

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance Legislation Amendment Rules (No. 2) 2021

Authority

Section 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister to, by legislative instrument, make 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.

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.

Purpose

The *Private Health Insurance Legislation Amendment Rules (No.2) 2021* (the Amendment Rules) amends the:

- Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules), to update the minimum benefits payable by private health insurers per night for nursing-home type patients (NHTPs) at public hospitals in some states and at private hospitals nationally. The changes take account of the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance; and,
- Section 8A of the *Private Health Insurance (Complying Products) Rules 2015* (the Complying Product Rules) to update the daily patient contribution payable by NHTPs for hospital accommodation in public hospitals in some states and territory jurisdictions and in all private hospitals. (The changes reflect the indexation applied to Adult Pension Basic Rate and Maximum Daily Rate of Rental Assistance.)

Background

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatments. 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), NHTPs (Schedule 4) and second-tier default benefits (Schedule 5).

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.

Section 8A of the Complying Product Rules sets the patient contribution for privately insured NHTPs by restricting the amount of benefit that private health insurers pay for each day of NHTP hospital treatment at a hospital. The amount of benefit is restricted 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 at public hospitals in each state and territory which chooses to increase this contribution and private hospitals nationally. Changes to the NHTP contribution rate reflect the indexation applied to the Adult Pension Basic Rate and the Maximum Daily Rate of Rental Assistance (Pension and Rental Assistance Rates), which take effect on 20 March 2021.

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 2021

Details

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

Consultation

In mid-Feb 2021, states and territories were asked whether they would increase the NHTP contribution and accommodation rates in their jurisdiction in line with increases in the Pension and Rental Assistance Rates which take effect on 20 March 2021.

New South Wales, Queensland, Tasmania, Victoria and the Northern Territory have advised that they will increase the NHTP accommodation rates in their public hospitals from 20 March 2021, consequently increasing the minimum benefit payable by private health insurers for accommodation. The Western Australia, the Australian Capital Territory and South Australia have advised no change to the minimum benefits payable by private health insurers is required 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 2021 to \$63.05. 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*.

The Amendment Rules

The consequential amendments in these Amendment Rules are administrative in nature and do not substantively alter existing arrangements established under the Act.

Commencement

The Amendment Rules commence on 20 March 2021.

ATTACHMENT

Details of the *Private Health Insurance Legislation Amendment (No. 2) Rules 2021*

Section 1 Name

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 2) 2021*.

Section 2 Commencement

Section 2 provides that the instrument commences on 20 March 2021.

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.

All Schedule changes come into effect from 20 March 2021.

Schedule 1—Amendments—Nursing-home type patient contribution

Private Health Insurance (Complying Product) Rules 2015

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

Item 1 amends the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules) to repeal the paragraph subparagraph 8A(3)(a) in the definition of ‘patient contribution’ and substitute a new paragraph adjusting rates at all jurisdictions except for the ACT, to \$63.05. 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 \$63.05

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

Item 2 amends the Complying Product Rules to update the nursing-home type patient contribution at private hospitals in Australia to \$63.05.

Schedule 2—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)

Item 1 amends clause 6 of Schedule 4 of the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements 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 \$133.60 to \$134.60.

Item 2 – clause 6 of Schedule 4 (table 1, table item dealing with Northern Territory)

Item 2 amends clause 6 of Schedule 4 of the Benefit Requirements 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 \$130.00 to \$133.15.

Item 3 – clause 6 of Schedule 4 (table 1, table item dealing with Queensland)

Item 3 amends clause 6 of Schedule 4 of the Benefit Requirements Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in Queensland from \$132.50 to \$135.00

Item 4 – clause 6 of Schedule 4 (table 1, table item dealing with Tasmania)

Item 4 amends clause 6 of Schedule 4 of the Benefit Requirements 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 \$150.00 to \$151.30.

Item 5 – clause 6 of Schedule 4 (table 1, table item dealing with Victoria)

Item 5 amends clause 6 of Schedule 4 of the Benefit Requirements Rules to increase the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in Victoria from \$137.00 to \$140.00.

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

Item 6 provides that Table 2 of clause 6 in Schedule 4 of the Benefit Requirements Rules is amended by updating the minimum benefit payable per night from \$48.60 to \$48.05 for nursing-home type patients in private hospitals.

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) 2021

This disallowable 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 disallowable legislative instrument

The purpose of the *Private Health Insurance Legislation Amendment Rules (No. 2) 2021* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules); and,
- *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

These Amendment Rules amend Schedule 4 of the Benefit Requirements Rules to update minimum benefits for nursing-home type patients at all private and some public hospitals.

These Amendment Rules also amend the Complying Product Rules to update the daily patient contribution payable by nursing-home type patients for hospital accommodation in public hospitals in most States and the Northern Territory, and in all private hospitals.

Human rights implications

The Amendment Rules engage the right to health by facilitating the payment of private health insurance benefits for health care services, encouraging access to, and choice in, health care services. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically the right to health, the Amendment Rules assist 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 that insurers do 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 Requirements Rules and Complying Product Rules respectively reflect regular indexation practices for both Commonwealth, state and territory jurisdictions and therefore maintain the status quo arrangements.

Conclusion

This disallowable 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 instrument is compatible with human rights because these changes continue to ensure that existing arrangements advancing the protection of human rights are maintained.