

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Complying Product) 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 (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 Rules (No. 2) 2019* (the Amendment Rules) amend Section 8A of the *Private Health Insurance (Complying Product) Rules 2015* (the Principal Rules). The purpose of the amendments to section 8A is to update the patient contribution payable per night for nursing-home type patients (NHTP) at public hospitals in each State and Territory and at private hospitals nationally.

Background

Section 8A of the Principal Rules sets the patient contribution for privately insured NHTPs by restricting the amount of benefit that private health insurers pay for each day of NHTP hospital treatment at a hospital. The amount of benefit is restricted to the hospital's charge less the patient contribution amount.

The Amendment Rules makes minor changes to the definition of 'patient contribution' in subsection 8A(3) of the Principal Rules by updating the NHTP contribution rate at public hospitals in each State and Territory and private hospitals nationally. Changes to the NHTP contribution rate reflect the indexation applied to the Adult Pension Basic Rate and the Maximum Daily Rate of Rental Assistance (Pension and Rental Assistance Rates), which took effect on 20 March 2019. The amendments are administrative in nature and do not substantively alter existing arrangements.

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 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, Queensland, South Australia, Tasmania, Western Australia and Victoria advised that they will increase the NHTP contribution rates in their public hospitals from 20 March 2019 to \$61.30. The Northern Territory has advised they will increase the NHTP contribution to \$61.30 with effect 1 May 2019 – this will be in line with their own legislative amendments. The Australian Capital Territory advised that they are not increasing their NHTP contribution rates at this time.

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 (COMPLYING PRODUCT)
AMENDMENT RULES (No. 2) 2019***

Section 1 Name

Section 1 provides that the title of the Rules is the *Private Health Insurance (Complying Product) 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 3 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 this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing 20 March 2019

Item 1 – Subsection 8A(3) (paragraph (a) of the definition of *patient contribution*)

Subsection 8A(3) of the Principal Rules sets out the patient contribution for privately insured nursing-home type patients (NHTPs) at public hospitals.

Item 1 of Schedule 1 to the Amendment Rules provides that paragraph (a) of the definition of *patient contribution* in the Principal Rules is amended by updating the NHTP contribution at public hospitals in all States but not the Australian Capital Territory and the Northern Territory.

Item 2 – Subsection 8A(3) (paragraph (b) of the definition of *patient contribution*)

Subsection 8A(3) of the Principal Rules sets out the patient contribution for privately insured NHTPs at private hospitals.

Item 2 of Schedule 1 of the Amendment Rules provides that paragraph (b) of the definition of *patient contribution* in the Principal Rules is amended by updating the NHTP contribution at private hospitals in Australia to \$61.30.

Schedule 2—Amendments commencing 1 May 2019

Item 1 – Subsection 8A(3) (subparagraph (a)(iii) of the definition of *patient contribution*)

Item 1 of Schedule 2 to the Amendment Rules provides that subparagraph (a)(iii) of the definition of *patient contribution* in the Principal Rules is amended by updating the NHTP contribution at public hospitals in the Northern Territory to \$61.30.

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 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 (Complying Product) Amendment Rules (No. 2) 2019* amend paragraphs (a) and (b) of the definition of patient contribution in subsection 8A(3) of the *Private Health Insurance (Complying Product) Rules 2015* to update the level of the patient contribution payable per night for Nursing-Home Type Patients (NHTP) at public hospitals in some States and private hospitals nationally. The changes reflect the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance, which took effect on 20 March 2019. 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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