EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No.3) 2020

Authority

Section 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister 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.3) 2020* (the Amendment Rules) amends 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 changes to the Medicare Benefits Schedule (MBS) that will take effect on 1 May 2020. This is achieved through amendments to:

- Schedules 1 and 3 of the Benefit Requirements Rules to classify MBS items into appropriate Procedure types to assign minimum hospital accommodation benefit requirements. Deleted MBS items have been removed.
- Schedules 5 and 7 of the Complying Product Rules to categorise MBS items into appropriate clinical, common, or support treatment categories to denote what hospital treatment items must be covered under insurance policies. Deleted MBS items have been removed.

Background

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric care, rehabilitation, palliative care and other hospital treatments. Schedules 1 to 5 of the Benefit Requirements Rules also set out the minimum levels of accommodation benefits which are payable by private health insurers for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), 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 of the Benefit Requirement Rules sets average benefits for overnight accommodation 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 Complying Product Rules set out gold/silver/bronze and basic product tiers, and their related clinical treatment 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.

The introduction of product tiers, with related clinical treatment 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 for hospital treatment within scope of a clinical category included in a health insurance policy.

From 1 May 2020, amendments come into effect to the General Medical, Pathology, and Diagnostic Imaging services tables (GMST, PST, DIST) of the *Health Insurance Act 1973*. The new Regulations include MBS changes that are the collective result of recommendations from the MBS Review Taskforce and the Medical Services Advisory Committee (MSAC), including public and clinician consultations. The MBS changes in the new Regulations must be reflected in private health insurance rules.

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

Commencement

The Amendment Rules commence on 1 May 2020.

Details

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

Consultation

On 15 April 2020, the Australian Government consulted peak representative bodies for private insurers and private hospitals on proposed changes to private health insurance rules based on a broad overview of draft amendments to the General Medical Services Table (GMST) of the MBS.

The final MBS changes contained in regulations were published on the Federal Register of Legislation, during the week ending 24 April 2020. The public release of the regulations allowed for additional rounds of consultation to commence on 21 and 24 April 2020, providing details of MBS item changes and associated private health insurance rules amendments. In recognition that the consultation period has been brief, stakeholders have been invited to provide post-implementation feedback on the private health insurance May changes with a view to future amendments, if necessary.

Medical officers within the Department of Health provided advice to determine the appropriate level of accommodation benefits and clinical categories in respect of the MBS items added by the Amendment Rules, and 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 (No. 3) RULES 2020*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 3) 2020* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences on 1 May 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 Clause 6(3) of Schedule 1

Item 1 amends clause 6(3) of Schedule 1 of the Benefit Requirement Rules to remove deleted MBS items 31539 and 31545 for obsolete service bore-enbloc stereotactic breast biopsy, from the Type A Procedure Surgical patient list.

Item 2 Clause 5(1) of Schedule 3

Item 2 amends clause 5(1) of Schedule 3 of the Benefit Requirement Rules to add to the Non-band specific Type B day procedures list new MBS items:

- 42504 for Micro Bypass Glaucoma Surgery for insertion of micro-stents in the eye, as a standalone procedure, rather than previously only being available when performed in conjunction with cataract surgery; and,
- 37226 for MRI-guided biopsy of the prostrate.

The effect of adding these items to the Non-band specific Type B day procedures list is they will automatically attract minimum hospital accommodation benefits for day procedures.

Item 3 Clause 8 of Schedule 3 (Category 2 – Diagnostic procedures and investigations, under the heading "D2:")

Item 3 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove from the Type C procedures list, Category 2 – Diagnostic procedures and investigations, D2 - Nuclear Medicine (Non-Imaging), obsolete MBS nuclear medicine items 12503, 12506, 12509, 12512, 12518, 12521 and 12530.

The effect of this amendment is that these MBS items are removed from the list of "Type C" procedures as they are no longer included in the MBS.

Item 4 Clause 8 of Schedule 3 (Category 6 – Pathology services, under the heading "P7:")

Item 4 amends Clause 8 of Schedule 3 of the Benefit Requirement Rules to add to the Type C procedures list, Category 6 – Pathology Services, P7 – Genetics, new MBS Pathology Services Table (PST) items 73298 and 73299 for characterisation of germline gene variants in the COL4A3, COL4A4 and COL4A5 genes.

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.

