Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)[1]

Private Health Insurance Act 2007

The Private Health Insurance Administration Council makes the following rule under section 333-25 of the *Private Health Insurance Act 2007*.

Dated 6 September 2013

LYNN RALPH
Commissioner of Private Health Insurance Administration

1 Name of rule

This rule is the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)*.

2 Commencement

Each provision of this rule specified in column 1 of the table commences in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

	Column 1	**Column 2**
	Provision(s)	**Commencement**
1	Sections 1 to 4 and anything in this regulation not elsewhere covered by this table	The day after this rule is registered
2	Schedule 1 Items [1] to [19]	31 March 2014
3	Schedule 1 Item [20]	1 July 2014
4	Schedule 1 Item [21]	31 March 2014
5	Schedule 1 Item [22]	1 July 2014

3 Authority

This rule is made under the *Private Health Insurance Act 2007*.

4 Schedule(s)

The *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1— Amendments

Private Health Insurance (Health Benefits Fund Administration) Rules 2007

[1] Rule 3, definition of *insurer*

Repeal the definition of "***insurer***".

[2] Rule 3, Definitions

insert after "***Act*** means the *Private Health Insurance Act 2007*.":

"***approved loss absorbing subordinated debt*** of a health benefits fund, means a security or other debt instrument, which has been approved by the Council under rule 3A.

Australian Accounting Standards means the accounting standards issued by the Australian Accounting Standards Board.

authorised deposit-taking institution means a body corporate in relation to which an authority under subsection 9 (3) of the *Banking Act 1959* is in force.

billed risk equalisation trust fund liability means the amount of risk equalisation trust fund payments, on the relevant day, for which an invoice from the Council has been received by the insurer but that have not yet been paid by the insurer.

borrowings of a health benefits fund are borrowings which would be permitted under Rule 5 of these Rules.

capital adequacy maximum default loss amount of a health benefits fund, has the meaning given by clause 13 of Schedule 3.

capital adequacy standard means the capital adequacy standard, referred to in Part 6, and as set out in Schedule 3 of these Rules.

capital adequacy supervisory adjustment amount of a health benefits fund, has the meaning given by clause 12 of Schedule 3.

cash has the meaning given in Australian Accounting Standards Standard 107.6.

cash management amount of a health benefits fund, has the meaning given by clause 5 of Schedule 2.

central estimate means an estimate of the mean of the range of possible outcomes of any calculation required under either the solvency standard or the capital adequacy standard.

constructive obligation has the meaning given in the liability adequacy test in Australian Accounting Standard Board Standard 137.

financial interdependency in relation to a group of related counterparties, means a circumstance in which the financial soundness of one counterparty in the group may affect the financial soundness of another counterparty in the group.

future claims liability of a health benefits fund, is the amount calculated, at a 75% probability of adequacy, in accordance with the following calculation:

(a) the sum of:

  (i) future cash flows from future claims under current policies; and

  (ii) the additional risk margin; and

  (iii) the sum of related intangible assets and related deferred acquisition costs;

where all elements of the future claims liability calculation are defined in a manner consistent with the definitions contained in the liability adequacy test set out in the Australian Accounting Standard Board Standard 1023, except that discounting is not applied and the constructive obligation component is not included.

future claims liability amount of a health benefits fund, has the meaning given in clause 7 of Schedule 3.

group of related counterparties means two or more counterparties which are ***related parties***, or are linked by either of the following:

(a) financial interdependency; or

(b) any other connection or relationship that might expose the counterparties in the group to a single risk.

health business revenue estimate of a health benefits fund, is its premium income estimate plus a central estimate of the gross revenue that it will earn in relation to its health related business in the 12 months after the relevant day, less any premium ceded to reinsurers in relation to health-related business within that 12 month period.

liquidity management plan of a health benefits fund, has the meaning given in subclause 4 (3) of Schedule 2.

maximum default loss means the largest uncompensated loss of the health benefits fund arising from any loss, other than losses arising from assets held with an Australian Government counterparty or deposits held with an authorised deposit-taking institution, in relation to:

(a) any asset or any group of related assets of the health benefits fund; and

(b) any individual counterparty or group of related counterparties.

operational risk amount of a health benefits fund, has the meaning given by clause 11 of Schedule 3.

