



Private Health Insurance (Prostheses) Rules (No. 4) 2019

I, Megan Keaney, delegate of the Minister for Health, make the following Rules.

Dated 17 December 2019

Megan Keaney
Acting Assistant Secretary
Office of Health Technology Assessment
Technology Assessment and Access Division
Department of Health

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Repeal	1
5 Definitions	1
Part 2—Benefit requirements	2
6 Listing of, and benefits for, prostheses	2
7 Circumstances in which a prosthesis is provided other than circumstances in which a medicare benefit is payable	3
8 Conditions in relation to the provision of listed prostheses.....	3
9 Benefits for prostheses provided as part of hospital treatment.....	3
10 Benefits for prostheses provided as part of hospital-substitute treatment	6
Part 3—Other	7
11 Timing of applications to have a prosthesis listed.....	7
12 Minister may have regard to recommendations and advice	7
13 Listing criteria for prostheses to be listed in Part C of Schedule 1	7
Schedule 1 – Prostheses List	8

Part 1—Preliminary

1 Name

This instrument is the *Private Health Insurance (Prostheses) Rules (No. 4) 2019*.

2 Commencement

This instrument commences on 1 February 2020.

3 Authority

This instrument is made under item 4 of the table in section 333-20 of the *Private Health Insurance Act 2007*.

4 Repeal

The *Private Health Insurance (Prostheses) Rules (No. 3) 2019*, made on 24 October 2019, is repealed.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) complying health insurance policy;
- (b) hospital-substitute treatment;
- (c) hospital treatment; and
- (d) medicare benefit.

In this instrument:

Act means the *Private Health Insurance Act 2007*.

cardiac home/remote monitoring system includes a component of a cardiac home/remote monitoring system.

certified overnight Type C procedure has the same meaning as in rule 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011*.

certified Type C procedure has the same meaning as in rule 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011*.

consultant physician has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

default minimum benefit has the meaning given by subrule 9(5).

gap permitted prosthesis means a prosthesis of a kind listed in Schedule 1 where an amount is set out for that kind of prosthesis in the column under the heading 'Minimum Benefit' and a different amount is set out in the column under the heading 'Maximum Benefit'.

implantable cardiac event recorder includes a component of an implantable cardiac event recorder.

insulin infusion pump includes a component of an insulin infusion pump.

listed prosthesis means a kind of prosthesis listed in Schedule 1 to these Rules.

listing application has the same meaning as in subsection 72-10(6) of the Act.

listing criteria has the same meaning as in subsection 72-10(6) of the Act.

Medicare Benefit item 38287 has the meaning given by subrule 9(5).

Medicare Benefit item 38290 has the meaning given by subrule 9(5).

Medicare Benefit item 38512 has the meaning given by subrule 9(5).

Medicare Benefit item 38515 has the meaning given by subrule 9(5).

National Law means:

- (a) for a State or Territory other than Western Australia — the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld) as it applies (with or without modification) as law of the State or Territory; or
- (b) for Western Australia — the legislation enacted by the *Health Practitioner Regulation National Law (WA) Act 2010* (WA) that corresponds to the Health Practitioner Regulation National Law.

no gap prosthesis means a prosthesis of a kind listed in Schedule 1 where an amount is set out for that kind of prosthesis in the column under the heading 'Minimum Benefit' and no amount is set out in the column under the heading 'Maximum Benefit'.

private hospital means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the Act that the hospital is a private hospital.

professional attendance has the same meaning as in clause 1.2.4 of the general medical services table being the table prescribed under section 4 of the *Health Insurance Act 1973*.

professional service has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

public hospital means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the Act that the hospital is a public hospital.

registered podiatric surgeon means a podiatric surgeon who holds specialist registration in the specialty of podiatric surgery under the National Law.

Note: The registration requirements for a registered podiatrist for the purposes of these Rules are the same registration requirements for podiatric surgeons as set out in rule 8 of the Private Health Insurance (Accreditation) Rules from time to time.

Regulations means the Health Insurance (General Medical Services Table) Regulations made under section 4 of the *Health Insurance Act 1973* as amended from time to time.

Schedule 1 means Schedule 1 to these Rules.

sum of default minimum benefits has the meaning given by subrule 9(5).

