

EXPLANATORY STATEMENT

NATIONAL HEALTH ACT 1953

NATIONAL HEALTH (CONTINUED DISPENSING) AMENDMENT DETERMINATION 2024 (No. 4)

PB 134 of 2024

Purpose

The purpose of the *National Health (Continued Dispensing) Amendment Determination 2024 (No. 4)*, made under subsection 89A(3) of the *National Health Act 1953* (the Act), is to amend the *National Health (Continued Dispensing) Determination 2022* to make changes to the pharmaceutical benefits eligible to be provided as a Continued Dispensing supply.

The *National Health (Continued Dispensing) Determination 2022* (the Principal Instrument) lists the pharmaceutical benefits that may be supplied by an approved pharmacist under Part VII of the Act without a prescription, and provides the conditions for such a supply (a ‘Continued Dispensing’ supply).

The amendments made by this instrument reflect amendments to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (PB 26 of 2024) (Listing Instrument), which commence on the same day. The Listing Instrument is made under sections 84AF, 84AK, 85, 85A, 88 and 101 of the Act.

Authority

Subsection 89A(3) of the Act provides that the Minister may determine the pharmaceutical benefits that can be supplied by an approved pharmacist under Part VII of the Act without a prescription, and the conditions for such a supply (‘Continued Dispensing’).

This instrument does not override state and territory legislation and does not apply in the external territories.

Amendments made by this Instrument

This instrument provides for the deletion of the drug ibrutinib from the table of listed drugs in Schedule 1 of the Principal Instrument.

This change is summarised, by subject matter, in the Attachment.

Consultation

This instrument affects approved pharmacists supplying a pharmaceutical benefit at or from premises in respect of which the pharmacist is for the time being approved. Prior to the commencement of the Principal Instrument, consultation was undertaken with relevant peak bodies including the Pharmaceutical Society of Australia, Australian Medical Association, Royal Australian College of General Practitioners, Consumers Health Forum, the Australian Federation of AIDS Organisations, and the Pharmacy Guild of Australia. The Department of Health and Aged Care (the Department) also undertook direct consultation with Services Australia, and consulted with state and territory Departments of Health about implementation for the Principal Instrument.

It was considered that further consultation for this instrument was unnecessary due to the nature of the consultation that had already taken place.

General

A provision-by-provision description of this instrument is contained in Attachment A.

This instrument commences on 1 December 2024.

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

Details of the *National Health (Continued Dispensing) Amendment Determination 2024 (No. 4)*

Part 1 – Preliminary

Section 1 Name

This section provides the name of this instrument is the *National Health (Continued Dispensing) Amendment Determination 2024 (No. 4)* and may also be cited as PB 134 of 2024.

Section 2 Commencement

This section provides that this instrument commences on 1 December 2024.

Section 3 Authority

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

Section 4 Schedules

This section provides that 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 has effect according to its terms.

Schedule 1 Amendments

The amendment in Schedule 1 involves the deletion of a listed drug from the list of pharmaceutical benefits that can be supplied as a Continued Dispensing supply. This change is summarised below.

**SUMMARY OF CHANGES TO THE CONTINUED DISPENSING MEASURE
MADE BY THIS INSTRUMENT**

Drug Deleted

Listed Drug

Ibrutinib

Statement of Compatibility with Human Rights

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

National Health (Continued Dispensing) Amendment Determination 2024 (No. 4) **(PB 134 of 2024)**

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 Legislative Instrument

The *National Health (Continued Dispensing) Amendment Determination 2024 (No. 4)* (the Instrument) amends the *National Health (Continued Dispensing) Determination 2022* (the Principal Instrument) which lists the pharmaceutical benefits that can be supplied by an approved pharmacist under Part VII of the *National Health Act 1953* without a prescription, and the conditions for such a supply ('Continued Dispensing').

Continued Dispensing arrangements enable approved pharmacists to supply pharmaceutical benefits without the presentation of a prescription. The Principal Instrument specifies the pharmaceutical benefits that can be supplied under Continued Dispensing arrangements and the conditions that must be met before an approved pharmacist can make a Continued Dispensing supply, which include that there is an immediate need for the supply and the Pharmaceutical Benefits Scheme (PBS) prescriber cannot be contacted or cannot provide a prescription for the patient electronically. Where an approved pharmacist makes a Continued Dispensing supply, they are required to dispense a maximum quantity of the pharmaceutical benefit.

This Instrument provides for amendments to the Principal Instrument to ensure that the Principal Instrument accurately reflects changes to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (the Listing Instrument), made under sections 84AF, 84AK, 85, 85A, 88 and 101 of the Act.

Human rights implications

This Instrument engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

The Right to Social Security

The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The UN Committee on Economic Social and Cultural Rights (the Committee) reports that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them. However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The Committee has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the ‘highest attainable standard of health’ takes into account the country’s available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

Analysis

This Instrument advances the right to health and the right to social security by ensuring that amendments to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (the Listing Instrument), that affect the pharmaceutical benefits that may be supplied as a Continued Dispensing supply, are also made in the Principal Instrument (*National Health (Continued Dispensing) Determination 2022*). This Instrument provides for the deletion of the listed drug ibrutinib from the list of pharmaceutical benefits that may be supplied as a Continued Dispensing supply which was incorrectly added on 1 October 2024. It is now being removed from the list as the PBAC has not recommended that this drug is suitable for Continued Dispensing.

The Listing Instrument determines the pharmaceutical benefits that are on the PBS through declarations of drugs and medicinal preparations, and determinations of forms, manners of administration and brands. The PBS is a benefit scheme which assists with advancement of this human right by providing for subsidised access by patients to medicines. The recommendatory role of the Pharmaceutical Benefits Advisory Committee (PBAC) ensures that decisions about subsidised access to medicines on the PBS are evidence-based. The Instrument continues to provide the option for patients to have subsidised access to eligible PBS medicines through continued dispensing arrangements.

Conclusion

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

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