

Issued by the Authority of the Minister for Health and Aged Care

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 1) 2025

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.

The *Private Health Insurance Legislation Amendment Rules (No.1) 2025* (the Amendment Rules) amends the:

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

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 Amendment Rules make consequential amendments to the Benefit Requirements Rules to implement changes to the private health insurance (PHI) procedure type classification of items of the Medicare Benefits Schedule (MBS) to reflect changes to MBS items commencing 1 January 2025.

Changes to the procedure type classification of MBS items are achieved by amending:

- Schedules 3 of the Benefit Requirements Rules for the purpose of specifying minimum hospital accommodation benefit requirements, to classify a new MBS item against procedure type classifications, amend items and remove deleted items, as appropriate.

The MBS item changes relevant to these Amendment Rules, and also reflected in the associated PHI technical document, are given effect by, and detailed in, the following legislative instruments commencing 1 January 2025 and can be viewed on the Australian Government Federal Register of Legislation (FRL) website (www.legislation.gov.au) by title or Unique ID:

- *Health Insurance (Section 3C Diagnostic Imaging Services – Duplex Scanning for Erectile Dysfunction) Repeal Determination 2024*
- *Health Insurance (Section 3C Co-Dependent Pathology Services) Amendment (No. 2) Determination 2024*

- *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Determination 2024*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2024*

The above instruments will make changes to reflect Government policy to MBS items in the Diagnostic Imaging Services Table (DIST) and Pathology Services Table (PST).

Two of these changes (MBS items 63390 and 63399) relate to measures announced in the 2023-24 Budget under *Strengthening Medicare* and *A Modern and Clinically Appropriate Medicare Benefits Schedule* measure, the 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *An Effective and Clinically Appropriate Medicare* measure, the 2024-25 Budget and the Strengthening Medicare Taskforce recommendations.

Two of these changes arise from recommendations of the Medical Services Advisory Committee (MSAC) and Pharmaceutical Benefits Advisory Committee (PBAC) under codependent Application 1765, which sought to amend the MBS criteria for codependent items 73303 and 73304 to allow for testing to determine eligibility for the treatment talazoparib.

One change arises from recommendations of MSAC and PBAC under codependent Application 1765, which sought to amend the MBS criteria for codependent Application 1507.1, which sought to expand the PBS listing for olaparib and the corresponding MBS criteria for codependent item 73295.

PHI minimum benefits for these MBS item changes are reflected in benefit classifications assigned in these Amendment Rules including:

- Diagnostic Imaging services
- Pathology services

Detailed information on MBS items, including fact sheets and quick reference guides, can be viewed on the Department of Health and Aged Care's (department) MBS Online website (www.mbsonline.gov.au) and in the Explanatory Statement that accompanies each set of regulatory changes. These statements also outline consultation that took place on the MBS changes.

The private health insurance classification and categorisation changes commencing 1 January 2025 are detailed in the Attachment to this Explanatory Statement. Further PHI clinical category and procedure type information, including announcement of changes through PHI 'Circulars' and the 'Private Health Insurance Classification of MBS items' technical document (PHI technical document) can be viewed on the Department's website (www.health.gov.au).

Consultation

Private Health Insurance Rules classifications for MBS items

Medical officers within the department provide expert clinical advice to assist in determining the appropriate PHI clinical category and procedure type for accommodation benefits for MBS items in private health insurance rules.

The department's weekly email to private health sector stakeholders including peak insurer and hospital representative associations, private health insurers and private hospitals, includes a *Regulatory Amendments and Consultations Calendar* which provides information on anticipated changes to MBS items and consultation processes.

Feedback received from stakeholders was considered when determining the final amendments.

MBS item related consultation

The Amendment Rules relating to the support treatment list and procedure type classifications are consequential to MBS items changes. Detail on the MBS items and consultations undertaken, including by the Taskforce, MSAC and with medical professional organisations can be found in the Explanatory Statements to the MBS Regulations that can be viewed on the FRL website (www.legislation.gov.au), and the Department's 'MBS Online' website (www.mbsonline.gov.au).

Implementation liaison groups involving professional bodies and clinical experts also inform development of MBS items. Consultation encompasses private hospital and private health sector representation.

Background

MBS items with the potential to be provided to privately insured patients as hospital treatment are allocated to hospital accommodation procedure type classifications under the Benefit Requirements Rules to provide clarity in the administration of treatments across policy tiers by insurers and facilitate claims and minimum benefit payments.

