EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance Act 2007

Private Health Insurance (Accreditation) Rules 2008

On 26 April 2006, as part of significant changes to private health insurance, the Commonwealth Government announced that it would introduce industry-wide safety and quality requirements to ensure that, from 1 July 2008, all privately insured services are provided by accredited and/or suitably qualified providers.

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make the Private Health Insurance (Accreditation) Rules providing for matters required or permitted by section 81-1 or necessary or convenient to be provided in order to carry out or give effect to that section of the Act.

Section 81-1 of the Act provides that an insurance policy meets the quality assurance requirements in Division 81 of the Act if the policy prohibits the payment of private health insurance benefits for a treatment that does not meet the standards in the Private Health Insurance (Accreditation) Rules 2008 (the Rules). An insurance policy must meet the quality assurance requirements in Division 81 where it is offered by a private health insurer as a complying health insurance policy in accordance with section 63-10 of the Act.

The Rules decline to set standards for the provision of treatment in relation to some areas of healthcare. This purpose is achieved by excluding these areas in the definition of 'treatment' in rule 4 of the Rules. Private health insurers may continue to pay private health insurance benefits under complying health insurance policies for those treatments that are excluded by the Rules, provided such payment is otherwise permitted under the legislation.

The Rules align with the standards set for providers in the public health system where applicable. Providers who are required by law to be registered with a state or territory authority, podiatric surgeons and allied health professionals, are required to meet standards that align with the standards currently required by insurers to be eligible for private health insurance benefits. Where applicable, the standards set out in the Rules align with those standards that apply before a Medicare Benefit becomes payable.

Other providers for whom standards are not currently set by Medicare or regulated by a centralised body (generally complementary therapists) are required under the Rules to be a member of a national, professional association that assesses the provider's qualifications, administers a continuing professional development scheme, and enforces a code of conduct and disciplinary procedure for members. This rule (rule 10) alone will commence on 1 July 2009 (12 months later than the remaining Rules) in order to allow insurers sufficient time to upgrade their internal processes and systems, and health care providers sufficient time to meet the requirements of the Rules.

The Act places the obligation on private health insurers to ensure that providers for whom private health insurance benefits are paid meet the standards as set out in the Rules. Private health insurers will have the discretion to determine how a provider's compliance with the Rules is evidenced. Private health insurers will also have the discretion to choose those providers with whom they enter into commercial arrangements. Private health insurers will

not be obliged to enter into arrangements with providers simply because those providers meet the standards in the Rules.

A preliminary assessment was provided to the Office of Best Practice Regulation indicating that these Rules are considered low risk. Therefore, no Regulatory Impact Statement is required for these Rules.

The Act does not specify any conditions that need to be met before the power to make the Rules may be exercised.

Consultation

On 30 May 2007, the Department of Health and Ageing (the Department) released a discussion paper setting out a proposed regulatory approach for quality assurance requirements (or standards) for providers of privately insurable treatments.

Consultation forums were held in most capital cities during July and August 2007 to provide health insurers, hospitals, health care organisations, professional organisations representing individual providers and accreditation bodies with an opportunity to refine the proposal. In addition, the department received 69 written submissions. The submissions received were taken into consideration when formulating the proposed quality assurance requirements.

On 27 February 2008, the Department released an exposure draft of the Rules via PHI Circular 08/08 seeking input from all stakeholders. Forty-eight submissions were received and considered in the further development of the Rules.

A final draft version of the Rules was released via PHI Circular 16/08 on 9 May 2008 for comment. A discussion paper outlining the key changes to the proposed draft Rules was released concurrently. Nine submissions were received in response to that version of the proposed draft Rules.

Details of the Rules are set out in Attachment A.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Private Health Insurance (Accreditation) Rules 2008 commence on 1 July 2008, except rule 10 which commences on 1 July 2009.

Authority: Section 333-20 of the *Private Health Insurance Act 2007*

ATTACHMENT A

DETAILS OF THE *PRIVATE HEALTH INSURANCE (ACCREDITATION) RULES 2008*

Part 1 Preliminary

1. Name of Rules

Rule 1 provides that the title of the Rules is the Private Health Insurance (Accreditation) Rules 2008.

