

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

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

Authority

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) authorises the Minister for Health 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 (No. 2) Rules 2019* (the Amendment Rules) make amendments to the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) and the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

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 purpose of the Amendment Rules is to amend:

- the Benefit Requirements Rules to:
 - increase the minimum benefit private health insurers pay for private patients' overnight and same-day accommodation fees in both private and public hospitals (the increase is in line with the annual March increase in the Cost Price Index (CPI)) of 1.3 per cent;
 - index the monetary thresholds which provide qualifiers on the MBS items included in the definitions of "advanced surgical patient" and "surgical patient" (the increase is in line with the indexation of MBS fees by 1.6 per cent from 1 July 2019);
 - increase the minimum benefit payable for nursing home-type patients' accommodation fees for the Australian Capital Territory (the ACT) and South Australia (SA). (The increases are in line with indices nominated by each of these jurisdiction. The ACT applied a 2.5 per cent increase being the estimated wage price increase for the ACT for 2019-20 as published by the ACT Treasury in the ACT 2019-20 Budget Papers. SA applied the CPI increase of 1.3 per cent.) ; and
 - reclassify Medicare Benefits Schedule (MBS) item 36840 from overnight procedures to same-day procedures, and vice-versa for MBS item 36508 for the purposes of minimum benefits for hospital accommodation.

- the Complying Product Rules to:
 - update the daily patient contribution payable by nursing home-type patients for hospital accommodation in public hospitals in the ACT;
 - refine the expression of two clinical categories in Schedule 5; and
 - omit 119 out-of-hospital (non-admitted) MBS items from Schedules 5, 6 and 7 of these Rules (the clinical categories, common treatments list and support treatments list respectively) as hospital insurance products cannot provide benefits for out of hospital services. As such, the inclusion of these items in the Schedules had no legal effect and so their removal is entirely administrative in nature.

Background

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatments. The minimum benefits are reviewed regularly and routinely increased in line with annual movements in CPI.

Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation benefits which are payable for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), nursing-home type patients (NHTPs, Schedule 4) and second-tier default benefits (Schedule 5).

Schedule 1 of the Benefit Requirements Rules sets benefits for different patient categories by categorising MBS item numbers into overnight patient classifications comprising ‘Advanced surgical patient’, ‘Obstetric patient’, ‘Surgical patient’, ‘Psychiatric patient’, ‘Rehabilitation patient’ and ‘Other patients’ for private hospitals and public hospitals in Victoria and Tasmania. Schedule 2 sets average benefits for all patients in all other State and Territory public hospitals. Schedule 3 sets out different benefits for four separate procedure bands for identified MBS item numbers for the same-day hospital accommodation benefits, which are payable for privately insured patients in all states and territories.

The minimum benefits payable per night for hospital treatment provided to NHTPs in Schedule 4 of the Benefit Requirements Rules is subject to review and change twice annually, to reflect the indexation applied to the Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance.

Schedule 5 of the Benefit Requirements Rules requires a health insurer to pay second tier default benefits for most episodes of hospital treatment provided in private hospital facilities that are specified in Schedule 5 if the health insurer does not have a negotiated agreement with the hospital. Schedule 5 generally sets a higher minimum level of benefit (for overnight treatment and day only treatment provided in specified facilities) than the minimum benefit set for such treatment by Schedules 1, 2 and 3 of the Benefit Requirements Rules.

The Complying Product Rules were amended on 1 April 2019, to introduce new gold/silver/bronze/basic product tiers and related clinical categories for hospital cover. This included allocating all hospital treatment MBS items to specified groups to provide clarity in the administration of treatments to be covered by insurers for clinical category arrangements.

The introduction of product tiers, with related clinical categories and MBS item allocation, will provide consumers with greater certainty about the treatments covered by health insurance products. Consumers will be able to more easily understand and compare competing policies.

Commencement

The Amendment Rules commence on 1 July 2019.

Details

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

Consultation

State and Territory governments were consulted about, and their approval sought for, the increases to minimum benefits payable for private patient's hospital accommodation in shared wards in public hospitals under the Benefit Requirement Rules.

