

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules (No. 3) 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 (No. 3) 2022* (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 Schedule 1 to the Prostheses Rules. The list of prostheses in Schedule 1 is commonly referred to as the Prostheses List.

The Schedule to the Prostheses Rules has four parts:

- Part A – Prostheses;
- Part B – Human Tissue;
- Part C – Other Prostheses
- Part D – General Use Items

The purpose of the *Private Health Insurance (Prostheses) Amendment Rules (No. 3) 2022* (the Amending Rules) is to amend the Prostheses Rules to:

- create a new group in Part C of the Prostheses List for the electronic devices allowing patients programming and controlling insulin pumps;
- add 1 new Prostheses List billing code II001 in the new group in Part C for the Personal Diabetes Manager, following a successful new application; and
- move 3 billing codes (JW005, JW008 and JW015) from Part A to Part D.

Consultation

The delegate had regard to recommendations made by the Prostheses List Advisory Committee (PLAC), and decisions made regarding listing of the devices on the National Diabetes Services Scheme.

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

Commencement

The Amending Rules commence on 1 December 2022.

The Amending 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. 3) 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. 3) 2022*.

Rule 2 Commencement

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

Rule 3 Authority

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

Rule 4 Schedules

Rule 4 provides that each instrument that is specified in a Schedule to the Amending Rules is amended or repealed as set out in the application 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. 3) 2022

Item 1 repeals table item 10.07 – Arterial Closure Devices in Part 1, Prostheses List – Part A of Schedule 1. The prostheses listed under table item 10.07 (codes JW005, JW008 and JW015) are being moved to Part 4, Prostheses List – Part D of Schedule 1.

Item 2 repeals the table in Schedule 1, Part 3 – Prostheses List – Part C and replaces it with an updated table.

Item 3 repeals table item 10.07 – Arterial Closure Devices in Part 4, Prostheses List – Part D of Schedule 1, and replaces it with a new 10.07 – Arterial Closure Devices item which includes codes JW005, JW008 and JW015 (see Item 1).

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. 3) 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. 3) 2022* (the Rules) 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. 3) 2022* (the Amending Rules) amend the *Private Health Insurance (Prostheses) Rules (No. 3) 2022* (the Prostheses Rules) by:

- creating a new group in Part C of the Prostheses List for the electronic devices allowing patients programming and controlling insulin pumps;
- adding 1 new Prostheses List billing code II001 in the new group in Part C for the Personal Diabetes Manager, following a successful new application; and
- move 3 billing codes (JW005, JW008 and JW015) from Part A to Part D.

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 new items will increase the amount of choice an insured person can have in relation to the type of prostheses for which they must receive a minimum private health insurance benefit. This will impact positively on the right to health of insured persons.

The Rules also remove entries at the request of the sponsors of these prostheses. The sponsors of these prostheses are no longer supplying these prostheses for use to privately insured persons in Australia.

Generally, the prostheses removed from the Rules have been replaced by newer models due to upgraded technologies or advancements in surgical procedures, or are still available for privately insured patients, but are supplied by different sponsors.

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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