

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

*Private Health Insurance (Reforms)
Amendment Rules (No. 3) 2018*

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) authorises the Minister for Health to, by legislative instrument, 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.3) 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 Complying Product Rules). These additional amendments do not change the commencement dates for amendments to the Complying Product Rules as implemented by the Principal Rules.

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 Medicare Benefit Schedule (MBS) item numbers within one of the tables included in this item. These amendments are consequential to changes to the MBS on 1 November 2018 for one of these items, and for changes which will take effect on 1 January 2019 for the other. The Principal Rules are being amended to ensure that the changes to the Complying Product Rules that commence on 1 April 2019 for product tiers and clinical categories provisions reflect the updated MBS items.

The Amendment Rules will also make two further amendments to the Principal Rules to:

- enable private health insurers to provide a more precise description of the length of time remaining until an insured person has reached 10 continuous years of cover and their Lifetime Health Cover loading is removed; and
- ensure that a hospital that is already eligible to receive second-tier default benefits will continue to be eligible for a period ending 60 calendar days after the date on which its accreditation against the National Safety and Quality Health Service Standards is due to expire.

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 set out the minimum requirements private health insurers need to meet to inform insured persons about their private health insurance products and to support the Department of Health's administration of hospitals' applications for eligibility for second-tier default benefits.

The Principal Rules also include amendments to introduce new gold/silver/bronze/basic product tiers and related clinical categories for hospital cover in the Complying Product Rules. This includes allocating all hospital treatment MBS items to specified groups to provide clarity in the administration of treatments to be covered by insurers for clinical category arrangements.

The amendments to the Complying Product Rules for product tiers and clinical categories do not commence until 1 April 2019. In the meantime, changes to the MBS items are occurring. As there are further changes to MBS items commencing on 1 January 2019, the Amendment Rules provide consequential changes to the allocation of those MBS items for the clinical category arrangements.

The introduction of 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 commence on the day after this instrument is registered and on later dates, as set out in the following table.

Provisions	Amendment Topic	Commencement
Sections 1 to 4	Technical	The day after this instrument is registered.
Schedule 1	Lifetime Health Cover information. Allocation of MBS items (Products tiers and clinical categories).	1 January 2019
Schedule 2	Second tier administrative reforms	31 December 2018

Details

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

Consultation

The addition of relevant items for the MBS implements decisions agreed by Government following recommendations of the Medical Services Advisory Committee (MSAC).

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.

Peak private health insurance organisations were consulted about the consequential amendments to allocate additional MBS items to the support treatments list of 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. 3) 2018***

Section 1 Name of Rules

Section 1 provides that this instrument is the *Private Health Insurance (Reforms) Amendment) Rules (No. 3) 2018* (the Amendment Rules).

Section 2 Commencement

Section 2 sets out when the Amendment Rules commence, which is set out in the following table.

Provisions	Amendment Topic	Commencement
Sections 1 to 4	Technical	The day after this instrument is registered.
Schedule 1	Lifetime Health Cover information. Allocation of MBS items (Products tiers and clinical categories)	1 January 2019
Schedule 2	Second tier administrative reforms	31 December 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 an instrument specified in a Schedule to the Amendment Rules is amended or repealed as set out in items in the schedule concerned. There are two amending schedules contained within the Amendment Rules.

Schedule 1 – Amendments commencing 1 January 2019
Private Health Insurance (Reforms) Amendment Rules 2018

Item [1]

Item [6] Part 2 of Schedule 2, subparagraph 15(2)(b)(ii)

Item [1] amends Item 6 of Schedule 2 to ensure new subparagraph 15(2)(b)(ii) provides for a more precise description of the length of time remaining until an insured person has reached 10 continuous years of cover and their Lifetime Health Cover loading is removed. The amendments allow for this period of time to be described in terms of the number of years, months and days (or any of those periods that is applicable). Insurers could choose to just state a number of years if there is a large number of years left, or could say precisely the number of days remaining. Insurers may choose to provide other information. For example, they may choose to advise the date when 10 years of continuous cover will be reached, and information about the assumptions and related rules for calculating the time remaining.

Items [2] and [3]

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

Items 2 and 3 amend Item 4 of Schedule 3 of the Principal Rules to insert two new Medicare Benefits Schedule (MBS) item numbers (72814 and 73344) in the table set out in section 1 of Schedule 7 to ensure that MBS item numbers included in the table are consistent with the MBS as at 1 January 2019. 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 two new MBS item numbers apply to individual pathology tests, which are required for assessment of a patient's eligibility to access specific cancer-related pharmaceuticals under the Pharmaceutical Benefits Scheme.

Details about specific MBS item changes already in effect or taking effect on 1 January 2019 can be found on the Department of Health MBS Online website.

Schedule 2 – Amendments commencing 31 December 2018

Private Health Insurance (Reforms) Amendment Rules 2018

Item [1]

Item [9] of Schedule 4 subrule 7E(3)

Item 1 amends Item [9] of Schedule 4 so that under new subrule 7E(3) a hospital will be included in the second-tier eligible hospitals class for a period ending 60 calendar days after the date on which its accreditation against the National Safety and Quality Health Service Standards is due to expire. The effect of this amendment is to ensure that if a hospital is not reaccredited until shortly before an earlier period of accreditation has ended, it will have time to reapply to be included in the second-tier eligible hospitals class and for the Minister for Health, or the Minister's delegate, to consider the application within the 60 days specified in 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 (Reforms) Amendment Rules (No.3) 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. 3) 2018* (the Amendment Rules) amends the *Private Health Insurance (Reforms) Amendment Rules 2018* (the Principal Rules) to insert additional individual Medicare Benefit Schedule (MBS) item numbers to ensure that the MBS item numbers set out in the Amendment Rules are consistent with the MBS as at 1 January 2019.

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.

The Amendment Rules will also make two further amendments to the Principal Rules. One will enable private health insurers to provide a more precise description of the length of time remaining until an insured person has reached 10 continuous years of cover and their Lifetime Health Cover loading is removed. The other will ensure that a hospital that is already eligible to receive second-tier default benefits will continue to be eligible for a period ending 60 calendar days after the date on which its accreditation against the National Safety and Quality Health Service Standards is due to expire.

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. The additional amendments implemented by the legislative instrument do not deviate from and continue to support that overall purpose.

Conclusion

This legislative instrument is compatible and advance the protection of the human right to health.

Andrew Simpson
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