The South Australian and ACT governments were also consulted about, and agreed to, the increase in the daily rate of nursing home-type patients' (NHTP) contribution for the hospital treatment fees (ACT only) and the minimum benefit payable for the daily fees for NHTP hospital accommodation.

Representative organisations, including the Australian Private Hospitals Association, the Urological Society of Australia and New Zealand and the Australian and New Zealand Association of Urological Surgeons (the relevant medical specialties) were consulted regarding the amendments to Schedules 1 and 3 of the Benefit Requirements Rules to reflect the more appropriate categorisation of MBS item 36840 as a treatment eligible for minimum benefits for same-day rather than overnight hospital accommodation, and MBS item 36508 as a treatment eligible for minimum benefits for overnight hospital accommodation rather than same-day accommodation. The re-categorisation of these items reflects the setting in which the majority of services of that kind are expected to be provided.

Peak private health insurance organisations, (Private Healthcare Australia, Members Health Fund Alliance) and the Australian Private Hospitals Association were consulted about the amendments to Schedules 5, 6 and 7 of the Complying Product Rules.

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

ATTACHMENT

DETAILS OF THE *PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT (No. 2) RULES 2019*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment (No. 2) Rules 2019* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences on 1 July 2019.

Section 3 Authority

Section 3 provides that the Amendment Rules are made under section 333-20 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.

Schedule 1 – Amendments

Private Health Insurance (Benefit Requirements) Rules 2011

Item 1 to 3 – Part 2, Schedule 1, clause 2 (tables 1, 2 and 3)

Items 1 to 3 amend the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) to repeal Tables 1, 2 and 3 in this subclause and substitute new tables that set out the new minimum benefits payable per night by private health insurers for specified classes of private patients for:

- accommodation at private hospitals in all States/Territories (Table 1)
- Victoria: shared ward accommodation at a public hospital (Table 2)
- Tasmania: shared ward accommodation at a public hospital (Table 3).

The new minimum benefits have been increased by the rate of increase in the Consumer Price Index (CPI) from March quarter 2018 to March quarter 2019, which is 1.3 per cent.

Item 4 – Schedule 1, subclause 4(3)

Subclause 4(3) of Schedule 1 sets out the MBS item numbers that form part of the criteria for a patient to be considered an “advanced surgical patient” for the purposes of the Benefit Requirement Rules. This subclause also includes a qualifier – the MBS fee for the professional service the patient will receive must be greater than a specified amount.

Item 4 amends the value of this specified amount to be \$866.60 (indexed by 1.6 per cent, the indexation rate for MBS fees for 2019 - 20).

Item 5 – Schedule 1, subclause 6(3)

Subclause 6(3) of Schedule 1 sets out the MBS item numbers that form part of the criteria for a patient to be considered a “surgical patient” for the purposes of the Benefit Requirement Rules. This subclause also includes a qualifier – the MBS fee for the professional service the patient will receive must fall within a range of two specified amounts.

Item 5 amends the range of these specified amounts to be \$258.05 to \$866.60 (indexed by 1.6 per cent, the indexation rate for MBS fees for 2019 20).

Item 6 – Schedule 1, subclause 6(3)

Item 6 amends the Benefit Requirements Rules by omitting MBS item 36840 from, and inserting MBS item 36508 into, subclause 6(3) of Schedule 1 to these Rules.

The effects of these amendments are:

- MBS item 36840 is no longer included in the list of “Type A” procedures, which qualify for overnight accommodation minimum benefits; and
- MBS item 36508 is now included in the list of “Type A” procedures, which qualify for overnight accommodation minimum benefits.

Item 7 – Schedule 2, clause 2 (table)

Item 7 repeals the table and substitutes a new table that sets out the new minimum benefits payable for hospital treatment provided in the circumstances set out in Schedule 2. The minimum benefits apply to overnight accommodation provided in shared wards in public hospitals in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia and Western Australia.

The new minimum benefits have been increased by the rate of increase in the CPI from March quarter 2018 to March quarter 2019, which is 1.3 per cent.

