



National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020)

made under subsection 99(4) of the

National Health Act 1953

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020)* that shows the text of the law as amended and in force on 1 January 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

- (1) This instrument is the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020*.
- (2) This instrument may also be cited as PB 99 of 2020.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2020	1 October 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

2A Authority

This instrument is made under subsection 99(4) of the *National Health Act 1953*.

2B Purpose

The purpose of this determination is to determine the amount of the Commonwealth payment for pharmaceutical benefits supplied by an approved hospital authority to a patient receiving treatment in or at a private hospital for which the authority is approved.

2C Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 2D

2D Things done under the National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010 (21/09/2010)

- (1) If:
- (a) a thing was done for a particular purpose under the National Health Act 1953 - National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010 (21/09/2010) as in force immediately before that Determination was repealed; and
 - (b) the thing could be done for that purpose under this instrument;
- the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

3 Definitions

In this instrument:

Act means the *National Health Act 1953*.

approved ex-manufacturer price has the same meaning as in subsection 84(1) of the Act.

approved hospital authority means a hospital authority that has been approved by the Minister under subsection 94(1) of the Act.

Approved Pharmacists Determination means the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020* (PB 66 of 2020).

brand has the same meaning as in Part VII of the Act.

current figure has the same meaning as in section 99G of the Act.

dangerous drug means:

- (a) a pharmaceutical benefit mentioned in Schedule 3 to the *National Health (Commonwealth Price and Conditions for Commonwealth Payments for Supply of Pharmaceutical Benefits) Determination 2019* (PB 114 of 2019); or
- (b) a pharmaceutical benefit that, under the law of a State or Territory, is classified as a dangerous drug.

dangerous drug fee has the same meaning as in *Approved Pharmacists Determination*.

determined quantity, of a listed brand of a pharmaceutical item, has the same meaning as in Part VII of the Act.

dispensed price:

- (a) for a ready-prepared pharmaceutical benefit—has the meaning given by section 9; and
- (b) for an extemporaneously-prepared pharmaceutical benefit—has the meaning given by subsection 16(1).

extemporaneously-prepared dispensing fee has the same meaning as in the Approved Pharmacists Determination.

extemporaneously-prepared pharmaceutical benefit means a pharmaceutical benefit that is not a ready-prepared pharmaceutical benefit.

listed brand has the same meaning as in Part VII of the Act.

maximum quantity, of a brand of a pharmaceutical item, means a quantity or number of units of the pharmaceutical item determined under paragraph 85A(2)(a) of the Act in relation to that brand of pharmaceutical item.

pack quantity has the same meaning as in subsection 84(1) of the Act.

Note: The Minister may determine one or more pack quantities for a brand of a pharmaceutical item under subsection 84AK(2) of the Act. The quantities determined are the quantities in manufacturer's PBS packs.

patient co-payment means:

- (a) for a person to whom, at the time that a pharmaceutical benefit is supplied, paragraph 87(2)(b) of the Act applies—the current figure for the general patient reduced charge, as defined in section 99F of the Act; or
- (b) for a person who is a concessional beneficiary for section 84 of the Act—the current figure for the concessional beneficiary charge, as defined in section 99F of the Act; or
- (c) for any other person—the current figure for the general patient charge, as defined in section 99F of the Act.

pharmaceutical benefit has the meaning given by section 84 of the Act.

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

private hospital means a hospital for which there is in force a statement under subsection 121-5(8) of the *Private Health Insurance Act 2007* that the hospital is a private hospital.

proportional ex-manufacturer price has the same meaning as in subsection 84(1) of the Act.

ready-prepared dispensing fee has the same meaning as in the Approved Pharmacists Determination.

ready-prepared pharmaceutical benefit means a brand of a pharmaceutical item for which there is a determination under subsection 85(6) of the Act.

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

Section 3

repatriation pharmaceutical benefit has the meaning given by section 84 of the Act.

Part 2—Rates and conditions of payment—general

4 Rounding up and rounding down

If the calculation of a price under this Determination includes a fraction of a cent, the final amount calculated is to then be rounded up or down to the nearest cent, with an amount of 0.5 of a cent or more being rounded up to the next cent.

5 Dangerous drug fee

If a pharmaceutical benefit is a dangerous drug, the Commonwealth must pay, in addition to any other amounts under this Determination, a dangerous drug fee where indicated in this Determination.

