

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Benefit Requirements) Amendment Rules (No. 3) 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 purpose of the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 3) 2019* (the Amendment Rules) is to amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules) as a consequence of the addition of new item 115 to the Medicare Benefits Schedule (MBS) by the *Health Insurance (Section 3C General Medical Services – Unscheduled specialist attendance) Determination 2019* with effect from 1 April 2019.

Consequently, the Amendment Rules amends the Principal Rules by adding MBS item number 115 to clause 8 of Schedule 3 of the Principal Rules.

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

### 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 benefit which are payable for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), nursing-home type patients (NHTP) (Schedule 4) and second tier default benefits (Schedule 5).

Schedule 1 of the Principal Rules categorises MBS item numbers into overnight patient classifications comprising ‘Advanced surgical patient’, ‘Obstetric patient’, ‘Surgical patient’, ‘Psychiatric patient’, ‘Rehabilitation patient’ and ‘Other patients’. Schedule 3 sets out MBS item numbers for the same day hospital accommodation benefits which are payable for privately insured patients in all states and territories.

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.

Schedule 5 of the Principal Rules requires a health insurer to pay second tier default benefits for most episodes of hospital treatment provided in private hospital facilities that are specified in Schedule 5 if the health insurer does not have a negotiated agreement with the hospital. Schedule 5 generally sets a higher minimum level of benefit (for overnight treatment

and day only treatment provided in specified facilities) than the minimum benefit set for such treatment by Schedules 1, 2 and 3 of the Principal Rules.

### Consultation

Medical advice was sought from medical officers within the Department of Health to determine the appropriate level of accommodation benefits in respect of the MBS item added to the Principal Rules by the Amendment Rules.

The Amendment Rules implement changes to reflect the update made to the MBS by the instrument outlined in the Purpose section.

The above instrument listed in the Purpose section implements a decision agreed by the Australian Government following recommendations of the Medical Services Advisory Committee (MSAC). The change in the determination was released for public comment prior to finalisation of the recommendations to Government as below.

As part of the MSAC process, consultation was undertaken with professional bodies, consumer groups, the public and clinical experts for applications put forward for consideration by the Committee.

The Amendment Rules commence on 1 April 2019.

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

## ATTACHMENT

### DETAILS OF THE *PRIVATE HEALTH INSURANCE (BENEFIT REQUIREMENTS) AMENDMENT RULES (No. 3) 2019*

#### **Section 1 Name of Rules**

Section 1 provides that the title of the instrument is the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 3) 2019* (the Amendment Rules).

#### **Section 2 Commencement**

Section 2 provides that the Amendment Rules commence on 1 April 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 the instrument specified in the Schedule of the Amendment Rules will be amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

#### **Schedule 1 – Amendments**

##### **Items 1 - Schedule 3, clause 8 (paragraphs under the heading “Category 1 – Attendances”)**

Item 1 amends the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules) by adding MBS item number 115 to clause 8 of Schedule 3 of the Principal Rules.

MBS item 115 was added to the MBS by the *Health Insurance (Section 3C General Medical Services – Unscheduled specialist attendance) Determination 2019*, which commences on 1 April 2019.

## 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. 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 (Benefit Requirements) Amendment Rules (No. 3) 2019* amends Schedule 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Principal Rules) to incorporate Medicare Benefits Schedule (MBS) item number 115 to the Principal Rules, as a consequence of that MBS item being added to the MBS by the *Health Insurance (Section 3C General Medical Services – Unscheduled specialist attendance) Determination 2019*.

### **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.

The amendments implemented by this Legislative Instrument support access to health care reflecting current medical practice by ensuring health insurers provide an appropriate level of accommodation benefits for medical services affected by the MBS item change.

### **Conclusion**

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

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