

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Prostheses) Rules, providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient in order to carry out or give effect to Part 3-3 of the Act.

In addition to the power to make this instrument under section 333-20 of the Act, 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.

The table in subsection 72-1(2) of Part 3-3 of the Act provides for benefit requirements that a complying health insurance policy that covers hospital treatment must meet. Under item 4 of that table there must be a benefit for the provision of a prosthesis, of a kind listed in Private Health Insurance (Prostheses) Rules (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a medicare benefit is payable or in other circumstances which may be set out in Private Health Insurance (Prostheses) Rules. The specified conditions are any that may be set out in Private Health Insurance (Prostheses) Rules.

If the complying health insurance policy also covers hospital-substitute treatment, under item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act the same requirements apply.

The *Private Health Insurance (Prostheses) Rules 2019 (No. 1)* (Prostheses Rules) were made for the purposes of section 333-20 of the Act. Listed prostheses and their minimum benefits are set out in the Schedule to the Rules. The list of prostheses in the Schedule is commonly referred to as the Prostheses List.

Purpose

The purpose of the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019* (the Amending Rules) is to list new prostheses in Part C of Schedule 1 to the Rules, and to provide method of calculation of minimum and maximum benefits for specified prostheses and to correct errors in listing in the Prostheses Rules.

The Amending Rules add 21 new cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation to Part C of Schedule 1 to the Prostheses Rules. In order to attract a benefit amount for the purposes of Item 4 of the Table under subsection 72-1 of the Act, these catheters must be provided as part of an episode of hospital treatment in a surgical procedure described in Medicare benefit Item 38290. Each of these catheters will be subject to this condition.

The Amending Rules also amend Rule 9 to include provisions that set out the methods for calculating the minimum benefits and maximum benefits for cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation provided as part of an episode of hospital treatment in a private hospital. The Amending Rules specify that the sum of the minimum

benefits payable for a cardiac ablation catheter, mapping catheter for cardiac ablation and patch for cardiac ablation provided as part of an episode of hospital treatment in a private hospital in a surgical procedure described in Medicare Benefit item 38290 will be no more than \$6,399.

The Amending Rules also correct an error in a minimum benefit for one prosthesis and omissions in listing conditions for three prostheses in Part A of Schedule 1 to the Prostheses Rules.

Consultation

A round table discussion was held on 11 January 2019 with representatives from private hospitals, private health insurance and sponsors. At this meeting, medical device sponsors were invited to provide individual submissions and follow up discussions with the department.

Applications to list cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation were assessed by the Prostheses List Advisory Committee (PLAC) on 4 February 2019, with advice from specialist clinicians and the Medical Services Advisory Committee (MSAC) (which met on 1 February 2019) on the assessment of comparative clinical effectiveness and cost effectiveness.

Following these recommendations, sponsors were consulted on the listing of these prostheses with the intention to list individual items with a maximum benefit of \$6399.

Sponsors of the prostheses with the error or omissions in listings in Part A of Schedule 1 to the Prostheses Rules were consulted on these corrections.

Details of the Amending Instrument are set out in the [Attachment](#).

The Amending Instrument commences immediately following the commencement of the Prostheses Rules.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Private *Health Insurance (Prostheses) Amendment Rules (No. 2) 2019*

Section 1 - Name

Section 1 provides for the Amending Rules to be referred to as the Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019.

Section 2 - Commencement

Section 2 provides that the Amending Rules commences immediately after the commencement of the *Private Health Insurance (Prostheses) Rules 2019 (No. 1)* (the Prostheses Rules). The Prostheses Rules commence on 1 March 2019

Section 3 - Authority

Section 3 provides that the Amending Rules is made under item 4 of the table in section 333-20 of the *Private Health Insurance Act 2007*.

Section 4 - Schedules

Section 4 provides that that each instrument that is specified in a Schedule to this instrument is 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 (Prostheses) Rules 2019

Item 1 - Rule 4

Item 1 inserts definitions for three new terms with their meaning outlined in subrule 9(5) - 'default minimum benefit', 'Medical Benefit item 38290' and 'sum of default minimum benefits'.

Item 2 - Rule 9

Item 2 repeals the whole of Rule 9 and replaces it with new subrules relating to cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation. The changes in Rule 9 describe the methods for calculating minimum benefits and maximum benefits for cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation.

For a private patient in a private hospital:

- If the sum of the default minimum benefits for the procedure in which the prosthesis was used is \$6399 or less, the minimum benefit and the maximum benefit are each

the default minimum benefit for the prosthesis;

- If the sum of default minimum benefits for the procedure in which the prosthesis was used is more than \$6399, the minimum benefit and the maximum benefit are each to be calculated using the following method: divide the default minimum benefit for the prosthesis by the sum of the default minimum benefits for the procedure in which the prosthesis was used, and multiply the result by \$6399. For example, if a cardiac ablation catheter, a mapping catheter for cardiac ablation and a patch for cardiac ablation each listed in Schedule 1 are used in a relevant procedure in accordance with any conditions, and the default minimum benefit of the cardiac ablation catheter is X, the default minimum benefit of the mapping catheter for cardiac ablation is Y, and the default minimum benefit of the patch for cardiac ablation is Z, the sum of the default minimum benefits for the procedure is (X+Y+Z). If the sum of the default minimum benefits for the procedure (X+Y+Z) is more than \$6399, the minimum benefit and maximum benefit for the cardiac ablation catheter is calculated by taking X, dividing it by (X+Y+Z), then multiplying the result by \$6399.

