



PB 9 of 2016

National Health (Indigenous Chronic Disease — PBS Co-payment Measure) Special Arrangement 2016 ¹

National Health Act 1953

I, TONY WYND, Acting Assistant Secretary, Pharmaceutical Access Branch, Pharmaceutical Benefits Division, Department of Health, delegate of the Minister for Health, make this Special Arrangement under subsections 100 (1) and 100(2) of the *National Health Act 1953*.

Dated 27 January 2016

TONY WYND
Acting Assistant Secretary
Pharmaceutical Access Branch
Pharmaceutical Benefits Division
Department of Health

Contents

1	Name of Instrument	2
2	Commencement	2
3	Revocation	2
4	Definitions	2
5	Pharmaceutical benefits covered by this Special Arrangement	4
6	Application of Part VII of the Act	4
7	Prescribing	4
8	General practices	5
9	Indigenous Health Services	5
10	Registering patients	6
11	Co-payment reduction	6
12	Eligibility for concession and entitlement cards under the Act	8
13	Payment by Commonwealth	8
14	Claim for payment	9

1 Name of Instrument

- (1) This Instrument is the *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement 2016*.
- (2) This Instrument may also be cited as PB 9 of 2016.

2 Commencement

This Instrument commences on 1 February 2016.

3 Revocation

The *National Health (Indigenous Chronic Disease – PBS Co-payment Measure) Special Arrangement Instrument 2015* (PB 23 of 2015) is revoked.

4 Definitions

In this Instrument:

Aboriginal Community Controlled Health Service, or ACCHS, means a primary health care service:

- (a) established by a local Aboriginal community to deliver holistic, comprehensive and culturally appropriate health care to the Aboriginal community; and

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- (b) controlled by a board of management the members of which:
- (i) belong to the local Aboriginal community; and
 - (ii) are elected by the local Aboriginal community; and
- (c) operated by the local Aboriginal community.

Act means the *National Health Act 1953*.

allowable discount has the meaning given by subsection 87(2AAAA) of the Act.

chronic disease, for a person, means a disease that has been, or is likely to be, present in the person for at least 6 months, including arthritis, asthma, cancer, diabetes, heart disease and stroke.

concessional beneficiary charge has the meaning given by section 99F of the Act.

general patient has the meaning given by section 84 of the Act.

general patient charge has the meaning given by section 99F of the Act.

general patient reduced charge has the meaning given by section 99F of the Act.

general practitioner has the meaning given by the *Health Insurance Act 1973*.

Indigenous Health Service means a medical practice, an Aboriginal Community Controlled Health Service or a health clinic that meets the requirements mentioned in section 9.

medical practitioner has the meaning given by the *Health Insurance Act 1973*.

medication chart prescription has the meaning given in the Regulations.

other Special Arrangement means another Special Arrangement under section 100 of the Act.

professional service has the meaning given by the *Health Insurance Act 1973*.

RACGP means the Royal Australian College of General Practitioners.

referred means referred to a specialist in accordance with regulations made for the purpose of subsection 133(2) of the *Health Insurance Act 1973*.

Regulations means the *National Health (Pharmaceutical Benefits) Regulations 1960*.

specialist means a specialist or consultant physician as defined in subsection 3(1) of the *Health Insurance Act 1973*.

Note Several other words and expressions used in this Instrument have the meaning they have in the Act, for example:

- approved supplier
- Chief Executive Medicare
- Claims Transmission System
- PBS prescriber
- pharmaceutical benefit

5 Pharmaceutical benefits covered by this Special Arrangement

- (1) This Special Arrangement applies to a pharmaceutical benefit which is generally available for supply under Part VII of the Act.
- (2) This Special Arrangement does not apply to a pharmaceutical benefit that can only be supplied under Part VII of the Act in accordance with another Special Arrangement under section 100 of the Act or to a pharmaceutical benefit that can only be supplied under the prescriber bag provisions of the Act.

Note Section 85AA of the Act provides that a pharmaceutical benefit that can only be supplied under Part VII of the Act in accordance with section 100 of the Act will be the subject of a subsection 85(2A) declaration (section 100 only drug), or a determination under paragraph 85(8)(a) (section 100 only pharmaceutical benefit) or paragraph 85(8)(b) (section 100 only circumstances). Section 85AAA of the Act provides that a pharmaceutical benefit that can only be supplied under Part VII of the Act under the prescriber bag provisions of the Act will be the subject of a subsection 85(2AA) declaration (prescriber bag only drug), or a determination under subsection 85(7A) (prescriber bag only pharmaceutical benefit).

6 Application of Part VII of the Act

- (1) Each pharmaceutical benefit supplied in accordance with this Special Arrangement is supplied under Part VII of the Act.
- (2) 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.
- (3) This Special Arrangement does not apply to continued dispensing under subsection 89A(1) of the Act.