2. Commencement

Rule 2 provides that the Rules are to commence on the day following registration on the Federal Register of Legislative Instruments, except rule 10 which commences on 1 July 2009.

The commencement of rule 10 has been delayed to allow insurers time to upgrade their internal processes and IT systems in anticipation of complying with Rule 10.

3. Application

Rule 3 provides that the Rules apply in respect of all policies existing on or issued after 1 July 2008 or, if the Rules commence later, the day the Rules commence.

4. Definitions

The note to Rule 4 provides that terms used in the Rules have the same meaning as in the *Private Health Insurance Act 2007*.

Rule 4 defines terms used in the Rules.

Part 2

5. Standards

Subrule 5(1) provides that the Rules specify the standards for section 81-1 of the Act for treatment covered by a complying health insurance policy.

Subrule 5(2) provides that if a health care provider provides more than one type of treatment, that provider must meet the applicable standard in the Rules for each type of treatment they provide.

6. Treatments provided by hospitals and health care organisations

Subrule 6(1) specifies the scope of treatment that is considered treatment provided by a hospital or treatment provided by a health care organisation.

Subrule 6(2)(a) provides that the standard of treatment for a hospital is met where it has permission of, or approval of, or is registered in the relevant State or Territory in which it operates as a hospital or provides treatment.

Subrule 6(2)(b)(i) provides that the standard of treatment for a health care organisation (including where the organisation is providing treatment on behalf of a hospital) is where it has the following:

- permission of, or approval of, or is registered in the relevant State or Territory as required by law; and
- is accredited, certified, or in the process of being accredited or certified by an appropriate accrediting body.

An 'appropriate accrediting body' is defined in rule 4.

Subrule 6(2)(c) provides that the standard of treatment provided by health care providers must be the standard specified in these Rules which are relevant to the provision of that treatment.

7. Treatments by health care providers regulated under state and territory laws

Subrule 7(1) provides that the standard of treatment for a health care provider who provides a treatment in a State or Territory is that the health care provider must have the relevant permission, approval or registration as required by law.

Subrule 7(2) provides that if a health care provider has the requisite permission, approval or registration under subrule 7(1) of the Rules but also provides a type of treatment referred to in rules 8, 9 or 10 of the Rules, the person must also comply with the standard in the rules 8, 9 or 10 respectively.

8. Treatments provided by podiatric surgeons

Rule 8 provides that the standard for treatment provided by a podiatric surgeon is that he or she is accredited as required under section 3AAA of the *Health Insurance Act 1973*.

9. Treatments provided by allied health professionals

Rule 9 outlines the standard for treatment provided by allied health professionals.

Subrule 9(1) provides that the standard for a treatment that falls within a field mentioned in regulation 3A of the *Health Insurance Regulations 1975* is that the treatment must be provided by an allied health professional who is qualified in that field. The provider does not have to be providing medicare-billable services, but must meet the same qualification requirement as if they were.

Subrule 9(2) provides that an allied health professional will be qualified in his or her field under subrule 9(1) if he or she meets the qualification requirements as specified in Schedule 1 of the *Health Insurance (Allied Health Services) Determination 2007*. This is the same standard as that required to be eligible for the Medicare Benefits Scheme. However, the provider does not have to be providing medicare-billable services.

Subrule 9(3) provides that if the treatment is provided by an allied health professional practising in a field not mentioned in subrule (1), the allied health professional must be a member of a professional organisation that covers that field and is also an ordinary member of Allied Health Professions Australia Ltd.

10. Treatments provided by other health care providers

Rule 10 provides that the standard of treatment provided by a health care provider who is not referred to in rules 7(1), 8 or 9 is that he or she must be a member of a professional organisation who covers the relevant field and who also satisfies the following requirements:

- is a national entity which has membership requirements for the profession;
- assesses the health care provider with respect to training and education;
- administers a continuing professional development scheme in which the member is required to participate;
- maintains a code of conduct which the member must uphold; and
- maintains a formal disciplinary procedure.

11. Premises where treatments are provided

Rule 11 provides that if a state or territory law requires premises in which treatment is provided to have a permission or approval to provide a treatment of that kind, the premises must have the permission or approval under that law.