

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 3) 2021

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) 2021* (the Amendment Rules) amends the:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules);
- *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules); and,
- *Private Health Insurance (Health Insurance Business) Rules 2018* (the Business 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, effective from 1 July 2021, to the:

- Benefit Requirements Rules:
 - increasing the minimum benefits payable by private health insurers for private patients' overnight and same-day accommodation in both private and public hospitals by amending Schedules 1 through 3. The increase is in line with the annual increase to March 2021 in the Consumer Price Index (CPI) of 1.1 per cent;
 - indexing the monetary qualifiers for Medicare Benefits Schedule (MBS) items included in Type A procedure patient classifications for "advanced surgical patient" and "surgical patient" by amending Schedule 1. The increases are in line with annual indexation of the MBS fees of 0.9 per cent from 1 July 2021;
 - increasing the minimum benefit payable by insurers for nursing home-type patients' (NHTPs) accommodation in public hospitals in South Australia (SA) and the Australian Capital Territory (ACT) by amending Schedule 4.

- Complying Product Rules:
 - increasing the daily patient contribution payable by NHTPs for accommodation in public hospitals in the ACT, by amending subrule 8A;
- Business Rules:
 - effecting a \$5 increase (GST not in scope) in the second-tier application fee, from \$895 to \$900, following a review and update of cost-recovery models and the application of indexation, by amending subrule 7B.

Background

Benefit Requirements Rules

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

Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation benefits payable by private health insurers associated with private patients' 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. Procedures requiring hospital treatment that includes part of an overnight stay ('Type A procedures') comprise 'Advanced surgical patient', 'Obstetric patient', 'Surgical patient', 'Psychiatric patient', 'Rehabilitation patient' and 'Other patients.'

Against these patient classifications, Schedule 1 sets out the minimum accommodation benefit payable by insurers per night for overnight accommodation for private patients at private hospitals in all states and territories, and for private patients in overnight shared ward accommodation at public hospitals in Victoria and Tasmania.

Schedule 2 of the Benefit Requirements Rules states the minimum accommodation benefit payable by insurers per night, for private patients in overnight shared-ward accommodation at all other State and Territory public hospitals. For each jurisdiction listed in Schedule 2, the minimum benefit payable by insurers per night is averaged across all patients, rather than being specific to patient classification as for Schedule 1.

Schedule 3 of the Benefit Requirements Rules sets out minimum same-day hospital accommodation benefits payable by insurers for procedures requiring hospital treatment that does not include part of an overnight stay at a hospital ('Type B procedures'). Type B procedures are further classified into four separate treatment bands, and Part 2 of Scheduled 3 places procedures by identified MBS item against those bands, and also notes some non-band specific Type B same day procedures.

Schedule 3 of the Benefit Requirements Rules also identifies by MBS item those procedures that do not normally require hospital treatment ('Type C procedures') so do not automatically qualify for any minimum benefits for hospital accommodation.

Schedule 4 of the Benefit Requirements Rules (at clause 2) classifies a patient remaining in hospital after a continuous 35-day period, and receiving accommodation and nursing care as an end in itself, as a NHTP.

The minimum benefits payable by insurers 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. Some jurisdictions reserve changes, or choose to make additional changes, to NHTP rates in July, annually. The Amendment Rules increase the minimum benefit payable by insurers per night for private NHTPs in public hospitals in South Australia and the Australian Capital Territory.

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.

Complying Product Rules

The Complying Product Rules sets the patient contribution for privately insured NHTPs at public and private hospitals. It also restricts the amount of benefit that private health insurers pay for each day of private NHTP hospital treatment at a hospital to the hospital's charge less the patient contribution amount.

Business Rules

The Business Rules subrule 7B sets a cost-recovery application fee for hospitals seeking to be second-tier eligible. The Australian Government Cost Recovery Guidelines require update of cost recovery information and the application of annual indexation.

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

Commencement

The Amendment Rules commence on 1 July 2021.

Details

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

Consultation

On 25 May 2021, the Australian Government Department of Health asked all states and territories whether they would increase accommodation fees and agree to corresponding increases in minimum accommodation benefits payable by private health insurers for private patients in their jurisdiction applicable from 1 July 2021, in line with adjustments in the Consumer Price Index (CPI).

New South Wales (NSW), Victoria (VIC), Queensland (QLD), Western Australia (WA), South Australia (SA), Tasmania (TAS), the Australian Capital Territory (ACT) and the Northern Territory (NT) advised they intend to increase their accommodation fees and agreed to the increases in minimum accommodation benefits, effective 1 July 2021.

SA and the ACT advised they intend to increase the minimum accommodation benefit payable by private health insurers for private NHTPs in their jurisdictions' public hospitals, effective 1 July 2021.

The ACT also advised of an increase in the NHTP contribution rate in their public hospitals from 1 July 2021.

On 11 June 2021, the Department of Health consulted with the private hospital sector on the increase to the second-tier application fee and received no feedback.