7 Prescribing

- (1) A pharmaceutical benefit is prescribed for supply under this Special Arrangement in accordance with Part VII of the Act, and instruments made for Part VII of the Act, but with the modifications set out in this section.
- (2) The prescription must be written for supply to a patient registered under subsection 10(2) of this Special Arrangement.
- (3) The PBS prescriber must be:
 - (a) a member, employee or contractor of:
 - (i) a general practice that meets the requirements in section 8; or
 - (ii) an Indigenous Health Service that meets the requirements in section 9; or
 - (b) a specialist treating a patient registered under subsection 10(2) and referred to the specialist by a medical practitioner who is a member, employee or contractor of:
 - (i) a general practice that meets the requirements in section 8; or
 - (ii) an Indigenous Health Service that meets the requirements in section 9.

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- (4) The PBS prescriber must annotate the prescription with an indicator that the prescription is being written for the supply of a pharmaceutical benefit under this Special Arrangement.
 - (5) This Special Arrangement does not apply to a medication chart prescription unless the person for whom the pharmaceutical benefit is prescribed is receiving treatment in or at a residential care service at which the person is receiving residential care.

8 General practices

- (1) For subsection 7(3), the requirements are that:
 - (a) the general practice:
 - (i) is accredited by an accrediting body as meeting the RACGP standards for general practices and maintains that accreditation; or
 - (ii) has been registered with an accrediting body to be assessed for accreditation (as mentioned in subparagraph (i)), for less than 12 months, and has not previously been refused accreditation; and
 - (b) the general practice has public liability indemnity insurance in relation to its medical practice; and
 - (c) the members of the general practice, or the general practitioners it employs or contracts, have professional indemnity insurance; and
 - (d) the general practice is approved by the Chief Executive Medicare to participate in the program known as the Practice Incentives Program, Indigenous Health Incentive, administered by the Department.
- (2) In this section:

accrediting body means:

 - (a) Australian General Practice Accreditation Ltd (ABN 60 077 562 406); or
 - (b) Quality Practice Accreditation Pty Ltd (ABN 26 081 986 932).

9 Indigenous Health Services

For subsection 7(3), the requirements are that the medical practice, ACCHS, or health clinic:

- (a) provides primary health care services to a predominantly Aboriginal or Torres Strait Islander population or both; and
- (b) provides professional services for which Medicare benefit is payable under the *Health Insurance Act 1973*, including because of a direction given under subsection 19(2) of that Act; and

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- (c) is located in an area the Department classifies as a metropolitan or a rural area, as defined in the document titled *Rural, Remote and Metropolitan Areas Classification, 1991 Census Edition*, dated November 1994, published by the Department of Primary Industries and Energy and the Department of Human Services and Health; and
 - (d) is approved by the Minister as an Indigenous Health Service.

10 Registering patients

- (1) This section applies to:
 - (a) a general practitioner who is a member, employee or contractor of a general practice mentioned in section 8; and
 - (b) a medical practitioner who is a member, employee or contractor of an Indigenous Health Service.
- (2) The practitioner may register, for the supply of a pharmaceutical benefit under this Special Arrangement, a patient:
 - (a) who is an eligible person within the meaning of the *Health Insurance Act 1973*;
 - (b) who identifies himself or herself to the practitioner as being of Aboriginal or Torres Strait Islander descent; and
 - (c) whom the practitioner assesses as meeting the eligibility criteria in subsection (3); and
 - (d) who provides consent to receive supplies under this Special Arrangement to:
 - (i) the practitioner; or
 - (ii) the general practice or Indigenous Health Service that employs or contracts the practitioner or of which the practitioner is a member; and
 - (e) who completes the form approved by the Secretary for the purpose.
- (3) For subsection (2), the eligibility criteria are that the patient, in the opinion of the practitioner:
 - (a) has an existing chronic disease, or is at risk of developing a chronic disease; and
 - (b) would experience setbacks in the prevention or ongoing management of the disease if the patient did not adhere to a course of treatment (involving a pharmaceutical benefit) for the disease; and
 - (c) is unlikely to adhere to the course of treatment without assistance under this Special Arrangement.

11 Co-payment reduction

- (1) Section 87 of the Act applies to the supply of a pharmaceutical benefit under this Special Arrangement, but with the modifications set out in this section.

Co-payment of nil

- (2) The amount that an approved supplier may charge for the supply of a pharmaceutical benefit under this Special Arrangement is nil if the patient either:
- (a) would otherwise have been charged the concessional beneficiary charge or the general patient reduced charge; or
 - (b) is receiving a supply that is described in subsection 99(2AB) or (2B) of the Act.

