

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Benefit Requirements) Rules* providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient to be provided in order to carry out or give effect to Part 3-3 of the Act.

Purpose

The *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* (the Amendment Rules) amends Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules).

The purpose of the amendment to Schedule 4 of the Principal Rules is to update the minimum benefits payable by private health insurers per night for nursing-home type patients (NHTP) at public hospitals in some states and at private hospitals nationally. The changes reflect the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance. The amendments are administrative in nature and do not substantively alter existing arrangements.

Background

The Principal Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatment. Schedules 1 to 5 of the Principal Rules set out the minimum levels of benefits which are payable for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), nursing-home type patients (Schedule 4) and second-tier default benefits (Schedule 5).

The minimum benefits payable per night for hospital treatment provided to NHTPs in Schedule 4 of the Principal Rules is subject to review and change twice annually, to reflect the indexation applied to the Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance (Pension and Rental Assistance Rates). The latest indexation of these rates takes effect on 20 March 2019.

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

Consultation

On 25 February 2019, States and Territories were asked whether they would increase the NHTP contribution and accommodation rates in their jurisdiction in line with increases in the Pension and Rental Assistance Rates which take effect on 20 March 2019.

New South Wales and Tasmania have advised that they will increase the NHTP accommodation rates in their public hospitals from 20 March 2019. The Northern Territory have advised they will increase the NHTP accommodation rates from 1 May 2019. The

increase will bring the Northern Territory in line with the other States and Territories rates. The Australian Capital Territory, Queensland, South Australia, Victoria and Western Australia have advised they are not increasing their accommodation rates at this time.

No specific consultation was undertaken in relation to Schedule 1, item 2 of the Amendment Rules regarding private hospitals because the change is administrative in nature and linked to the twice annual Pension and Rental Assistance Rates increase. The change does not substantially alter existing arrangements.

Schedule 1 of the Amendment Rules will commence on 20 March 2019 and Schedule 2 will commence on 1 May 2019 (to reflect the delayed Northern Territory increase).

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

DETAILS OF THE *PRIVATE HEALTH INSURANCE (BENEFIT REQUIREMENTS) AMENDMENT (No. 2) RULES 2019*

Section 1 Name

Section 1 provides that the title of the Rules is the *Private Health Insurance (Benefit Requirements) Amendment Rules (No.2) 2019* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the Schedule 1 of the Amendment Rules commences on 20 March 2019 and Schedule 2 of the Amendment Rules commences on 1 May 2019.

Section 3 Authority

Section 3 provides that the Amendment Rules are made under item 3A of the table in section 333-20 of the *Private Health Insurance Act 2007*.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments commencing 20 March 2019

Schedule 4, clause 6 (Table 1, table item dealing with New South Wales)

Item 1 of Schedule 1 provides that the table item dealing with New South Wales in Table 1 of clause 6 in Schedule 4 of the Principal Rules is amended by updating the minimum benefit payable per night for nursing-home type patients from \$127.10 to \$129.30

Schedule 4, clause 6 (Table 1, table item dealing with Tasmania)

Item 2 of Schedule 1 provides that the table item dealing with Tasmania in Table 1 of clause 6 in Schedule 4 of the Principal Rules is amended by updating the minimum benefit payable per night for nursing-home type patients from \$145.55 to \$147.10.

Schedule 4, clause 6 (Table 2)

Item 3 of Schedule 1 provides that Table 2 of clause 6 in Schedule 4 of the Principal Rules is amended by updating the minimum benefit payable per night from \$50.45 to \$49.80 for nursing-home type patients in private hospitals.

Schedule 2 – Amendments commencing 1 May 2019

Schedule 4, clause 6 (Table 1, table item dealing with the Northern Territory)

Item 1 of Schedule 2 provides that the table item dealing with the Northern Territory in Table 1 of clause 6 in Schedule 4 of the Principal Rules is amended by updating the minimum benefit payable per night for nursing-home type patients from \$90.69 to \$125.00.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019

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 (Benefit Requirements) Amendment Rules (No. 2) 2019* amend Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* to update the level of the minimum benefits payable by private health insurers for Nursing-Home Type Patients (NHTP) at public hospitals in some States and at private hospitals nationally. The changes reflect the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance. The amendments are administrative in nature and do not substantively alter existing arrangements.

Human rights implications

This Legislative Instrument engages Article 12 of the International Covenant on Economic, Social and Cultural Rights, the right to health, 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.

As the amendments implemented by this Legislative Instrument ensure the level of benefits reflects the indexation to pension basic rate and rental assistance, insurers and providers of private health goods and services are required to update the benefits payable to insured person who are NHTPs. These changes are consequential on the changes to the indexation and do not alter existing arrangements.

Conclusion

This Legislative Instrument is compatible with human rights because these changes continue to ensure that existing arrangements that advance the protection of human rights are maintained.

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