Benefit Requirements Rules

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric care, rehabilitation, palliative care, and other hospital treatments. Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation benefits payable by private health insurers associated with private patients' hospital treatment: benefits for overnight accommodation (Schedules 1 and 2); same-day accommodation (Schedule 3); Nursing-Home Type Patients (NHTP) (Schedule 4) and second-tier default benefits (Schedule 5).

Schedule 1 and 2— Type A procedures

Schedule 1 of the Benefit Requirements Rules provides for benefits for different patient categories by categorising MBS item numbers into patient classifications for accommodation benefits. Procedures requiring hospital treatment that includes part of an overnight stay (Type A procedures) comprise 'Advanced surgical patient', 'Obstetric patient', 'Surgical patient', 'Psychiatric patient', 'Rehabilitation patient' and 'Other patients.'

Against these patient classifications, Schedule 1 sets out the minimum accommodation benefit payable by insurers per night for overnight accommodation for private patients at private hospitals in all states and territories, and for private patients in overnight shared ward accommodation at public hospitals in Victoria and Tasmania.

Schedule 2 of the Benefit Requirements Rules states the minimum accommodation benefit payable by insurers per night, for private patients in overnight shared ward accommodation at

all other State and Territory public hospitals. For each jurisdiction listed in Schedule 2, the minimum benefit payable by insurers per night is averaged across all patients, rather than being specific to patient classification as for Schedule 1.

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 relevant to the circumstances of the hospital treatment provided to a patient.

The Benefit Requirements Rules also sets out circumstances in which benefits for accommodation, including part of an overnight stay, may be payable for patients receiving a Certified Type B Procedure (at Part 3 Schedule 1).

Schedule 3— Type C procedures

Type C procedures are those services that do not normally require hospital treatment. Schedule 3 Part 3 of the Benefit Requirements Rules identifies Type C procedures by MBS item.

The Benefit Requirements Rules, together with the *Private Health Insurance (Health Insurance Business) Rules 2018*, establish that Type C procedures do not normally qualify for minimum benefits for hospital treatment, including for accommodation, except in circumstances where a patient may receive as hospital treatment a Certified Type C Procedure (at Part 2 Schedule 3) or a Certified Overnight Type C procedure (at Part 3 of Schedule 1).

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.

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.1) 2025*

Section 1 – Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 1) 2025* (the Amendment Rules).

Section 2 – Commencement

Section 2 provides that the instrument commences on 1 January 2025.

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 1 January 2025.

Schedule 1—Amendments—Procedure types

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

Schedule 2 of the Amendment Rules repeals the existing list of MBS items classified as Type C procedures in the Benefit Requirements Rules and substitutes an amended list.

- Type C procedures normally do not involve hospital treatment.

Items added to the lists of procedure types may be new, extended, renumbered, or reclassified MBS items. Similarly, MBS items deleted from the lists may be due to removal or expiry from the MBS, renumbering, or procedure type reclassification.

Item 1 provides for an amended list of MBS items classified as **Type C procedures**. The amended list of MBS items reflects the following item changes:

- Additions: number = 1 (63390)
- Deletions: number = 3 (55208, 55211 and 63399)

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. 1) 2025

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. 1) 2025* (the Amendment Rules) is to amend the following instruments:

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

The Amendment Rules make consequential amendments to the:

- Benefit Requirements Rules to classify new, amended and reviewed MBS items by procedure-type for the purposes of minimum benefits for accommodation and, in relation to Type C procedures, access to any minimum benefits as hospital treatment unless provided as a Certified Type C procedure;
- remove deleted MBS items from the above Rules.

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.

The amendments relating to omission or insertion of MBS items in the Benefit Requirements Rules and the Complying Product Rules, and under definitions of hospital treatment are as a consequence of the changes to the MBS that take effect on 1 November 2024.

The addition of new MBS items to accommodation benefit classifications, and specified clinical categories, allows for the specified treatments under those items and the related minimum benefit amounts to be claimed by patients who have the relevant private health insurance policies.

The amendments relating to monetary qualifiers are a consequence of routine MBS indexation.

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.

Paul McBride
Assistant Secretary
Private Health Strategy Branch
Health Systems Strategy Division
Health Strategy, First Nations and Sports Group
Department of Health and Aged Care