



National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Determination 2021

PB 84 of 2021

made under subsection 89A(3) of the

National Health Act 1953

Compilation No. 17

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About this compilation

This compilation

This is a compilation of the *National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Determination 2021* that shows the text of the law as amended and in force on 15 May 2024 (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 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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name

- (1) This instrument is the *National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Determination 2021*.
- (2) This instrument may also be cited as PB 84 of 2021.

3 Authority

This instrument is made under subsection 89A(3) of the *National Health Act 1953*.

4 Definitions

Note: The expression premises that is used in this instrument is defined in the Act.

In this instrument:

Act means the *National Health Act 1953*.

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

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

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.

5 Supply of pharmaceutical benefits by approved pharmacist without prescription

- (1) A pharmaceutical benefit (the *substitute benefit*) described in column 2 of an item of the table in subsection (8) may be supplied without a prescription to a person by an approved pharmacist, at or from premises in respect of which the pharmacist is approved, if:
 - (a) a prescription for a pharmaceutical benefit (the *prescribed benefit*) described in column 1 of the item is presented to the approved pharmacist; and
 - (b) subsections (2), (3), (4), (5), (6) and (7) apply.

Approved pharmacist cannot supply prescribed benefit

- (2) This subsection applies if the approved pharmacist cannot supply the prescribed benefit.

Section 5

Person cannot obtain prescription for substitute benefit in time

- (3) This subsection applies if the approved pharmacist is satisfied that it is not practicable for the person to obtain a prescription for the substitute benefit from a PBS prescriber before the person needs the supply of the prescribed benefit.

Substitution permitted under Therapeutic Goods Act

- (4) This subsection applies if the substitute benefit may be dispensed in accordance with section 30EL of the *Therapeutic Goods Act 1989*.

Person presenting prescription has been informed of cost implications

- (5) This subsection applies if the approved pharmacist has informed the person presenting the prescription of:
- (a) each substitute benefit that the approved pharmacist can supply instead of the prescribed benefit; and
 - (b) for each substitute benefit that the approved pharmacist can supply:
 - (i) the amount (which may be a nil amount) that the approved pharmacist would, if the approved pharmacist supplied the substitute benefit to the person for whom the prescribed benefit was prescribed, be permitted by Part VII of the Act to charge that person for that supply; and
 - (ii) the amount that the approved pharmacist would, if the approved pharmacist supplied the substitute benefit otherwise than under Part VII of the Act to the person for whom the prescribed benefit was prescribed, charge that person for that supply; and
 - (c) the amount (which may be a nil amount) that the approved pharmacist would, if the approved pharmacist supplied the prescribed benefit to the person for whom it was prescribed, be permitted by Part VII of the Act to charge that person for that supply.

Record of information justifying supply of substitute benefit

- (6) This subsection applies if the approved pharmacist records the information that the approved pharmacist used to support the decision to supply the substitute benefit, including the following statements:
- (a) a statement that the substitute benefit supplied is a pharmaceutical benefit determined under paragraph 89A(3)(a) of the Act;
 - (b) a statement that the conditions in this section are satisfied;
 - (c) a statement that the approved pharmacist is satisfied that the substitute benefit needs to be supplied because:
 - (i) the approved pharmacist cannot supply the prescribed benefit; and
 - (ii) it is not practicable for the person to obtain a prescription for the substitute benefit from a PBS prescriber before the person needs the supply of the prescribed benefit.

Arrangements to inform PBS prescriber of substitution

- (7) This subsection applies if the approved pharmacist has in place arrangements for giving, to the PBS prescriber who wrote the prescription for the prescribed benefit, written notice of the supply of the substitute benefit, within 72 hours after that supply.

Table of prescribed and substitute pharmaceutical benefits

- (8) For the purposes of subsection (1), the table is as follows.

Prescribed and substitute pharmaceutical benefits		
Item	Column 1 Prescribed pharmaceutical benefit	Column 2 Substitute pharmaceutical benefit
1	Listed drug: Insulin degludec with insulin aspart Form: Injections, pre-filled pen, 70 units-30 units per mL, 3 mL, 5 Manner of administration: Injection Brand: Ryzodeg Flextouch	Listed drug: Insulin degludec with insulin aspart Form: Injections, cartridges, 70 units-30 units per mL, 3 mL, 5 Manner of administration: Injection Brand: Ryzodeg Penfill
2	Listed drug: Fluoxetine Form: Tablet, dispersible, 20 mg (as hydrochloride) Manner of administration: Oral Brand: Zactin Tablet	Listed drug: Fluoxetine Form: Capsule 20 mg (as hydrochloride) Manner of administration: Oral Brand: any of the following: (a) APO-Fluoxetine (b) BTC Fluoxetine (c) Blooms the Chemist Fluoxetine (d) FLUOTEX (e) Fluoxetine APOTEX (f) Fluoxetine Sandoz (g) Fluoxetine generichealth (h) NOUMED FLUOXETINE (i) Prozac 20 (j) Zactin
3	Listed drug: Fluoxetine Form: Tablet, dispersible, 20 mg (as hydrochloride) Manner of administration: Oral Brand: Zactin Tablet	Listed drug: Fluoxetine Form: Capsule 10 mg (Medreich) (S19A) Manner of administration: Oral Brand: Fluoxetine Capsules 10 mg (Medreich, UK)

