

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Data Provision) Amendment Rules 2019

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health to, by legislative instrument, make *Private Health Insurance Rules* specified in the second column of the table provided in that provision. In particular, the Minister is authorised to make *Private Health Insurance (Data Provision) Rules* specified in item 9 of the table to provide for matters required or permitted by Part 4-5 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act. Part 4-5 of the Act imposes miscellaneous notification and other obligations on private health insurers.

Purpose

The *Private Health Insurance (Data Provision) Amendment Rules 2019* (the Amendment Rules) amend the *Private Health Insurance (Data Provision) Rules 2018* (the Primary Rules) to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the AI Act), where an Act confers 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 such instrument. The power to amend the Rules relies on subsection 33(3) of the AI Act.

Background

The information required by the Primary Rules to be given to the Secretary is now specified in the following documents, which were approved by the Assistant Secretary of the Data Informatics and Analytics Branch of the Department on the dates indicated:

- GT-Dental Data from Insurers to the Department, approved 6 June 2019;
- HCP1 Data from Insurers to the Department, approved 6 June 2019; and
- HCP2 Data from Insurers to the Department, approved 6 June 2019.

These documents can be found on the Department's website via the following link to the [Hospital Casemix Protocol \(HCP\)](#).

The previous information required by the Primary Rules to be given to the Secretary were specified in the documents approved by the Department on 30 May 2018.

Data specifications are reviewed routinely every year. Following consultation with external stakeholders changes are generally introduced effective 1 July in each financial year.

Changes to the 2019/20 data specifications are designed to align with national metadata standards published in METeOR, the Australian Institute of Health and Welfare's Metadata online registry, and to improve data quality.

Changes to the 2019/20 data specifications include:

- moving to more recent versions of diagnosis and procedure classifications,
- new validation edit rules to highlight errors for correction, and
- care type field to include a new code for mental health care.

These are minor amendments.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. Subsection 323-1(1) of the Act makes it an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty, function or power under the Act, unless the disclosure is an authorised disclosure. The Act allows for a limited set of circumstances to be considered as authorised disclosures, one of which is to enable a person to perform functions in connection with a Medicare program. The collective effect of these provisions limit the way in which the Department deals with information about individuals.

Consultation

The Department has consulted with the private health insurance and private hospital industry through existing working group arrangements. The working groups are comprised of Department and industry stakeholder representatives. Private health insurance and private hospital stakeholder representatives interested in developing the amendments participated in the process. Industry is of the view that it is appropriate for amendments to be managed by this Working Group. Previous amendments to the data specifications have been managed in this way. The amended data specifications are distributed to industry via a Private Health Insurance Circular published by the Department.

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

The Amendment Rules commence on 1 July 2019.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Data Provision) Amendment Rules 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

Private Health Insurance (Data Provision) Rules provide for matters required or permitted by Part 4-5 of the *Private Health Insurance Act 2007* (the Act), or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act.

The *Private Health Insurance (Data Provision) Rules 2018* (the Primary Rules) specify the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

The Private Health Insurance (Data Provision) Amendment Rules 2019 (the Amendment Rules) amend the *Private Health Insurance (Data Provision) Rules 2018* to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

The information required by the Primary Rules as amended is now specified in the following documents, which were approved by the Assistant Secretary of the Data Informatics and Analytics Branch of the Department on the dates indicated:

- GT-Dental Data from Insurers to the Department, approved 6 June 2019;
- HCP1 Data from Insurers to the Department, approved 6 June 2019; and
- HCP2 Data from Insurers to the Department, approved 6 June 2019.

These documents can be found on the Department's website via the following link to the [Hospital Casemix Protocol \(HCP\)](#).

The information which, under these Rules, private health insurers must give to the Secretary does not include personal information about patients (i.e. information from which individual patients could be identified).

Human rights implications

This legislative instrument will engage the human right of privacy but will not result in any limitation of that right.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. Further, Part 6- 8 of the Act makes it an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty, function or power under the Act, unless the disclosure is an authorised disclosure for the purposes of the Act. The effect of this provision is to limit the way in which the Department deals with information about individuals.

Conclusion

This legislative instrument is compatible with human rights as, although it engages the right of privacy in relation to personal information, it will not derogate from that right.

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