

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Data Provision) Amendment Rules 2020

Authority

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health to, by legislative instrument, make Private Health Insurance Rules. The types of rules are specified in the second column of the table provided in subsection 333-20. In particular, the Minister is authorised to make Private Health Insurance (Data Provision) Rules as specified in item 9 of the table at subsection 333-20. The rules provide for matters required or permitted by Part 4-5 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act. Part 4-5 of the Act imposes miscellaneous notification and other obligations on private health insurers.

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.

Purpose

The *Private Health Insurance (Data Provision) Amendment Rules 2020* (the Amendment Rules) amend the *Private Health Insurance (Data Provision) Rules 2018* (the Rules) to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

Background

The Rules apply and incorporate the following instruments without modifications:

- the matters contained in the document titled “GT-Dental Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020);
- the matters contained in the document titled “HCP1 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020); and
- the matters contained in the document titled “HCP2 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020),

from the time the Amendment Rules commence.

The documents referred to above can be accessed on the Department’s website using the following link: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-HCP> (Hospital Casemix Protocol (HCP)).

Data specifications are reviewed routinely every year by the Department. Following consultation with external stakeholders changes are generally introduced effective 1 July in each financial year.

Changes to the 2020/21 data specifications are designed to align with national metadata standards published in METeOR, the Australian Institute of Health and Welfare's Metadata online registry, and to improve data quality.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. Subsection 323-1(1) of the Act makes it an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty, function or power under the Act, unless the disclosure is an authorised disclosure. The Act allows for a limited set of circumstances to be considered as authorised disclosures, one of which is to enable a person to perform functions in connection with a Medicare program. The collective effect of these provisions limit the way in which the Department deals with information about individuals.

Consultation

The Department has consulted with the private health insurance and private hospital industry about the Amendment Rules through existing working group arrangements. The working groups are comprised of representatives from the Department and industry stakeholders. Private health insurance and private hospital stakeholder representatives interested in developing the amendments also participated in the process. Feedback received from industry is that it is appropriate for amendments to be managed by the existing working group arrangements. Previous amendments to the data specifications have also been managed in this way. The amended data specifications are distributed to industry via a Private Health Insurance Circular published by the Department. Private Health Insurance Circulars can be accessed at the following link: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-phicirculars2020-index1>

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

The Amendment Rules commence on 1 July 2020.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Data Provision) Amendment Rules 2020

This Disallowable 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 Disallowable Legislative Instrument

Private Health Insurance (Data Provision) Rules provide for matters required or permitted by Part 4-5 of the *Private Health Insurance Act 2007* (the Act), or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act.

The *Private Health Insurance (Data Provision) Rules 2018* (the Rules) specify the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

The *Private Health Insurance (Data Provision) Amendment Rules 2020* (the Amendment Rules) amend the Rules to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department under subsection 172-10(1) of the Act.

The Rules apply and incorporate the following instruments without modifications:

- the matters contained in the document titled “GT-Dental Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department) on 6 May 2020;
- the matters contained in the document titled “HCP1 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020); and
- the matters contained in the document titled “HCP2 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020),

from the time the Amendment Rules commence.

The amendments to the Rules requiring that the information requirements set out in those documents to be provided to the Department commence on 1 July 2020.

These documents can be found on the Department’s website using the following link:

<https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-HCP> (Hospital Casemix Protocol (HCP)).

Human rights implications

This Disallowable Legislative Instrument will engage the human right of privacy but will not result in any limitation of that right.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. Further, Part 6- 8 of the Act makes it an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty,

function or power under the Act, unless the disclosure is an authorised disclosure for the purposes of the Act. The effect of this provision is to limit the way in which the Department deals with information about individuals.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as, although it engages the right of privacy in relation to personal information, it will not derogate from that right.

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