

## EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health

*NATIONAL HEALTH ACT 1953*

***NATIONAL HEALTH (INDIGENOUS CHRONIC DISEASE – PBS CO-PAYMENT MEASURE) SPECIAL ARRANGEMENT AMENDMENT INSTRUMENT 2012 (NO.1)***

**PB 43 of 2012**

### Authority

Subsection 100(1) of the *National Health Act 1953* (the Act) enables the Minister to make special arrangements for the supply of pharmaceutical benefits. Subsection 100(2) of the Act provides that the Minister may vary or revoke a special arrangement made under subsection 100(1).

Subsection 100(3) of the Act provides that Part VII of the Act, and instruments made for the purposes of Part VII of the Act, have effect subject to a special arrangement made under subsection 100(1).

### Purpose

The purpose of this legislative instrument, made under subsections 100(1) and 100(2) of the Act, is to amend the *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement 2012* (PB 22 of 2012) (the Special Arrangement), to make changes to the Special Arrangement to assist eligible Indigenous patients to access Pharmaceutical Benefits Scheme (PBS) medicines with reduced patient co-payments.

On and from 1 July 2012 the Act provides, when Schedules 1 and 2 of the *National Health Amendment (Fifth Community Pharmacy Agreement Initiatives) Act 2012* commence, for the determination of the conditions of supply and the eligible pharmaceutical benefits that can be supplied for the purposes of continued dispensing supplies (new section 89A), and supply from a medication chart in residential aged care facilities (section 93A), being two new initiatives referred to in the Fifth Community Pharmacy Agreement.

This Instrument makes consequential amendments to the Special Arrangement to provide that:

- the reduced co-payment under this Special Arrangement is available for supply from a medication chart prescription for residents in residential aged care facilities;
- the reduced co-payment under this Special Arrangement is not available for a continued dispensing supply; and
- to ensure that it is clear when prescriptions are not required to be included in a claim, and, if so, when a supply certification form is required.

A provision by provision description of this Instrument is contained in [Attachment 1](#).

### Consultations

The changes made by this instrument are minor and mechanical and do not require consultation.

This legislative instrument commences on 1 July 2012.

This Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## ATTACHMENT

**ITEM BY ITEM DESCRIPTION OF THE NATIONAL HEALTH (INDIGENOUS CHRONIC DISEASE – PBS CO-PAYMENT MEASURE) SPECIAL ARRANGEMENT AMENDMENT INSTRUMENT 2012 (NO.1) (PB 43 OF 2012)**

**Section 1 Name of Instrument**

This section provides that the Instrument is the *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement Amendment Instrument 2012 (No.1)* and that it may also be cited as PB 43 of 2012.

**Section 2 Commencement**

This section provides that the Instrument commences on 1 July 2012.

**Section 3 Amendments to PB 22 of 2012**

This section provides that Schedule 1 amends the *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement 2012 (PB 22 of 2012)* (the Special Arrangement).

**Schedule 1**

**Items 1 to 4** amend section 4 of the Special Arrangement to insert definitions for ‘medication chart prescription’, ‘paperless claim for payment’, ‘Regulations’ and ‘supply certification form’.

**Item 5** amends section 6 of the Special Arrangement to make it clear that the reduced co-payment under this Special Arrangement is not available for continued dispensing supply under subsection 89A(1) of the Act, including where under normal Pharmaceutical Benefits Scheme (PBS) supply it would be an under co-payment situation. This does not prevent the use of a prescription annotated for the purposes of this Special Arrangement as the previous prescription for the purposes of continued dispensing.

**Item 6** inserts a note after subsection 7(4) of the Special Arrangement to make it clear that the reduced co-payment under this Special Arrangement is available for supply under subsection 93A(4) of the Act based on a medication chart prescription to a person receiving residential care, including where under normal PBS supply it would be an under co-payment situation.

**Item 7** inserts a new subparagraph 15(2)(b)(ii) to provide that where under normal PBS supply it would be an under co-payment situation and no claim would be made for supply, no prescription is required to be provided with a claim made under this Special Arrangement, the claim is a ‘paperless claim for payment’ (within the meaning of the Regulations), but the ‘supply certification form’ otherwise required by new regulation 31(4) of the Regulations on and from 1 July 2012 is not required.

Item 7 also inserts a new subparagraph 15(2)(b)(iii) to ensure that it is clear that supply from a medication chart prescription under subsection 93A(4) of the Act and this Special Arrangement does need to include a supply certification form, except where subparagraph 15(2)(b)(ii) applies.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***NATIONAL HEALTH (INDIGENOUS CHRONIC DISEASE – PBS CO-PAYMENT MEASURE) SPECIAL ARRANGEMENT AMENDMENT INSTRUMENT 2012 (NO.1)***

This 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 Legislative Instrument**

The purpose of this legislative instrument, made under subsections 100(1) and 100(2) of the Act, is to amend the *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement 2012* (PB 22 of 2012) (the Special Arrangement), to make changes to the Special Arrangement to assist eligible Indigenous patients to access Pharmaceutical Benefits Scheme (PBS) medicines with reduced patient co-payments under the PBS.

This Instrument amends the Special Arrangement to provide that the reduced co-payment under this Special Arrangement is available for supply from a medication chart in residential aged care facilities and not available for a continued dispensing supply and to ensure that it is clear when prescriptions are not required to be included in a claim, and, if so, when a supply certification form is required.

#### **Human rights implications**

This legislative instrument engages Article 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 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.

The PBS is a benefit scheme which assists with advancement of this human right by providing for subsidised access by patients to medicines. This Special Arrangement ensure more ready and equitable access to PBS medicines for Indigenous Australians and is part of the Australian Government's Closing the Gap reform agenda. Closing the Gap is a commitment by all Australian governments to improve the lives of Indigenous Australians, and in particular provide a better future for Indigenous children.

#### **Conclusion**

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

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