Note Under the Act, a supply described in subsection 99(2AB) or (2B) of the Act is deemed to be a supply and receipt otherwise than under Part VII of the Act (other than for the purposes of Division 1A of that Part). Normally, an approved supplier does not make a claim for payment for supply of a pharmaceutical benefit. When this Special Arrangement applies, an approved supplier may make a claim in accordance with section 14 of this Special Arrangement.

Co-payment for general patients

- (3) The amount that an approved supplier may charge for the supply of a pharmaceutical benefit under this Special Arrangement is equal to the:
- (a) concessional beneficiary charge (less any allowable discount) if the patient would otherwise have been charged the general patient charge; or
 - (b) concessional beneficiary charge if the patient is receiving a supply that is described in subsection 99(2A) of the Act.

Note Under the Act, a supply described in subsection 99(2A) of the Act is deemed to be a supply and receipt otherwise than under Part VII of the Act (other than for the purposes of Division 1A of that Part). Normally, an approved supplier does not make a claim for payment for supply of a pharmaceutical benefit. When this Special Arrangement applies, an approved supplier may make a claim in accordance with section 14 of this Special Arrangement.

The general patient safety net or concessional beneficiary safety net

- (4) For the purpose of calculating an amount for the general patient safety net or concessional beneficiary safety net (within the meaning of section 99F of the Act), and despite subsections (2) and (3):
- (a) if the concessional beneficiary charge or the general patient reduced charge would otherwise have applied to the supply — the amount charged is taken to be the concessional beneficiary charge or the general patient reduced charge respectively (without any allowable discount); and
 - (b) if the general patient charge would otherwise have applied to the supply — the amount charged is taken to be the general patient charge (without any allowable discount); and
 - (c) if subsection 99(2A), (2AB), or (2B) of the Act would have operated for the supply — the amount charged is taken to be the amount worked out for the pharmaceutical benefit under subsection 84C (7) of the Act; and

(d) the indexation provisions of Division 4A of Part VII of the Act apply.

12 Eligibility for concession and entitlement cards under the Act

Section 84C of the Act applies to a patient in accordance with subsection 11(4).

13 Payment by Commonwealth

- (1) Section 99 of the Act applies but with the modifications set out in this section.

If the co-payment is nil under paragraph 11(2)(a)

- (2) If the amount that an approved supplier is entitled to charge for the supply by the supplier of a pharmaceutical benefit under this Special Arrangement is nil under paragraph 11(2)(a), the supplier is entitled to be paid by the Commonwealth an amount equivalent to the concessional beneficiary charge or the general patient reduced charge in addition to what the supplier is entitled to be paid for the supply under subsection 99(2) or subsection 99(4) of the Act.

If the co-payment is nil under paragraph 11(2)(b)

- (3) If the amount that an approved supplier is entitled to charge for the supply by the supplier of a pharmaceutical benefit under this Special Arrangement is nil under paragraph 11(2)(b), the supplier is entitled to be paid by the Commonwealth the price of the pharmaceutical benefit under subsection 84C(7) of the Act.

If the co-payment is for a general patient under paragraph 11(3)(a)

- (4) If the amount that an approved supplier is entitled to charge for the supply of a pharmaceutical benefit under this Special Arrangement is equal to the concessional beneficiary charge (less any allowable discount) under paragraph 11(3)(a), the supplier is entitled to be paid the difference between the concessional beneficiary charge and the general patient charge (ignoring any discount given) in addition to what the supplier is entitled to be paid for the supply under subsection 99(2) or subsection 99(4) of the Act.

If the co-payment is for a general patient under paragraph 11(3)(b)

- (5) If the amount that an approved supplier is entitled to charge for the supply by the supplier of a pharmaceutical benefit under this Special Arrangement is equal to the concessional beneficiary charge under paragraph 11(3)(b), the supplier is entitled to be paid by the Commonwealth the amount (if any) by which the price of the pharmaceutical benefit under subsection 84C(7) of the Act exceeded the amount charged.

14 Claim for payment

- (1) An approved supplier who wants to receive payment from the Commonwealth for the supply of a pharmaceutical benefit under this Special Arrangement must make a claim for payment to the Chief Executive Medicare on behalf of the Secretary.
- (2) The claim must be made in accordance with the rules made under subsections 98AC(4) and 99AAA(8) of the Act with the following modifications:
 - (a) if it is for the supply of a pharmaceutical benefit under paragraph 11(2)(b) or 11(3)(b) — in accordance with those rules, as if the supply were a supply to which Part VII of the Act applies;
 - (b) unless made using the manual system, must include an indicator that the claim is being made for the supply of a pharmaceutical benefit under this Special Arrangement.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.