other liabilities amount of a health benefits fund, has the meaning given in clause 9 of Schedule 3.

outstanding claims liability has the meaning given by the Australian Accounting Standard Board Standard 1023, where:

(a) the risk margin applied produces a 75% probability of adequacy; and

(b) discounting is not applied; and

(c) any outstanding claims liabilities from health related business are incorporated; and

(d) receipts from the risk equalisation trust fund are incorporated.

outstanding claims liability amount of a health benefits fund, has the meaning given in clause 6 of Schedule 3.

premium income estimate of a health benefits fund, is the central estimate of the amount of health insurance business premium income that it will earn in the 12 months after the relevant day, where the premium increase assumption is the lesser of:

(a) the central estimate of the amount of revenue the private health insurer's health benefits fund will earn in the 12 months after the relevant day; and

(b) the amount determined in accordance with the methodology published by the Council, as amended from time to time.

previously approved subordinated debt of a health benefits fund, means debt of a kind previously approved by the Council, as subordinated debt, for the purposes of the solvency standard or the capital adequacy standard established by these rules, as in force as immediately prior to 31 March 2014.

probability of adequacy means the percentile required to meet individual elements of either the solvency standard or the capital adequacy standard.

prudent liabilities amount, of a health benefits fund, has the meaning given by clause 5 of Schedule 3."

[3] Rule 3, Definitions

insert after "***Regulations*** means any regulations made under the Act.":

"***related party*** has the meaning given by the Australian Accounting Standards Board Standard 124.

relevant day means the day on which the calculation is based for the purposes of assessing compliance with the solvency standard or the capital adequacy standard, as the case may be.

risk equalisation trust fund accrued liability amount of a health benefits fund, has the meaning given in clause 8 of Schedule 3."

[4] Rule 3, Definitions

insert after "***Rules*** means the Rules made under the Act including these Rules.":

"***single equivalent units (SEUs)*** has the meaning given in Part 1, Rule 4 of the *Private Health Insurance (Risk Equalisation Policy) Rules 2007*.

size margin of a health benefits fund, is the lesser of:

(a) the margin based on the number of *SEUs* of the health benefits fund as calculated by the following formula:

$$0.75 \times (SEUs)\ \hat{}\ {-0.16}; \text{ and}$$

(b) 0.25.

solvency standard means a solvency standard, as referred to in Part 6, and set out in Schedule 2 of these Rules.

solvency supervisory adjustment amount of a health benefits fund, has the meaning given by subclause 6 (2) of Schedule 2.

stress test amount of a health benefits fund, has the meaning given by subclause 10 (1) of Schedule 3.

stressed net cash outflow amount of a health benefits fund means the 98^{th} percentile estimate of the net cash outflows for a 30 day period from the relevant day, where:

(a) net cash outflow means the cash outflows from the health benefits fund less cash inflows to the health benefits fund; and

(b) cash outflows are limited to cash payments required to meet all liabilities that are, or might become, referable to the health benefits fund; and

(c) cash inflows represent cash receipts arising from:

(i) premiums payable under policies of insurance that are referable to the fund; and

(ii) income from the investment of assets of the fund held on the relevant day including amounts receivable on maturity and excluding revenues from the sale of assets, except where a binding agreement for the sale has been entered into prior to the relevant day; and

(iii) any other money due to be received by the insurer in connection with its conduct of the business of the fund.

stressed investment income estimate of a health benefits fund, has the meaning given by subclause 10 (3) of Schedule 3.

stressed net margin estimate of a health benefits fund, has the meaning given by subclause 10 (2) of Schedule 3.

stressed other income estimate of a health benefits fund, has the meaning given by subclause 10 (4) of Schedule 3."

[5] Rule 3, Definitions

Repeal the definition of "***subordinated debt"*** and substitute:

"subordinated debt means the sum of any previously approved subordinated debt and any approved loss absorbing subordinated debt.

unbilled calculated deficit means the central estimate of the sum of all the amounts calculated for each risk equalisation jurisdiction, and under the following conditions:

(a) in accordance with Part 2, Rule 11 (1) (e) of the *Private Health Insurance (Risk Equalisation Policy) Rules 2007;*

(b) over the period up to the relevant day;

(c) where the risk equalisation trust fund payments or receipts have accrued but have not yet been paid; and

