

## **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. 6) 2022*

### **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.

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 *Private Health Insurance Legislation Amendment Rules (No. 6) 2022* (the Amendment Rules) amends the:

- *Private Health Insurance (Complying Product) 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 the Australian Capital Territory (ACT), and New South Wales (NSW).
- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules), to:
  - index the monetary qualifiers for Medicare Benefits Schedule (MBS) items included in Type A procedure patient classifications for “advanced surgical patient” and “surgical patient” by amending Schedule 1.
  - update the minimum benefits payable by private health insurers for private patients’ overnight and same-day accommodation in both private and public hospitals in all States and Territories by amending Schedules 1 through 3;
  - update the minimum benefits payable by private health insurers for NHTPs accommodated at public hospitals in the ACT, NSW and South Australia (SA) by amending Schedule 4.

The increase is in line with the annual increase to March 2022 in the Consumer Price Index (CPI) of 5.1 per cent.

Amendments to the NHTP rates and NHTP benefits take account of indexation applied on 20 March 2022 to the Adult Pension Basic Rate and the Maximum Daily Rate of Rental Assistance (Pension and Rental Assistance Rates). The NHTP updates will be applied from 1 July 2022 by ACT, NSW and SA.

Other States and Territories amended their NHTP rates and benefits from 20 March 2022, as reflected in the *Private Health Insurance Legislation Amendment Rules (No. 3) 2022*.

The MBS indexation changes to MBS thresholds are in line with annual indexation of the MBS fees of 1.6 per cent from 1 July 2022 as set out in the *Health Insurance Legislation Amendment (2022 Measures No. 1) Regulations 2022*, accessible on the Federal Register of Legislation (FRL) at <http://www.legislation.gov.au>.

## Background

### *Benefit Requirements Rules*

The Benefit Requirements Rules provide for minimum benefit requirements for psychiatric care, rehabilitation, palliative care, and other hospital treatments. Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation benefits payable by private health insurers associated with private patients' hospital treatment for: overnight accommodation (Schedules 1 and 2); same-day accommodation (Schedule 3); Nursing-Home Type Patients (NHTP) (Schedule 4) and second-tier default benefits (Schedule 5).

Schedule 1 of the Benefit Requirements Rules also sets benefits for different patient categories by categorising MBS item numbers into patient classifications for accommodation benefits. Procedures requiring hospital treatment that includes part of an overnight stay ('Type A procedures') comprise 'Advanced surgical patient', 'Obstetric patient', 'Surgical patient', 'Psychiatric patient', 'Rehabilitation patient' and 'Other patients.'

Against these patient classifications, Schedule 1 sets out the minimum accommodation benefit payable by insurers per night for overnight accommodation for private patients at private hospitals in all states and territories, and for private patients in overnight shared ward accommodation at public hospitals in Victoria and Tasmania.

Schedule 2 of the Benefit Requirements Rules states the minimum accommodation benefit payable by insurers per night, for private patients in overnight shared ward accommodation at all other State and Territory public hospitals. For each jurisdiction listed in Schedule 2, the minimum benefit payable by insurers per night is averaged across all patients, rather than being specific to patient classification as for Schedule 1.

Schedule 3 of the Benefit Requirements Rules sets out minimum same-day accommodation benefits payable by insurers for procedures requiring hospital treatment that does not include part of an overnight stay at a hospital ('Type B procedures'). Type B procedures are further classified into four separate treatment bands (1 to 4) based on anaesthesia type and/or theatre time. Part 2 of Schedule 3 identifies MBS items against Type B procedure Band 1, or the Type B non-band specific classification which are Band 1 to 4 depending on how treatment is delivered to an individual patient. The Benefit Requirements Rules also sets out circumstances in which benefits for accommodation including part of an overnight stay may be payable for patients receiving a Certified Type B Procedure (at Part 3 of Schedule 1).

Schedule 3 of the Benefit Requirements Rules also identifies by MBS item those services that do not normally require hospital treatment ('Type C procedures'). The Benefit Requirements Rules, together with the *Private Health Insurance (Health Insurance Business) Rules 2018*, establish that Type C procedures do not normally qualify as hospital treatment eligible for minimum benefits, including for accommodation, except in circumstances where a patient may receive as hospital treatment a Certified Type C Procedure (at Part 2 of Schedule 3).

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 minimum benefits payable by insurers 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. Some jurisdictions reserve changes, or choose to make additional changes, to NHTP rates in July, annually.

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 as eligible in Schedule 5, if the health insurer does not have a negotiated agreement with the hospital for that type of hospital treatment. 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.

