

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Pharmaceutical benefits supplied by private hospitals) Amendment Determination 2015 (No. 1)

PB 66 of 2015

Authority

Subsection 99(4) of the *National Health Act 1953* (the Act) provides that an approved hospital authority is entitled to payment from the Commonwealth at such rates and subject to such conditions as the Minister determines, in respect of the supply of pharmaceutical benefits to patients receiving treatment in or at an approved hospital. The *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010* (the Principal Determination) determines the rates and conditions of payments to private hospitals. Another determination under subsection 99(4) determines the rates and conditions of payments to public hospitals.

Purpose

This Amendment Determination amends the Principal Determination to reflect the new Determination made by the Pharmaceutical Benefits Remuneration Tribunal under paragraph 98B(1)(a) of the Act, which will take effect from 1 July 2015.

The amendments are consequential and for consistency reflect similar changes to the Determination under paragraph 98B(1)(a) of the Act which include clarification of when rounding in a calculation applies and when the dangerous drug fee applies. Additionally, the amendments change the date by which the wholesale cost for a container must be agreed between the Minister and the Pharmacy Guild of Australia to be more reflective of current practice.

Details of the amendments made by this Determination are set out in the [Attachment](#).

Background

Part VII of the *National Health Act 1953* (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.

Subsection 85(1) provides that benefits are to be provided by the Commonwealth in accordance with Part VII in respect of pharmaceutical benefits.

The Principal Determination sets out the rates of payment for the supply of pharmaceutical benefits by a private hospital approved under section 94 of the Act.

Consultation

The changes to this Determination are consequential amendments as a result of amendments to the Determination under paragraph 98B(1)(a). The changes to the 98B(1)(a) instrument are a direct result of the Sixth Community Pharmacy Agreement between the Pharmacy Guild of Australia and the Commonwealth. For this reason, no consultation on this determination was considered necessary.

This Determination commences on 1 July 2015.

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

Details of the *National Health (Pharmaceutical benefits supplied by private hospitals) Amendment Determination 2015 (No. 1) – PB 66 of 2015*

Section 1 Name of Determination

This section provides that the title of the Determination is the *National Health (Pharmaceutical benefits supplied by private hospitals) Amendment Determination 2015 (No.1)* and that it may also be cited as PB 66 of 2015.

Section 2 Commencement

This section provides for the Determination to commence on 1 July 2015.

Section 3 Amendment of National Health (Pharmaceutical Benefits Supplied By Private Hospitals) Determination 2010

This section provides that Schedule 1 amends the *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010* made on 21 September 2010.

SCHEDULE 1 – AMENDMENTS

Section 1 – Section 6

This section amends the current wording to ensure that if the calculation of a price in the Determination includes a fraction of a cent, the result of the calculation will be rounded accordingly at the end of the calculation.

Section 2 – Section 7

This Section amends the current wording to clarify that where indicated in this Determination, the Commonwealth must pay a dangerous drug fee if a pharmaceutical benefit is a dangerous drug.

Section 3 – Subsection 8(1)

This section includes a new reference at paragraph 8(1)(c) that where applicable, a single dangerous drug fee is to be paid when a repeat supply of a pharmaceutical benefit occurs.

Section 4 – Section 11

This section is amended to include references at paragraphs 11(1)(a)(iii), 11(1)(b)(iii) and 11(1)(c)(iv) to the dangerous drug fee being payable where applicable.

Section 5 – Subsection 13(3)

This section amends the date by which the wholesale cost for a container must be agreed between the Minister and the Pharmacy Guild of Australia from 1 May to 15 June each year.

Section 6 – Section 14, Step 1

This section amends Step 1 of the Method statement to include the dangerous drug fee, where applicable, within the calculation for the price of broken quantities for ready-prepared pharmaceutical benefits.

Statement of Compatibility with Human Rights

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

National Health (Pharmaceutical benefits supplied by private hospitals) Amendment Determination 2015 (No. 1) – PB 66 of 2015

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

This Amendment Determination amends the Principal Determination to reflect the new Determination made under paragraph 98B(1)(a) of the Act, that will take effect from 1 July 2015.

The amendments are consequential and for consistency reflect similar changes to the Determination under paragraph 98B(1)(a) of the Act which include clarification of when rounding in a calculation applies, when the dangerous drug fee applies. Additionally, the amendments amend the date by which the wholesale cost for a container must be agreed between the Minister and the Pharmacy Guild of Australia to be more reflective of current practice.

Human rights implications

This legislative instrument engages Articles 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 Pharmaceutical Benefits Scheme (PBS) is a benefit scheme which assists with advancement of this human right by providing for subsidised access by patients to medicines.

Conclusion

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

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