National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement 2020

made under section 100 of the

National Health Act 1953

Compilation No. 4

Compilation date:	22 September 2021
Includes amendments up to:	F2021L01304
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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement 2020* that shows the text of the law as amended and in force on 22 September 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary

1 Name

(1) This instrument is the *National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement 2020*.

3 Authority

This instrument is made under section 100 of the *National Health Act 1953*.

4 Repeal of this instrument

This instrument is repealed at the start of 1 January 2022.

5 Simplified outline of this instrument

This instrument makes a special arrangement to make the supply of pharmaceutical benefits to patients who have been prescribed a pharmaceutical benefit as the result of a Medicare telehealth attendance or telephone attendance more convenient and effective. Medicare telehealth and telephone attendances have been introduced as a temporary measure in response to the impact of human coronavirus (COVID-19).

This instrument modifies arrangements for the supply of pharmaceutical benefits on paper-based prescriptions to enable certain supplies to be made based on an image of the prescription provided to the approved supplier by the PBS prescriber.

This instrument also modifies arrangements for the supply of pharmaceutical benefits in relation to written acknowledgement of receipt of pharmaceutical benefits and signatures for records of supplies of pharmaceutical benefits on pharmaceutical benefits prescription record forms.

Note: Part VII of the Act, and regulations or other instruments made for the purposes of that Part, have effect subject to this instrument (see subsection 100(3) of the Act).

6 Definitions

(1) In this instrument:

Act means the *National Health Act 1953*.

approved hospital authority has the same meaning as in Part VII of the Act.

approved hospital authority dispenser means the pharmacist or practitioner by whom, or under whose supervision, a pharmaceutical benefit supplied by an approved hospital authority will be dispensed.

approved medical practitioner has the same meaning as in Part VII of the Act.

approved pharmacist has the same meaning as in Part VII of the Act.

approved supplier has the same meaning as in Part VII of the Act.

CTS claim has the same meaning as in Part VII of the Act.

medication chart prescription has the same meaning as in the Regulations.

paper-based prescription has the same meaning as in the Regulations.

PBS prescriber has the same meaning as in Part VII of the Act.

pharmaceutical benefit has the same meaning as in Part VII of the Act.

phone attendance has the same meaning as in the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

Poisons Standard means the current Poisons Standard (within the meaning of the *Therapeutic Goods Act 1989*).

Regulations means the *National Health (Pharmaceutical Benefits) Regulations 2017*.

relevant streamlined authority code has the same meaning as in the Regulations.

telehealth attendance has the same meaning as in the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

(2) A reference in this Special Arrangement to the Act, the Regulations, the *Health Insurance (Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020,* the *Health Insurance Act 1973* or the *Therapeutic Goods Act 1989* is a reference to that legislation as in force from time to time.

(3) A reference in this Special Arrangement to a digital image of a prescription includes a reference to a digital image of so much of the prescription as would indicate that subsections 40(1), (2) and (2A) of the Regulations have been complied with.

Part 2—Special Arrangement for supplies of pharmaceutical benefits

Division 1—Preliminary

7 Pharmaceutical benefits covered by this Special Arrangement

(1) Division 2 of this Special Arrangement applies to all pharmaceutical benefits available for supply under Part VII of the Act other than a pharmaceutical benefit:

(a) referred to in Schedule 8 to the Poisons Standard, or referred to in both Schedule 4 and Appendix D to the Poisons Standard; and

(b) which may not be supplied on the basis of a digital image of a prescription or a copy of prescription under a law in force in the State or Territory in which the pharmaceutical benefit would be supplied.

(2) Division 3 of this Special Arrangement applies to all pharmaceutical benefits available for supply under Part VII of the Act.

8 Application of Part VII of the Act

A provision of Part VII of the Act, or of regulations or other instruments made for Part VII of the Act, applies subject to this Special Arrangement.

