

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 1) 2019

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health (the Minister) to make Private Health Insurance Rules. Specifically:

- item 3 of the table under section 333-20 of 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;
- item 3A of the table under subsection 333-20 of 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 Legislation Amendment Rules (No. 1) 2019 (the Legislation Amendment Rules)* is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011*
- *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019*
- *Private Health Insurance (Complying Product) Rules 2015*
- *Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019*

The Legislation Amendment Rules amend the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* and the *Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019* to revise the commencement date for the increase in the minimum benefits payable by private health insurers per night for nursing-home type patients (NHTP) at public hospitals in the Northern Territory.

Both of these instruments originally set the date of the increase as 1 May 2019. The Northern Territory government has since advised that the relevant changes to Northern Territory legislation necessary to enact this provision will not be passed until the May 2019 sittings of the Northern Territory Legislative Assembly.

The Legislation Amendment Rules, therefore, amend Item 3 of the table in subsection 2(1) of the commencement provisions of both the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* and the *Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019* to revise the commencement date of Schedule 2 amendments to these Rules from 1 May 2019 to 1 July 2019.

The Legislation Amendment Rules also amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) and the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) as a consequence of the addition of new items to the Medicare Benefits Schedule (MBS) by the *Health Insurance (Section 3C General Medical Services – Blue Light Cystoscopy) Determination*

2019 and the Health Insurance (Section 3C Diagnostic Imaging Services – Liver and Obstetric MRI Services) Determination 2019 with effect from 1 May 2019. In particular the following amendments are made to the above Rules:

- (a) MBS item numbers 36504, 36505, 36507 and 36508 are added to clause 5(1) of Schedule 3 and MBS item numbers 63454, 63460, 63496, 63545 and 63546 are added to clause 8 of Schedule 3 to the Benefit Requirements Rules:
- (b) MBS item numbers 36504, 36505, 36507 and 36508 are added in column 3 of clause 2 of Schedule 5 in the clinical category “kidneys and bladder” of the Product Complying Rules.

The amendments are administrative in nature and do not substantively alter existing arrangements.

Background

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatment. Schedules 1 to 5 of the Benefit Requirements 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).

Schedule 1 of the Benefit Requirements 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 Benefit Requirements 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 Benefit Requirements 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 Benefit Requirements Rules.

The Complying Product Rules were amended on 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. As specified MBS items are now included in these Rules, any updates

will need to be reflected to ensure currency of the application of the provisions in these Rules.

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

Consultation

The amendments to the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* and *Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019* are in response to a request from the Northern Territory government. On 25 March 2019, the Northern Territory requested the Commonwealth to revise the effective date of the update to the accommodation rates payable per night for nursing-home type patients (NHTP) at public hospitals in the Northern Territory to 1 July 2019.

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 items added to Benefit Requirements Rules by the Legislation Amendment Rules.

The addition of new MBS item numbers made by Legislation Amendment Rules implement decisions agreed by the Australian Government following recommendations of the Medical Services Advisory Committee (MSAC). The change in the determinations were released for public comment prior to finalisation of the recommendations to Government. 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 Legislation Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

DETAILS OF THE *PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT RULES (NO. 1) 2019*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 1) 2019* (the Legislation Amendment Rules)

Section 2 Commencement

Section 2 provides that the Schedules 1 and 3 of the Legislation Amendment Rules commence on 1 May 2019 and the remainder of the instrument commence on the day after registration.

Section 3 Authority

Section 3 provides that the Legislation Amendment Rules are made under 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

Private Health Insurance (Benefit Requirements) Rules 2011

Item 1 - Schedule 3, subclause 5(1)

Item 1 amends the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) by adding MBS item numbers 36504, 36505, 36507 and 36508 to subclause 5(1) of Schedule 3 to these Rules.

These MBS items were added to the MBS by the *Health Insurance (Section 3C General Medical Services – Blue Light Cystoscopy) Determination 2019*, which commences on 1 May 2019.

Item 2 - Schedule 3, clause 8 (paragraph I5 under the heading “Category 5 – Diagnostic Imaging Services”)

Item 2 amends the Benefit Requirements Rules) by adding MBS item numbers 63454, 63460, 63496, 63545 and 63546 to clause 8 of Schedule 3 to these Rules.

These MBS items were added to the MBS by the *Health Insurance (Section 3C Diagnostic Imaging Services – Liver and Obstetric MRI Services) Determination 2019*, which commences on 1 May 2019.

Schedule 2 – Amendments

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

Item 1 – Subsection 2(1), (cell at table item 3, column 2)

Item 1 amends table item 3 of subsection 2(1) of the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* by revising the commencement date to 1 July 2019.

Schedule 3–Amendments

Private Health Insurance (Complying Product) Rules 2015

Item 1 - Schedule 5, clause 2 (cell at table item dealing with the clinical category “kidneys and bladder”, column headed “Treatments that must be covered (MBS items) (see Notes 1, 2 and 3)”

Item 1 inserts new MBS items 36504, 36505, 36507 and 36508 into the third column of the clinical category “kidneys and bladder”. These are consequential amendments following a determination under subsection 3C(1) of the *Health Insurance Act 1973* that these MBS items be treated as if they were specified in the general medical services table. The general medical services table is set out in the regulations made under subsection 4(1) of the *Health Insurance Act 1973*.

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

Schedule 4 –Amendments

Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019

Item 1 – Subsection 2(1) (cell at table item 3, column 2)

Item 1 repeals the cell at column 2 of item 3 of the table and substitutes the date with 1 July 2019 to amend commencement date in relation to the increase in the minimum benefits payable by private health insurers per night for nursing home type patients at public hospitals in the Northern Territory.

Statement of Compatibility with Human Rights

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

Private Health Insurance Legislation Amendment Rules (No. 1) 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

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The Legislation Amendment Rules, therefore, amend Item 3 of the table in subsection 2(1) of the commencement provisions of both the *Private Health Insurance (Benefit Requirements) Amendment Rules (No. 2) 2019* and *Private Health Insurance (Complying Product) Amendment Rules (No. 2) 2019* to revise the commencement date of Schedule 2 amendments from 1 May 2019 to 1 July 2019.

The Legislation Amendment Rules also amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) and the *Private Health Insurance (Complying Product) Rules 2015* (the Product Complying Rules) as a consequence of the addition of new items to the Medicare Benefits Schedule (MBS) by the *Health Insurance (Section 3C General Medical Services – Blue Light Cystoscopy) Determination 2019* and the *Health Insurance (Section 3C Diagnostic Imaging Services – Liver and Obstetric MRI Services) Determination 2019* with effect from 1 May 2019. In particular the following amendments are made to the above Rules:

- (c) MBS item numbers 36504, 36505, 36507 and 36508 are added to clause 5(1) of Schedule 3 and MBS item numbers 63454, 63460, 63496, 63545 and 63546 are added to clause 8 of Schedule 3 to the Benefit Requirements Rules;
- (d) MBS item numbers 36504, 36505, 36507 and 36508 are added in column 3 of clause 2 of Schedule 5 in the clinical category “kidneys and bladder” of the Product Complying Rules.

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 required changes to Northern Territory legislation and new MBS items, insurers and providers of private health goods and services are required to update the benefits payable to insured persons. These changes are consequential on the changes to indexation and MBS items 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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