

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Incentives) Amendment Rules (No. 1) 2020*

### **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) 2020* (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 :

Sets the rebate adjustment factor for the adjustment year commencing on 1 April 2020 to one (1).

### **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.

In late March 2020, due to the widespread impact on most Australians of the COVID-19 pandemic, the private health insurance industry indicated that a number of insurers were planning to defer their 1 April 2020 premium increase for three, six or twelve months. The current formula does not envisage a situation where insurers do not implement approved premium increases uniformly. The application of a Rebate Adjustment Factor less than 1 in this circumstance would disadvantage consumers by adjusting their Rebate amount while an approved increase to their premium was deferred.

#### Commencement

The Amendment Rules commence on 31 March 2020.

#### Details

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

#### Consultation

The Department has consulted with the Australian Prudential Regulation Authority, peak bodies within the private health insurer industry and several individual private health insurers.

***Private Health Insurance (Incentives)  
Amendment Rules (No. 1) 2020***

**Section 1 Name**

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

**Section 2 Commencement**

Section 2 provides that the instrument commences on 31 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 (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 prescribe the rebate adjustment factor for the adjustment year commencing 1 April 2020 to be one “1”.

## 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) 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 (Incentives) Amendment Rules (No. 1) 2020* (the Amendment Rules) is to amend the following instruments:

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

These Amendment Rules insert 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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