9 Supplies to which the Special Arrangement applies

(1) Division 2 of this Special Arrangement applies to the supply of a pharmaceutical benefit by an approved supplier based on a paper-based prescription (excluding a medication chart prescription) written as the result of a telehealth attendance or phone attendance provided on or after 20 March 2020 to which any of the following apply:

(a) an item in Group A40, Group M18 or Group M19 of the general medical services table;

(b) items 91850 to 91858 of Group T4 of the general medical services table;

(c) an item specified in the *Health Insurance* (*Section 3C General Medical Services – COVID-19 Telehealth and Telephone Attendances) Determination 2020*.

(2) However, Division 2 of this Special Arrangement does not apply to the supply of a pharmaceutical benefit if:

(a) the pharmaceutical benefit would be supplied by an approved pharmacist or approved hospital authority and the relevant prescription must be in writing

under a law in force in the State or Territory in which the premises, at or from which the pharmaceutical benefit would be supplied, are located; or

(b) the pharmaceutical benefit would be supplied by an approved medical practitioner and the relevant prescription must be in writing under a law in force in the area in respect of which the medical practitioner is approved.

(3) Division 3 of this Special Arrangement applies to the supply of a pharmaceutical benefit by an approved supplier.

(4) In this section, ***item*** includes an item relating to a service specified in a determination in force under subsection 3C(1) of the *Health Insurance Act 1973*.

Note: Subsection 3C(1) enables the Minister to determine that, for the purposes of the *Health Insurance Act 1973,* the *National Health Act 1953* and associated legislation, a health service not already specified in the general medical services table is to be treated as a professional or medical service and that the health service should be treated as if there were an item in that table.

Division 2—Requirements for supply of pharmaceutical benefit - paper-based prescriptions

10 Modified application of section 44 of the Regulations - supplies on first presentation of prescription

(1) The requirements for the supply of a pharmaceutical benefit on the first presentation of a prescription in section 44 of the Regulations are modified as set out in this section for a supply to which Division 2 of this Special Arrangement applies.

(2) Despite section 44 of the Regulations, an approved pharmacist or approved medical practitioner may supply a pharmaceutical benefit to a person on the first presentation of a prescription if a PBS prescriber has given the approved pharmacist or medical practitioner a digital image of the prescription or a copy of the prescription.

Note: a paper-based prescription for a pharmaceutical benefit will commonly include a part of the prescription that is the pharmacist/patient copy and a part of the prescription that is the Medicare/DVA copy - see subsection 40(2) of the Regulations.

(3) An approved hospital authority may supply a pharmaceutical benefit to a person on the first presentation of a prescription if a PBS prescriber has given the approved hospital authority dispenser a digital image of the prescription or a copy of the prescription.

(4) If the prescription is or would be an authority prescription, the approved supplier may supply the pharmaceutical benefit only if:

(a) where the pharmaceutical benefit prescribed has a relevant streamlined authority code:

(i) the PBS prescriber informs the approved pharmacist, approved medical practitioner or approved hospital authority dispenser of that code before the pharmaceutical benefit is supplied; or

(ii) the digital image of the prescription displays the code; or

(b) both:

(i) the Minister or the Chief Executive Medicare has notified the PBS prescriber (orally or by other means) that each relevant authorisation will be given; and

(ii) the PBS prescriber informs the approved pharmacist, approved medical practitioner or approved hospital authority dispenser of that notification before the pharmaceutical benefit is supplied.

11 Modified application of section 51 of the Regulations - repeated supplies of pharmaceutical benefits

(1) The requirements for repeated supplies of a pharmaceutical benefit in section 51 of the Regulations are modified as set out in this section where the approved supplier has been given a digital image or copy of a prescription referred to in subsection 10(1) by a PBS prescriber.

(2) Where the supplier of a pharmaceutical benefit to which subsection 51(4) of the Regulations applies reasonably believes that:

(a) a supply of the benefit that was previously supplied to the person has been destroyed, lost or stolen; or

(b) having regard to the person's circumstances, the supply of the benefit is necessary, without delay, for the treatment of the person;

the supplier of the benefit meets the requirements of paragraph 51(4)(b) or 51(4)(c) of the Regulations, as appropriate, if the supplier writes the words "immediate supply necessary" and signs the copy of the prescription, the digital image of the prescription or a print out of the digital image of the prescription.