For a private patient in a public hospital:

The minimum benefit for the prosthesis is the lesser of:

- the amount for that prosthesis calculated in accordance with subrule (3B); or
- the amount of the insured person's liability to the public hospital for that prosthesis; and

The maximum benefit is the amount for the prosthesis calculated in accordance with subrule (3B).

- If the sum of default minimum benefits for the procedure in which the prosthesis was used is \$6399 or less, the amount is the default minimum benefit for the prosthesis;

If the sum of default minimum benefits for the procedure in which the prosthesis was used is more than \$6399, the amount is to be calculated as follows: divide the default minimum benefit for the prosthesis by the sum of the default minimum benefits for the procedure in which the prosthesis was used, and multiply the result by \$6399. For example, if a cardiac ablation catheter, a mapping catheter for cardiac ablation and a patch for cardiac ablation each listed in Schedule 1 are used in a relevant procedure in accordance with any conditions, and the default minimum benefit of the cardiac ablation catheter is X, the default minimum benefit of the mapping catheter for cardiac ablation is Y, and the default minimum benefit of the patch for cardiac ablation is Z, the sum of the default minimum benefits for the procedure is (X+Y+Z). If the sum of the default minimum benefits for the procedure (X+Y+Z) is more than \$6399, the amount calculated in accordance with subrule (3B) for the cardiac ablation catheter is calculated by taking X, dividing it by (X+Y+Z), then multiplying the result by \$6399.

Item 3 - Schedule 1, Part 1 - Prostheses List - Part A

Item 3 corrects the minimum benefit for the prosthesis listed under billing code MN237.

Items 4 - Schedule 1, Part 1 - Prostheses List Part A

Item 4 adds a "Condition" to the prosthesis listed under billing code DE678 that was omitted from the Prostheses Rules.

Item 5 - Schedule 1, Part 1 - Prosthesis List Part A

Item 5 adds a "Condition" to the prosthesis listed under billing code DE679 that was omitted from the Prosthesis Rules.

Item 6 - Schedule 1, Part 1 - Prosthesis List Part A

Item 6 adds a "Condition" to the prosthesis listed under billing code DE680 that was omitted from the Prosthesis Rules.

Item 7 - Schedule 1, Part 3 - Prosthesis List - Part C

Item 7 adds listings for 21 new cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation to the Prosthesis List. Item 7 also adds a "Condition" to each of the prostheses listed that they are to be used only in a surgical procedure described in item 38290 in Group T8 of the *Health Insurance (General Medical Services Table) Regulations 2018*. This is the only surgical procedure in which cardiac ablation has been found to be clinically effective and cost effective when compared with other treatments.

Statement of Compatibility with Human Rights

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

Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019

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 (Prostheses) Amendment Rules (No. 2) 2019* (the Amending Rules) is to list new prostheses in Part C of Schedule 1 to the Rules, and to provide method of calculation of minimum and maximum benefits for specified prostheses and to correct errors in listing in the Prostheses Rules.

The Amending Rules add 21 new cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation to Part C of Schedule 1 to the Prostheses Rules. In order to attract a benefit amount for the purposes of Item 4 of the Table under subsection 72-1 of the Act, these catheters must be provided as part of an episode of hospital treatment in a surgical procedure described in Medicare benefit Item 38290. Each of these catheters will be subject to this condition.

The Amending Rules also amend Rule 9 to include provisions that set out the methods for calculating the minimum benefits and maximum benefits for cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation provided as part of an episode of hospital treatment in a private hospital. The Amending Rules specify that the sum of the minimum benefits payable for a cardiac ablation catheter, mapping catheter for cardiac ablation and patch for cardiac ablation provided as part of an episode of hospital treatment in a private hospital in a surgical procedure described in Medicare Benefit item 38290 will be no more than \$6,399. This is the maximum cost effective price for this combination of devices used in this surgical operation, as advised by the MSAC. For treatment of a private patient in a public hospital, the same applies except that the minimum benefit is the lesser of the amount calculated so the sum of benefits payable is no more than \$6,399, or the amount of the insured person's liability to the public hospital for that prosthesis.

The Amending Rules also correct an error in a minimum benefit for one prosthesis and omissions in listing conditions for three prostheses in Part A of Schedule 1 to the Prostheses Rules.

Human rights implications

This instrument engages article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health.

Right to Health

The right to health - the right to the enjoyment of the highest attainable standard of physical and mental health- is contained in article 12(1) of the ICESCR. Whilst the UN Committee on Economic Social and Cultural Rights has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

Analysis

This instrument includes additional kinds of prostheses in Part C of Schedule 1. The addition of these kinds of prostheses will ensure that an insured person with appropriate cover will receive a minimum benefit for the provision of the prosthesis (if other requirements are met). The addition of new items will increase the amount of choice an insured person has in relation to the type of prostheses for which they must receive a minimum private health insurance benefit. This instrument will also ensure that appropriate benefits are paid in respect of prostheses on the Prostheses List. This will impact positively on the right to health of insured persons.

Conclusion

The instrument is compatible with human rights because it enables advances in the protection of human rights.

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