Part 2—Benefit requirements

6 Listing of, and benefits for, prostheses

For item 4 of the table in subsection 72-1(2) of the Act:

- (a) Schedule 1 lists the kinds of prostheses:
 - (i) in relation to which the Minister has granted an application for listing under subsection 72-10(5) of the Act; or

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- (ii) which are listed in accordance with section 12 of the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*; and

Note: Section 12 of the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007* deals with the listing of a prosthesis that was a no gap prosthesis or a gap permitted prosthesis for the purposes of the *National Health Act 1953* immediately before the commencement of the Act.

- (aa) circumstances in which a listed prosthesis is provided for the purposes of paragraph (d) of item 4 of the table in subsection 72-1(2) are set out in rule 7; and
- (ab) conditions that must be satisfied in relation to the provision of a listed prosthesis for the purposes of paragraphs (c) and (d) of item 4 of the table in subsection 72-1(2) are set out in rule 8; and
- (b) rule 9 sets out the method for working out the minimum benefit and maximum benefit for hospital treatment, covered under a complying health insurance policy, that is the provision of a listed prosthesis; and
- (c) rule 10 sets out the method for working out the minimum benefit and maximum benefit for hospital-substitute treatment, covered under a complying health insurance policy, that is the provision of a listed prosthesis.

7 Circumstances in which a prosthesis is provided other than circumstances in which a medicare benefit is payable

For the purposes of paragraph (d) of item 4 of the table in subsection 72-1(2) of the Act, the following circumstances are set out:

- (a) the provision of a listed prosthesis which is associated with podiatric treatment by a registered podiatric surgeon.

Note: Paragraph (c) of Item 4 of subsection 72-1(2) deals with the provision of a listed prosthesis in circumstances in which a medicare benefit is payable.

8 Conditions in relation to the provision of listed prostheses

For the purposes of paragraphs (c) and (d) of item 4 of the table in subsection 72-1(2) of the Act, conditions that must be satisfied in relation to the provision of a listed prosthesis in the circumstances covered by paragraph (c) or (d) of that item, as the case may be, are:

- (a) in relation to any kind of prosthesis where there is a statement of a requirement under the heading 'Condition' in Schedule 1 under the listing for that kind of prosthesis, that requirement; and
- (b) in relation to a listed prosthesis that is an insulin infusion pump, also:
 - (i) the professional service associated with the provision of the insulin infusion pump must be a professional attendance by a consultant physician in the practice of his or her specialty; and
 - (ii) the professional service must be provided as a certified Type C procedure or certified overnight Type C procedure; and
 - (iii) the insulin infusion pump must be provided for the purpose of administering insulin.

Note: Item 4 of the table in subsection 72-1(2) of the Act states other requirements in relation to benefits for the provision of prostheses that a policy that covers hospital treatment must meet. These requirements relate to benefits for hospital treatment and, if the policy covers hospital-substitute treatment, to the benefits of that coverage as well.

9 Benefits for prostheses provided as part of hospital treatment

- (1) For a no gap prosthesis (other than a no gap prosthesis referred to in subrule (1A)) provided as part of an episode of hospital treatment in a private hospital, the minimum

benefit and the maximum benefit are each the amount for that prosthesis listed in the column in Schedule 1 under the heading 'Minimum Benefit'.

(1A) For:

- (a) a no gap cardiac ablation catheter, mapping catheter for catheter cardiac ablation, or patch for cardiac ablation, provided as part of an episode of hospital treatment in a private hospital and used in a surgical procedure described in Medicare Benefit item 38287 or 38290 and where the procedure is for the treatment of atrial fibrillation; or
- (b) a no gap monopolar device for surgical cardiac ablation, bipolar device for surgical cardiac ablation, system for surgical cardiac ablation or probe for surgical cardiac ablation provided as part of an episode of hospital treatment in a private hospital and used in a surgical procedure described in Medicare Benefit item 38512 or 38515.

the minimum benefit and the maximum benefit for the prosthesis are as follows:

- (c) if the sum of the default minimum benefits for the procedure in which the prosthesis was used is \$6399 or less, the minimum benefit and the maximum benefit are each the default minimum benefit for the prosthesis;
- (d) if the sum of default minimum benefits for the procedure in which the prosthesis was used is more than \$6399, the minimum benefit and the maximum benefit are each to be calculated using the following method: divide the default minimum benefit for the prosthesis by the sum of the default minimum benefits for the procedure in which the prosthesis was used, and multiply the result by \$6399.

