**EXPLANATORY STATEMENT**

*National Health Act 1953*

***National Health (Claims Transmission System Exemption) Guidelines 2015***

**PB 38 of 2015**

**Authority**

This instrument is made under subsection 99AAC(2) of the *National Health Act 1953* (the Act).

**Purpose**

The purpose of this instrument is to repeal and remake the Guidelines under subsection 99AAC(2) of the Act.

This instrument contains changes which are consequential to the *National Health (Pharmaceutical Benefits) Regulations 1960* (the Regulations), as amended by the *National Health (Pharmaceutical Benefits) Amendment (Medication Chart Prescriptions) Regulation 2015* on 1 April 2015.

The Regulation amendments provide for a medication chart prescription to be used for hospital patients for prescribing, dispensing, and claiming on the Pharmaceutical Benefits Scheme (PBS) and Repatriation PBS (RPBS). The Regulation amendments implement the PBS Medication Charts for Public and Private Hospitals measure, announced by the Australian Government as part of the 2014-15 Budget.

The Regulations assist with streamlining payment of claims submitted electronically by approved suppliers of pharmaceutical benefits (i.e. pharmacists, hospitals, dispensing doctors). Approved suppliers will no longer be required to send in prescriptions as part of their PBS/RPBS claim, instead providing an electronic supply certification and, under the Regulation amendments, keeping prescription documents previously provided to the Commonwealth for 2 years.

Unless the Secretary, Department of Health, in accordance with Guidelines made under subsection 99AAC(2) of the Act, declares an approved supplier exempt under subsection 99AAC(1) of the Act, an approved supplier must make a PBS/RPBS claim using the Claims Transmission System (an electronic online claiming system). A declaration that an approved supplier is exempt permits the approved supplier to make a PBS/RPBS claim using the manual system, that is, non-electronically, by sending prescriptions to the Chief Executive Medicare in accordance with rules made under subsection 99AAA(8) of the Act.

If an approved supplier is an approved medical practitioner (dispensing doctor), an exemption under the Guidelines is not needed, as the dispensing doctor may choose to make a manual system claim as of right, see paragraph 99AAB(2)(a) of the Act.

The Secretary’s power under subsection 99AAC(1) of the Act, that is, the power to make an exemption declaration, has been delegated to the Chief Executive Medicare.

This instrument:

* has an emergency or accessibility ground for exemption;
* has a ground for exemption for an approved supplier who was using the Claims Transmission System to make PBS/RPBS claims by making a ‘CTS non-online claim’ (commonly known as diskette claim)before 1 April 2015. Amendments to the rules made under subsections 98AC(4) and 99AAA(8) of the Act ceased the CTS non-online claiming method on 1 April 2015;
* does not retain older and more specific grounds for exemption that are no longer needed; and
* contains a transitional provision to ensure that any exemption in force under PB 9 of 2000 remains in force.

**Consultation**

The Department of Human Services has received strong support from a range of stakeholders for the implementation of paperless (electronic) claiming of PBS/RPBS medicines. This includes support for transitional arrangements to ensure stakeholder readiness for the implementation of paperless PBS/RPBS claiming.

Details of the instrument are set out in the Attachment.

This instrument commences on 1 April 2015.

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

**ATTACHMENT**

**Details of the *National Health (Claims Transmission System Exemption) Guidelines 2015***

**Section 1 Name of Instrument**This section provides that the name of this instrument is the *National Health (Claims Transmission System Exemption) Guidelines 2015.* It can also be cited as PB 38 of 2015.

**Section 2 Commencement**This section provides that this instrument commences on 1 April 2015.

**Section 3 Repeal**This section provides that determination PB 9 of 2000 under subsection 99AAC(2) of the *National Health Act 1953* (the Act), which commenced on 1 July 2000, is repealed.

