

## 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. 7) 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.7) 2022* (the Amendment Rules) amends the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements 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 to implement changes to the private health insurance procedure type classification of items of the Medicare Benefits Schedule (MBS) to reflect the introduction from 1 July 2022. These MBS item changes include:

- four new co-dependent pathology items for neurotrophic tyrosine receptor kinase (NTRK) gene fusion testing in patients with locally advanced or metastatic solid tumour to determine eligibility for access to larotrectinib under the PBS (73430, 73431, 73432, 73433)
- amendment to an existing item descriptor for removal of sacral nerve lead or leads (32218) and review of procedure type to reflect current service provision.

Changes to the procedure type classification of MBS items are achieved by amending Schedules 3 of the Benefit Requirements Rules for the purpose of specifying minimum hospital accommodation benefit requirements, to classify new, amended, and reviewed MBS items against procedure type classifications. No changes are required to the *Private Health Insurance (Complying Product) Rules 2015* for the purposes of classifying new MBS items 73430, 73431, 73432 and 73433 as they are in the Pathology Services Table (PST) which are automatically categorised as Support treatments.

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

- *Health Insurance (Section 3C Co-Dependent Pathology Services) Amendment Determination (No.3) 2022*
- *Health Insurance Legislation Amendment (2022 Measures No. 1) Regulations 2022*

The above instruments will make changes to MBS items of the General Medical Services Table (GMST) and Pathology Services Table (PST) from 1 July 2022, to reflect Government policy. The changes implement the Government's response to recommendations from the clinician-led MBS Review Taskforce (the Taskforce) or the independent Medical Services Advisory Committee (MSAC).

Detailed information on MBS items, including fact sheets and quick reference guides, can be accessed at MBS Online available at [www.mbsonline.gov.au](http://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.

The private health insurance classification and categorisation changes commencing 1 July 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](http://www.health.gov.au).

### Consultation

Consultation on proposed private health insurance classification of the new co-dependent pathology MBS items was undertaken in June 2022 and the amended MBS item 32218 in February 2022. Feedback was sought from those most likely to be directly affected by the changes including peak industry representatives. Feedback received from stakeholders was considered 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 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 across policy tiers by insurers and facilitate claims and benefit payments.

### ***Complying Product Rules***

The Complying Product Rules sets out the 'Basic, Bronze, Silver and Gold' product tiers for complying health insurance policies, and which clinical categories of treatment are included in each 'Hospital Treatment Product Tier.'

#### *Schedule 7—Support treatments*

The Support treatments list (Schedule 7) consists of MBS items, such as pathology tests and diagnostic tests, generally used to support the provision of a primary treatment in one of the clinical categories, or in the Common treatments list. Items in the Support treatments list are unlikely to be the primary reason for treatment in hospital.

MBS items of the Diagnostic Imaging Services Table (DIST), Pathology Services Table (PST) and 3C Determination items are automatically categorised as Support Treatments under Schedule 7 of the Complying Product Rules, so are not individually listed in the Rules.

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.

'Type C' procedures under the *Private Health Insurance (Benefit Requirements) Rules 2011* are also listed in the clinical categories or the Common or Support treatments list. Type C services do not normally require, but may be provided as, hospital treatment with the appropriate certification.

Inclusion of an MBS item against a clinical category or in the Common or Support treatments 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.

### ***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— Type B procedures*

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 Schedule 1).

#### *Schedule 3— Type C procedures*

'Type C procedures' are those services that do not normally require hospital treatment. Schedule 3 Part 3 of the Benefit Requirements Rules identifies Type C procedures by MBS item.

The Benefit Requirements Rules, together with the *Private Health Insurance (Health Insurance Business) Rules 2018*, establish that Type C procedures do not normally qualify for minimum benefits for hospital treatment, including for accommodation, except in circumstances where a patient may receive as hospital treatment a Certified Type C Procedure (at Part 2 Schedule 3) or a Certified Overnight Type C procedure.

### **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 July 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. 7) 2022*

#### **Section 1**      **Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 7) 2022* (the Amendment Rules)

#### **Section 2**      **Commencement**

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

#### Schedule 1—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 amended tables.

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

Items added to the lists of procedure types may be new MBS items, or due to procedure type reclassification following item amendments. Similarly, MBS items deleted from lists may be due to deletion from the MBS, or procedure type reclassification.

**Item 1** provides for an amended list of MBS items classified as Non-band specific Type B day procedures. The amended list of MBS items reflects the addition of item 32218.

## Schedule 2—Amendments—Type C procedures

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

Schedule 3 of the Amendment Rules repeals the existing MBS items listed as Type C procedures in the Benefit Requirements Rules and substitutes an amended table.

- Type C procedures normally do not involve hospital treatment.

Items added to the lists of procedure types may be new MBS items, or due to procedure type reclassification following item amendments. Similarly, MBS items deleted from lists may be due to deletion from the MBS, or procedure type reclassification.

**Item 1** provides for an amended list of MBS items classified as Type C procedures. The amended list of MBS items reflects the addition of items 73430, 73431, 73432 and 73433.

## **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. 7) 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. 7) 2022* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules).

The Amendment Rules make consequential amendments to the:

- Benefit Requirements Rules to classify new and amended MBS items by procedure-type for the purposes of minimum benefits for accommodation and, in relation to Type C procedures, access to any minimum benefits as hospital treatment unless provided as a Certified Type C procedure.

#### **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 insertion of MBS items in the Benefit Requirements Rules and under definitions of hospital treatment are as a consequence of the changes to the MBS that take effect on 1 July 2022.

The addition of new and amended MBS items to accommodation benefit classifications 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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