12 Modified application of section 52 of the Regulations - repeat authorisations

(1) The requirements for repeat authorisations of a pharmaceutical benefit in section 52 of the Regulations are modified as set out in this section for a supply to which subsection (2) applies.

(2) This subsection applies if an approved supplier supplies a pharmaceutical benefit under this special arrangement based on:

(a) a copy or digital image of a prescription referred to in subsection 10(1) given to the approved supplier by a PBS prescriber and that contains a direction to supply the benefit more than once; or

(b) a copy of a prescription or a print out of a digital image of a prescription referred to in subsection 10(1) given to the approved supplier by a PBS prescriber and to which is attached a deferred supply authorisation that contains a direction to supply the benefit more than once or a repeat authorisation that contains a direction to supply the benefit more than once;

and subsequent supplies of the pharmaceutical benefit can be made under the prescription at the time of supply.

Requirement to prepare repeat authorisation

(3) The requirements of subparagraph 52(3)(a)(iii) of the Regulations are met if the approved supplier:

(a) attaches the repeat authorisation to a print out of the digital image of the prescription or the copy of the prescription; and

(b) retains the repeat authorisation and the print out of the digital image of the prescription or the copy of the prescription.

13 Modified application of section 53 of the Regulations - deferred supply

(1) The requirements for deferred supply of a pharmaceutical benefit in section 53 of the Regulations are modified as set out in this section for a supply to which subsection (2) applies.

(2) This subsection applies where an approved supplier:

(a) supplies one or more pharmaceutical benefits based on a copy of a prescription or a digital image of a prescription referred to in subsection 10(1) and given to the approved supplier by a PBS prescriber; and

(b) defers, in accordance with subsection 53(2) of the Regulations, the supply of one or more pharmaceutical benefits directed to be supplied based on the prescription.

(3) The requirements of paragraph 53(3)(c) of the Regulations are met if the supplier of the benefit:

(a) writes the words “original supply deferred" on the copy of the prescription, the digital image of the prescription or a print out of the digital image of the prescription; and

(b) attaches the deferred supply authorisation to a print out of the digital image of the prescription or the copy of the prescription; and

(c) retains the deferred supply authorisation and print out of the digital image of the prescription or the copy of the prescription.

(4) Where the supplier of the benefit writes the words "original supply deferred" on the digital image of the prescription, the print out referred to in paragraph (3)(c) must be of the digital image including that writing.

14 Keeping documents - approved suppliers

An approved supplier must keep a document referred to in an item in the following table for a period of 2 years from the date of supply if:

(a) the supply was made on the basis of:

(i) a digital image or copy of a paper-based prescription for a pharmaceutical benefit given to the approved supplier by a PBS prescriber; or

(ii) a deferred supply authorisation or repeat supply authorisation prepared in relation to a pharmaceutical benefit included in a digital image or copy of a paper-based prescription; and

(b) the supply is of a kind referred to in that item.

Documents to be kept

Item	Kind of supply	Document
1	Both of the following apply in relation to the supply: (a) the supply was the first or only supply of a pharmaceutical benefit authorised by the prescription; (b) a CTS claim is made for the supply.	The digital image, print out of the digital image or the copy of the prescription.
2	Both of the following apply in relation to the supply: (a) the supply was on the basis of a repeat authorisation or a deferred supply authorisation; (b) a CTS claim is made for the supply.	The repeat authorisation or deferred supply authorisation.
3	After the supply, there are no remaining supplies of pharmaceutical benefits that are authorised by the prescription.	The digital image, print out of the digital image or the copy of the prescription.

15 Keeping documents - PBS prescribers

Where a PBS prescriber has written a prescription referred to in subsection 10(1) and the PBS prescriber has given an approved medical practitioner, approved pharmacist or approved hospital authority dispenser a digital image or copy of the prescription, the PBS prescriber must keep the prescription for a period of at least 2 years from the date the prescription.

