

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 1) 2020

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 Rules (No. 1) 2020* (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 make consequential amendments to the Benefit Requirement Rules and the Complying Product Rules to reflect two sets of changes to the Medicare Benefits Schedule (MBS), one which took effect on 17 January 2020, and another will take effect from 1 March 2020.

In particular, the Benefit Requirements Rules are amended to:

- insert four new MBS items for GP and Medical Practitioner Focussed Psychological Strategies as part of the Bushfire Recovery Access Initiative;
- insert two existing MBS items for GP Focussed Psychological Strategies to correct inconsistency in the classification for minimum accommodation benefits;
- insert 22 new MBS items and remove the 11 existing items they replace for emergency medicine specialists and medical practitioners providing emergency medicine attendances and goals of care services;
- insert 18 new emergency procedure items for emergency medicine specialists and medical practitioners;
- insert two new items for extracorporeal life support;
- remove one item for gastric lavage which is considered obsolete and no longer best practice; and
- insert one new item for goals of care in the specialty of intensive care.

The Complying Product Rules are amended to:

- insert selected MBS items in Schedule 5 (the clinical categories list) as consequential amendments to reflect changes to the MBS effective from 17 January 2020 for the Bushfire Recovery Access Initiative;
- implement other changes in Schedules 6 and 7 consistent with the amendments to the Benefit Requirements Rules outlined above for emergency medicine and intensive care and insert four additional MBS items in Schedule 7, which do not require separate accommodation so are not reflected in amendments to the Benefit Requirement Rules; and
- remove duplication of MBS items 10950 to 10970 and correct placement of MBS items 10984 to 10997 in Schedule 7.

Background

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatments. The minimum benefits are reviewed regularly and routinely increased in line with annual movements in the Consumer Price Index.

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).

Schedule 1 of the Benefit Requirements Rules sets benefits for different patient categories by categorising MBS item numbers into patient classifications for accommodation benefits for overnight procedures ('Type A procedures') comprising 'Advanced surgical patient', 'Obstetric patient', 'Surgical patient', 'Psychiatric patient', 'Rehabilitation patient' and 'Other patients' for private hospitals and public hospitals in Victoria and Tasmania. Schedule 2 sets average benefits for all patients in all other State and Territory public hospitals. Schedule 3 sets out benefits for four separate day procedure ('Type B procedures') bands for identified MBS item numbers for same-day hospital accommodation benefits, which are payable for public and privately insured patients in all states and territories. Schedule 3 also sets out procedures ('Type C procedures') which do not normally require hospital treatment so they do not automatically qualify for any minimum benefits for hospital accommodation.

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. All hospital treatment MBS items are now allocated 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, provides consumers with greater certainty about the treatments covered by health insurance products. Consumers are able to more easily understand and compare competing policies. The clinical categories (Schedule 5) are treatments that must be covered by private health insurance products in the product tiers basic, bronze, silver and gold.

The Common treatments list (Schedule 6) consists of MBS items that are commonly used across multiple clinical categories. The Support treatments list (Schedule 7) consists of MBS items that are generally used to support the provision of a primary treatment in one of the clinical categories or in the Common treatments list. Items in the Support treatments list are unlikely to be the primary reason for an admission.

Insurers are required to provide cover for MBS items in the Common and Support treatments lists where the MBS item is provided for hospital treatment that is within scope of a clinical category included in a health insurance policy.

Commencement

The Amendment Rules commence on 1 March 2020.

Details

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

Consultation

On 12 January 2020, the Prime Minister, the Hon Scott Morrison MP, announced that extra mental health services under the MBS would be provided immediately to people that have been affected by the bushfire crisis. Due to the short timeframe in drafting the associated legislative instrument (the *Health Insurance (Section 3C General Medical Services – Mental Health Services for Bushfire Response) Determination 2020*) to implement the extra mental health services under the MBS, it was not reasonably practicable to undertake consultation with representatives of persons affected by the instrument considering the nature of the emergency.

The intensive care and emergency medicine item changes were part of public consultation processes on the recommendations of the MBS Review and further consultation on implementation with the College of Intensive Care Medicine Australia and New Zealand, the Australian and New Zealand Intensive Care Society and the Australian Medical Association.

Advice was sought from medical officers within the Department of Health in relation to the consequential changes for private health insurance legislation to determine the appropriate level of accommodation benefits and clinical categories in respect of the MBS items added by the Amendment Rules, to the Benefit Requirements Rules Complying Product Rules respectively.

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

ATTACHMENT

DETAILS OF THE *PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT RULES (No. 1) 2020*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 1) 2020* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences on 1 March 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 (Benefit Requirements) Rules 2011

Item 1 – Subclause 6(3) of Schedule 1

Item 1 amends subclause 6(3) of Schedule 1 of the Benefit Requirement Rules to insert MBS items 13834 and 13837.

The effect of this amendment is that these MBS items are included in the list of “Type A” “Surgical patient” procedures which automatically attract minimum benefits for overnight hospital accommodation.

Item 2 – Clause 8 of Schedule 3 (Category 1 – Attendances, under the heading “A7:”)

Item 2 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to insert MBS items 285 and 287 under the heading “Category 1 – Attendances A7:”.

The effect of this amendment is that these MBS items are included in the list of “Type C” procedures so they do not automatically attract minimum benefits for hospital accommodation. This corrects an inconsistency with the equivalent MBS items for medical practitioner Focussed Psychological Strategies, which are already included.

