

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No.2) 2020

Authority

Section 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.2) 2020* (the Amendment Rules) amends 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 make consequential amendments to the Benefit Requirement Rules and the Complying Product Rules to reflect indexation and adjustments applicable to Pension and Rent Assistance Rates from 20 March 2020. This is achieved by:

- amending Schedule 4 of the Benefit Requirements Rules (at clause 6, table 1) to change the minimum benefits payable by private health insurers per night for privately insured nursing-home type patients (NHTPs) accommodated in private hospitals nationally, or public hospitals in some jurisdictions.
- amending Section 8A of the Complying Product Rules to change the daily patient contribution payable by NHTPs towards the costs of their accommodation at private hospitals nationally, or at public hospitals in some jurisdictions.

Background

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 also set out the minimum levels of accommodation benefits which are payable by private health insurers for hospital treatment. Namely, benefits for overnight accommodation (Schedules 1 and 2), same day accommodation (Schedule 3), NHTPs (Schedule 4) and second-tier default benefits (Schedule 5).

Schedule 4 of the Benefit Requirements Rules (at clause 2) classifies a patient remaining in hospital after a continuous 35-day period, and receiving accommodation and nursing care as an end in itself, as a NHTP.

The Complying Product Rules Section 8A sets the patient contribution for privately insured NHTPs at public and private hospitals. It also restricts the amount of benefit that private health insurers pay for each day of NHTP hospital treatment at a hospital to the hospital's charge less the patient contribution amount.

The Amendment Rules makes minor changes to the definition of "patient contribution" in subsection 8A(3) of the Complying Product Rules by updating the NHTP contribution rate for privately insured patients at public hospitals for each state and territory except the Australian Capital Territory, and by updating the NHTP contribution rate for privately insured patients at private hospitals nationally.

The Commonwealth reviews NHTP accommodation and contribution rates twice annually, in line with adjustments and indexation applied to the Commonwealth Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance (Pension and Rental Assistance Rates). Changes in the Amendment Rules reflect the indexation applied to the Pension and Rental Assistance Rates, effective 20 March 2020.

The amendments in the Amendment Rules are administrative in nature and do not substantively alter existing arrangements.

Commencement

The Amendment Rules commence on 20 March 2020.

Details

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

Consultation

On 7 February 2020, the Australian Government asked the states and territories whether they would increase the NHTP contribution and accommodation rates in their jurisdiction in line with adjustments in the Pension and Rental Assistance Rates applicable from 20 March 2020.

New South Wales, the Northern Territory and Tasmania advised they intend to increase their minimum accommodation benefit payable by private health insurers for private NHTPs in their public hospitals, effective 20 March 2020.

The, Australian Capital Territory, Queensland, South Australia, Victoria and Western Australia will not change the minimum accommodation benefit payable by private health insurers, at this time.

All states and territories except the Australian Capital Territory advised that they will increase the NHTP contribution rates in their public hospitals from 20 March 2020 to \$62.50. The Australian Capital Territory advised that it is not increasing its NHTP contribution rate at this time.

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

DETAILS OF THE *PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT (No. 2) RULES 2020*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 2) 2020* (the Amendment Rules).

Section 2 Commencement

Section 2 provides that the instrument commences on 20 March 2020.

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 – Nursing-home type patient minimum accommodation benefit

Private Health Insurance (Benefit Requirements) Rules 2011

Item 1 – Clause 6 of Schedule 4 (Table 1, table item dealing with New South Wales, column headed “Minimum benefit per night”)

Item 1 amends clause 6 of Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirement Rules) to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing-home type patients in public hospitals in New South Wales from \$131.00 to \$133.60.

Item 2 – Clause 6 of Schedule 4 (Table 1, table item dealing with Northern Territory, column headed “Minimum benefit per night”)

Item 2 amends clause 6 of Schedule 4 of the Benefit Requirement Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing-home type patients in public hospitals in the Northern Territory from \$125.00 to \$130.00.

Item 3 – Clause 6 of Schedule 4 (Table 1, table item dealing with Tasmania, column headed “Minimum benefit per night”)

Item 3 amends clause 6 of Schedule 4 of the Benefit Requirement Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in Tasmania from \$148.30 to \$150.00.

Item 4 – Clause 6 of Schedule 4 (Table 2, table item dealing with Private hospitals, column headed “Minimum benefit per night”)

Item 4 amends clause 6 of Schedule 4 of the Benefit Requirement Rules to decrease the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in private hospitals from \$49.30 to \$48.60.

Schedule 2—Amendments – Nursing –home type patients contribution

Private Health Insurance (Complying Product) Rules 2015

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

Item 1 amends the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to repeal paragraph (a) of the definition of “patient contribution” in section 8A(3) and substitute a new paragraph 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 all states’ and the Northern Territory’s public hospitals is \$62.50. The rise in this rate reflects the Australian Government’s indexation of pensions and rent assistance on 20 March 2020. There is no change to the daily patient contribution payable by nursing home-type patients in public hospitals in the Australian Capital Territory.

Item 2 – Subsection 8A(3) (paragraph (b) of the definition of *patient contribution*)

Item 2 amends the Complying Product Rules to provide that paragraph (b) of the definition of ‘patient contribution’ in the Principal Rules is amended by increasing the nursing-home type patient contribution at private hospitals in Australia from \$61.80 to \$62.50.

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. 2) 2020

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 Legislation Amendment Rules (No. 2) 2020* (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 Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirement Rules) to update minimum benefits for nursing home type patients at public hospitals in New South Wales, the Northern Territory, and Tasmania.

The Amendment Rules also amend the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to update the daily patient contribution payable by nursing home-type patients for hospital accommodation in public hospitals in all states and the Northern Territory, and all private hospitals across Australia. There is no change to the daily patient contribution payable by nursing-home type patients in public hospitals in the Australian Capital Territory.

Human rights implications

The Amendment Rules engage Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically 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, 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 insurers to not differentiate the premiums they charge according to individual health characteristics such as poor health.

Analysis

The amendments relating to the updated minimum benefits and patient contributions for nursing-home type patients at public hospitals in some states and territories in the Benefit Requirement Rules and Complying Product Rules reflect regular indexation practices for the Commonwealth, and state and territory jurisdictions and therefore maintain the status quo arrangements.

Conclusion

This 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.

Brian Kelleher
Assistant Secretary
Private Health Insurance Branch
Medical Benefits Division
Department of Health