

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (General Co-payment) Instrument 2022

Purpose

The *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* (Special Arrangement) provides for eligible Aboriginal and Torres Strait Islander people when obtaining Pharmaceutical Benefits Scheme (PBS) General Schedule medicines, who would normally pay the full PBS co-payment will pay the concessional rate and those eligible patients who would normally pay the concessional rate receive their PBS medicines without being required to pay a PBS co- payment. Eligible patients include those who would experience setbacks in the prevention or ongoing management of a medical condition without treatment, and who are unlikely to adhere to the treatment without the assistance provided by this Special Arrangement. Eligibility is confirmed by a patient’s doctor.

The purpose of the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement Amendment (General Co-payment Instrument 2022* (Amending Instrument) is to consequentially amend the Special Arrangement in order to maintain the current operation of the Special Arrangement. The consequential amendments are a result of amendments under Schedule 1 of the *National Health Amendment (General Co-payment) Act 2022* (Amendment Act) commencing on 1 January 2023. The Amendment Act amends the *National Health Act 1953*, to reduce the PBS general patient charge from \$42.50 to \$30 (indexed annually) and enable approved pharmacists and medical practitioners to apply an optional discount to certain PBS medicines with a Commonwealth price between the new co-payment of \$30 and the current co-payment of \$42.50. The Amending Instrument ensures eligible patients continue to receive the same amount of \$42.50 count towards their PBS Safety Net, rather than the reduced co-payment amount of \$30.00.

The Amending Instrument also provides that a supply of a pharmaceutical benefit under this Special Arrangement is not eligible for increased discounting. This ensures that eligible patients continue to access PBS medicines with a reduced patient co-payment.

Authority

Subsection 100(1) of the *National Health Act 1953* (Act) provides that the Minister may make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available to persons who are living in isolated areas or are receiving treatment in circumstances in which pharmaceutical benefits are inadequate for that treatment, amongst other circumstances.

Subsection 100(2) of the Act provides that the Minister may vary or revoke a special arrangement made under subsection 100(1) of the Act.

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

Commencement

This Amending Instrument commences on 1 January 2023.

Consultation

Broad consultation was undertaken with various stakeholders, including clinical software developers, pharmacy groups and Services Australia regarding the consequential amendments required to implement these changes.

This consultation ensures all supporting software and systems are able to accommodate the updated Special Arrangement.

Details of the Amending Instrument are set out in the **Attachment**.

ATTACHMENT

Details of the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (General Co-payment) Instrument 2022*

Section 1 – Name

Section 1 provides that the name of the amending instrument is the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement Amendment (General Co-payment) Instrument 2022* (Amending Instrument). The Amending Instrument may also be cited as PB 109 of 2022.

Section 2 – Commencement

Section 2 provides that the Amending Instrument commences on 1 January 2023.

Section 3 – Authority

Section 3 provides that the Amending Instrument is made under section 100 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.

Schedule 1—Amendments

Item 1 – Section 10A

Item 1 inserts a new subsection by omitting ‘A pharmaceutical’ and replacing with ‘(1) A pharmaceutical’. This allows for a further subsection to be added under section 10A for information on ‘eligible for increased discounting’, see Item 2 below.

Item 2 – Section 10A

Item 2 inserts a new subsection at the end of section 10A. Subsection 10A(2) has the effect that a supply of a pharmaceutical benefit under this Special Arrangement is not eligible for increased discounting. The term ‘eligible for increased discounting’ is given meaning by

section 87AA of the Act, which is inserted by the *National Health Amendment (General Co-payment) Act 2022* commencing on 1 January 2023. This provides that a general patient under this Special Arrangement will not be eligible to receive any increased discounting from a pharmacy for the supply of pharmaceutical benefits. This ensures that general patients continue to access PBS medicines with a reduced patient co-payment and continue to receive the same amount of \$42.50 count towards their PBS Safety Net.

Item 3 – Section 11

Item 3 amends paragraph 11(4)(b) by omitting ‘the general patient charge (without any allowable discount)’ and substituting with ‘\$42.50 (without any allowable discount)’. This provides that general patients registered under the Special Arrangement will continue to pay for PBS medicines at the concessional co-payment rate and have the 2022 general co-payment amount of \$42.50 counted toward their PBS Safety Net rather than the general co-payment amount of \$30.00.

The fixed value of \$42.50 will not be indexed each year. Once the general co-payment is greater than the current co-payment rate, the value for Safety Net purposes will be the general co-payment amount at the time of supply.

Statement of Compatibility with Human Rights

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

National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (General Co-payment) Instrument 2022

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 *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (General Co-payment) Instrument 2022* (Amending Instrument) consequentially amends the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* (Special Arrangement) in order to main the current operation of the Special Arrangement. The consequential amendments are a result of amendments under Schedule 1 of the *National Health Amendment (General Co-payment) Act 2022* (Amendment Act) commencing on 1 January 2023. The Amendment Act amends the *National Health Act 1953*, to reduce the PBS general patient charge from \$42.50 to \$30 (indexed annually) and enable approved pharmacists and medical practitioners to apply an optional discount to certain PBS medicines with a Commonwealth price between the new co-payment of \$30 and the current co-payment of \$42.50. The Amending Instrument ensures eligible patients continue to receive the same amount of \$42.50 count towards their PBS Safety Net, rather than the reduced co-payment amount of \$30.00.

The Amending Instrument also provides that a supply of a pharmaceutical benefit under this Special Arrangement is not eligible for increased discounting. This ensures that eligible patients continue to access PBS medicines with a reduced patient co-payment.

Human rights implications

This instrument engages with 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. This Amending Instrument ensures more equitable access to PBS medicines for eligible Aboriginal and Torres Strait Islander peoples.

Conclusion

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

Elsy Brammesan, delegate of the Minister for Health and Aged Care