

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. 8) 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.8) 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 of a new temporary MBS item ventral mesh rectopexy for the repair of rectal prolapse that take effect 6 July 2022.

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

- Schedule 5 of the Complying Product Rules for the purpose of describing hospital treatment that must be covered under insurance policies, to categorise the MBS item by clinical category.
- Schedules 1 of the Benefit Requirements Rules for the purpose of specifying minimum hospital accommodation benefit requirements, to classify the new MBS item against a procedure type classification.

The MBS item change 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 – Ventral Mesh Rectopexy Services) Determination 2022*

The above instrument will make changes to MBS items of the General Medical Services Table (GMST) from 6 July 2022, to reflect Government policy. The change implements the Government's response to recommendations from the clinician-led MBS Review Taskforce (the Taskforce).

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.

The private health insurance classification and categorisation changes commencing 6 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.

Consultation

Stakeholders were notified of the introduction of a new temporary item for ventral mesh rectopexy (32118) in the Department's 1 July 2022 Weekly industry email. Due to the limited time available prior to 6 July 2022 commencement, consultation was not possible for item 32118. However, its classification and categorisation mirrors that of existing item number 32117 which is categorised under *Digestive system* and classified as *Type A Advanced Surgical* procedure.

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 5—Clinical categories

The 38 ‘Clinical categories’ in column 1 of the table in 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 (column two of the table) for only one clinical category have been placed against that category in the table at Schedule 5 of the Complying Product Rules. The mention of an MBS item against a particular category does not mean it is only covered under that clinical category.

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. If an MBS item is relevant to the scope of cover for three or more clinical categories it has generally be placed into the list of ‘Common treatments’ (Schedule 6).

Where an MBS item is not likely to be a reason for admission for hospital treatment it has generally been placed into the list of ‘Support treatments’ (Schedule 7) even if specific to a single body system.

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 1 and 2— Type A procedures

Schedule 1 of the Benefit Requirements Rules also 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.

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 6 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. 8) 2022*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 8) 2022* (the Amendment Rules)

Section 2 Commencement

Section 2 provides that the instrument commences on 6 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 6 July 2022.

Schedule 1—Amendments—Clinical Categories

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

Schedule 1 of the Amendment Rules repeals the existing MBS items in the Clinical categories table of the Complying Product Rules and substitutes an amended table.

Changes are 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 against Clinical category (Schedule 5) amending the category ‘*Digestive system*’ to reflect the addition of new item 32118.

Schedule 2—Amendments—Type A procedures

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

Schedule 2 of the Amendment Rules repeals the existing MBS items listed as a Type A procedures in the Benefit Requirements Rules, and substitutes amended tables.

- Type A procedures normally involve hospital treatment that includes part of an overnight stay.

Item 1 provides for an amended list of MBS items classified as Type A procedures Advanced Surgical patient, from 1 July 2022. The amended list of MBS items reflects the addition of item 32118.

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. 8) 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. 8) 2022* (the Amendment Rules) is to amend the following instruments:

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

The Amendment Rules make consequential amendments to the:

- Complying Product Rules to categorise the new item of the Medicare Benefits Schedule (MBS) into the appropriate Clinical category for the purpose of describing hospital treatment that must be covered under insurance policies; and,
- Benefit Requirements Rules to classify the new item 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 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 6 July 2022.

The addition of the new MBS item to the accommodation benefit classification, and specified clinical category, allows for the specified treatment under the item 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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