

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

*Private Health Insurance (Complying Product)
Amendment Rules (No. 3) 2019*

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 (Complying Product) Amendment Rules (No.3) 2019* (the Amendment Rules) make amendments to the *Private Health Insurance (Complying Product) 2015* (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 Schedule 7 (Support treatments list) of the Principal Rules to omit from the itemised list of Medicare Benefits Schedule (MBS) items in the “support treatments list” any MBS item numbers that are listed in the MBS pathology services table or diagnostic imaging table, and instead include by textual reference the relevant MBS items listed in those tables. This is a technical amendment to the way items are referred to. It is not intended to change the approach to MBS items included in the support treatments lists for the purpose of product tier and clinical category arrangements in the Principal Rules.

The diagnostic imaging services table is made under section 4AA of the *Health Insurance Act 1973* (the Health Insurance Act) and the pathology services table is made under section 4A of the same Act.

The support treatments list is at Schedule 7 to the Principal Rules, as implemented by Schedule 3 of the *Private Health Insurance (Reforms) Amendment Rules 2018*. The support treatment list is principally diagnostic and pathology items. It also includes other MBS items which are commonly used to support the provision of a primary treatment, which may be a treatment identified in an MBS item in Schedule 5 or Schedule 6 of the Principal Rules.

A form of descriptive words will be inserted into Schedule 7 so an MBS item:

- listed, at the time of a person’s treatment, in the MBS pathology services table or diagnostic imaging table (including those deemed to be an MBS pathology or

diagnostic imaging service by virtue of a determination under section 3C of the Health Insurance Act); and

- not separately listed against a clinical category or the common treatments list in the Principal Rules,

is included in the “support treatments list”. MBS item numbers which are neither diagnostic imaging nor pathology items will be retained in a table set out in Schedule 7.

This amendment is intended to keep the required scope of cover clear for insurers and the public more generally, but reduce the administrative burden of frequent amendments and concomitant compilations to the Principal Rules due to the frequency of changes for diagnostic imaging and pathology MBS items

The Amendment Rules will also:

- omit or include individual MBS item numbers to ensure that the MBS items set out in the common treatments list, Schedule 6 of the Principal Rules, are consistent with the MBS as at 1 April 2019; and
- amend the definition of **MBS item** in Rule 4 of the Principal Rules to include in the definition an item deemed to be in general medical, diagnostic imaging or pathology services tables by virtue of a determination under section 3C of the Health Insurance Act.

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 were amended, effective 1 April 2019, to introduce new gold/silver/bronze/basic product tiers and related clinical categories for hospital cover. This included 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 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	Definition of MBS item Support treatments list Allocation of MBS items (common treatments list)	Immediately after the commencement of Part 1 of Schedule 3 to the <i>Private Health Insurance (Reforms) Amendment Rules 2018</i> .

Details

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

Consultation

The addition and omission of relevant MBS items in the Principal Rules reflect decisions made by Government following recommendations of the MBS Review Taskforce (following stakeholder engagement) and consultations with medical professional bodies.

Peak private health insurance organisations were consulted about the approach to the amendments to Schedules 6 and 7 of 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 (COMPLYING PRODUCT)*
AMENDMENT RULES (No. 3) 2019**

Section 1 Name of Rules

Section 1 provides that this instrument is the *Private Health Insurance (Complying Product) Amendment Rules 2019* (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	Definition of MBS item Support treatments list Allocation of MBS items (Products tiers and clinical categories)	Immediately after the commencement of Part 1 of Schedule 3 to the <i>Private Health Insurance (Reforms) Amendment Rules 2018</i> . Part 1 of Schedule 3 commences 1 April 2019.

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 April 2019

Private Health Insurance (Complying Product) Amendment Rules (No. 3) 2019

Item [1]

Rule 4 Definitions

Item 1 amends the definition of ***MBS item*** set out in Rule 4 of the Principal Rules to include in the definition an item deemed to be in the general medical, diagnostic imaging or pathology services tables by virtue of a determination under section 3C of the Health Insurance Act.

Item [2]

Schedule 6 – common treatments list

Item 2 omits the following MBS items from the common treatments list - 20, 35, 43, 51, 92, 93, 95, 96, 183, 188, 202 and 212. These are consequential amendments as these items were removed from the MBS with effect on 1 March 2019.

Item 2 also inserts MBS item 115 into the common treatments list. This is a consequential amendment following addition of this professional attendance item to the MBS with effect on 1 April 2019.

More information about the MBS changes for those items can be found on the Department of Health MBS Online website.

Item [3]

Schedule 7 - support treatments list

Item 3 repeals Schedule 7 and substitutes a new Schedule 7. This new schedule provides for two ways in which MBS items included in the support treatments list can be described. The first way is by reference to other regulations and instruments made under the Health Insurance Act. The second is by inclusion of specific MBS items in the schedule.

New clause 1 of Schedule 7 provides for the support treatments list to be:

- specific MBS items enumerated in a table and intended to be services other than diagnostic imaging or pathology; and
- MBS items not separately listed against a clinical category or the common treatments list but, at the time of a person's treatment, listed in the diagnostic imaging or pathology services tables (including items deemed to be in those tables by virtue of a determination under section 3C of the Health Insurance Act).

Rule 11F(5)(b) of the Principal Rules limit the incorporation of pathology and diagnostic imaging items in Schedule 7 to those MBS items that are hospital treatments.

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. 3) 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. 3) 2019* (the Amendment Rules) amends the *Private Health Insurance (Complying Product) Rules 2015* (the Principal Rules) to

- amend Schedule 7 of the Principal Rules so that certain pathology and diagnostic imaging Medicare Benefit Schedule (MBS) items are included by textual reference to the MBS item tables made under other regulations and determinations made under the *Health Insurance Act 1973*, rather than by enumerating those items separately in Schedule 7 of the Principal Rules. This is a technical amendment to the way items are referred to. It is not intended to change the approach to MBS items included in the support treatments lists for the purpose of product tier and clinical category arrangements in the Principal Rules.
- omit 12 and include one individual MBS item number to ensure that the MBS items set out in the common treatments list, Schedule 6 of the Principal Rules, are consistent with the MBS as at 1 April 2019; and
- amend the definition of **MBS item** in Rule 4 of the Principal Rules to include in the definition an item deemed to be in general medical, diagnostic imaging or pathology services tables by virtue of a determination under section 3C of the Health Insurance Act.

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 amendments to Schedule 7 are intended to keep the required scope of cover clear for insurers and the public more generally, but reduce the administrative burden of frequent amendments and concomitant compilations to the Principal Rules due to the frequency of changes for diagnostic imaging and pathology MBS items. This will also provide clarity and consistency with other statutory instruments listing MBS items.

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.

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