

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Rules 2009 (No. 2)

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Prostheses) Rules*, providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient in order to carry out or give effect to Part 3-3 of the Act.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act provides for requirements that a complying health insurance policy that covers hospital treatment must meet. There must be a minimum benefit for the provision of a prosthesis of a kind listed in the *Private Health Insurance (Prostheses) Rules*.

Item 4 of the table provides that in order for a private health insurer to be required to pay the minimum benefit, a Medicare benefit must be payable in respect of the professional service associated with the provision of the listed prosthesis.

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply.

The *Private Health Insurance (Prostheses) Rules 2009 (No. 2)* (the Rules) commence on 15 August 2009.

The Rules revoke the *Private Health Insurance (Prostheses) Rules 2009 (No. 1)* (Previous Rules) as amended by the *Private Health Insurance (Prostheses) Amendment Rules 2009 (No. 1)*.

Rule 5 provides that the Schedule lists the prostheses the Minister has listed:

- under subsection 72-10 (5) of the Act; and
- as a result of the transitional arrangements covering a prosthesis that was listed as a gap prosthesis for the purposes of the *National Health Act 1953* immediately before the commencement of the Act.

The Schedule has two parts:

- Part A – Prostheses; and
- Part B – Human Tissue List.

The Rules set out the method for determining the minimum (and maximum) benefit payable for listed prostheses provided as part of hospital treatment or part of hospital-substitute treatment (rules 6 and 7).

The Rules also make reference to the timing of applications to have a prosthesis listed in the Schedule (rule 8) and to the role of Prostheses and Devices Committee (PDC) and the Prostheses and Devices Negotiating Group (rule 9).

The Rules update the Previous Rules by:

- adding 804 new items to Part A and 2 new items to Part B of the Schedule as no gap prostheses or gap permitted prostheses;
- changing the current listing of many existing products in Parts A and B of the Schedule including:
 - amending the descriptions of products;
 - allocating new billing codes in respect of new sizes or models of products;
 - compressing billing codes to cover a range of products offered at the same benefit;
 - changing sponsor names to reflect new sponsor arrangements; and
 - changing the minimum benefit and/or maximum benefit; and
- deleting 950 products in Part A of the Schedule and 6 products in Part B of the Schedule.

In Part A of the Schedule, some products are grouped according to their clinical effectiveness, as assessed by Clinical Advisory Groups (CAGs) or the Panel of Clinical Experts (PoCE). The purpose of the groupings is to identify products of similar clinical effectiveness or clinical design, in order to assist in determining the benefits payable for the products and to assist with clinical choice.

Product Reviews

Reviews within the PoCE assessment bodies have resulted in amended grouping schemes for:

- (i) General & Miscellaneous Non CAG Mesh products;
- (ii) Plastic & Reconstructive Non CAG products; and
- (iii) Ear, Nose & Throat (ENT).

Reviews within the CAG assessment bodies included:

- (i) Hip Prostheses CAG (HPCAG) – review of benefits payable for hip products in Group 15, 28 and 29; and
- (ii) Spinal Prostheses CAG (SPCAG) – review of benefits payable for spinal products in Group 6.

Benefits payable for new products have also been negotiated with sponsors and have been incorporated into the Rules (with the exception of 37 applications, where a truncated benefit process was used).

CONSULTATION

The Rules have been made having regard to recommendations made by the Prostheses and Devices Committee (PDC), a ministerially appointed committee comprised of nominees from health insurers, hospitals, clinicians, prostheses sponsors, and consumer representatives.

In making its recommendations, the PDC was advised by CAGs, other clinical experts, and benefits negotiators, all appointed by the PDC.

Details of the Rules are set out in the Attachment.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority: Section 333-20 of the
*Private Health Insurance
Act 2007*

DETAILS OF THE *PRIVATE HEALTH INSURANCE (PROSTHESES) RULES 2009* (No. 2)

PART 1 PRELIMINARY

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Prostheses) Rules 2009* (No. 2).

2. Commencement

Rule 2 provides for the Rules to commence on 15 August 2009.

3. Revocation

Rule 3 provides for the revocation of the *Private Health Insurance (Prostheses) Rules 2009* (No. 1) (as amended by the *Private Health Insurance (Prostheses) Amendment Rules 2009* (No. 1)).

4. Definitions

Terms used in the Rules have the same meaning as in the Act. In addition, certain terms are defined for the purposes of the Rules, including the definitions of *gap permitted prosthesis* and *no gap prosthesis*.