Section 5

Prescribed and substitute pharmaceutical benefits

Item	Column 1 Prescribed pharmaceutical benefit	Column 2 Substitute pharmaceutical benefit
4	Listed drug: Gliclazide Form: Tablet 30 mg (modified release) Manner of administration: Oral Brand: any of the following: a) APO-Gliclazide MR b) Gliclazide MR Viatris c) Pharmacor Gliclazide MR	Listed drug: Gliclazide Form: Tablet 60 mg (modified release) Manner of administration: Oral Brand: any of the following: a) ARDIX GLICLAZIDE 60mg MR b) Diamicon 60mg MR c) Gliclazide Lupin MR d) Pharmacor Gliclazide MR
5	Listed drug: Abatacept Form: Injection 125 mg in 1 mL dose single dose pre-filled syringe Manner of administration: Injection Brand: Orenzia	Listed drug: Abatacept Form: Injection 125 mg in 1 mL single dose autoinjector Manner of administration: Injection Brand: Orenzia ClickJect
6	Listed drug: Abatacept Form: Injection 125 mg in 1 mL single dose autoinjector Manner of administration: Injection Brand: Orenzia ClickJect	Listed drug: Abatacept Form: Injection 125 mg in 1 mL single dose pre-filled syringe Manner of administration: Injection Brand: Orenzia

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 how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Determination 2021 (PB 84 of 2021)	15 Aug 2021 (F2021L01118)	16 Aug 2021 (s 2(1) item 1)	
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2021 (PB 95 of 2021)	19 Aug 2021 (F2021L01138)	20 Aug 2021 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2021 (PB 108 of 2021)	17 Sept 2021 (F2021L01296)	18 Sept 2021 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2022 (PB 10 of 2022)	7 Feb 2022 (F2022L00117)	8 Feb 2022 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2022 (PB 42 of 2022)	19 May 2022 (F2022L00711)	20 May 2022 (s 2(1) item 1)	—

National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Determination 2021

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 3) Determination 2022 (PB 73 of 2022)	29 July 2022 (F2022L01030)	1 Aug 2022 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 4) Determination 2022 (PB 119 of 2022)	5 Dec 2022 (F2022L01581)	6 Dec 2022 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 5) Determination 2022 (PB 131 of 2022)	20 Dec 2022 (F2022L01715)	21 Dec 2022 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2023 (PB 20 of 2023)	16 Mar 2023 (F2023L00235)	17 Mar 2023 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2023 (PB 32 of 2023)	14 Apr 2023 (F2023L00441)	17 Apr 2023 (s 2(1) item 1)	—

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 3) Determination 2023 (PB 41 of 2023)	1 May 2023 (F2023L00516)	1 May 2023 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 4) Determination 2023 (PB 66 of 2023)	5 July 2023 (F2023L00974)	6 July 2023 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 5) Determination 2023 (PB 78 of 2023)	31 July 2023 (F2023L01047)	1 Aug 2023 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 6) Determination 2023 (PB 90 of 2023)	14 Sept 2023 (F2023L01236)	15 Sept 2023 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 7) Determination 2023 (PB 126 of 2023)	8 Dec 2023 (F2023L01632)	11 Dec 2023 (s 2(1) item 1)	—

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Prescription during Shortages) Determination 2021* 9

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2024 (PB 12 of 2024)	31 Jan 2024 (F2024L00115)	1 Feb 2024 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2024 (PB 13 of 2024)	28 Feb 2024 (F2024L00242)	29 Feb 2024 (s 2(1) item 1)	—
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 3) Determination 2024 (PB 51 of 2024)	14 May 2024 (F2024L00539)	15 May 2024 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 2.....	rep LA s 48D
s 5.....	am F2021L01138; F2021L01296; F2022L00117; F2022L00711; F2022L01030; F2022L01581; F2022L01715; F2023L00235 ed C8 am F2023L00441; F2023L00516; F2023L00974; F2023L01047; F2023L01236; F2023L01632; F2024L00115; F2024L00242; F2024L00539