(d) where an invoice, notice or receipt from the Council has not yet been received by the private health insurer, for that period.

unbilled gross deficit means the central estimate of the sum of the eligible benefits notionally allocated to the aged-based pool and the high cost claimants pool, calculated for each risk equalisation jurisdiction, and under the following conditions:

(a) in accordance with Part 2, Rule 11 (1) (a) of the *Private Health Insurance (Risk Equalisation Policy) Rules 2007;*

(b) over the period up to the relevant day;

(c) where the risk equalisation trust fund payments or receipts have accrued but have not yet been paid; and

(d) where an invoice, notice or receipt from the Council has not yet been received by the private health insurer, for that period.

uncompensated loss means the likely net loss after insurance, derivative, recoveries, and compensation.

unexpired risk liability has the meaning given in the liability adequacy test in the relevant Australian Accounting Standards Board Standard 1023.

xth percentile means the percentile with which the:

(a) net margin for the health insurance business; and

(b) investment income; and

(c) health related business income and all other income, less associated expenses;

must be measured at, in order to achieve a second percentile profit margin, incorporating allowance for correlation between (a), (b) and (c)."

[6] After rule 3

Insert:

"3A Approved loss absorbing subordinated debt

(1) An instrument or agreement of issue of approved loss absorbing subordinated debt must be approved by the Council prior to the time of issue.

(2) The Council must consider the requirements in subclause (3) and have regard to the quantum of the proposed issue and the timing for draw down, in making its decision on approval.

(3) Approved loss absorbing subordinated debt must be created by a debt instrument or agreement which meets and continues to meet the following terms and conditions:

(a) it must comprise a mechanism which specifies the conditions and process for loss absorption, through diminution of value, conversion or other means, of the instrument or agreement on a going concern basis, such that prior to non-compliance with the capital adequacy standard the value of the debt would be reduced to the relevant extent, and if necessary exhausted; and

(b) it must have a minimum term of 10 years from the commencement of the loan; and

(c) there must be no circumstances where repayment may be accelerated or called at the lender's or any third party's option; and

(d) interest payments must not be payable where the payment of these would cause the fund to breach the capital adequacy standard; and

(e) interest payment obligations may be capitalised and interest may be charged on capitalised interest; and

(f) capital repayments must not be made where repayment would cause the fund to breach the capital adequacy standard; and

(g) delayed capital repayments may be subject to continuing interest charges, on the interest charge and repayment conditions specified in this paragraph."

[7] Subrule 8 (1)

Omit "restructure" substitute " restructure of a health benefits fund conducted by a private health insurer".

[8] Paragraphs 8 (1) (d) and (e)

Omit "to which the insurer is subject", substitute "that applies to the private health insurer".

[9] Paragraph 9 (a)

Omit "proposal;", substitute "proposal of a health benefits fund conducted by a private health insurer;".

[10] Subrule 10 (1)

Omit "restructure,", first occurring, substitute "restructure of a health benefits fund conducted by a private health insurer,".

[11] Subrule 10 (3)

Omit "a restructure", substitute "the restructure".

[12] Subrule 10 (4)

Omit "a restructure", substitute "the restructure".

[13] Subrule 11 (1)

After "(**transferring funds**)" insert "of the transferor private health insurer or transferor private health insurers".

[14] Paragraph 12 (1) (g)

Omit "the insurer", substitute "the transferor private health insurer".

[15] Paragraph 13 (1) (d) and (e)

Omit "to which the insurer is subject", substitute "that applies to the private health insurer".

[16] Subrule 13A (4)

Omit "an insurer", substitute "the transferor private health insurer's health insurance business".

[17] Subrule 15 (1)

Omit "the insurers", substitute "the private health insurers who made the application".

[18] Subrule 17 (1)

After "days of", insert "a private health insurer".

