

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Subsection 84C(7)) Amendment Determination 2015 (No. 1)

PB 63 of 2015

Authority

Subsection 84C(7) of the *National Health Act 1953* (the Act) provides that the Minister may determine the manner in which the price for all or any pharmaceutical benefits and repatriation pharmaceutical benefits is to be ascertained for the purpose of the Safety Net. Paragraph 84C(8)(d) of the Act provides for the addition of fees or amounts as determined by the Minister in accordance with subsection 84C(9) of the Act which requires the agreement in writing of the Pharmacy Guild of Australia.

This price is determined in the *National Health (Subsection 84C(7)) Determination 2010* made on 20 July 2010 (the Principal Determination), as being the sum of the Commonwealth price for a pharmaceutical benefit, calculated in accordance with the determination by the Pharmaceutical Benefits Remuneration Tribunal under paragraph 98B(1)(a) of the Act, and an additional amount for paragraph 84C(8)(d).

Purpose

The purpose of this Determination is to reflect the additional amount for ready-prepared pharmaceutical benefits and for extemporaneously-prepared pharmaceutical benefits, with effect from 1 July 2015.

Background

Part VII of the Act is the legislative basis of the Pharmaceutical Benefits Scheme (PBS) by which the Commonwealth provides reliable, timely, and affordable access to a wide range of medicines for all Australians.

Division 1A of Part VII of the Act provides for the Safety Net arrangements for the PBS and Repatriation Pharmaceutical Benefits Scheme (RPBS). The Safety Net reduces the cost of medicines for individuals and families who require a large number of pharmaceutical benefits.

Section 84C of the Act provides that a person is eligible to receive a Safety Net concession card or entitlement card when expenditure on pharmaceutical benefits for the person or the person and their family during an entitlement period reaches a certain amount (the Safety Net amount). A Safety Net concession card or entitlement card enables access to PBS or RPBS medicines at a reduced rate or free of charge for the remainder of the entitlement period. An entitlement period for the Safety Net is a calendar year from 1 January to 31 December.

Section 84C also sets out the supplies and amounts which can be taken into account for the purpose of the Safety Net. Where the Commonwealth price for a medicine is equal to or greater than the maximum amount the patient may be charged (the patient co-payment), the amount for Safety Net purposes is the amount charged as the patient co-payment. Where the Commonwealth price for a pharmaceutical benefit is less than the patient co-payment, subsection 84C(4)(e) of the Act provides that the supply cannot be taken into account for Safety Net purposes unless the amount charged does not exceed the sum of the subsection 84C(7) price for the pharmaceutical benefit or repatriation pharmaceutical benefit and any charges (where applicable) for supplying the pharmaceutical benefit outside of normal trading hours and/or by delivery to premises other than the approved pharmacy.

Subsection 84C(7) of the Act provides that the Minister may determine the manner in which the price for all or any pharmaceutical benefits or repatriation pharmaceutical benefits (including those referred to in subsection 84C(4)(e)) is to be ascertained for the purpose of the Safety Net. Subsection 87C(8) provides that the manner determined under subsection (7) shall accord with the requirements set out in subsection (8).

The price of a pharmaceutical benefit for subsection 84C(7) of the Act is determined in the Principal Determination to be the sum of the Commonwealth price, calculated in accordance with a determination under paragraph 98B(1)(a) of the Act, and an additional amount determined by the Minister for paragraph 84C(8)(d) of the Act. A different amount applies for ready-prepared and extemporaneously-prepared pharmaceutical benefits.

The Principal Determination provides that the subsection 84C(7) price for a pharmaceutical benefit must not exceed the patient co-payment amount. This means that the additional amount that can be included, in full or in part, only where the price is up to a maximum of the patient co-payment.

The additional amount for ready-prepared pharmaceutical benefits is indexed annually. The additional amount for extemporaneously-prepared benefits is obtained by multiplying the additional amount for ready-prepared benefits by the ratio of the extemporaneously-prepared and ready-prepared dispensing fees determined under paragraph 98B(1)(a) of the Act.

The *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2015 (No. 1)*, PB 64 of 2015, defines the ready-prepared dispensing fee and the extemporaneously-prepared dispensing fee to be \$6.93 and \$8.97, respectively, from 1 July 2015.

Amendments

A component of the Fifth Community Pharmacy Agreement (Fifth Agreement) has been the Safety Net Additional Fee indexed annually by Wage cost Index 9 (WCI9) on 1 August of each year. For the term of the Sixth Community Pharmacy Agreement (Sixth Agreement) the fee will remain indexed annually by WCI9, however the indexation date will change to 1 July. The fee for 2015/16 has been set as part of the Sixth Agreement negotiations and indexation will begin to be applied from 1 July 2016.

This Determination revises the additional amount, for paragraph 84C(8)(d) of the Act, for ready-prepared pharmaceutical benefits from \$1.15 to \$1.17 and for extemporaneously-prepared pharmaceutical benefits from \$1.50 to \$1.53, with effect from 1 July 2015.

Consultation

Subsection 84C(9) of the Act provides that the Minister must not determine an additional amount unless the Pharmacy Guild of Australia (the Guild) has agreed in writing.

The Guild is a signatory to the Sixth Agreement which outlines these amendments. In addition, the Guild was consulted specifically on this matter and has confirmed their agreement in writing, for ready-prepared and extemporaneously-prepared pharmaceutical benefits additional fees as set out in the Sixth Agreement.

The Determination commences on 1 July 2015.

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

Statement of Compatibility with Human Rights

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

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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 subsection 84C(7) of the *National Health Act 1953* (the Act), is to give effect to the execution of the Sixth Pharmacy Community Agreement. It amends the *National Health (Subsection 84C(7)) Determination 2010* to adjust the additional amount (also known as the Safety Net Recording Fee) used in the calculation of the price of pharmaceutical benefits. The supply of pharmaceutical benefits by approved pharmacists includes recording patient payments for Safety Net purposes. The additional amount forms part of the price that can be charged to the patient for a pharmaceutical benefit where the Commonwealth price is less than the patient co-payment amount. It is included in full or in part such that the patient payment is not more than the co-payment amount.

The legislative instrument increases the additional amount for ready-prepared pharmaceutical benefits from \$1.15 to \$1.17 and for extemporaneously-prepared pharmaceutical benefits from \$1.50 to \$1.53, with effect from 1 July 2015.

Human rights implications

This legislative instrument engages Article 2, 7 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The legislative instrument assists with the provision favourable conditions of work to ensure remuneration for workers with fair wages. In addition it also assists in 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 Pharmaceutical Benefits Scheme (PBS) is a benefit scheme which assists with providing subsidised access for people to medicines. This is a positive step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for PBS support effective administration of the scheme.

Conclusion

The legislative instrument is compatible with human rights because it advances the protection of human rights.

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