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

Details

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

ATTACHMENT

Details of the *Private Health Insurance Legislation Amendment Rules (No. 3) 2021*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 3) 2021* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences on 1 July 2021.

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 – minimum accommodation benefits

Private Health Insurance (Benefit Requirements) Rules 2011

Item 1 to 3 – Clause 2 of Schedule 1 (tables 1, 2 and 3)

Items 1 to 3 amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) to repeal Tables 1, 2 and 3 and substitute new tables that set out the minimum benefits payable per night by private health insurers for specified classes of private patients applicable from 1 July 2021 for:

- overnight accommodation for private patients at private hospitals in all States/Territories (Table 1);
- Victoria: overnight shared ward accommodation for private patients at public hospitals (Table 2); and,
- Tasmania: overnight shared ward accommodation for private patients at public hospitals (Table 3).

The new minimum benefits have been increased by the rate of increase in the Consumer Price Index (CPI) from March quarter 2020 to March quarter 2021, which is 1.1 per cent.

Table headings have been amended for clarification.

Item 4 – Subclause 4(3) of Schedule 1

Subclause 4(3) of Schedule 1 sets out the MBS item numbers that form part of the criteria for a patient to be considered an “advanced surgical patient” for the purposes of the Benefit Requirements Rules. This subclause also includes a qualifier – the MBS fee for the professional service the patient will receive must be greater than a specified amount.

Item 4 amends the value of this specified amount from \$879.60 to be \$887.50 (indexed by 0.9 per cent, the indexation rate for MBS fees effective 1 July 2021).

Item 5 – Subclause 6(3) of Schedule 1

Subclause 6(3) of Schedule 1 sets out the MBS item numbers that form part of the criteria for a patient to be considered a “surgical patient” for the purposes of the Benefit Requirements Rules. This subclause also includes a qualifier – the MBS fee for the professional service the patient will receive must fall within a range of two specified amounts.

Item 5 amends the range of this specified amount from “\$261.90 to \$879.60” to the new range of \$264.25 to \$887.50 (indexed by 0.9 per cent, the indexation rate for MBS fees effective 1 July 2021).

Item 6 – Clause 2 of Schedule 2 (table)

Item 6 repeals the table and substitutes a new table that sets out the new minimum benefits payable by insurers for hospital treatment provided to private patients in the circumstances set out in Schedule 2. The minimum benefits apply to overnight accommodation provided in shared wards for private patients in public hospitals in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia and Western Australia.

The new minimum benefits have been increased by the rate of increase in the CPI from March quarter 2020 to March quarter 2021, which is 1.1 per cent.

Items 7 and 8 – Clause 2 of Schedule 3 (table 1 and 2)

Items 7 and 8 repeal Tables 1 and 2 respectively and substitute them with new tables that set out the new minimum benefits payable by private health insurers for same-day accommodation hospital treatment provided in the circumstances set out in Schedule 3. The minimum benefits apply to same-day accommodation in:

- all State and Territory public hospitals (Table 1); and
- all private hospitals (Table 2).

The new minimum benefits have been increased by the rate of increase in the CPI from March quarter 2020 to March quarter 2021, which is 1.1 per cent.

Item 9 – Clause 6 of Schedule 4 (table 1, table item dealing with the Australian Capital Territory)

Item 9 amends clause 6 of Schedule 4 to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in the Australian Capital Territory from \$130.70 to \$133.00.

Item 10 – Clause 6 of Schedule 4 (table 1, table item dealing with South Australia)

Item 10 amends clause 6 of Schedule 4 to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in South Australia from \$125.00 to \$126.

Schedule 2—Amendments - Nursing-home type patient contribution

Private Health Insurance (Complying Product) Rules 2015

Item 1 – Subrule 8A(3) (paragraph (a)(i) of the definition of *patient contribution*)

Item 1 repeals the paragraph and substitutes a new paragraph, with new daily patient contribution rates (to fees for hospital treatment) payable by nursing home-type patients in the Australia Capital Territory’s public hospitals of \$63.05. The rise in this rate reflects the Australian Government’s indexation of aged pensions plus rent assistance from 20 March 2021 under the *Private Health Insurance Legislation Amendment Rules (No. 2) 2021*, bringing the patient contribution in the Australian Capital Territory into alignment with indexation already applied by all other states and territories.

Schedule 3—Amendments-Second-tier application fee

Private Health Insurance (Health Insurance Business) Rules 2018

Item 1 – Subrule 7B

Item 1 repeals the subrule (not including the heading) and substitutes a new rule for a \$5 increase to the second-tier application fee, taking the fee from \$895 to \$900, from 1 July 2021.

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) 2021

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) 2021* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011*
- *Private Health Insurance (Complying Product) Rules 2015*
- *Private Health Insurance (Health Insurance Business) Rules 2018*

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 Benefit Requirements Rules, Complying Product Rules and the Business Rules are as a consequence of routine indexation and updating of administrative arrangements.

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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