Note: For example, if a cardiac ablation catheter, a mapping catheter for cardiac ablation and a patch for cardiac ablation each listed in Schedule 1 are used in a relevant procedure in accordance with any conditions, and the default minimum benefit of the cardiac ablation catheter is X, the default minimum benefit of the mapping catheter for cardiac ablation is Y, and the default minimum benefit of the patch for cardiac ablation is Z, the sum of the default minimum benefits for the procedure is (X+Y+Z). If the sum of the default minimum benefits for the procedure (X+Y+Z) is more than \$6399, the minimum benefit and maximum benefit for the cardiac ablation catheter is calculated by taking X, dividing it by (X+Y+Z), then multiplying the result by \$6399.

- (2) For a gap permitted prosthesis provided as part of an episode of hospital treatment in a private hospital:
 - (a) the minimum benefit is the amount for that prosthesis in the column in Schedule 1 under the heading 'Minimum Benefit'; and
 - (b) the maximum benefit is the amount for that prosthesis in the column in Schedule 1 under the heading 'Maximum Benefit'.
- (3) For a no gap prosthesis (other than a no gap prosthesis referred to in subrule (3A)) provided as part of an episode of hospital treatment in a public hospital:
 - (a) the minimum benefit is the lesser of the following amounts:
 - (i) the amount for that prosthesis listed in the column under the heading 'Minimum Benefit' in Schedule 1; or
 - (ii) the amount of the insured person's liability to the public hospital for that prosthesis; and
 - (b) the maximum benefit is the amount for that prosthesis listed in the column under the heading 'Minimum Benefit' in Schedule 1.
- (3A) For a no gap cardiac ablation catheter, mapping catheter for catheter cardiac ablation or patch for cardiac ablation, provided as part of an episode of hospital treatment in a public hospital and used in a surgical procedure described in Medicare Benefit item 38290 or 38287 and where the procedure is for the treatment of atrial fibrillation, or a no gap monopolar device for surgical cardiac ablation, bipolar device for surgical cardiac ablation system for surgical cardiac ablation or probe for cardiac ablation, provided as

part of an episode of hospital treatment in a public hospital and used in a surgical procedure described in Medicare Benefit item 38512 or 38515:

- (a) the minimum benefit for the prosthesis is the lesser of:
 - (i) the amount for that prosthesis calculated in accordance with subrule (3B); or
 - (ii) the amount of the insured person's liability to the public hospital for that prosthesis; and
- (b) the maximum benefit is the amount for the prosthesis calculated in accordance with subrule (3B).

(3B) The amount for a prosthesis calculated in accordance with this subrule is the following amount:

- (a) if the sum of default minimum benefits for the procedure in which the prosthesis was used is \$6399 or less, the amount is the default minimum benefit for the prosthesis;
- (b) if the sum of default minimum benefits for the procedure in which the prosthesis was used is more than \$6399, the amount is to be calculated as follows: divide the default minimum benefit for the prosthesis by the sum of the default minimum benefits for the procedure in which the prosthesis was used, and multiply the result by \$6399.

Note: For example, if a cardiac ablation catheter, a mapping catheter for catheter cardiac ablation and a patch for cardiac ablation each listed in Schedule 1 are used in a relevant procedure in accordance with any conditions, and the default minimum benefit of the cardiac ablation catheter is X, the default minimum benefit of the mapping catheter for cardiac ablation is Y, and the default minimum benefit of the patch for cardiac ablation is Z, the sum of the default minimum benefits for the procedure is (X+Y+Z). If the sum of the default minimum benefits for the procedure (X+Y+Z) is more than \$6399, the amount calculated in accordance with subrule (3B) for the cardiac ablation catheter is calculated by taking X, dividing it by (X+Y+Z), then multiplying the result by \$6399.

(4) For a gap permitted prosthesis provided as part of an episode of hospital treatment in a public hospital:

- (a) the minimum benefit is the lesser of the following amounts:
 - (i) the amount for that prosthesis listed in the column under the heading 'Minimum Benefit' in Schedule 1; or
 - (ii) the amount of the insured person's liability to the public hospital for that prosthesis; and
- (b) the maximum benefit is the amount for that prosthesis listed in the column under the heading 'Maximum Benefit' in Schedule 1.

