

## **EXPLANATORY STATEMENT**

### *Private Health Insurance Act 2007*

#### *Private Health Insurance (Data Provision) Amendment Rules 2023*

#### **Authority**

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health and Aged Care to, by legislative instrument, make Private Health Insurance Rules. The types of rules are specified in the second column of the table provided in subsection 333-20(1). In particular, the Minister is authorised to make Private Health Insurance (Data Provision) Rules as specified in item 9 of the table in subsection 333-20(1). The rules provide for matters required or permitted by Part 4-5 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act. Part 4-5 of the Act imposes miscellaneous notification and other obligations on private health insurers.

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.

#### **Purpose**

The *Private Health Insurance (Data Provision) Amendment Rules 2023* (the Amendment Rules) amend the *Private Health Insurance (Data Provision) Rules 2018* (the Rules) to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health and Aged Care (the Department) under subsection 172-10(1) of the Act.

#### **Background**

The Rules apply and incorporate the following instruments without modifications:

- the matters contained in the document titled “GT-Dental Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 21 June 2023);
- the matters contained in the document titled “HCP1 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 21 June 2023); and
- the matters contained in the document titled “HCP2 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 21 June 2023),

from the time the Amendment Rules commence.

The documents referred to above can be accessed on the Department’s website using the following link: <https://www.health.gov.au/resources/collections/hospital-data-resources>.

Data specifications are reviewed routinely every year by the Department. Following consultation with external stakeholders, changes are generally introduced effective 1 July in each financial year.

Changes to the 2023/24 data specifications are designed to align with national metadata standards published in METeOR, the Australian Institute of Health and Welfare's Metadata online registry, and to improve data quality.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. This information is protected by subsection 323-1(1) of the Act, which makes it an offence to disclose the information where the disclosure is not authorised by the Act. The Act allows for a limited set of circumstances to be considered as authorised disclosures, one of which is to enable a person to perform functions in connection with a Medicare program (paragraph 323-5(b)). The collective effect of these provisions limit the purposes for which protected information may be used or disclosed.

### **Commencement**

The Amendment Rules commence on 1 July 2023.

### **Consultation**

The Department has consulted with private health insurers and the hospital sector (private and public) about the Amendment Rules through existing working group arrangements. The working groups are comprised of representatives from the Department and industry stakeholders. Feedback received from industry is that it is appropriate for amendments to be managed by the existing working group arrangements. Previous amendments to the data specifications have also been managed in this way. The amended data specifications are distributed to industry via a Private Health Insurance Circular published by the Department. Private Health Insurance Circulars can be accessed at the following link: <https://www.health.gov.au/news/phi-circulars>.

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

## **Attachment**

### **Details of the *Private Health Insurance (Data Provision) Amendment Rules 2023***

#### **Section 1      Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance (Data Provision) Amendment Rules 2023*.

#### **Section 2      Commencement**

Section 2 provides that the instrument commences on 1 July 2023.

#### **Section 3      Authority**

Section 3 provides that the Amendment Rules are made under section 333-20 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 1—Amendments**

#### ***Private Health Insurance (Data Provision) Rules 2018***

**Item 1** repeals the existing definition of *GT-Dental Data from Insurers to the Department* and then substitutes a new definition of *GT-Dental Data from Insurers to the Department*. The new definition of *GT-Dental Data from Insurers to the Department* means the protocol set out in the document approved by the Assistant Secretary of the Data and Analytics Branch of the Department of Health and Aged Care on 21 June 2023 which consists of “Data Specifications (GT-Dental)” and “Explanatory Notes (GT-Dental)”.

**Item 2** repeals the existing the definition of *HCP1 Data from Insurers to the Department* and then substitutes a new definition of *HCP1 Data from Insurers to the Department*. The new definition of *HCP1 Data from Insurers to the Department* means the protocol set out in the document approved by the Assistant Secretary of the Data and Analytics Branch of the Department of Health and Aged Care on 21 June 2023 which consists of “Data Specifications (HCP1)” and “Explanatory Notes (HCP1)”.

**Item 3** repeals the existing definition of *HCP2 Data from Insurers to the Department* and then substitutes a new definition of *HCP2 Data from Insurers to the Department*. The new definition of *HCP2 Data from Insurers to the Department* means the protocol set out in the document approved by the Assistant Secretary of the Data and Analytics Branch of the Department of Health and Aged Care on 21 June 2023 which consists of “Data Specifications (HCP2)” and “Explanatory Notes (HCP2)”.

# Statement of Compatibility with Human Rights

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

## ***Private Health Insurance (Data Provision) Amendment Rules 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**

Private Health Insurance (Data Provision) Rules provide for matters required or permitted by Part 4-5 of the *Private Health Insurance Act 2007* (the Act), or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act.

The *Private Health Insurance (Data Provision) Amendment Rules 2023* (the Amendment Rules) amend the *Private Health Insurance (Data Provision) Rules 2018* (the Rules) to update the information, relating to the treatment received by insured persons, that private health insurers must give to the Secretary of the Department of Health and Aged Care (the Department) under subsection 172-10(1) of the Act.

The Rules apply and incorporate the following instruments without modifications:

- the matters contained in the document titled “GT-Dental Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department) on 21 June 2023;
- the matters contained in the document titled “HCP1 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 21 June 2023); and
- the matters contained in the document titled “HCP2 Data from Insurers to the Department”, (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 21 June 2023),

from the time the Amendment Rules commence.

The Amendment Rules will commence on 1 July 2023.

These documents can be found on the Department’s website using the following link:

<https://www.health.gov.au/news/phi-circulars>.

### **Human rights implications**

The Amendment Rules engage the human right to privacy under Article 17 of the International Covenant on Civil and Political Rights, but does not result in any limitation of that right.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment received by insured patients. This information is protected by subsection 323-1(1) of the Act, which makes it an offence to disclose the information where the disclosure is not authorised by the Act. The Act allows for a limited set of circumstances to be considered as authorised disclosures, one of which is to enable a person to perform functions in connection with a Medicare program (paragraph 323-5(b)). The collective effect of these provisions limit the purposes for which protected information may be used or disclosed.

## **Conclusion**

The Amendment Rules are compatible with human rights as although it engages the right to privacy in relation to the disclosure of personal information, it does not derogate from that right.

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