

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

*Private Health Insurance (Reforms)
Amendment Rules (No. 2) 2018*

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) authorises the Minister for Health, by legislative instrument, to make specified *Private Health Insurance Rules* providing for matters required or permitted by the corresponding Chapter, Part or section to be provided or necessary or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

The *Private Health Insurance (Reforms) Amendment Rules (No. 2) 2018* (the Amendment Rules) makes amendments to the *Private Health Insurance (Reforms) Amendment Rules 2018* (the Principal Rules), which in turn amend the *Private Health Insurance (Complying Product) Rules 2015*. The amendments to the Amendment Rules relate to new product tiers and clinical categories for each product tier that commence on 1 April 2019. These additional amendments do not change that commencement date.

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of the Amendment Rules is to amend elements of item 4 of Part 1 of Schedule 3 of the Principal Rules to incorporate new and remove redundant Medicare Benefit Schedule (MBS) item numbers within three separate tables included in this item. These amendments are consequential to changes to the MBS for these items, which will take effect on 1 November 2018. The Principal Rules are being amended to ensure that the changes to the *Private Health Insurance (Complying Product) Rules 2015* that commence on 1 April 2019 for product tiers and clinical categories provisions reflect the updated MBS items.

Background

On 13 October 2017, the Government announced a package of reforms designed to make private health insurance simpler and more affordable for all Australians. The *Private Health Insurance Legislation Amendment Act 2018* amended the *Private Health Insurance Act 2007* and associated legislation to enable a number of reforms, as well as establishing a framework to support the implementation of some reforms through subordinate legislation.

The Principal Rules include amendments to introduce new product tiers and clinical categories for hospital cover in the *Private Health Insurance (Complying Product) Rules 2015*. The amendments set out new rules to categorise hospital products as either gold, silver, bronze or basic, depending on the services they cover, and to require insurers to use a defined set of clinical categories to describe the coverage they provide. To assist in the administration

of private health insurance, items included on the MBS that can be provided in hospitals have been allocated in Schedule 3 of the Principal Rules to:

- Schedule 5, column 3 – for MBS items that are relevant to hospital treatments within the scope of cover of the relevant clinical category;
- Schedule 6 – for MBS items that are relevant to treatments commonly used across a number of the clinical categories listed in Schedule 5; and
- Schedule 7 - MBS items that are relevant to treatments that are commonly used to support the provision of another primary treatment (eg, pathology, and anaesthetics).

When a health insurance policy covers a clinical category it must cover all hospital treatment within the scope of cover identified in Schedule 5 column 2 of the Principal Rules. The scope of cover is not limited to the MBS items allocated to the category. For the convenience of insurers and consumers, each MBS item has been allocated to the category or list where it is most likely to be relevant.

As there are changes to MBS items commencing on 1 November 2018, the Amendment Rules provide consequential changes to the allocation of those MBS items to clinical categories or to the common and support treatment lists.

The creation of gold, silver, bronze and basic product tiers, with related clinical categories and MBS item allocation, will provide consumers with greater certainty about the treatments covered by health insurance products. Consumers will be able to more easily understand and compare competing policies.

Commencement

The Amendment Rules will commence on 1 November 2018.

Details

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

Consultation

MBS item changes for 1 November 2018 implement decisions agreed by Government in relation to new and redundant MBS Items following recommendations of the Medical Services Advisory Committee (MSAC) and the MBS Review Taskforce (the Taskforce).

As part of the MSAC process, consultation was undertaken on the MBS item changes with professional bodies, consumer groups, the public and clinical experts for all applications considered by MSAC.

The Taskforce's recommendations were made on the basis of work by the Diagnostic Imaging Clinical Committee, Endocrinology Clinical Committee, Spinal Surgery committee, Dermatology, Allergy and Immunology Clinical Committee and Thoracic Medicine Clinical Committee. The recommendations were released for public consultation prior to the finalisation of its recommendations to Government.

Consultation was undertaken with the principal peak organisations for the private health insurance industry about the consequential amendments to allocation of MBS items to clinical categories and the common and support treatments lists in the Amendment Rules. The amendments are machinery in nature. They apply the approach to allocation of the relevant MBS items that was the subject of previous consultation for the Principal Rules.