6 Repeat supply

- (1) If, under subsection 88(6) of the Act and section 49 of the Regulations, a medical practitioner, instead of directing a repeated supply of a pharmaceutical benefit, directs the supply of a quantity or number of units of the benefit on 1 occasion, not exceeding the total quantity or number of units that could be prescribed if the medical practitioner directed a repeated supply, the price for the purpose of this Determination for the supply includes:
 - (a) only 1 dispensing fee, that may be:
 - (i) a ready-prepared dispensing fee; or
 - (ii) an extemporaneously-prepared dispensing fee; and
 - (b) the price, if any, of only 1 container; and
 - (c) if a dangerous drug fee applies, only one such fee.
- (2) For this section, the price, if any, for a container is to be worked out under section 12.

7 Drugs and medicinal preparations to which a subsection 85(6) determination applies

If a determination under subsection 85(6) of the Act applies to a pharmaceutical benefit that is a drug or medicinal preparation, the Commonwealth will only make a payment for the supply of a drug or medicinal preparation of the brand mentioned in the determination.

Part 3—Dispensed price for supply of ready-prepared pharmaceutical benefits

8 Amount payable to approved hospital authority

- (1) The amount payable to an approved hospital authority for the supply of a ready-prepared pharmaceutical benefit to a patient receiving treatment in or at a private hospital for which the hospital authority is approved is the amount by which the dispensed price for the benefit exceeds the patient co-payment.
- (2) For a person to whom, at the time that the benefit is supplied, subsection 87(5A) of the Act applies, the amount of the patient co-payment is zero.

9 Dispensed price—general

- (1) The dispensed price for the supply of a ready-prepared pharmaceutical benefit by an approved hospital authority to a patient receiving treatment in or at a private hospital for which the authority is approved is:
 - (a) if a quantity of the benefit that is ordered and supplied is equal to a multiple of a pack quantity of the benefit—the sum of:
 - (i) for each pack quantity:
 - (A) the approved ex-manufacturer price or the proportional ex-manufacturer price (as applicable) for the pack quantity; and
 - (B) the storage and handling mark-up under section 10 for the pack quantity; and
 - (C) the mark-up, worked out under section 11; and
 - (ii) a ready-prepared dispensing fee; and
 - (iii) if a dangerous drug fee applies, the dangerous drug fee; or
 - (b) if a quantity of the benefit that is ordered and supplied is less than a pack quantity of the benefit—the sum of:
 - (i) the amount worked out under section 13; and
 - (ii) a ready-prepared dispensing fee; and
 - (iii) if a dangerous drug fee applies, the dangerous drug fee; and
 - (iv) an amount for the supply of a container, worked out under section 12; or
 - (c) if a quantity of the benefit that is ordered and supplied is more than a multiple of a pack quantity of the benefit—the sum of:
 - (i) for each pack quantity:
 - (A) the approved ex-manufacturer price or the proportional ex-manufacturer price (as applicable) for the pack quantity; and

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- (B) the storage and handling mark-up under section 10 for the pack quantity; and
 - (C) the mark-up worked out under section 11; and
 - (ii) for the remainder of the quantity that is less than a pack quantity—the amount worked out under section 13; and
 - (iii) a ready-prepared dispensing fee; and
 - (iv) if a dangerous drug fee applies, the dangerous drug fee.
- (2) However, for a ready-prepared pharmaceutical benefit that comprises the admixture of ready-prepared ingredients and is specified in Schedule 1 to the *National Health (Commonwealth Price and Conditions for Commonwealth Payments for Supply of Pharmaceutical Benefits) Determination 2019*:
- (a) the ready-prepared dispensing fee does not apply; and
 - (b) an extemporaneously-prepared dispensing fee must be paid by the Commonwealth; and
 - (c) no amount for the supply of the container is payable; and
 - (d) if a dangerous drug fee applies, the dangerous drug fee.

10 Storage and handling mark-up (same as wholesale mark-up for approved pharmacists)

For the purposes of sub-subparagraphs 9(1)(a)(i)(B) and (c)(i)(B) and paragraph (b) of step 1 in section 13, the storage and handling mark-up for a pack quantity of a ready-prepared pharmaceutical benefit is the same as the wholesale mark-up for the pack quantity of the benefit would have been under section 11 of the *Approved Pharmacists Determination* if the benefit had been supplied by an approved pharmacist.

11 Private hospital mark-up

- (1) For sub-subparagraph 9(1)(a)(i)(C), the mark-up for a ready-prepared pharmaceutical benefit is an amount equal to 1.4% of the sum of the amounts worked out under sub-subparagraphs 9(1)(a)(i)(A) and (B).
- (2) For sub-subparagraph 9(1)(c)(i)(C), the mark-up for a ready-prepared pharmaceutical benefit is an amount equal to 1.4% of the sum of the amounts worked out under sub-subparagraphs 9(1)(c)(i)(A) and (B).

