

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025

PB 53 of 2025

Purpose

The *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Rules 2022* (Principal Instrument) defines the procedures to be followed and sets out the details regarding the information required to be provided by approved suppliers when making claims for payment for supplies of pharmaceutical benefits, or providing information on supplies of pharmaceutical benefits where there is no claim to be made.

The purpose of the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025* (Amending Instrument) is to amend the Principal Instrument to support arrangements for the systems processing and determination of claims by approved pharmacists for advanced payment of the Additional Community Supply Support payment (ACSS payment) from 1 July 2025.

In July 2024, the *National Health Act 1953* (Act) was amended to give effect to the agreement between the Minister for Health and Aged Care (on behalf of the Commonwealth) and the Pharmacy Guild of Australia (Guild) made under the Eighth Community Pharmacy Agreement (8CPA) to introduce the ACSS payment for eligible supplies made by approved pharmacists.

The 8CPA took effect on 1 July 2024 and will remain in effect until 30 June 2029. A copy of the 8CPA can be found on the Department of Health, Disability and Ageing's website at: <https://www.health.gov.au/resources/publications/eighth-community-pharmacy-agreement>.

Supplies eligible for the ACSS payment and the amount of the payment are determined in the *National Health (Additional Community Supply Support Payment) Determination 2024* (ACSS Determination).

Claims for ACSS payments have been processed manually by officers in Services Australia prior to the development and implementation of a system solution to enable those claims to be processed in the same manner, and on the same timetable, as general Commonwealth payments to approved suppliers for supplies of pharmaceutical benefits. A system solution for processing claims for ACSS payments will commence operation from 1 July 2025. Services Australia will continue to manually process all claims for ACSS payments in respect of eligible supplies made prior to 1 July 2025. For the purposes of subsection 99AB(1B) of the Act, the *National Health (Additional Community Supply Support Payment Advances) Instrument 2025* specifies the day from which ACSS advance payments may become payable, being 1 July 2025.

The Amending Instrument amends the Principal Instrument to reflect that from 1 July 2025, the procedures for processing and determining claims in respect of ACSS payments will no longer differ from those for general Commonwealth payments to approved suppliers for supplies of pharmaceutical benefits.

Authority

The Amending Instrument is made under subsection 99AAA(8) of the Act.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

The Pharmaceutical Benefits Scheme (PBS) operates under Part VII of the Act and provides Australians with timely, reliable and affordable access to necessary and cost-effective medicines. The Act regulates the listing, prescribing, pricing, charging and payment of subsidies for supply of drugs and medicinal preparations as pharmaceutical benefits.

Subsection 99AAA(8) of the Act provides that the Minister must, by legislative instrument, make rules defining the procedures to be followed by approved suppliers in making claims for payment, and specifying the information to be given to the Secretary by approved suppliers and procedures for giving this information, in relation to the supply of pharmaceutical benefits.

Subsection 99AAA(8) additionally provides that the Minister must, by legislative instrument, make rules defining the procedures to be followed by the Secretary in processing and determining claims by approved suppliers.

Consultation

There has been broad consultation with stakeholders, including Services Australia, in relation to the content of the Amending Instrument. The pharmacy industry will welcome the Amending Instrument, noting that it supports the advance payment of ACSS fees to approved pharmacists.

As part of the 8CPA, the Guild and the Commonwealth agreed that manual processing of ACSS payments would be required initially, with a goal of automation of payments on or around 1 July 2025.

Commencement

This Amending Instrument commences on 1 July 2025.

General

This Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this Amending Instrument are outlined in **Attachment A**.

This Amending Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025

Section 1 – Name

Section 1 provides that the name of the instrument is the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025* (Amending Instrument), which may also be cited as PB 53 of 2025.

Section 2 – Commencement

Section 2 provides that the Amending Instrument commences on 1 July 2025.

Section 3 – Authority

Section 3 provides that the Amending Instrument is made under subsection 99AAA(8) of the *National Health Act 1953* (Act).

Section 4 – Schedules

Section 4 provides that each instrument specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in that Schedule has effect according to its terms. The Schedule amends the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Rules 2022* (Principal Instrument).

Schedule 1—Amendments

Item 1 – Subsection 12(2) (note)

Item 1 repeals the note to subsection 12(2) and substitutes a new note to advise that advance payments are permitted in accordance with section 99AB of the Act, on account of amounts that may become payable under sections 99 or 99AAAA of the Act.

This change reflects the additional availability from 1 July 2025 of advance payments of amounts that may become payable under section 99AAAA of the Act.