#### *Complying Product Rules*

The Complying Product Rules 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 private NHTP hospital treatment at a hospital to the hospital's charge less the patient contribution amount.

#### **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 1 July 2022.

#### Details

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

#### Consultation

In May and June 2022, the Australian Government Department of Health asked all states and territories whether they would increase accommodation fees and agree to corresponding increases in minimum accommodation benefits payable by private health insurers for private patients in their jurisdiction applicable from 1 July 2022, in line with adjustments in the Consumer Price Index (CPI).

New South Wales (NSW), Victoria (VIC), Queensland (QLD), Western Australia (WA), South Australia (SA), Tasmania (TAS), the Australian Capital Territory (ACT) and the Northern Territory (NT) advised they intend to increase their accommodation fees and agreed to the increases in minimum accommodation benefits, effective 1 July 2022.

The ACT, NSW and SA advised they intend to increase the minimum accommodation benefit payable by private health insurers for private NHTPs in their jurisdictions' public hospitals, effective 1 July 2022.

The ACT and NSW also advised of an increase in the NHTP contribution rate in their public hospitals from 1 July 2022.

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

#### Details

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

## ATTACHMENT

### **Details of the *Private Health Insurance Legislation Amendment Rules (No. 6) 2022***

#### **Section 1      Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 6) 2022* (the Amendment Rules).

#### **Section 2      Commencement**

Section 2 provides that the instrument commences on 1 July 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.

## Schedule 1—Amendments – minimum accommodation benefits

### *Private Health Insurance (Benefit Requirements) Rules 2011*

#### **Item 1 to 3 – Clause 2 of Schedule 1 (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 and substitute new tables that set out the minimum benefits payable per night by private health insurers for specified classes of private patients applicable from 1 July 2022 for:

- overnight accommodation for private patients at private hospitals in all States/Territories (Table 1);
- Victoria: overnight shared ward accommodation for private patients at public hospitals (Table 2); and,
- Tasmania: overnight shared ward accommodation for private patients at public hospitals (Table 3).

The new minimum benefits have been increased by the rate of increase in the Consumer Price Index (CPI) from March quarter 2021 to March quarter 2022, which is 5.1 per cent.

#### **Item 4 – Subclause 4(3) of Schedule 1**

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 Requirements 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 from \$887.50 to be \$901.70 (indexed by 1.6 per cent, the indexation rate for MBS fees effective 1 July 2022).

#### **Item 5 – Subclause 6(3) of Schedule 1**

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 Requirements 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 this specified amount from “\$264.25 to \$887.50” to the new range of \$268.50 to \$901.70 (indexed by 1.6 per cent, the indexation rate for MBS fees effective 1 July 2022).

#### **Item 6 – Clause 2 of Schedule 2 (table)**

Item 6 repeals the table and substitutes a new table that sets out the new minimum benefits payable by insurers for hospital treatment provided to private patients in the circumstances set out in Schedule 2. The minimum benefits apply to overnight accommodation provided in shared wards for private patients 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 2021 to March quarter 2022, which is 5.1 per cent.

### **Items 7 and 8 – Clause 2 of Schedule 3 (table 1 and 2)**

Items 7 and 8 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 same-day accommodation 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 2021 to March quarter 2022, which is 5.1 per cent.

### **Item 9 – Clause 6 of Schedule 4 (table 1, table item dealing with the Australian Capital Territory)**

Item 9 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 \$133.00 to \$137.30.

### **Item 10 – Clause 6 of Schedule 4 (table 1, table item dealing with New South Wales)**

Item 10 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 New South Wales from \$140.10 to \$144.40.

### **Item 11 – Clause 6 of Schedule 4 (table 1, table item dealing with South Australia)**

Item 10 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 \$126.00 to \$132.00.

Schedule 2—Amendments - Nursing-home type patient contribution

***Private Health Insurance (Complying Product) Rules 2015***

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

Item 1 repeals the paragraph and substitutes a new paragraph, with new daily patient contribution rates (to fees for hospital treatment) of \$65.40 payable by nursing-home type patients in public hospitals in the Australian Capital Territory and New South Wales. The rise in this rate reflects the Australian Government's indexation of aged pensions plus rent assistance from 20 March 2022 under the *Private Health Insurance Legislation Amendment Rules (No. 3) 2022*, bringing the patient contribution in the Australian Capital Territory and New South Wales into alignment with indexation already applied by all other states and territories.

## **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. 6) 2022*

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. 6) 2022* (the Amendment Rules) is to amend the following instruments:

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

### **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*

Amendments relating to the Benefit Requirements Rules and the Complying Product Rules are as a consequence of routine indexation.

### **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.

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