

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Incentives) Amendment Rules (No. 1) 2019*

### **Authority**

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Incentives) Rules* providing for matters required or permitted by Part 2-2, section 206-1 and Part 6-4 of the Act, or necessary or convenient to be provided in order to carry out or give effect to these provisions.

In addition to the power to make this instrument under section 333-20 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

The *Private Health Insurance (Incentives) Amendment Rules (No. 1) 2019* (the Amendment Rules) amend the *Private Health Insurance (Incentives) Rules 2012 (No. 2)* (the Principal Rules).

### **Purpose**

The Amendment Rules amend the Principal Rules to insert a revised section 5A. Section 5A determines the adjustment factor for the purposes of subsection 22-10(5A) of the Act, defined for the purposes of the Principal Rules as the rebate adjustment factor. The rebate adjustment factor is used to uniformly adjust all rebate percentages.

New rule 5A :

updates the formula for calculating the rebate adjustment factor by including the impact of age-based discounts (which from 1 April 2019 become available to persons who are under 30) and rate protection. The rate protection has always been taken into consideration in calculating the industry average premium increase since 2014 and industry is aware of this practice.

### **Background**

The Private Health Insurance Rebate was announced in the 'Tax Reform: not a new tax, a new tax system package' in August 1998. The rebate commenced on 1 January 1999 as a 30% rebate payable for all complying hospital, general and combined (hospital and general) treatment insurance policies.

Higher rebates for older Australians were introduced from 1 April 2005; rebates increased to 35% for policyholders aged 65-69 years and to 40% for those 70 years and over.

From 1 April 2014, the rebate contribution from the Australian Government is calculated based on a weighted average ratio, known as a Rebate Adjustment Factor.

The Rebate Adjustment Factor takes into account the difference between the Consumer Price Index and the industry weighted average increase in premiums.

On 13 October 2017, a package of reforms was announced to make private health insurance simpler and more affordable, including increased excesses, age-based discounts, and standard classification of product coverage from 1 April 2019.

From 1 April 2019, insurers are able to offer premium discounts on hospital cover of two per cent for each year that a person is aged under 30 when they first purchase hospital insurance, to a maximum of 10 per cent for 18 to 25 year olds.

For a consumer on a \$1,500 policy the savings is up to \$150 and for a young family on a \$3,000 policy the savings is up to \$300. The formula is to be amended to include the impact of this saving.

The Explanatory Statement to the *Private Health Insurance (Incentives) Amendment Rules 2014 (No. 1)* confirmed that the formula includes the impact of rate protection. For the avoidance of doubt, the amendments provide that the formula within the Incentive Rules also include this factor. This is not a change to current practice.

#### Commencement

The Amendment Rules commence on 10 January 2020.

#### Details

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

#### Consultation

The Department has consulted with the Australian Prudential Regulation Authority and select actuaries within the private health insurer industry.

**DETAILS OF THE *Private Health Insurance (Incentives) Amendment Rules (No. 1) 2019***

**Section 1 Name**

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

**Section 2 Commencement**

Section 2 provides that the instrument commences on 10 January 2020.

**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 (Incentives) Rules 2012 (No. 2)*

**Item 1**

Item 1 repeals rule 5A of the Principal Rules and inserts a new rule 5A.

Section 5A determines the rebate adjustment factor as a formula for the purposes of subsection 22-15(5A) of the *Private Health Insurance Act 2007* (the Act).

The rebate adjustment factor is calculated as a proportional rebate adjustment so that the rebate levels are reduced by the difference between the growth in premiums and the change in the Consumer Price Index (CPI).

The rebate adjustment factor is calculated to three decimal places. The rebate adjustment factor is expressed as a factor, rounding up where the fourth decimal place is five or more.

This amendment will introduce an additional element to the formula. It will include an age-based discount factor.

This amendment also makes it clear that rate protection applies to the formula. This was specified in the explanatory statement to the *Private Health Insurance (Incentives) Amendment Rules 2014 (No. 1)*.

The *average premium increase for the relevant adjustment year* is the industry average premium increase (including rate protection and age-based discount factor), which is calculated and published by the Department in a private health insurance circular during the course of an adjustment year. The Department publishes the average premium increase each year expressed as a percentage. For the purposes of the rebate adjustment factor, the average premium increase will be expressed as a factor to 4 decimal places equivalent to the percentage figure published by the Department.

The rebate adjustment factor will apply so that the applicable rebate percentage is the same for all insurance policies, subject to income testing reductions.

## Statement of Compatibility with Human Rights

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

### ***Private Health Insurance (Incentives) 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**

The purpose of the *Private Health Insurance (Incentives) Amendment Rules (No. 1) 2019* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Incentives) Rules 2012 (No. 2)* (the Incentive Rules)

These Amendment Rules inserts a new Rule 5A to the Incentives Rules to update the formula for calculating the rebate adjustment factor by including the impact of age-based discounts and to state that rate protection is a variable in the formula.

#### **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.

The amendment Rules do not change the overall private health insurance regulation's support for human right to health.

#### *Analysis*

The amendments relating to the updated formula in relation to the entitlement to rebates by specified persons who hold private health insurance are entirely administrative in nature and therefore do not engage human rights.

**Conclusion**

The Amendment Rules are compatible with human rights because the amendment introduced by these Rules continue to ensure that existing arrangements that advance the protection of human rights are maintained.

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