[19] Further amendments

Provision	Omit each mention of	Insert
subrules 4 (1) and 5 (1)	an insurer	a private health insurer
subrules 6 (1) and 7 (1)	An insurer	A private health insurer
rule 10A, definition of ***not-for profit insurer***	an insurer	a private health insurer
subrule 11 (1)	an insurer	a private health insurer
subrule 11 (1)	more insurers	more other private health insurers
paragraph 11 (3) (k)	as insurer	as private health insurer
subrule 11 (6)	Insurers	private health insurers
paragraph 12 (1) (i)	an insurer	a private health insurer
paragraph 14 (c)	the insurer	the private health insurer

[20] Schedule 2

Repeal Schedule 2 and substitute:

"Schedule 2 Solvency standard

(rule 18)

Part 1 Preliminary

1 Purpose of solvency standard

(1) The purpose of this solvency standard, established for Division 140 of the Act, is to ensure as far as practicable that at any time the financial position of a health benefits fund conducted by a private health insurer is such that the private health insurer will be able to meet, out of the fund's assets, all liabilities that are referrable to the fund, as those liabilities become due.

(2) This standard requires the private health insurer to demonstrate that it will be able to meet the liabilities of its health benefits fund, allowing for adverse circumstances.

(3) A central pillar of a private health insurer’s financial strength is that the assets of a health benefits fund are sufficiently liquid to meet its cash demands and unanticipated losses from its activities.

(4) The health benefits fund’s compliance with this solvency standard, is an indication of its financial strength into the future, on a going concern basis.

(5) The board of a private health insurer must ensure that the private health insurer is compliant with the solvency standard.

Part 2 Complying with the solvency standard

2 Application of Australian Accounting Standards

(1) Any amount or value that is required to be calculated for the purposes of this Schedule must be calculated in accordance with Australian Accounting Standards, unless otherwise indicated.

3 Estimates, forecasts and calculations

(1) All estimates, forecasts and calculations in this Schedule must:

(a) be made having regard to reasonably available statistics and other relevant information; and

(b) not be deliberately or carelessly overstated or understated.

4 Complying with the solvency standard

(1) A private health insurer must, at all times, comply with this Schedule in relation to each health benefits fund conducted by the private health insurer.

(2) The private health insurer must ensure that, at all times, the value of the cash of its health benefits fund is not less than the sum of the cash management amount, plus any solvency supervisory adjustment amount determined in accordance with clause 6 of this Schedule.

(3) A private health insurer must have, and comply with, a board endorsed, liquidity management plan for each health benefits fund it conducts. The liquidity management plan must be designed to enable the health benefits fund to continue to comply with the solvency requirements set out in subclause (2), including by setting minimum liquidity requirements and management action triggers, to ensure compliance.

(4) When a board of a private health insurer endorses a liquidity management plan it must ensure that the plan has been designed with regard to:

(a) the extent to which the assets of the health benefits fund could be readily converted to cash under stressed market conditions; and

(b) the concentration of exposures to related counterparties for the assets which may be required to be converted to cash under stressed market conditions; and

(c) the seasonality and variability in cash flows; and

(d) the potential size of cash outflows under stressed business conditions; and

(e) the potential that the health benefits fund may have to draw down its cash to repay borrowings; and

(f) any other matter the board of the private health insurer considers relevant.

(5) The board must review the liquidity management plan at least every two years and either:

(a) re-endorse the existing liquidity management plan; or

(b) endorse a new liquidity management plan.

(6) The private health insurer must provide a report to the Council, in the approved form, within 28 days of the end of each financial quarter, or as otherwise required by the Council, for the purposes of the Council assessing the compliance of the private health insurer with the solvency standard.

(7) A private health insurer must notify the Council immediately, in writing, if the private health insurer becomes aware that it does not comply with this Schedule.

5 Cash management amount

(1) The ***cash management amount*** of a health benefits fund is the greater of:

(a) the ***stressed net cash outflow amount*** plus 1% of the health business revenue estimate; and

(b) 1% of the health business revenue estimate.

6 Solvency supervisory adjustment amount

(1) The ***solvency supervisory adjustment amount*** of a health benefits fund, on the relevant day, is:

(a) an amount expressed in dollars; or

(b) a percentage figure; or

(c) a factor; or

(d) an amount, or a description of an amount, derived through another basis for calculating the solvency supervisory adjustment amount; or

(e) a methodology to be applied that will result in an amount;

which is not less than 0, and would not result in a negative amount, determined by the Council, upon reasonable grounds.

