

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. 6) 2023

Authority

Subsection 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.

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 *Private Health Insurance Legislation Amendment Rules (No. 6) 2023* (the Amendment Rules) amends the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) to correct a typographical error to the minimum benefit payable by private health insurers for same day Band 3 accommodation for private patients at private hospitals in all States and Territories (the ‘same day Band 3 amount’).

This change will be effected by amending Schedule 3-Same-day accommodation: hospitals in all States/Territories, Clause 2 Minimum Benefit set out under Band 3 of Table 2- Same day accommodation for private patients at private hospitals in all States/Territories.

These Amendment Rules amend the same day Band 3 amount to \$403.

Background

From 1 July 2023, the *Private Health Insurance Legislation Amendment Rules (No. 4) 2023* (the Amendment Rules No. 4) made amendments to the Benefit Requirements Rules. The Amendment Rules No. 4 indexed minimum accommodation benefits by the percentage change in the Consumer Price Index (CPI) from the March Quarter 2022 to March Quarter 2023 of 7 per cent, as reported by the Australian Bureau of Statistics (ABS), which could, in 2023, be viewed on the ABS website (<https://www.abs.gov.au/>). A typographical error in the Amendment Rules No. 4 incorrectly set the same day Band 3 amount at \$441 from 1 July 2023.

The Amendment Rules ensure the same day Band 3 amount will accurately reflect the 7 per cent change in CPI from the March Quarter 2022 to March Quarter 2023, by amending the amount to \$403.

The Amendment Rules allow private health insurers to pay, and patients to receive, the correct indexed same day Band 3 amount. Patients are not disadvantaged by this amendment which will apply prospectively from the day after the instrument is registered.

Benefit Requirements Rules

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

Schedule 3 of the Benefit Requirements Rules sets out minimum same day accommodation benefits payable by insurers for procedures requiring hospital treatment that does not include part of an overnight stay at a hospital ('Type B procedures'). Type B procedures are further classified into four separate treatment bands (1 to 4) based on anaesthesia type and/or theatre time. Type B non-band specific classification may be any of Bands 1 to 4 depending on how treatment is delivered to an individual patient.

The Amendment Rules

The minor amendments in these Amendment Rules are administrative in nature and do not substantively alter existing arrangements established under the Act.

Consultation

Private health insurance minimum accommodation benefits payable by private health insurers for private patients in private hospitals are set by the Australian Government. Consultation is not routinely undertaken for their annual indexation, as the changes continue business-as-usual implementation of the Government's policy regarding annual indexation of minimum accommodation benefits by the percentage change in CPI, which is expected by stakeholders to be applied on 1 July of each year.

Consultation was not required for this amendment which ensure the application of this routine annual indexation is consistent with stakeholder expectations. allowing rapid administrative action to correct the amount following identification of the error.

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

Commencement

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

Details

Details of the Amendment Rules are set out in the **Attachment**.

Details of the *Private Health Insurance Legislation Amendment Rules (No. 6) 2023*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 6) 2023* (the Amendment Rules).

Section 2 Commencement

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

Section 3 Authority

Section 3 provides that the Amendment Rules are made under subsection 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 commence on the day after the instrument is registered.

Schedule 1—Amendments – Minimum accommodation benefits

Private Health Insurance (Benefit Requirements) Rules 2011

Item 1 – Clause 2 of Schedule 3 (Table 2)

Item 1 repeals “Table 2- Same day accommodation for private patients at private hospitals in all States/Territories” and substitutes with a new table that sets out the minimum benefits payable by private health insurers for same day accommodation hospital treatment provided in the circumstances set out in Schedule 3 of the Benefit Requirement Rules. The minimum benefits apply to same day accommodation for private patients in all private hospitals.

The effect of the new table is to amend the amount specified in Column 4, Band 3 from \$441 to \$403. All other amounts in the table remain unchanged.

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. 6) 2023

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 instrument

The purpose of the *Private Health Insurance Legislation Amendment Rules (No. 6) 2023* (the Amendment Rules) is to amend the following instrument:

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

Human rights implications

The Amendment Rules engage Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically the right to health, by assisting 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 insurers to not differentiate the premiums they charge according to individual health characteristics such as poor health.

Analysis

Amendments relating to the Benefit Requirements Rules correct a minimum benefit amount to accurately reflect the application of routine annual indexation. Patients are not disadvantaged by this amendment which will apply prospectively.

Conclusion

This 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.

Andrew Rintoul
A/g Assistant Secretary
Private Health Strategy Branch
Benefits Integrity Division
Health Resourcing Group
Department of Health and Aged Care