**Section 4 Definitions**This section provides definitions for ‘Act’, Claims Transmission System’ and ‘CTS non-online claim’. The ‘Claims Transmission System’ is commonly called online claiming. A ‘CTS non-online claim’ is commonly called ‘diskette claiming’, and ceases to be a part of the ‘Claims Transmission System’ on 1 April 2015, via amendment to the rules made under subsections 98AC(4) and 99AAA(8) of the Act. The definition of ‘CTS non-online claim’ is used in the exemption ground contained in section 6 of this instrument.

**Section 5 Emergency or accessibility exemption**This section provides for an emergency or accessibility ground of exemption. An approved supplier must apply to the Chief Executive Medicare (delegate of the Secretary) for exemption, who must be satisfied that it is appropriate to make an exemption due to emergency, or otherwise in the interests of accessibility.

**Section 6 CTS non-online claim procedure exemption**This section provides a ground for exemption for an approved supplier, who was using the Claims Transmission System to make Pharmaceutical Benefits Scheme (PBS)/Repatriation PBS (RPBS) claims, by making a ‘CTS non-online claim’, before 1 April 2015. Amendments to the rules made under subsections 98AC(4) and 99AAA(8) of the Act ceased the CTS non-online claiming method on and from 1 April 2015. An approved supplier must apply to the Chief Executive Medicare (delegate of the Secretary) for exemption.

**Section 7 Section 5 or 6 exemption – period of exemption**This section provides that the Chief Executive Medicare (delegate of the Secretary) may specify a period for which the exemption is to be effective.

**Section 8 Transitional**This section is a transitional provision which provides that a declaration made by the Chief Executive Medicare (delegate of the Secretary) under subsection 99AAC(1) of the Act, in accordance with determination PB 9 of 2000, continues in force, with the same period of exemption (if any) specified in that declaration.

**Statement of Compatibility with Human Rights**

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

***National Health (Claims Transmission System Exemption) Guidelines 2015***

This 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 Instrument**

The purpose of this legislative instrument, made under subsection 99AAC(2) of the *National Health Act 1953* (the Act), is to repeal and remake the Guidelines. This instrument is a consequential amendment to reflect changes to the *National Health (Pharmaceutical Benefits) Regulations 1960* (the Regulations), made by the *National Health (Pharmaceutical Benefits) Amendment (Medication Chart Prescriptions) Regulation 2015* on 1 April 2015.

The Regulations provide for hospital medication chart prescriptions to be used for prescribing, dispensing and claiming for supply of pharmaceutical benefits (medicines), without the need to produce a separate prescription for Pharmaceutical Benefits Scheme (PBS) or Repatriation PBS (RPBS) purposes.

The Regulations assist with streamlining the payment of claims submitted electronically by all approved suppliers of medicines (ie, pharmacist, hospitals, dispensing doctors). Approved suppliers will no longer be required to send in prescriptions as part of their PBS/RPBS claim, instead providing an electronic supply certification and, under the Regulations, keeping prescription documents previously provided to the Commonwealth for 2 years.

The Chief Executive Medicare, as delegate of the Secretary, may declare an approved supplier exempt from making a PBS/RPBS claim, using the Claims Transmission System, in accordance with this instrument. The approved supplier may then make a manual system claim, which involves sending prescriptions to the Chief Executive Medicare, in accordance with rules made under subsection 99AAA(8) of the Act. This instrument has an emergency or accessibility exemption ground (which is simpler than the previous electricity supply grounds) and a ground based on prior usage of the ‘CTS non-online claims’ (commonly called diskette claims) method. The instrument ensures that if any approved supplier does not use the Claims Transmission System on and from 1 April 2015, they can apply to use the manual system instead. An approved medical practitioner does not require an exemption, as they may choose to manual system claim as of right under paragraph 99AAB(2)(a) of the Act.

**Human rights implications**

This instrument engages Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights 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 assists with advancement of these human rights by providing for subsidised access to medicines. The amendments made by the Regulations, and provided for in this instrument, are a positive step towards attaining the highest standard of health for all Australians. This instrument provides exemption grounds to allow approved suppliers to access manual claiming, where appropriate.

**Conclusion**

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

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