Statement of Compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument. The Statement of Compatibility has been prepared to meet that requirement and is included at **Attachment B**.

**DETAILS OF THE *PRIVATE HEALTH INSURANCE (REFORMS)*
*AMENDMENT RULES (No. 2) 2018***

Section 1 Name of Rules

Section 1 provides that this instrument is the *Private Health Insurance (Reforms) Amendment) Rules (No. 2) 2018* (the Amendment Rules).

Section 2 Commencement

Section 2 sets out when the Amendment Rules commence, which is 1 November 2018.

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 Schedule 1 to the Amendment Rules amends provisions in the *Private Health Insurance (Reforms) Amendment Rules 2018* that come into effect on 1 April 2019. These amendments ensure that the changes to the *Private Health Insurance (Complying Product) Rules 2015* that commence on 1 April 2019 for product tiers and clinical categories provisions reflect the updated MBS items.

Schedule 1 – Amendments

Item 1 Item [4] of Schedule 3 (table to section 2 of Schedule 5)

Item 1 amends Item 4 of Schedule 3 of the Principal Rules to omit the table set out in section 2 of Schedule 5 and substitute an amended table in Schedule 5 which updates selected MBS item numbers to ensure the MBS item numbers set out in the table are consistent with the MBS as at 1 November 2018. Column 3 of the table sets out certain hospital treatments that must be covered (identified by their individual MBS item number) that are in the scope of cover of a clinical category in relation to which a policy provides hospital cover.

The effect of this amendment includes a significant number of changes to the MBS items mentioned for the clinical category “back, neck and spine” (55 new MBS items and 65 MBS items deleted). There are also some deletions and new numbers in other clinical categories, including new items in “Back, neck and spine”, “Skin”, “Sleep studies”, “Breast surgery (medically necessary)”, “Assisted reproductive services”, “Eye (not cataracts)”, and “Kidney and bladder”.

Details about specific MBS item changes taking effect on 1 November 2018 can be found on the Department of Health MBS Online website.

Item 2 Item [4] of Schedule 3 (table to section 1 of Schedule 6)

Item 2 amends Item 4 of Schedule 3 of the Principal Rules to omit the table set out in section 1 of Schedule 6 and substitute an amended table which updates selected MBS item numbers to ensure that MBS item numbers set out in the table are consistent with the MBS as at 1 November 2018. This table sets out MBS items that are relevant to treatments commonly used across a number of the clinical categories listed in Schedule 5.

The effect of this amendment is to delete two MBS items and insert four MBS items.

Details about specific MBS item changes taking effect on 1 November 2018 can be found on the Department of Health MBS Online website.

Item 3 Item [4] of Schedule 3 (table to section 1 of Schedule 7)

Item 1 amends Item 4 of Schedule 3 of the Principal Rules to omit the table set out in section 1 of Schedule 7 and substitute an amended table which updates selected MBS item numbers to ensure that MBS item numbers set out in the table are consistent with the MBS as at 1 November 2018. This table sets out the MBS items that are relevant to treatments that are commonly used to support the provision of another primary treatment (eg, pathology, and anaesthetics).

The effect of this amendment is to delete six MBS items and insert 13 MBS items.

Details about specific MBS item changes taking effect on 1 November 2018 can be found on the Department of Health MBS Online website.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Reforms) Amendment Rules (No.2) 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 (Reforms) Amendment Rules (No. 2) 2018* (the Amendment Rules) amends the *Private Health Insurance (Reforms) Amendment Rules 2018* (the Principal Rules) to omit and substitute individual Medicare Benefit Schedule (MBS) item numbers to ensure that the MBS item numbers set out in the Amendment Rules are consistent with amendments to the MBS which come into effect on 1 November 2018.

The inclusion of MBS items in the Principal Rules are part of the reforms to simplify the nomenclature of, and introduce standardised clinical categories for, private health insurance policies offering hospital cover. The effect of these reforms is to make it easier for consumers to understand the information they receive about insurance policies and select policies best suited for their needs.

Human rights implications

This legislative instrument engages Article 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 the right to health 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 and advance the protection of the human right to health.

Susan Azmi
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