Part 2 Benefit requirements

5. Listing of, and benefits, for prostheses

Paragraph 5(a) provides that the Schedule to the Rules sets out the prostheses the Minister has listed ('listed prostheses').

The prostheses listed in the Schedule to the Rules are:

- prostheses that the Minister has decided to list as a result of applications made under subsection 72-10(2) of the Act. Under subsection 72-10(5) of the Act, where the Minister decides to grant such an application and the applicant has paid the initial listing fee imposed under the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007*, the Minister must list the prosthesis in the *Private Health Insurance (Prostheses) Rules*; and
- prostheses that were, immediately before the commencement of the Act on 1 April 2007, listed as no gap prosthesis or gap permitted prosthesis for the purposes of the *National Health Act 1953: section 12, Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*.

Paragraph 5(b) provides that rule 6 sets out the method for working out the minimum and

maximum benefit for hospital treatment, covered under a complying health insurance policy, that is the provision of a listed prosthesis in circumstances where:

- a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis; or,
- the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist.

Paragraph 5(c) provides that rule 7 sets out the method for working out the minimum benefit and maximum benefit for hospital-substitute treatment, covered under a complying private health insurance policy, that is the provision of a listed prosthesis in circumstances where a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis.

It is not possible for a private health insurer to cover hospital treatment or hospital-substitute treatment under a policy, but exclude coverage of the provision of an associated listed prosthesis. This coverage requirement is provided for in Rule 6 of the *Private Health Insurance (Complying Products) Rules 2007*.

6. Benefits for prostheses provided as part of hospital treatment

Subrule 6(1) provides that for a no gap prosthesis provided as part of an episode of hospital treatment by a private hospital in the circumstances mentioned in paragraph 5 (b), the minimum and maximum benefit are each the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 6(2) provides that for a gap permitted prosthesis provided as part of an episode of hospital treatment by a private hospital in the circumstances mentioned in paragraph 5 (b) the minimum benefit and the maximum benefit are the amounts set out in the Schedule for that prosthesis under the column headings 'Minimum Benefit' and 'Maximum Benefit'.

Subrule 6(3) provides that for a no gap prosthesis provided as part of an episode of hospital treatment by a public hospital in the circumstances mentioned in paragraph 5 (b) the minimum benefit is the lesser of: the amount for that prosthesis set out in the Schedule under the column heading 'Minimum Benefit'; or, the amount of the insured person's liability to the public hospital for that prosthesis. The maximum benefit is the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 6(4) provides that for a gap permitted prosthesis provided as part of an episode of hospital treatment by a public hospital in the circumstances mentioned in paragraph 5(b), the minimum benefit is the lesser of: the amount for that prosthesis set out in the Schedule under the column heading 'Minimum Benefit'; or, the amount of the insured person's liability to the public hospital for that prosthesis. The maximum benefit is the amount for that prosthesis set out under the column heading 'Maximum Benefit' in the Schedule.

7. Benefits for prostheses provided as part of hospital-substitute treatment

Subrule 7(1) provides that for a no gap prosthesis provided as part of an episode of hospital substitute treatment in the circumstances mentioned in paragraph 5 (c) the minimum and

maximum benefit are each the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 7(2) provides that for a gap permitted prosthesis provided as part of an episode of hospital-substitute treatment in the circumstances mentioned in paragraph 5 (c) the minimum benefit and the maximum benefit are the amounts set out in the Schedule for that prosthesis under the column headings 'Minimum Benefit' and 'Maximum Benefit'.

8. Timing of applications to have a prosthesis listed

Rule 8 provides that as a matter of normal administrative practice, if the Minister grants an application, then the prosthesis must be listed in the Schedule the next time the Minister makes or varies the rules.

9. Minister may have regard to recommendations and advice

Subrule 9(1) provides that in making a decision under subsection 72-10 of the Act, the Minister may have regard to a recommendation from the Prostheses and Devices Committee when deciding whether or not to grant the application to list a prosthesis.

Subrule 9(2) provides that the Minister may have regard to the amounts as negotiated between the Prostheses and Devices Negotiating Group and the applicant when setting the minimum and maximum benefits.

SCHEDULE

The Schedule contains the 'Minimum Benefit' and 'Maximum Benefit' for prostheses for private and public hospital treatment, and hospital-substitute treatment.