium increases associated with lifetime health cover provisions in Part 2-3 of the Act, and any discounts that might apply;
 - differences between the excesses or co-payments payable under the terminating policy and the default policy;
 - any services covered under the terminating policy that will not be covered under the default policy;
- (e) other details about the transfer:
- that if a person transfers from an old terminating policy to a new policy (either of their own choice or the default) they will be considered to have satisfied any waiting periods for hospital or hospital-substitute treatments that are covered by both the old and new policies to the extent that they satisfied the waiting periods under the old policy;
 - that if a person transfers from an old terminating policy to a default policy and then moves to another policy (the replacement policy):
 - where there are treatments under the replacement policy that were not covered on the default policy, they may have to serve waiting periods under the replacement policy even where those treatments had been covered by the original terminating policy;
 - where the default policy had higher excesses or co-payments than the replacement policy, those higher amounts under the default policy might continue to apply for a period of time under the replacement policy.

These provisions ensure that consumers are well informed about changes to their policies when insurers decide not to continue to offer certain products or product sub-groups. The information will equip consumers to decide about the consequences of moving to a default policy specified by the insurer, and also the timeline and implications for the timing of their decision should they decide to move to a different policy.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Private Health Insurance (Complying Product) Amendment (Terminating Products) Rules 2018

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 (Complying Product) Amendment (Terminating Products) Rules 2018* amends the *Private Health Insurance (Complying Product) Rules 2015* to set out requirements for insurers to notify adult policyholders of certain matters when they hold a product that will be terminated. Policyholders can then choose a new policy, or will be transferred to a default policy as set out in the information provided to them.

Human rights implications

This legislative instrument engages Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights by assisting with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Private health insurance regulation assists with the advancement of these human rights by improving the governing framework for private health insurance in the interests of consumers. Private health insurance regulation aims to encourage insurers and providers of private health goods and services to provide better value for money to consumers, to improve information provided to consumers of private health services to allow consumers to make more informed choices when purchasing services, and requires insurers not to differentiate the premiums they charge according to individual health characteristics such as poor health.

Conclusion

This legislative instrument is compatible with human rights because it advances the protection of human rights.

Susan Azmi

Acting Assistant Secretary

Private Health Insurance Branch

Medical Benefits Division

Department of Health