(2) In making a determination about a solvency supervisory adjustment amount, the Council may consider the following examples as being examples of reasonable grounds for the determination of the solvency supervisory adjustment but the Council is not limited in its considerations to those examples:

(a) the health benefits fund's cash management amount does not make adequate allowance for inherent uncertainty; and/or

(b) the health benefits fund's cash has not been classified appropriately; and/or

(c) the private health insurer conducting the health benefits fund does not have adequate data to assess the risks of the fund; and/or

(d) the health benefits fund is exposed to contagion risks from a related party, and the private health insurer has not appropriately considered these risks for the purpose of its obligation under this Schedule.

(3) If:

(a) the Council is satisfied that there are reasonable grounds under subclause (1); and

(b) the Council makes a determination under subclause (1) in relation to the health benefits fund;

the Council must, as soon as practicable after making the determination, notify the private health insurer, in writing, of:

(c) the amount, factor, figure or methodology determined under subclause (1); and

(d) the reasons for the decision to make a determination under subclause (1); and

(e) the private health insurer's right to apply for review of the decision under subclause (4).

(4) The private health insurer may apply to the Administrative Appeals Tribunal for review of a decision by the Council under subclause (1)."

[21] Schedule 3

Repeal Schedule 3 and substitute:

"Schedule 3 Capital adequacy standard

(rule 19)

Part 1 Preliminary

1 Purpose of capital adequacy standard

(1) The purpose of this capital adequacy standard, established for Division 143 of the Act is to ensure, as far as practicable, that there are sufficient assets in a health benefits fund conducted by a private health insurer to provide adequate capital for the conduct of the health benefits fund in accordance with the Act and in the interests of the policy holders of the fund.

(2) This standard requires the private health insurer to demonstrate that the assets of its health benefits fund will be able to meet the liabilities of the fund after a 12 month period, allowing for the future business plans of the fund and adverse circumstances.

(3) The health benefits fund's compliance with this capital adequacy standard, is an indication of its future financial strength, on a going concern basis.

(4) The board of a private health insurer must ensure that the private health insurer is compliant with the capital adequacy standard.

Part 2 Complying with the capital adequacy standard

2 Application of Australian Accounting Standards

(1) Any amount or value that is required to be calculated for the purposes of this Schedule must be calculated in accordance with Australian Accounting Standards, unless otherwise indicated.

3 Estimates, forecasts and calculations

(1) All estimates, forecasts and calculations in this Schedule must:

(a) be made having regard to reasonably available statistics and other relevant information; and

(b) not be deliberately or carelessly overstated or understated.

4 Complying with the capital adequacy standard

(1) A private health insurer must comply with this Schedule in relation to each health benefits fund conducted by the private health insurer.

(2) The private health insurer must ensure that, at all times, the value of the assets of its health benefits fund is not less than the amount calculated under paragraph (a) and also not less than the second amount calculated under paragraph (b), where:

(a) the amount is the sum of that fund's:

(i) prudent liabilities amount; and

(ii) stress test amount; and

(iii) operational risk amount; and

(iv) any capital adequacy supervisory adjustment amount, determined in accordance with clause 12 of this Schedule; and

(v) less any subordinated debt; and

(b) the second amount is the sum of that fund's:

(i) prudent liabilities amount; and

(ii) capital adequacy maximum default loss amount; and

(iii) any capital adequacy supervisory adjustment amount, determined in accordance with clause 12 of this Schedule; and

(iv) less any subordinated debt.

(3) The private health insurer must provide a report to the Council, in the approved form, within 28 days of the end of each financial quarter, or as otherwise required by the Council, for the purposes of the Council assessing the compliance of the private health insurer with the capital adequacy standard.

(4) A private health insurer must notify the Council immediately, in writing, if the private health insurer becomes aware that it does not comply with this Schedule.

5 Prudent liabilities amount

(1) The ***prudent liabilities amount*** of a health benefits fund on the relevant day is the sum of its:

(a) outstanding claims liability amount; and

(b) future claims liability amount; and

(c) risk equalisation trust fund accrued liability amount; and

(d) other liabilities amount.

6 Outstanding claims liability amount

(1) The ***outstanding claims liability amount*** of the health benefits fund is calculated in accordance with the following formula:

outstanding claims liability × (1 + ***size margin***)

7 Future claims liability amount

(1) The ***future claims liability amount*** of the health benefits fund is calculated in accordance with the following formula:

future claims liability × (1+ ***size margin***)

8 Risk equalisation trust fund accrued liability amount

(1) The risk equalisation trust fund accrued liability amount is the greater of:

(a) 0.1 × unbilled calculated deficit; and

(b) (1.1 × unbilled calculated deficit) – unbilled gross deficit + billed risk equalisation trust fund liability.