Item 5 Clause 8 of Schedule 3 (Category 6 – Pathology services, under the heading "P7:")

Item 5 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to add to the Type C procedures list new MBS Pathology Services Table (PST) items:

- 73352 and 73353 for diagnostic genetic testing for familial hypercholesterolemia (MSAC Application 1534);
- 73354, 73355, 73356 and 73357 for genetic testing for hereditary colorectal and endometrial cancers (MSAC Application 1504);
- 73358, 73359, 73360, 73361, 73362, 73363, for genetic testing either using whole exome sequencing or whole genome sequencing to test clinically affected children for childhood syndromes; and,
- 73364, 73365, 73366, 73367, 73368, 73369, 73370, 73371, 73372, 73373, 73374, 73375, 73376, 73377, 73378, 73379, 73380, 73381, 73382, and 73383, for Genetic testing of somatic markers for diagnosis and classification of tumours (MSAC Applications 1526, 1527 and 1528).

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.

Item 6 Clause 8 of Schedule 3 (Category 5 – Diagnostic Imaging Services, under the heading "I1:")

Item 6 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to add to the Type C procedures list, Category 5 – Diagnostic Imaging Services, Group I1 – Ultrasound, new MBS Diagnostic Imaging Services Table (DIST) items:

- 55066 and 55071 for a diagnostic ultrasound of the breast and subsequent ultrasound used to guide a biopsy within the one service.
- 40 musculoskeletal ultrasound items, separating bilateral and unilateral services:
  - 55856, 55857, 55858, 55859 (hand or wrist)
  - 55860, 55861, 55862, 55863 (forearm or elbow)
  - 55864, 55865, 55866, 55867 (shoulder or upper arm)
  - 55868, 55869, 55870, 55871 (hip or groin)
  - 55872, 55873, 55874, 55875 (Paediatric hip)
  - 55876, 55877, 55878, 55879 (buttock or thigh)
  - 55880, 55881, 55882, 55883 (knee)
  - 55884, 55885, 55886,55887 (lower leg)
  - 55888, 55889, 55890, 55891 (ankle or hind foot)
  - 55892, 55893, 55894, 55895 (mid foot or fore foot)

The effect of this amendment is that these MBS items are added to list of "Type C" procedures so they do not automatically attract minimum benefits for hospital accommodation.

Item 6 also amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove from the Type C procedures list the following musculoskeletal ultrasound items which will be deleted from the MBS Pathology Services Table (PST) items:

- 55816, 55818 (hip or groin)
- 55820, 55822 (paediatric hip)
- 55824, 55826 (buttock or thigh)
- 55828, 55830 (knee)
- 55832, 55834 (lower leg)
- 55836, 55838 (ankle or hind foot)
- 55840, 55842 (mid foot or fore foot)

The effect of this amendment is that these MBS items are removed from the list of "Type C" procedures as they are no longer included in the MBS.

Item 7 Clause 8 of Schedule 3 (Category 5 – Diagnostic Imaging Services, under the heading "I2:")

Item 7 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to add to the Type C procedures list, Category 5 Diagnostic Imaging Services, Group I2 - Computed Tomography, new MBS DIST items:

- 56622, 56623, 56627, 56628, 56629 and 56630 Computed Tomography (CT) items that separate the upper and lower limb (excluding the knee);
- 57352, 57353 and 57354 new CT spiral angiography items for different anatomical areas to accommodate different clinical circumstances.

The effect of this amendment is that these MBS items are added to list of "Type C" procedures so they do not automatically attract minimum benefits for hospital accommodation.

Item 7 also amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove from the Type C procedures list the following deleted MBS Diagnostic Imaging Services Table (DIST) items:

- 56619, 56625 CT services are being removed from the MBS as they are no longer required.

- 57350 spiral angiography with intravenous contrast medium.

The effect of this amendment is that these MBS items are removed from the list of "Type C" procedures as they are longer included in the MBS.

Item 8 Clause 8 of Schedule 3 (Category 5 – Diagnostic Imaging Services, under the heading "I3:")

Item 8 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to add to the Type C procedures list, Category 5 Diagnostic Imaging Services, Group I3 - Diagnostic Radiology, new MBS DIST items:

- 57905 to consolidate and replace two separate x-ray items (57906 and 57909)

- 57907 for facial bone and sinus x-ray to consolidate and replace two separate items (57903 and 57912)

The effect of this amendment is that these MBS items are added to list of "Type C" procedures so they do not automatically attract minimum benefits for hospital accommodation.

