

## **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. 1) 2022*

### **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. 1) 2022* (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.

Subsection 12(1A) of the *Legislation Act 2003* provides a registered legislative instrument may have a commencement date prior to the date of registration (retrospective commencement).

Subsection 12(2) provides this is subject to the conditions it does not disadvantage a person (other than the Commonwealth) or impose a liability on a person (other than the Commonwealth). Subsection 12(4) of the *Legislation Act 2003* provides the effect of subsection (2) in relation to an instrument is subject to any contrary provision in an Act.

The Act does not exclude subsection 12(2) of the *Legislation Act 2003* from applying to rules made under section 333-20(1) of the Act. However, this instrument will not impose a liability or disadvantage a person other than the Commonwealth, consistent with the intent of *Legislation Act 2003*.

### **Purpose**

The Amendment Rules make a consequential amendment to the Health Insurance Business Rules subsequent to the reinstating, with retrospective effect from 1 January 2022, of 40 temporary Medicare Benefits Schedule (MBS) items previously available from 15 September to 31 December 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 relisted MBS items will continue to not be considered hospital treatment for the purposes of the Act. The retrospective effect of the amendment will also ensure that, as a result of the relisting of these MBS items, no person's rights will be affected so as to disadvantage the person, or any person have a liability imposed upon them in respect of anything done or omitted to be done prior to the date of registration.

The reinstated 40 temporary 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 relisted 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](http://www.legislation.gov.au):

- *Health Insurance Legislation Amendment (2022 Measures No. 1) Determination 2022.*

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

These changes, along with reinstating of other temporary MBS telehealth items, will remain in place until 30 June 2022.

## 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 are taken to have commenced on 1 January 2022.

## 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 Legislation Amendment (2022 Measures No. 1) Determination 2022*
  - available online from FRL at [www.legislation.gov.au](http://www.legislation.gov.au), and in the information factsheet available from the MBS Online website at [www.mbsonline.gov.au](http://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. 1) 2022***

**Section 1 Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance (Health Insurance Business) Amendment Rules (No. 1) 2022*.

**Section 2 Commencement**

Section 2 provides that the instrument is taken to have commenced on 1 January 2022.

**Section 3 Authority**

Section 3 provides that the Amendment Rules are made under section 333-20 of the *Private Health Insurance Act 2007* (the Act).

**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 are taken to have come into effect from 1 January 2022.

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 Act. This amendment excludes from the definition of hospital treatment 40 temporary Medicare Benefits Schedule (MBS) items being relisted 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 6 of the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* 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. 1) 2022***

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. 1) 2022* (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 40 temporary Medicare Benefits Schedule (MBS) items being relisted 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 40 temporary 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 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.

**Louise Riley**  
**Acting First Assistant Secretary**  
**Medical Benefits Division**  
**Health Resourcing Group**  
**Department of Health**