9 Other liabilities amount

(1) The value of any ***other liabilities amount*** of the health benefits fund is the sum of all other liabilities not included in clauses 5, 6, 7 and 8 of this Schedule, valued as follows:

(a) individually, at a 98% probability of adequacy, where the balance sheet value of the liability is not less than 2% of the total value of balance sheet liabilities; and

(b) collectively, at least at a 98% probability of adequacy, where the balance sheet value of the liability is less than 2% of the total value of balance sheet liabilities.

10 Stress test amount

(1) The stress test amount of a health benefits fund on the relevant day is the greater of:

(a) $0; and

(b) the amount calculated using the following formula:

$$-N - I - O + T$$

Where:

N is the health benefits fund's ***stressed net margin estimate***, calculated in accordance with subclause (2).

I is the health benefits fund's ***stressed investment income estimate***, on the relevant day, calculated in accordance with subclause (3).

O is the health benefits fund's ***stressed other income estimate***, on the relevant day, calculated in accordance with subclause (4).

T is the amount of tax that may be attributable to the health benefits fund (which may be a negative amount to reflect future income tax credits), if it achieved its:

(i) stressed net margin estimate; and

(ii) stressed investment income estimate; and

(iii) stressed other income estimate; and

for the 12 months after the relevant day.

(2) The ***stressed net margin estimate*** (***N***) of the health benefits fund is calculated in accordance with the following formula:

$$P \times NM\%$$

Where :

P is the ***premium income estimate*** of the health benefits fund on the relevant day.

NM% is the private health insurer's estimate of its health benefits fund's x^{th} percentile net margin percentage for the health insurance business for 12 months after the relevant day calculated:

(a) applying the same premium increases as those assumed in calculating the premium income estimate; and

(b) excluding any possible changes in the unexpired risk liability or constructive obligation during that period.

In calculating NM% the following must be taken into account:

(a) historical variability in net margins; and

(b) changes in the fund's policy holder growth rate; and

(c) expansion into new complying health insurance product(s); and

(d) expansion into new markets.

(3) The ***stressed investment income estimate*** (***I***) of the health benefits fund is the private health insurer's estimate of its health benefits fund's x^{th} percentile investment income for the 12 months after the relevant day, taking into account all significant risks including:

(a) market risk; and

(b) credit risk; and

(c) the risk of incorrect asset valuation on the balance sheet.

(4) The ***stressed other income estimate*** (***O***) of the health benefits fund is the private health insurer's estimate of its health benefits fund's x^{th} percentile of its health related business and all other income, less associated expenses for the 12 months after the relevant day.

11 Operational risk amount

(1) The ***operational risk amount*** of a health benefits fund is calculated in accordance with the sum of:

(a) 0.5% of its health business revenue estimate, on the relevant day; and

(b) $1,000,000 × 1.025 ^ (the calendar year of the relevant day minus 2014).

12 Capital adequacy supervisory adjustment amount

(1) The ***capital adequacy supervisory adjustment amount*** of a health benefits fund, on the relevant day, is:

(a) an amount expressed in dollars; or

(b) a percentage figure; or

(c) a factor; or

(d) an amount, or a description of an amount, derived through another basis for calculating the capital adequacy supervisory adjustment amount;

which is not less than 0, and would not result in a negative amount, determined by the Council (including by the application of specified methodology), upon reasonable grounds.

(2) In making a determination about a capital adequacy supervisory adjustment amount, the Council may consider the following examples as being examples of reasonable grounds for the determination of the capital adequacy supervisory adjustment but the Council is not limited in its considerations to those examples:

(a) there is a less than 98% probability that the health benefits fund will meet its prudent liabilities in 12 months' time; and/or

(b) the health benefits fund's stress test amount does not make adequate allowance for:

(i) growth in policy holders, including in new markets; and/or

(ii) changes to the fund's products, including the launch of new products; and/or

(iii) a lack of asset diversification; and/or

(iv) market risk; and/or

(v) mismeasurement of asset values; and/or

(vi) credit risk; and/or

(c) the health benefits fund's prudent liabilities amount does not make adequate allowance for inherent uncertainty; and/or

(d) the health benefits fund's operational risk amount does not make adequate allowance for inherent uncertainty; and/or

(e) the health benefits fund's assets are not valued appropriately; and/or

(f) the private health insurer conducting the health benefits fund does not have adequate data to assess its risks; and/or

(g) the health benefits fund is exposed to contagion risks from a related entity, and the private health insurer conducting it has not properly considered these risks for the purpose of its obligations under this Schedule; and/or

(h) the health benefits fund's capital adequacy maximum default loss has not been appropriately calculated.

