

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. 3) 2023

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. 3) 2023* (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 amend the Benefit Requirements Rules to correct inadvertent omission of five Medicare Benefits Schedule (MBS) items (35548, 35641, 35697, 38272 and 45535) during tabulation of the ‘Non-Band specific Type B day procedures -list of MBS items’ in the *Private Health Insurance Legislation Amendment Rules (No. 1) 2023*.

The ‘Private Health Insurance classification of MBS items 1 March 2023’ (‘technical document’) remains correct showing the five MBS items as having both Type A Advanced Surgical and Non-Band specific Type B day procedure types. The technical document could in 2023 be viewed on the website of the Department of Health and Aged Care (‘the Department’) at <https://health.gov.au>.

The Amendment Rules commence on the day after this instrument is registered.

Consultation

The Department’s weekly email to private health sector stakeholders including peak insurer and hospital representative associations, private health insurers and private hospitals, provided notification on 10 March 2023 of the tabulation error and anticipated corrections.

Benefit Requirements Rules

The Benefit Requirements Rules provide for minimum benefit requirements for psychiatric care, rehabilitation, palliative care, and other hospital treatments.

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 that normally require hospital treatment that does not include part of an overnight stay ('Type B procedures').

Part 2 of Schedule 3 identifies MBS items against Type B procedure Band 1, or the Non-band specific Type B day procedure classification. Treatment Bands 1 to 4 are described based on anaesthesia and/or theatre time.

The treatment band applicable to a Non-band specific Type B day procedure item is that relevant to the circumstances of the hospital treatment provided to a patient.

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 the day after this instrument is registered.

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*.

Details of the *Private Health Insurance Legislation Amendment Rules (No. 3) 2023*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 3) 2023* (the Amendment Rules)

Section 2 Commencement

Section 2 provides that the instrument commences the day after the instrument is registered.

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.

Schedule 21—Amendments—Procedure types

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

Item 1 provides for a corrected list of MBS items classified as Non-band specific Type B day procedures to reinstate the following five MBS items inadvertently omitted from the table of the *Private Health Insurance Legislation Amendment Rules (No. 1) 2023*:

- 35548, 35641, 35697, 38272 and 45535

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. 3) 2023

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. 3) 2023* (the Amendment Rules) is to amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules).

The Amendment Rules amend the Benefit Requirements Rules to reinstate five Medicare Benefits Schedule (MBS) items inadvertently omitted during tabulation to the list of ‘Type B Non-band specific procedures’ 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 reinstating five MBS items to the list of Type B Non-band specific procedures allows for those items to be claimed at the related higher minimum benefit accommodation amounts by patients receiving same-day hospital treatment 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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