

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance Legislation Amendment (No. 3) Rules 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 Legislation Amendment (No. 3) Rules 2019* (the Amendment Rules) make amendments to 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).

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 4 of the Benefit Requirements Rules to update the minimum benefits payable by private health insurers per night for nursing-home type patients (NHTPs) at public hospitals in some states and at private hospitals nationally. The changes take account of the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance;
- Section 8A of the Complying Product Rules to update the daily patient contribution payable by nursing-home type patients for hospital accommodation in public hospitals in some states and territory jurisdictions and to update the daily patient contribution payable by nursing-home type patients for hospital accommodation in all private hospitals. (The changes reflect the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance.)

### **Background**

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatments. Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation 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 (NHTPs, Schedule 4) and second-tier default benefits (Schedule 5).

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.

Section 8A of the Complying Product 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 which chooses to increase this contribution 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 September 2019.

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

#### Commencement

The Amendment Rules commence on 20 September 2019.

#### Details

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

#### Consultation

On 21 August 2019, states and territories were asked whether they would increase the NHTP contribution and accommodation rates in their jurisdiction in line with increases in the Pension and Rental Assistance Rates which take effect on 20 September 2019.

New South Wales, Queensland and Tasmania have advised that they will increase the NHTP accommodation rates in their public hospitals from 20 September 2019, consequently increasing the minimum benefit payable by private health insurers for accommodation. The Northern Territory, the Australian Capital Territory, South Australia and Victoria and Western Australia have advised no change to the minimum benefits payable by private health insurers is required at this time.

All states and territories except the Australian Capital Territory advised that they will increase the NHTP contribution rates in their public hospitals from 20 September 2019 to \$61.80. The Australian Capital Territory advised that it is not increasing its NHTP contribution rate at this time.

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

## ATTACHMENT

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

#### **Section 1 Name**

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

#### **Section 2 Commencement**

Section 2 provides that the instrument commences on 1 July 2019.

#### **Section 3 Authority**

Section 3 provides that the 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 4, clause 6 (table 1, table item dealing with New South Wales)**

Item 1 amends clause 6 of Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirement Rules) to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing-home type patients in public hospitals in New South Wales from \$129.30 to \$131.00.

#### **Item 2 – Schedule 4, clause 6 (table 1, table item dealing with Queensland)**

Item 2 amends clause 6 of Schedule 4 of the Benefit Requirement Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing-home type patients in public hospitals in Queensland from \$129.50 to \$132.50.

#### **Item 3 – Schedule 4, clause 6 (table 1, table item dealing with Tasmania)**

Item 3 amends clause 6 of Schedule 4 of the Benefit Requirement Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in Tasmania from \$147.10 to \$148.30.

#### **Item 4 - Schedule 4, clause 6 (Table 2)**

Item 5 of Schedule 1 provides that Table 2 of clause 6 in Schedule 4 of the Benefit Requirement Rules is amended by updating the minimum benefit payable per night from \$49.80 to \$49.30 for nursing-home type patients in private hospitals.

### **Schedule 2—Amendments**

#### *Private Health Insurance (Complying Product) Rules 2015*

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

Item 1 amends the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to omit the amount of \$61.30 set out in subparagraph 8A(3)(a)(i) in the definition of ‘patient contribution’ and substitute \$61.80 in its place. The effect of this change is that the daily rate for patient contribution (to fees for hospital treatment) payable by nursing-home type patients in all states and the Northern Territory’s public hospitals is \$61.80. The rise in this rate reflects the Australian Government’s indexation of aged pensions and rent assistance on 20 September 2019.

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

Item 2 amends the Complying Product Rules to provide that paragraph (b) of the definition of *patient contribution* in the Principal Rules is amended by updating the nursing-home type patient contribution at private hospitals in Australia to \$61.80.

## 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 (No. 3) 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

The purpose of the *Private Health Insurance Legislation Amendment (No. 3) Rules 2019 (the Amendment Rules)* is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011*
- *Private Health Insurance (Complying Product) Rules 2015*

These Amendment Rules amend Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirement Rules) to update minimum benefits for nursing home type patients at public hospitals in New South Wales, Queensland and Tasmania.

These Amendment Rules also amend the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to update the daily patient contribution payable by nursing home-type patients for hospital accommodation in public hospitals in all states and the Northern Territory and all private hospitals.

#### Human rights implications

Some aspects of the Amendment Rules engage 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 to not differentiate the premiums they charge according to individual health characteristics such as poor health.

### *Analysis*

The amendments relating to the updated minimum benefits and patient contributions for nursing-home type patients at public hospitals in some states and territories in the Benefit Requirement Rules and Complying Product Rules respectively reflect regular indexation practices for both Commonwealth, state and territory jurisdictions and therefore maintain the status quo arrangements. The amendments amending the expression of time for action by private health insurers in the Complying Product Rules are entirely administrative in nature and therefore do not engage human rights.

### **Conclusion**

This Legislative Instrument only engages human rights to the extent that it maintains current arrangements with respect to the regulation of private health insurance. Therefore, this Legislative Instrument is compatible with human rights because these changes continue to ensure that existing arrangements advance the protection of human rights are maintained.

**Brian Kelleher**  
**Assistant Secretary**  
**Private Health Insurance Branch**  
**Medical Benefits Division**  
**Department of Health**