(3) The Council may determine the same or different capital adequacy supervisory adjustment amounts for the purposes of paragraphs 4 (2) (a) and 4 (2) (b).

(4) If:

(a) the Council is satisfied that there are reasonable grounds under subclause (1); and

(b) the Council makes a determination under subclause (1) in relation to the health benefits fund;

the Council must, as soon as practicable after making the determination, notify the private health insurer, in writing, of:

(c) the amount, factor or figure determined under subclause (1) and the calculation methodology used to determine this amount; and

(d) the reasons for the decision to make a determination under subclause (2), including which of paragraphs 4 (2) (a) and 4 (2) (b) of Schedule 3 the capital adequacy supervisory adjustment amount applies to; and

(e) the private health insurer's right to apply for review of the decision under subclause (6).

(5) The private health insurer may apply to the Administrative Appeals Tribunal for review of a decision by the Council under subclause (1).

13 Capital adequacy maximum default loss amount

(1) The ***capital adequacy maximum default loss amount*** of a health benefits fund on the relevant day is a prudent estimate of the maximum default loss.

(2) For the purpose of calculating the capital adequacy maximum default loss amount of a health benefits fund under subclause (1):

(a) the capital adequacy maximum default loss amount must be:

(i) at least as large as the maximum default loss; and

(ii) less than the maximum default loss plus 10% × (value of assets in the fund – prudent liabilities amount).

14 Transitional provisions

(1) On the commencement of this Schedule, a private health insurer that has any ***previously approved subordinated debt*** may treat it as having its full value for the purposes of the capital adequacy standard, subject to subclause (2).

(2) From the earlier of:

(a) five years after the commencement of this Schedule; and

(b) four years before the maturity date of the subordinated debt;

the value of previously approved subordinated debt, for the purposes of the capital adequacy standard, linearly decreases to zero over 48 months."

[22] Schedule 3 Part 3 - Capital management policy

Following Schedule 3 Part 2, as amended by these rules, insert:

"Part 3 Capital management policy

15 Capital management policy

(1) A private health insurer must have, and comply with, a written, board endorsed, capital management policy for each health benefits fund it conducts.

(2) The capital management policy must include, but is not limited to:

(a) a capital management plan that must contain:

(i) a description of the board's risk appetite as it relates to capital needs and the process used to determine that appetite; and

(ii) capital target levels which have regard to subclause (5), and details of how they are calculated; and

(iii) clearly defined capital trigger points, which have regard to subclause (5); and

(iv) corrective action options, for each trigger point identified specifying actions and timeframes, for those actions, which a private health insurer may utilise to return capital to capital target levels (identified in subparagraph (2) (a) (ii));

(b) a pricing philosophy, which must include:

(i) profitability targets; and

(ii) direct and explicit consideration of the capital implications of particular profitability levels; and

(iii) guidelines on the speed of correction of deviations from these profitability targets;

(c) investment rules, which must include:

(i) clear objectives; and

(ii) asset allocation limits; and

(iii) asset concentration limits; and

(iv) a consideration of capital strength;

(d) rules stipulating circumstances under which the capital management policy is to be reviewed, which must include changes in:

(i) policy holder growth rates; and

(ii) registration status; and

(iii) net margin; and

(iv) broader economic conditions.

(3) The private health insurer must provide the Council with a copy of the capital management policy as soon as practicable after it has been endorsed.

(4) The board must review the capital management policy at least every two years and either:

(a) re-endorse the existing capital management policy; or

(b) endorse a new capital management policy.

(5) In meeting the requirements in subparagraphs (2) (a) (ii) and (2) (a) (iii) a private health insurer must use methods designed to protect the health benefits fund and which consider:

(a) access to internal and external capital; and

(b) the impact on premiums of holding more or less capital than the amount determined."

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.