

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health and Aged Care

*Private Health Insurance Act 2007*

*Private Health Insurance Legislation Amendment Rules (No. 3) 2022*

### **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. 3) 2022* (the Amendment Rules) amends the:

- *Private Health Insurance (Complying Products) Rules 2015* (the Complying Product Rules) to update the daily patient contribution payable by nursing-home type patients (NHTPs) for hospital accommodation in public hospitals in all state and territory jurisdictions except for public hospitals in the Australian Capital Territory (ACT), and New South Wales (NSW); and in all private hospitals nationally; and,
- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules), to update the minimum benefits payable by private health insurers per night for NHTPs at public hospitals in the Northern Territory (NT), Tasmania (TAS), Western Australia (WA), and at private hospitals nationally.

These changes to the NHTP rates and benefits take account of 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 2022.

### **Background**

Section 8A of the Complying Product Rules establish the daily patient contribution rate payable by a privately insured NHTP in hospital.

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric, rehabilitation and palliative care and other hospital treatments. The minimum benefits payable per night by insurers for hospital treatment provided to NHTPs is set out in Schedule 4 of the Benefit Requirements Rules.

NHTP rates and benefits are 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. Jurisdictions are consulted on changes to rates in public hospitals. Some jurisdictions apply changes to NHTP rates and benefits on 1 July, annually.

### **The Amendment Rules**

The Amendment Rules make 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. The Amendment Rules also amend Schedule 4 of the Benefit Requirements Rules to update the minimum NHTP benefit payable by insurer per night.

The amendments in the 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 2022.

### Details

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

### Consultation

In February and March 2022, all states and territories were consulted regarding the NHTP contribution rates and accommodation benefits for their jurisdiction, in line with increases in the Pension and Rental Assistance Rates which take effect on 20 March 2022. The changes detailed in the Amendment Rules reflect responses received.

The Commonwealth advised jurisdictions from 20 March 2022 that for private hospitals the proposed:

- daily patient contribution rate payable by NHTP would be \$65.40; and,
- minimum benefit payable by insurers for NHTP would be \$45.70.

The NT, QLD, SA, TAS, VIC, and WA advised intent to increase the NHTP contribution rates in their public hospitals from 20 March 2022 to \$65.40.

The NT and TAS advised intent to increase the minimum benefit payable by private health insurers for NHTP accommodation.

WA advised intent to decrease the minimum benefit payable by private health insurers for NHTP accommodation.

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

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## ATTACHMENT

### ***Details of the Private Health Insurance Legislation Amendment (No. 3) Rules 2022***

#### **Section 1 Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 3) 2022*.

#### **Section 2 Commencement**

Section 2 provides that the instrument commences on 20 March 2022.

#### **Section 3 Authority**

Section 3 provides that the Amendment Rules are made under section 333-20(1) 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 2022.

#### **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 subparagraph 8A(3)(a) in the definition of ‘patient contribution’ and substitute a new subparagraph of rates at all jurisdictions. The effect of this change is that the daily rate for patient contribution (to fees for hospital treatment) payable by nursing-home type patients to \$65.40, except for the ACT (\$63.05) and NSW (\$64.05) which remain unchanged.

#### **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 \$65.40

## 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 Northern Territory)

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 the NT from \$133.15 to \$138.35.

#### **Item 2** – Clause 6 of Schedule 4 (table 1, table item dealing with Tasmania)

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 TAS from \$153.70 to \$156.95.

#### **Item 3** – Clause 6 of Schedule 4 (table 1, table item dealing with Western Australia)

Item 3 amends clause 6 of Schedule 4 of the Benefit Requirements Rules to decrease the minimum benefits payable by private health insurers for hospital treatment provided to nursing home-type patients in public hospitals in WA from \$138.10 to \$136.75.

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

Item 4 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 by private health insurers for hospital treatment provided to nursing home-type patients in private hospitals from \$47.05 to \$45.70.

## **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. 3) 2022***

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. 3) 2022* (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 the Complying Product Rules to update the daily patient contribution payable by nursing-home type patients (NHTP) for hospital accommodation in all private hospitals nationally, and public hospitals in all states and territories except the ACT and NSW.

These Amendment Rules also amend the Benefit Requirements Rules to update minimum benefits for nursing-home type patients payable by insurers for NHTP hospital accommodation at all private hospitals nationally, and public hospitals in the NT, TAS and WA.

#### **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.

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