Item 8 also amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove from the Type C procedures list MBS Diagnostic Imaging Services Table (DIST) items:

- 57906, 57909 (consolidate into one new MBS item, see above, 57905)
- 57912, 57903 (consolidate into one new MBS item, see above, 57907)
- 59306 and 59309 mammary ductogram will be removed from the MBS as they are clinically obsolete.

The effect of this amendment is that these MBS items are removed from the list of "Type C" procedures as they are longer included in the MBS.

Item 9 Clause 8 of Schedule 3 (Category 5 – Diagnostic Imaging Services, under the heading "I4:")

Item 9 amends clause 8 of Schedule 3 of the Benefit Requirement Rules to remove from the Type C procedures list, Category 5 Diagnostic Imagining Services, Group I4 - Nuclear Medicine Imaging, MBS DIST items:

- 61316, 61317, 61320 nuclear imaging items (being consolidated into item 61314)
- 61352, 61401, 61405, 61417, 61437, 61458 and 61484 for nuclear imagining as the items are considered obsolete and have been removed from the MBS as no longer reflecting clinical best practice.

The effect of this amendment is that these MBS items are removed from the list of "Type C" procedures as they are longer included in the MBS.

Schedule 2—Amendments

Private Health Insurance (Complying Product) Rules 2015

Item 1 Clause 2 of Schedule 5 (table item dealing with clinical category "Eye (not cataracts)", column headed "Treatments that must be covered (MBS Items) (see Notes 1, 2 and 3)")

Item 1 inserts new MBS item 42504 for Micro Bypass Glaucoma Surgery for insertion of micro-stents in the eye, as a standalone procedure, in the clinical category "Eye (not cataracts)" as a consequence of changes to the MBS from 1 May 2020.

The effect of these amendments is that item 42504 is included in the clinical category "Eye (not cataracts)".

Item 2 Clause 2 of Schedule 5 (table item dealing with clinical category "Breast surgery (medically necessary)", column headed "Treatments that must be covered (MBS Items) (see Notes 1, 2 and 3)")

Item 2 removes deleted MBS items 31539, 31542 and 31545 from the clinical category "Breast surgery (medically necessary)" as a consequence of changes to the MBS from 1 May 2020.

The effect of these amendments is that items 31539, 31542 and 31545 are removed from Schedule 5 of the Complying Product Rules.

Item 3 Clause 2 of Schedule 5 (table item dealing with clinical category "Male reproductive system", column headed "Treatments that must be covered (MBS Items) (see Notes 1, 2 and 3)")

Item 3 inserts new MBS item 37226 for MRI-guided biopsy of the prostrate in the clinical category "Male reproductive system" as a consequence of changes to the MBS from 1 May 2020.

The effect of these amendments is that item 37226 is included in the clinical category "Male reproductive system".

Item 4 Clause 1 of Schedule 7 (table titled "Table of MBS items")

Item 4 repeals the table and substitutes it with a revised table containing the MBS items coming within the Schedule 7 - Support Treatments List from 1 May 2020.

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. 3) 2020

This 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 instrument

The purpose of the *Private Health Insurance Legislation Amendment Rules (No. 3) 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 the Benefit Requirement Rules and the Complying Product Rules to reflect changes to the Medicare Benefits Schedule (MBS) that will take effect on 1 May 2020. This is achieved through amendments to:

- Schedules 1 and 3 of the Benefit Requirements Rules to classify MBS items into appropriate Procedure types to assign minimum hospital accommodation benefit requirements. Deleted MBS items have been removed.
- Schedules 5 and 7 of the Complying Product Rules to categorise MBS items into appropriate clinical, common, or support treatment categories to denote what hospital treatment items must be covered under insurance policies. Deleted MBS items have been removed.

Human rights implications

The Amendment Rules engage Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically 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 of private health services to allow consumers to 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 1 May 2020.

The addition of new MBS items to accommodation benefit requirement classifications, and specified clinical categories, allows 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 instrument only engages human rights to the extent that it maintains current arrangements with respect to the regulation of private health insurance. Therefore, this instrument is compatible with human rights because these changes continue to ensure that existing arrangements advancing the protection of human rights are maintained.

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