12 Container price

- (1) The price for a container for a ready-prepared pharmaceutical benefit is the sum of:
 - (a) the wholesale cost worked out under subsection (2); and
 - (b) the mark-up worked out under subsection (4).
- (2) The wholesale cost for a container will be based on the average of wholesale costs for a particular container, in a quantity of 100, as agreed by the Minister

Section 13

and the Pharmacy Guild of Australia for the supply of the container, by a wholesale drug distributor.

- (3) The wholesale cost must be agreed on or before 15 June in a year and takes effect on 1 August in that year.
- (4) For paragraph (1)(b), the mark-up is 10% of the amount agreed under subsection (2).
- (5) For a mark-up worked out under subsection (4), if the calculation of a percentage of the wholesale cost includes a fraction of a cent, the mark-up is to be rounded up or down to the nearest cent, with an amount of 0.5 of a cent or more being rounded up to the next cent.
- (6) In this section:

container means:

- (a) for a ready-prepared pharmaceutical benefit that is injectable—a vial with a capacity of 150 ml; or
- (b) for any other ready-prepared pharmaceutical benefit—a vial with a capacity of 25 ml.

13 Price for broken quantities

If a ready-prepared pharmaceutical benefit is ordered and supplied in a quantity that is less than a pack quantity (the *broken quantity*), the amount mentioned in subparagraph 9(1)(b)(i) or (c)(ii) is to be worked out using the following method statement.

Method statement

Step 1 Add together, for a pack quantity:

- (a) the approved ex-manufacturer price or the proportional ex-manufacturer price (as applicable) for the pack quantity; and
- (b) the storage and handling mark-up under section 10 for the pack quantity; and
- (c) the mark-up worked out under section 11.

Step 2 Divide the quantity or number of units in the broken quantity by the pack quantity and express as a percentage.

Step 3 For a percentage up to and including an amount in column 1 of the following table, select the percentage mentioned in column 2 of the previous item in the following table.

Column 1 Up to and including: (%)	Column 2 Select amount: (%)
5	10
10	18

Column 1 Up to and including: (%)	Column 2 Select amount: (%)
15	26
20	32
25	38
30	44
35	50
40	54
45	58
50	62
55	66
60	70
65	74
70	78
75	82
80	86
85	90
90	94
95	98
100	100

Step 4 Multiply the amount worked out under step 3 by the amount worked out under step 1.

14 Ready-prepared pharmaceutical benefits—limit on the dispensed price

If the dispensed price worked out for the supply of a broken quantity of a ready-prepared pharmaceutical benefit exceeds the dispensed price for a pack quantity, the dispensed price for the pack quantity is the dispensed price for the broken quantity.

15 Pharmaceutical benefits mentioned in a determination under paragraph 98C(1)(b) of the Act

If a prescription directs the supply of a quantity of a pharmaceutical benefit mentioned in a determination under paragraph 98C(1)(b) of the Act as a pharmaceutical benefit the complete pack of which shall be supplied regardless of any lesser quantity ordered, the dispensed price is the price worked out as if a complete pack was supplied.

Part 4—Dispensed price for supply of extemporaneously-prepared pharmaceutical benefits

16 Extemporaneously-prepared pharmaceutical benefits

- (1) For an extemporaneously-prepared pharmaceutical benefit supplied to a patient receiving treatment in or at a private hospital for which the hospital authority is approved, the dispensed price is the Commonwealth price determined for the benefit under the Approved Pharmacists Determination, as if the benefit was supplied by an approved pharmacist.
- (2) The amount payable to the approved hospital authority for the supply of an extemporaneously-prepared pharmaceutical benefit to the patient is the amount by which the dispensed price for the benefit exceeds the patient co-payment.
- (3) For a person to whom, at the time that the benefit is supplied, subsection 87(5A) of the Act applies, the amount of the patient co-payment is zero.

Schedule 1—Repeals

National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010 (21/09/2010)

1 The whole of the determination

Repeal the determination.

Endnotes

Endnote 1—About the endnotes

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	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020)	24 Sept 2020 (F2020L01208)	1 Oct 2020 (s 2(1) item 1)	
National Health (Pharmaceutical Benefits) Legislation Amendment (Commonwealth Price— Mark-ups) Determination 2020 (PB 134 of 2020)	24 Dec 2020 (F2020L01713)	Sch 1 (items 1–11): 1 Jan 2021 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 2C	rep LA s 48C
s 3	am F2020L01713
Part 3	
s 9	am F2020L01713
s 10	rs F2020L01713
s 13	am F2020L01713
Schedule 1	
Schedule 1	rep LA s 48C