Items 8 and 9 – Schedule 3, clause 2 (table 1 and 2)

Items 8 and 9 repeal Tables 1 and 2 respectively and substitute them with new tables that set out the new minimum benefits payable by private health insurers for hospital treatment provided in the circumstances set out in Schedule 3. The minimum benefits apply to same-day accommodation in:

- all State and Territory public hospitals (Table 1); and
- all private hospitals (Table 2).

The new minimum benefits have been increased by the rate of increase in the CPI from March quarter 2018 to March quarter 2019, which is 1.3 per cent.

Item 10 – Schedule 3, subclause 5(1)

Item 10 omits MBS item 36508 from, and inserts MBS item 36840 into, subclause 5(1) of Schedule 3 to these Rules.

The effects of these amendments are:

- MBS item 36508 is no longer included in the list of “Type B” procedures, which qualify for same-day accommodation minimum benefits; and
- MBS item 36840 is now included in the list of “Type B” procedures, which qualify for same-day accommodation minimum benefits.

Item 11 – Schedule 4, clause 6 (table 1, table item dealing with the Australian Capital Territory)

Item 11 amends clause 6 of Schedule 4 to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in the Australian Capital Territory from \$125.00 to \$128.15. (The ACT has indexed the minimum benefit by 2.5 per cent, being the estimated wage price index for the ACT for 2019-20 as published by the ACT Treasury in the ACT 2019-20 Budget Papers.)

Item 12 – Schedule 4, clause 6 (table 1, table item dealing with South Australia)

Item 12 amends clause 6 of Schedule 4 to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in South Australia from \$120.00 to \$122.00. (South Australia has indexed the minimum benefit by CPI (1.3 per cent) and rounded it to the nearest dollar.)

Schedule 2—Amendments

Private Health Insurance (Complying Product) Rules 2015

Item 1 –Subsection 8A(3) (subparagraph (a)(i) of the definition of *patient contribution*)

Item 1 omits the amount of \$60.05 set out in subparagraph 8A(3)(a)(i) in the definition of ‘patient contribution’ and substitutes \$61.30 in its place. The effect of this change is that the daily rate for patient contribution (to fees for hospital treatment) payable by nursing home-type patients in the Australia Capital Territory’s public hospitals is \$61.30. The rise in this rate reflects the Australian Government’s indexation of aged pensions plus rent assistance on 20 March 2019.

Item 2 – Schedule 5, clause 2 (table)

Item 2 repeals the table in Schedule 5 of the Complying Products Rules and substitutes a new table that sets out the clinical categories associated with the private health insurance product tiers of Gold, Silver, Bronze and Basic.

Item 3 amends the clinical categories to remove 27 out-of-hospital (non-admitted) MBS items from five clinical categories

The clinical categories apply to hospital insurance products so it is redundant to include out-of-hospital (non-admitted) MBS items in the clinical categories. Therefore, the removal of the MBS items from the table is entirely administrative in nature.

The removed MBS items are:

- from “Hospital psychiatric services” – 21 MBS items omitted
 - (80000, 80001, 80010, 80011, 80021, 80100, 80110, 80111, 80121, 80125, 80126, 80135, 80136, 80146, 80150, 80151, 80160, 80161, 80171, 82000, 82015;

- from “Palliative care” –MBS item 3003 omitted;
- from “Brain and nervous system” – MBS items 6004 and 6016 omitted;
- from “Diabetes management (excluding insulin pumps)” - MBS items 81100 and 81105 omitted; and
- “Pregnancy and birth” – MBS item 16399 omitted.

Further the descriptions for the clinical categories of “Back, neck and spine” and “Joint replacements” have been refined. The clinical category “Back, neck and spine” has been amended to include the reference to “spinal disc replacement” as an example of hospital treatments included in the scope of cover for this clinical category. The reference to “spinal disc replacement” has been omitted from the scope of cover for the clinical category “Joint replacements”. These amendments ensure consistency between the scope of cover and treatments that must be covered (which are expressed through the MBS items included in these two clinical categories).