Division 3 — Requirements for receipt of a pharmaceutical benefit-all prescriptions

16 Application of section 57 of the Regulations—written acknowledgement of receipt of pharmaceutical benefits

(1) Section 57 of the Regulations does not apply to the supply of a pharmaceutical benefit where it is not practicable for the approved supplier to obtain from the person to whom the benefit is supplied (whether or not for the person's own use) written acknowledgement that the person has received the benefit.

16A Application of subsection 84D(7) of the Act—signatures for records of supplies of pharmaceutical benefits on pharmaceutical benefits prescription record forms

(1) This section applies to a record made for the purposes of subsection 84D(6) of the Act of the supply of a pharmaceutical benefit on a pharmaceutical benefits prescription record form.

(2) The requirement in subsection 84D(7) of the Act for the record to be signed by a medical practitioner or pharmacist (as applicable under paragraph 84D(7)(d), (e) or (f) of the Act) does not apply if:

(a) the record is not handwritten; and

(b) it is not practicable for the medical practitioner or pharmacist to sign the record due to concerns relating to transmission of the coronavirus known as COVID-19.

Part 3—Application, savings and transitional provisions

17 Continued application of Special Arrangement as in force before commencement of the *National Health (COVID-19 Supply of Pharmaceutical Benefits) Amendment (Expansion of Telehealth and Telephone Attendances) Special Arrangement 2020*

(1) This Special Arrangement, as in force immediately before the commencement of this section, continues to apply on and after that commencement in relation to the supply of a pharmaceutical benefit made under this Special Arrangement before that commencement.

18 Transitional provision for existing prescriptions

(1) In this Section:

repeal date means the date this Special Arrangement is repealed, being at the start of 1 January 2022.

(2) This Special Arrangement continues to apply on and after the repeal date in relation to the supply of a pharmaceutical benefit made under this Special Arrangement if the prescription for the pharmaceutical benefit is dated before the repeal date.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement 2020	25 Mar 2020 (F2020L00312)	26 Mar 2020 (s 2(1) item 1)	
National Health (COVID-19 Supply of Pharmaceutical Benefits) Amendment (Expansion of Telehealth and Telephone Attendances) Special Arrangement 2020	7 Apr 2020 (F2020L00414)	8 Apr 2020 (s 2(1) item 1)	—
National Health (COVID-19 Supply of Pharmaceutical Benefits) Special Arrangement Amendment (Extension and Record Forms) Instrument 2020 (PB 101 of 2020)	24 Sept 2020 (F2020L01212)	25 Sept 2020 (s 2(1) item 1)	—
National Health (COVID-19 Supply of Pharmaceutical Benefits) Amendment (Extension) Special Arrangement 2021 (PB 37 of 2021)	19 Mar 2021 (F2021L00257)	20 Mar 2021 (s 2(1) item 1)	—
National Health (COVID-19 Supply of Pharmaceutical Benefits) Amendment (Further Extension) Special Arrangement 2021 (PB 106 of 2021)	21 Sept 2021 (F2021L01304)	22 Sept 2021 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	am F2020L01212; F2021L00257; F2021L01304
s 5	rs F2020L00414
	am F2020L01212
s 6	am F2020L00414; F2020L01212
Part 2	
Division 1	
s 7	am F2020L00414
s 9	rs F2020L00414
Division 2	
s 10	rs F2020L00414
s 11	rs F2020L00414
s 12	ad F2020L00414
s 13	ad F2020L00414
s 14	ad F2020L00414
s 15	ad F2020L00414
Division 3	
s 12	renum F2020L00414
s 16 (prev s 12)	am F2020L01212
s 16A	ad F2020L01212
Part 3	
s 13 (second occurring)	ad F2020L00414
	renum
	ed C1
s 17 (prev s 13 second occurring)	
s 18	ad F2021L01304