Item 3 – Clause 8 of Schedule 3 (Category 1 – Attendances, under the heading “A21:”)

Item 3 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove obsolete MBS items 501, 503, 507, 511, 515, 519, 520, 530, 532, 534 and 536; and substitute MBS items 5001, 5004, 5011, 5012, 5013, 5014, 5016, 5017, 5019, 5021, 5022, 5027, 5030, 5031, 5032, 5033, 5035, 5036, 5039, 5041, 5042 and 5044 under the heading “Category 1 – Attendances A21:”.

The effect of this amendment is to remove the obsolete MBS items and that the substitute MBS items are included in the list of “Type C” procedures.

Item 4 – Clause 8 of Schedule 3 (Category 1 – Attendances, after the paragraph “A27:”)

Item 4 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to insert a new paragraph under the paragraph “Category 1 – Attendances A27:”. The new paragraph inserts MBS items 91285, 91287, 91723 and 91727.

The effect of this amendment is that these MBS items are included in the list of “Type C” procedures.

Item 5 – Clause 8 of Schedule 3 (Category 3 – Therapeutic procedures, under the heading “T1:”)

Item 5 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to insert MBS item 13899 under “Category 3 – Therapeutic procedures T1:”.

The effect of this amendment is that the MBS item is included in the list of “Type C” procedures.

Item 6 – Clause 8 of Schedule 3 (Category 3 – Therapeutic procedures, under the heading “T1:”)

Item 6 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove obsolete MBS item 14200 under “Category 3 – Therapeutic procedures T1:”.

The effect of this amendment is to remove the obsolete MBS item from the Benefit Requirement Rules.

Item 7 – Clause 8 of Schedule 3 (Category 3 – Therapeutic procedures, under the heading “T1:”)

Item 7 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to insert MBS items 14255, 14256, 14257, 14258, 14259, 14260, 14263, 14264, 14265, 14266, 14270, 14272, 14277, 14278, 14280, 14283, 14285 and 14288 under “Category 3 – Therapeutic procedures T1:”.

The effect of this amendment is that the MBS items are included in the list of “Type C” procedures.

Schedule 2 – Amendments

Private Health Insurance (Complying Product) Rules 2015

Item 1 – Clause 2 of Schedule 5 (table item dealing with clinical category “Hospital psychiatric services”, column headed “Treatments that must be covered (MBS Items) (see Notes 1, 2 and 3)”)

Item 1 inserts 4 new GP and Medical Practitioner Focussed Psychological Strategies Medicare Benefit Schedule (MBS) item numbers in the clinical category “Hospital psychiatric services” as a consequence of changes to the MBS from 17 January 2020.

- The new MBS items are 91285, 91287, 91723 and 91727.

The effect of these amendments is that these items are included in the clinical category “Hospital psychiatric services”.

Item 2 – Clause 1, Schedule 6 (table titled “Common treatments list”)

Item 2 repeals the Common treatments table set out in Schedule 6 of the Complying Products Rules and substitutes a new table in which 11 obsolete MBS items are omitted and 22 MBS items are inserted as a consequence of changes to the MBS from 1 March 2020.

The omitted MBS items are:

- 501, 503, 507, 511, 515, 519, 520, 530, 532, 534 and 536.

The inserted MBS items are:

- 5001, 5004, 5011, 5012, 5013, 5014, 5016, 5017, 5019, 5021, 5022, 5027, 5030, 5031, 5032, 5033, 5035, 5036, 5039, 5041, 5042 and 5044.

The effect of these amendments is that these items are included in the Common treatments list.

Item 3 – Clause 1 of Schedule 7 (table titled “Table of MBS items”)

Item 3 repeals the Support treatments table set out in Schedule 7 of the Complying Products Rules and substitutes a new table in which: obsolete MBS item 14200 is omitted; 7 intensive care and 18 emergency medicine MBS items are inserted as a consequence of changes to the MBS from 1 March 2020; and corrections are made to remove duplicate MBS items and correct numerical ordering of MBS items.

The inserted MBS items are:

- 13832, 13834, 13835, 13837, 13838, 13840, 13899, 14255, 14256, 14257, 14258, 14259, 14260, 14263, 14264, 14265, 14266, 14270, 14272, 14277, 14278, 14280, 14283, 14285 and 14288.

The effect of these amendments is that these items are included in the Support treatments list.

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) 2020

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. 1) Rules 2020* (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 3 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirement Rules) to omit or insert selected Medicare Benefit Schedule (MBS) items for the purposes of hospital treatments which qualify for overnight or same-day accommodation benefits; and to correct inconsistency in the classification of two existing GP MBS items with equivalent existing medical practitioner MBS items already in the Benefit Requirement Rules.

These Amendment Rules also amend the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to omit or insert selected MBS items in Schedules 5, 6 and 7; and remove duplicate MBS items and correct MBS item number ordering within the table in Schedule 7.

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 and to improve information provided to consumers so that consumers can make more informed choices when purchasing services. Private health insurance regulation also requires insurers to not differentiate the premiums they charge according to individual health characteristics such as poor health.

Analysis

The amendments relating to the omission or insertion of MBS items in the Benefit Requirement Rules and the Complying Product Rules are as a consequence of the changes to the MBS from 17 January 2020 and 1 March 2020. The reclassification of two MBS items within Schedule 3 of the Benefit Requirements Rules removes inconsistency in classification of existing MBS items. The removal of duplicate MBS items and reordering of some MBS item numbers in Schedule 7 of the Complying Product Rules correct administrative errors.

The addition of new MBS items to specified clinical categories allow for the specified treatments under those items and the related benefit amounts to be claimed by patients who have the relevant private health insurance policies.

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.

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