Note: Paragraphs (d) and (e) of subsection 72-10(5) of the Act deal with the fixing of minimum and maximum benefits when the Minister is making or varying the Private Health Insurance (Prostheses) Rules.

(5) For the purposes of this Rule:

the **default minimum benefit** for a prosthesis is the amount for that prosthesis listed in the Column in Schedule 1 under the heading 'Minimum Benefit';

Medicare Benefit item 38287 means item 38287 in Group T8 of the Regulations;

Medicare Benefit item 38290 means item 38290 in Group T8 of the Regulations;

Medicare Benefit item 38512 means item 38512 in Group T8 of the Regulations;

Medicare Benefit item 38515 means item 38315 in Group T8 of the Regulations;

the *sum of default minimum benefits* for a procedure is the sum of the default minimum benefits for each cardiac ablation catheter, mapping catheter for catheter cardiac ablation, patch for cardiac ablation, monopolar device for surgical cardiac ablation, bipolar device for surgical cardiac ablation, system for surgical cardiac ablation and probe for surgical cardiac ablation used in that procedure.

10 Benefits for prostheses provided as part of hospital-substitute treatment

- (1) For a no gap prosthesis provided as part of an episode of hospital-substitute treatment the minimum benefit and the maximum benefit are both the amount for that prosthesis listed in the column in Schedule 1 under the heading ‘Minimum Benefit’.
- (2) For a gap permitted prosthesis provided as part of an episode of hospital-substitute treatment:
 - (a) the minimum benefit is the amount for that prosthesis in the column in Schedule 1 under the heading ‘Minimum Benefit’; and
 - (b) the maximum benefit is the amount for that prosthesis in the column in Schedule 1 under the heading ‘Maximum Benefit’.

Note 1: Private health insurers cannot cover, as part of hospital-substitute treatment, a service for which medicare benefit is payable unless the service is specified in the *Private Health Insurance (Health Insurance Business) Rules* —see paragraph 121-10(3)(a) of the Act.

Note 2: Paragraphs (d) and (e) of subsection 72-10(5) of the Act deal with the fixing of minimum and maximum benefits when the Minister is making or varying the Private Health Insurance (Prostheses) Rules.

Part 3—Other

11 Timing of applications to have a prosthesis listed

As a matter of normal administrative practice, applications made under subsection 72-10(2) of the Act will be considered after they have been received and, if the Minister decides to grant the application, the kind of prosthesis will be listed in Schedule 1 the next time the Minister makes or varies the Private Health Insurance (Prostheses) Rules.

Note 1: Under subsection 72-10(5) of the Act the Minister must list the kind of prosthesis, set out the minimum benefit and, if the Minister considers it appropriate, the maximum benefit for the prosthesis in these Rules on the next occasion that the Minister makes or varies the Rules after he or she grants an application and the applicant has paid to the Commonwealth any initial listing fee within 14 days of being informed of the Minister's decision to grant the application.

Note 2: Under subsection 72-15(3) of the Act, the Minister may remove a kind of prosthesis from the list in the Rules if the applicant fails to pay an ongoing listing fee.

12 Minister may have regard to recommendations and advice

In making the decision under subsection 72-10 of the Act, the Minister may have regard to a recommendation from the Prostheses List Advisory Committee.

13 Listing criteria for prostheses to be listed in Part C of Schedule 1

For a listing application to be granted to list a kind of prosthesis in Part C of Schedule 1, the listing criterion is that the kind of prosthesis is:

- (i) an insulin infusion pump;
- (ii) an implantable cardiac event recorder;
- (iii) a cardiac home/remote monitoring system;
- (iv) a cardiac ablation catheter;
- (v) a mapping catheter for catheter cardiac ablation;
- (vi) a patch for cardiac ablation;
- (vii) a monopolar device for surgical cardiac ablation;
- (viii) a bipolar device for surgical cardiac ablation;
- (ix) a system for surgical cardiac ablation; or
- (x) a probe for surgical cardiac ablation.

Note 1: The power to make listing criteria is in subsection 72-10(6) of the Act.

Note 2: Under subsection 72-10(7) of the Act the Minister must not grant a listing application if any applicable listing criteria are not satisfied in relation to the application.

Note 3: Under the Act the Minister may refuse to grant a listing application even if the listing criteria are satisfied. See Note to subsection 72-10(7) of the Act.