

EXPLANATORY STATEMENT

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

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 2) 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 Legislation Amendment Rules (No.2) 2022* (the Amendment Rules) amends the:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules); and,
- *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 Amendment Rules make consequential amendments to the Benefit Requirements Rules and the Complying Product Rules to implement changes to the private health insurance clinical categorisation and procedure type classification of items of the Medicare Benefits Schedule (MBS) to reflect the introduction from 1 March 2022, of two new MBS items to treat chronic graft versus host disease (cGVHD) with integrated, closed-system, extracorporeal photopheresis (ECP) in conjunction with the drug methoxalen on the Pharmaceutical Benefits Scheme.

Changes to the clinical categorisation and procedure type classification of MBS items are achieved by amending:

- Schedule 6 of the Complying Product Rules for the purpose of describing hospital treatment(s) that must be covered under insurance policies, to categorise the two new MBS items into the Common Treatments list; and,
- Schedule 3 of the Benefit Requirements Rules for the purpose of specifying minimum hospital accommodation benefit requirements, to classify the two new MBS items as Procedure-type B Non-Band Specific.

The MBS item changes relevant to these Amendment Rules, are given effect by, and detailed in *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022* on the Federal Register of Legislation (FRL) at www.legislation.gov.au.

The instrument will make changes to MBS items of the general medical services table (GMST) from 1 March 2022, to reflect Government policy.

Detailed information on MBS items, including fact sheets and quick reference guides, can be accessed at MBS Online available at www.mbsonline.gov.au and in the Explanatory Statement that accompanies each set of regulatory changes. These statements also outline consultation that took place on the MBS changes.

These private health insurance changes commencing 1 March 2022 are detailed in the Attachment to this Explanatory Statement. Further information can be accessed in private health insurance information provided online at www.health.gov.au.

Consultation

Consultation on proposed private health insurance classification of these additional MBS items was undertaken in February 2022. Feedback was sought from those most likely to be directly affected by the changes including peak industry representative bodies the Australian Private Hospitals Association and Private Healthcare Australia and clinical colleges. Feedback received from stakeholders was taken into account when determining the final classifications.

Background

MBS items with the potential to be provided to privately insured patients as hospital treatment are allocated to clinical treatment categories under the Complying Product Rules and hospital accommodation procedure type classifications under the Benefit Requirements Rules, to provide clarity in the administration of treatments by insurers and facilitate claims and benefit payments.

Benefit Requirements Rules

The Benefit Requirements Rules provide for minimum benefit requirements for psychiatric care, rehabilitation, palliative care, and other hospital treatments. 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: benefits for overnight accommodation (Schedules 1 and 2); same-day accommodation (Schedule 3); Nursing-Home Type Patients (NHTP) (Schedule 4) and second-tier default benefits (Schedule 5).

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 (1 to 4) based on anaesthesia type and/or theatre time, and a fifth ‘non-band specific’ classification for items that could fall into different bands depending on how treatment is delivered to an individual patient. Part 2 of Schedule 3 identifies MBS items against Type B procedure Band 1, or the Type B non-band specific classification. The Benefit Requirements Rules also sets out circumstances in which benefits for accommodation including part of an overnight stay may be payable for patients receiving a Certified Type B Procedure (at Part 3 of Schedule 1).

Complying Product Rules

The Complying Product Rules sets out the gold, silver, bronze and basic product tiers for hospital cover, and which clinical treatment categories are included in each Hospital Treatment Product Tier.

The 38 clinical categories (Schedule 5) are treatments that must be covered by private health insurance products in the product tiers Basic, Bronze, Silver and Gold, when delivered as hospital treatment.

MBS items that are likely to be relevant to the scope of cover for only one clinical category have been placed against that category in the table at Schedule 5 of the Complying Product Rules. Where an MBS item is not likely to be a reason for admission for hospital treatment it has generally been placed in the Support treatments list, even if specific to a single body system.

MBS items that may be relevant to the scope of cover for two clinical categories are placed against the clinical category that is in the lowest product tier for which the MBS item is likely to apply.

Schedule 6—Common treatments list

The Common treatments list (Schedule 6) consists of MBS items that are used across, and therefore common to, multiple clinical categories (2 or more). For example, professional attendances by a medical practitioner are on the Common treatments list except where the MBS descriptor expressly prevents claims for hospital treatment. MBS items on the Common treatments list will generally be for treatments that may be the primary reason for an admission. In some cases, they may also be associated with, or support, another treatment that is the reason for admission. Insurers are required to cover MBS items in the Common treatments list where the treatment falls within the scope of cover for the clinical categories included in an insurance policy, and the treatment is delivered as hospital treatment.

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 the scope of cover for a clinical category included in a patient’s private health insurance policy.

Inclusion of an MBS item against a clinical category or in the Common or Support treatment lists has no bearing on whether that service requires a hospital admission and does not imply these services necessarily require admission.

MBS items which cannot be claimed for services provided as hospital treatment are not intended to be listed in the clinical categories, Common treatment or Support treatment lists.

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 1 March 2022.

Details

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

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

ATTACHMENT

Details of the *Private Health Insurance Legislation Amendment Rules (No. 2) 2022*

Section 1 **Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 2) 2022* (the Amendment Rules)

Section 2 **Commencement**

Section 2 provides that the instrument commences on 1 March 2022.

Section 3 **Authority**

Section 3 provides that the Amendment Rules are made under section 333-20(1) 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 1 March 2022.

Schedule 1—Amendments—Common Treatments

Private Health Insurance (Complying Product) Rules 2015 (Complying Product Rules)

Schedule 1 of the Amendment Rules repeals the existing MBS items against the Common treatments list of the Complying Product Rules, and substitutes an amended list.

Changes are also detailed in the private health insurance clinical category and procedure type information provided at www.health.gov.au.

Item 1 provides for an amended list of MBS items categorised in the Common treatments list (Schedule 6), to include new items to the MBS from 1 March 2022.

The amended Common treatments list reflects the addition of items 13761 and 13762.

Schedule 2—Amendments—Type B procedures

Private Health Insurance (Benefit Requirements) Rules 2011 (Benefit Requirements Rules)

Schedule 2 of the Amendment Rules repeals the existing MBS items listed as Type B non-band specific procedures in the Benefit Requirements Rules and substitutes an amended list.

- Type B procedures normally involve hospital treatment that does not include any part of an overnight stay.

Item 1 provides for an amended list of MBS items classified as Non-band specific Type B procedures. The amended list of MBS items reflects the addition of items 13761 and 13762.

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. 2) 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 Legislation Amendment Rules (No. 2) 2022* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules); and,
- *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

The Amendment Rules make consequential amendments to the:

- Complying Product Rules to categorise new items of the Medicare Benefits Schedule (MBS) into the Common treatments list for the purpose of describing hospital treatment(s) that must be covered under insurance policies; and,
- Benefit Requirements Rules to classify new MBS items by procedure-type for the purposes of minimum benefits for accommodation.

Human rights implications

The Amendment Rules engage the right to health by facilitating the 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 amendments relating to omission or insertion of MBS items in the Benefit Requirements Rules and the Complying Product Rules, and under definitions of hospital treatment are as a consequence of the changes to the MBS that take effect on 1 March 2022.

The addition of new MBS items to accommodation benefit classifications, and specified clinical categories, allows for the specified treatments under those items and the related minimum benefit amounts to be claimed by patients who have the relevant private health insurance policies.

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.

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