Item 2 – Paragraphs 13(2)(b) and (c)

Item 2 repeals paragraphs 13(2)(b) and (c) and substitutes new paragraph 13(2)(b) which provides that a statement of account is to be given to the approved supplier in respect of each claim for payment.

This change recognises that for each claim for payment by an approved supplier in respect of ACSS eligible supplies made on or after 1 July 2025, a statement of account including information about ACSS payments will be provided to the approved supplier in respect of each claim for payment.

Item 3 – Subsection 13(3)

Item 3 repeals subsection 13(3), not including the note, and substitutes new subsection 13(3). New subsection 13(3) provides that information included in a statement of account about ACSS payments made in respect of ACSS eligible supplies made before 1 July 2025 is not required to relate to a particular claim period and may be included in a statement of account that relates to supplies of pharmaceutical benefits made in different claim periods.

The amendments to subsection 13(3) of the Principal Instrument reflect the need for there to be operational flexibility in respect of the timeframes in which statements of account including information about ACSS payments are given to approved pharmacists for ACSS eligible supplies made before 1 July 2025.

Statement of Compatibility with Human Rights

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

National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025

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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 Amending Instrument

The purpose of the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Payment Advances) Rules 2025* (Amending Instrument) is to make consequential amendments to the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Rules 2022* (Principal Instrument).

These amendments relate to changed procedures for processing and determining claims in respect of the Additional Community Supply Support (ACSS) payment for eligible supplies of pharmaceutical benefits, and the procedures for making the ACSS payment in respect of those claims. From 1 July 2025, claims for payment in respect of ACSS eligible supplies made on or after 1 July 2025 will be processed in the same manner, and on the same timetable, as general Commonwealth payments to approved suppliers for supplies of pharmaceutical benefits.

The ACSS payment to approved pharmacists was agreed under the Eighth Community Pharmacy Agreement (8CPA) between the Minister for Health and Aged Care (on behalf of the Commonwealth) and the Pharmacy Guild of Australia (Guild). The *National Health Act 1953* (Act) was amended in July 2024 to include section 99AAAA that creates an entitlement to the ACSS payment for eligible supplies.

The *National Health (Additional Community Supply Support Payment) Determination 2024*, which commenced in October 2024, determines supplies eligible for the ACSS payment and the amount of the payment, giving effect to the agreement in the 8CPA.

The Amending Instrument makes minor changes to the Principal Instrument to reflect that from 1 July 2025, advance payments will become available for claims for payment in respect of ACSS eligible supplies made on or after 1 July 2025, as these claims will then be processed in the same manner as general Commonwealth payments to approved suppliers for supplies of pharmaceutical benefits.

Human rights implications

The Amending Instrument engages Articles 2, 7, 9, 12 and 17 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It supports the rights to health and social security and assisting in realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It also supports the right to just and favourable conditions at work, specifically to fair wages. It does not impose any further limitations on the right to privacy.

The Pharmaceutical Benefits Scheme (PBS) established under Part VII of the Act assists with the advancement of the rights to health and social security by providing Commonwealth subsidised access to necessary and cost-effective medicines for Australians.

The ACSS payment positively affects an individual's rights to health, social security, and favourable conditions of work by supporting the continued supply of Commonwealth subsidised pharmaceutical benefits by approved pharmacists. This further supports patient access to PBS medicines through community pharmacies and provides a means through which the Commonwealth is able to provide the necessary level of financial support to community pharmacies for the dispensing of PBS medicines, without increasing the costs of medicines for patients.

The Amending Instrument does not affect patient entitlement to the subsidised supply of pharmaceutical benefits under the PBS. This includes in relation to which pharmaceutical benefits may be supplied to the patient under the PBS, the amount a patient may be required to pay for a PBS supply and the amount of patient co-payment that will count towards their PBS safety-net.

The Amending Instrument also does not affect the procedures that must be followed by approved pharmacists in submitting claims for payment for supplies of pharmaceutical benefits to Services Australia or the information that must be given as part of the claim. Approved pharmacists are not required to submit a separate claim to receive an ACSS payment (where eligible) in addition to a claim for payment under section 99 of the Act. No additional personal information about patients or pharmacists is required to be supplied to Services Australia in order for an approved pharmacist to make a claim for the ACSS payment.

The Amending Instrument therefore does not impose any additional limitation on the right to privacy contained in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Personal information required by the Principal Instrument to be submitted to Services Australia for the purposes of making PBS claims is collected and disclosed in accordance with the *Privacy Act 1988* and the secrecy provisions in the Act.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights to health and social security, and favourable conditions of work as outlined above.

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