

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Prostheses) Rules, providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient in order to carry out or give effect to Part 3-3 of the Act.

In addition to the power to make this instrument under section 333-20 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 72-10(6) of the Act provides that the Private Health Insurance (Prostheses) Rules may set out listing criteria that must be satisfied in order for an application for a prosthesis to be listed to be granted.

Background

The table in subsection 72-1(2) of Part 3-3 of the Act provides for benefit requirements that a complying health insurance policy that covers hospital treatment must meet. Under item 4 of that table there must be a benefit for the provision of a prosthesis, of a kind listed in the Private Health Insurance (Prostheses) Rules (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a medicare benefit is payable or in other circumstances which may be set out in the Private Health Insurance (Prostheses) Rules. The specified conditions are any that may be set out in the Private Health Insurance (Prostheses) Rules.

If the complying health insurance policy also covers hospital-substitute treatment, under item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act, the same requirements apply.

Purpose

The *Private Health Insurance (Prostheses) Rules* (Prostheses Rules) are made for the purposes of subsection 333-20(1) of the Act. Listed prostheses and their minimum benefits are set out in the Schedule to the Prostheses Rules. The list of prostheses in the Schedule is commonly referred to as the Prostheses List.

The Schedule to the Prostheses Rules has three parts:

- Part A – Prostheses;
- Part B – Human Tissues;
- Part C – Other Prostheses.

The purpose of the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022* (the Amending Rules) is to:

- add 2 new Prostheses List billing codes to Part A of the Schedule following successful applications;
- correct the benefit for billing code ZA110 in Part A of the Schedule;
- move 493 billing codes for the general use items from Part A to the newly established Part D of the Schedule.

The new Part D of the Schedule will list billing codes for devices that have been identified by the Clinical Implementation Reference Group (CIRG) as general use items. The CIRG is an independent group of clinicians who provide advice to the Australian Government Department of Health and Aged Care on measures being implemented as part of the Prostheses List reforms.

The general use items are scheduled to be removed from the Prostheses List on 1 July 2023, when bundling arrangements are intended to be implemented. Removal of the general use items from the Prostheses List does not mean removing these products from the market, i.e. it is expected they will continue to be available for use by doctors under a different funding agreement with no clinical implications or adverse outcomes to patients.

Consultation

The Amending Rules have been made following consultation with the sponsors of the new prostheses as part of the assessment of their applications. Changes related to the Prostheses List Part D aim to provide clarity regarding some aspects of the reforms, but do not have any material effect on the listing of the prostheses.

Details of the Amending Rules are set out in the Attachment.

The Prostheses Rules commence on 1 August 2022.

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

Provision by provision description of the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022* (Amending Rules)

Rule 1 Name

Rule 1 provides that the title of the Amending Rules is the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022*.

Rule 2 Commencement

Rule 2 provides that the Amending Rules commence on 1 August 2022.

Rule 3 Authority

Rule 3 provides that the Amending Rules is made under item 4 of the table in section 333-20 of the *Private Health Insurance Act 2007*.

Rule 4 Schedules

Rule 4 provides that each instrument that is specified in Schedule 1 to the Amending Rules is amended or repealed as set out in the applicable items to the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Private health Insurance (Prostheses) Rules (No. 2) 2022

Item 1 repeals Schedule 1, Part 1 – Prostheses List – Part A table and replaces it with updated table.

Item 2 adds Schedule 1, Part 4 – Prostheses List – Part D.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022

This 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 Legislative Instrument

The table in subsection 72-1(2) of Part 3-3 of the *Private Health Insurance Act 2007* (the Act) provides for benefit requirements that a complying health insurance policy that covers hospital treatment must meet. Under item 4 of that table there must be a benefit for the provision of a prosthesis, of a kind listed in Private Health Insurance (Prostheses) Rules (i.e. a listed prosthesis), in specified circumstances and under any specified conditions.

The *Private Health Insurance (Prostheses) Rules (No. 2) 2022* were made for the purposes of section 333-20 of the Act. Listed prostheses and their minimum benefits are set out in the Schedule to the Rules. The list of prostheses in the Schedule is commonly referred to as the Prostheses List.

The *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2022* (the Amending Rules) amend the *Private Health Insurance (Prostheses) Rules (No. 2) 2022* (the Prostheses Rules) by:

- adding 2 new Prostheses List billing codes to Part A of the Schedule following successful applications;
- correcting the benefit for billing code ZA110 in Part A of the Schedule;
- moving 493 billing codes for the general use items from Part A to the newly established Part D of the Schedule.

Human rights implications

This instrument engages article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the right to health.

Right to Health

The right to health – the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in article 12(1) of the ICESCR. Whilst the UN Committee on Economic Social and Cultural Rights has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. In addition, the right to health must meet certain key requirements, including that health care must be scientifically and medically appropriate and of good quality.

Analysis

The addition of billing codes and the correction of benefit will ensure that an insured person has access to private health insurance benefits for prostheses that have been assessed as clinically and cost effective. Moving devices from Part A to Part D of the Schedule will ensure that insured persons will continue to have access to private health insurance benefits while alternative funding arrangements are being negotiated and implemented. These changes will impact positively on the right to health of insured persons.

Conclusion

The instrument is compatible with human rights because it enables advances in the protection of human rights, in particular the right to health.

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