Item 3 – Schedule 6, clause 1 (table)

Item 3 repeals the Common treatments table set out in Schedule 6 of the Complying Products Rules and substitutes a new table in which 54 out-of-hospital (non-admitted) MBS items do not appear. The Common treatments list applies to hospital insurance products so it is redundant to include out-of-hospital (non-admitted) MBS items in the (Common treatments list. Therefore, the removal of the MBS items from the table is entirely administrative in nature.

The removed MBS items are:

- 99, 112, 113, 114, 139, 149, 179, 181, 185, 187, 189, 191, 203, 206, 245, 249, 251, 252, 254, 256, 259, 261, 263, 265, 268, 270, 283, 286, 288, 384, 389, 2122, 2125, 2126, 2137, 2138, 2143, 2147, 2179, 2195, 2199, 2220, 2799, 2820, 13210, 82150, 82151, 82152, 82220, 82221, 82222, 82223, 82224 and 82225.

Item 4 – Schedule 7, clause 1 (table)

Item 4 repeals the Support treatments table set out in Schedule 7 of the Complying Products Rules and substitutes a new table in which 38 out-of-hospital (non-admitted) MBS items do not appear. The Support treatments list applies to hospital insurance products so it is redundant to include out-of-hospital (non-admitted) MBS items in the Support treatments list. Therefore, the removal of the MBS items from the table is entirely administrative in nature.

The removed MBS items are:

- 10984, 10987, 10990, 10991, 10992, 10997, 81110, 81115, 81120, 81125, 81300, 81305, 81310, 81315, 81320, 81325, 81330, 81335, 81340, 81345, 81350, 81355, 81360, 82005, 82010, 82020, 82025, 82030, 82035, 82300, 82306, 82309, 82312, 82315, 82318, 82324, 82327 and 82332.

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 (No. 2) Rules 2019

This 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 Legislative Instrument

The purpose of the *Private Health Insurance Legislation Amendment (No. 2) Rules 2019 (the Amendment Rules)* is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011*
- *Private Health Insurance (Complying Product) Rules 2015*

These Amendment Rules amend Schedules 1,2,3 and 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* to re-categorise selected Medicare Benefit Schedule (MBS) items for the purposes of hospital treatments which qualify for overnight or same-day accommodation benefits; to increase hospital accommodation minimum benefits for private patients in private and public hospitals; to update a monetary qualifier applicable to private patients categorised as “advanced surgical patients” or “surgical patients”; to update minimum benefits for nursing home-type patients at public hospitals in the Australian Capital Territory and South Australia.

These Amendment Rules also amend the *Private Health Insurance (Complying Product) Rules 2015* to update the daily patient contribution payable by nursing home-type patients for hospital accommodation in public hospitals in the Australian Capital Territory; refining the expression of the scope of cover for two clinical categories in Schedule 5 of the Complying Product Rules and updating the MBS items listed in Schedules 5, 6 and 7 of the Complying Product Rules to remove out-of-hospital (non-admitted) MBS items.

Human rights implications

Some aspects of the Amendment Rules engage Article 12 of the International Covenant on Economic, Social and Cultural Rights, 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, to improve information provided to consumers of private health services to allow consumers to make more informed choices when purchasing services and requires insurers to not differentiate the premiums they charge according to individual health characteristics such as poor health.

Analysis

The amendments relating to the amount of benefits and other monetary amounts in the Benefit Requirement Rules are in response to the consumer price index for March 2018 to March 2019, and therefore maintain the status quo arrangements.

The amendments re-categorising MBS items 36840 and 36508 are to reflect the setting in which the majority of services of that kind are provided or expect to be provided. This does not prevent the medical practitioner from certifying that the service should be provided as part of an overnight stay for a particular patient, and thereby attract a higher level of benefit.

The amendments relating to the updated minimum benefits and patient contributions for nursing home –type patients at public hospitals in the Australian Capital Territory and South Australia in the Benefit Requirement Rules and Complying Product Rules respectively reflect regular indexation practices for both Commonwealth, State and Territory jurisdictions and therefore maintain the status quo arrangements.

The amendments removing redundant items from the Complying Product Rules are entirely administrative in nature and therefore do not engage human rights.

Conclusion

This 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 Legislative Instrument is compatible with human rights because these changes continue to ensure that existing arrangements advance the protection of human rights are maintained.

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