

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Aged Care

Private Health Insurance Act 2007

Private Health Insurance (Health Insurance Business) Amendment Rules (No. 2) 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 (Health Insurance Business) Amendment Rules (No.2) 2021* (the Amendment Rules) amends the:

- *Private Health Insurance (Health Insurance Business) Rules 2018* (the Health Insurance 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 Amendment Rules make a consequential amendment to the Health Insurance Business Rules subsequent to the listing of 40 new temporary Medicare Benefits Schedule (MBS) items from 15 September 2021 for specialist telehealth and phone services performed by the admitting medical practitioner or admitting dental practitioner for private patients admitted to hospital. The amendment will ensure the new MBS items will not be considered hospital treatment for the purposes of the *Private Health Insurance Act 2007* (the Act).

The new MBS items will be excluded from the definition of hospital treatment by adding the MBS items to the classes of treatments specified for the purposes of subsection 121-5(4) of the Act by amending:

- Part 3 Rule 8 of the Health Insurance Business Rules to include reference to the new MBS items.

The MBS item changes relevant to these Amendment Rules, are given effect by, and detailed in, the following legislative instrument, accessible on the Federal Register of Legislation (FRL) at www.legislation.gov.au:

- *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (In-Hospital Telehealth and Phone Services) Determination 2021*.

The expansion of specialist telehealth and phone services will ensure continuity of care for private in-hospital patients and are necessary to keep both health care practitioners and patients safe during the evolving COVID-19 pandemic.

These changes, along with other temporary COVID-19 MBS telehealth items, will remain in place until 31 December 2021, with ongoing arrangements to be considered as part of broader Government consideration of MBS telehealth arrangements.

Background

Subsection 121-5(4) of the Act specifies that despite subsections (1), (2) and (2A), treatment is not hospital treatment if it is specified in, or is included in a class of treatments specified in, the Private Health Insurance (Health Insurance Business) Rules for the purposes of this subsection.

Health Insurance Business Rules

A treatment with the potential to be provided to privately insured patients as hospital treatment can be excluded from the definition of hospital treatment under subsection 121-5(4) of the Act if it is specified in, or included in a class of treatments specified in, the Private Health Insurance (Health Insurance Business) Rules for the purposes of that subsection.

The Amendment Rules

The consequential amendments in these Amendment Rules are administrative in nature and do not substantively alter existing arrangements established under the Act.

Commencement

The Amendment Rules commence on 15 September 2021.

Details

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

Consultation

MBS item related consultation

The Amendment Rules are consequential to MBS items changes. Detail on the MBS items and consultations undertaken can be found in the Explanatory Statement to the:

- *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Amendment (In-Hospital Telehealth and Phone Services) Determination 2021*

– available online from FRL at www.legislation.gov.au, and in the information factsheet available from the MBS Online website at www.mbsonline.gov.au.

Private health insurance consultation on MBS items

Due to the short implementation timeframe and the nature of the items consultation with the private health insurance sector was not undertaken. The Department's weekly email to private health sector stakeholders will provide information on the changes. Regular updates are provided in the Regulatory Amendments Calendar as part of this weekly email.

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

Details of the *Private Health Insurance (Health Insurance Business) Amendment Rules (No. 2) 2021*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance (Health Insurance Business) Amendment Rules (No. 2) 2021*.

Section 2 Commencement

Section 2 provides that the instrument commences on 15 September 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.

All Schedule changes come into effect from 15 September 2021.

Schedule 1—Amendments

Private Health Insurance (Health Insurance Business) Rules 2018

Schedule 1 of the Amendment Rules adds a new class to the classes of treatments specified for the purposes of subsection 121- 5(4) of the *Private Health Insurance Act 2007* (the Act). This amendment excludes from the definition of hospital treatment new Medicare Benefits Schedule (MBS) items being introduced from 15 September 2021 for specialist telehealth and phone services performed by the admitting medical practitioner or admitting dental practitioner for private patients admitted to hospital.

Item 1 provides for insertion of text at Rule 8 specifying for the purposes of subsection 121-5 (4) of the Act a new class of treatments as:
“any treatment which is a service to which an item in the tables of Schedule 5 of the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020* applies”.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Health Insurance Business) Amendment Rules (No. 2) 2021

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

The purpose of the *Private Health Insurance (Health Insurance Business) Amendment Rules (No. 2) 2021* (the Amendment Rules) is to amend the:

- *Private Health Insurance (Health Insurance Business) Rules 2018* (the Health Insurance Business Rules).

The Amendment Rules make a consequential amendment to the Health Insurance Business Rules to:

- add a new class to the classes of treatments specified for the purposes of subsection 121- 5 (4) of the *Private Health Insurance Act 2007* (the Act). This amendment excludes from the definition of hospital treatment new Medicare Benefits Schedule (MBS) items being introduced from 15 September 2021 for specialist telehealth and phone services performed by the admitting medical practitioner or admitting dental practitioner for private patients admitted to hospital.

Human rights implications

The Amendment Rules engage the right to health by facilitating the appropriate payment of private health insurance benefits for health care services, encouraging access to, and choice in, health care services. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically the right to health, the Amendment Rules assist 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 that insurers do not differentiate the premiums they charge according to individual health characteristics such as poor health.

Analysis

The amendment relating to inclusion of the new telehealth consultation MBS items as a new class of treatments specified for the purposes of subsection 121-5 (4) of the Act is a consequence of the changes to the MBS that take effect on 15 September 2021 and is consistent with the policy intent of the changes to the MBS.

Conclusion

This disallowable 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 instrument is compatible with human rights because these changes continue to ensure that existing arrangements advancing the protection of human rights are maintained.

Brian Kelleher
Assistant Secretary
Private Health Industry Branch
Medical Benefits Division
Health Resourcing Group
Department of Health