

RELEVANT LEGISLATION

- Section 90 of the *National Health Act 1953* before and after being amended by the *Community Services and Health Legislation (Amendment) Act 1990* on 18 December 1990
- Division 4B of the *National Health Act 1953*  
- Pharmacy Restructuring Authority
- Health Insurance Commission Regulations (Amendment) Statutory Rules 1989 No. 195
- Determination under s.99L of the *National Health Act 1953* No. PB1 of 1991
- Determination under s.99L of the *National Health Act 1953* No. PB4 of 1991
- Determination under s.99L of the *National Health Act 1953* No. PB10 of 1991
- Determination under s.99L of the *National Health Act 1953* No. PB14 of 1991

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## Community Services and Health

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COMMONWEALTH OF AUSTRALIA  
NATIONAL HEALTH ACT 1953  
PHARMACEUTICAL BENEFITS  
DETERMINATION UNDER SECTION 99L

No. PB 1 of 1991

I, PETER RICHARD STAPLES, Minister of State for Aged, Family and Health Services, pursuant to section 99L of the National Health Act 1953, hereby make the following Determination:

**Commencement**

1. This Determination shall come into operation on the date on which it is notified in the Commonwealth of Australia Gazette.

**Interpretation**

2. In this Determination:

"the Act" means the National Health Act 1953;

"the Regulations" means the National Health (Pharmaceutical Benefits) Regulations;

"the Authority" means the Pharmacy Restructuring Authority established under section 99J of the Act;

"pharmacist" has the same meaning as in subsection 4(1) of the Act;

"approved pharmacist" has the same meaning as in subsection 84(1) of the Act;

"PBS prescription" means a prescription for a pharmaceutical benefit supplied in accordance with the Act, the Regulations and the declarations and determinations made under the Act and the Regulations, and includes -

- (a) a prescription written on an authority form pursuant to regulation 13 of the Regulations, subparagraph 14(d) of the declaration made under subsection 85(2) of the Act or subparagraph 10(d) of the determinations made under sections 85, 85A and 88 of the Act; and
- (b) a repeat authorization under regulation 26 of the Regulations; and
- (c) a deferred supply authorization under regulation 26A of the Regulations; and
- (d) an order form under regulation 16 of the Regulations for the supply of a pharmaceutical benefit to a medical practitioner for the purpose of section 93 of the Act;

"RPBS prescription" means a prescription for a pharmaceutical benefit supplied in accordance with a scheme given effect to by an instrument made pursuant to section 91 of the Veterans' Entitlement Act 1986 and includes -

- (a) a prescription written on a prior approval form; and
- (b) a repeat authorization; and
- (c) a deferred supply authorization.

#### Applications for Approval to Supply Pharmaceutical Benefits

3. For the purposes of paragraph 99K(1)(b) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by a pharmacist under section 90 of the Act:
- (a) approval of a pharmacist shall not be recommended in respect of premises located within 5 kilometres by normal access routes from other premises in respect of which a pharmacist is already approved;
  - (b) approval of a pharmacist in respect of particular premises shall not be recommended unless the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval;
  - (c) approval of a pharmacist in respect of particular premises shall not be recommended (except in the circumstances provided for in subparagraph (d)) if those premises are situated within 5 kilometres by normal access routes of other premises in respect of which there has been granted financial assistance under section 99ZD or 99ZE of the Act;
  - (d) approval of a pharmacist in respect of particular premises shall be recommended where those premises are located not more than 500 metres from other premises in respect of which that pharmacist is already approved under section 90 of the Act and from which the pharmacist proposes to cease supplying pharmaceutical benefits;
  - (e) approval of a pharmacist in respect of particular premises shall be recommended where those premises are located more than 500 metres but not more than 5 kilometres by normal access routes from other premises in respect of which that pharmacist is already approved under section 90 of the Act and from which the pharmacist proposes to cease supplying pharmaceutical benefits, provided that -
    - (i) there has been no grant of financial assistance made under section 99ZD or 99ZE of the Act in respect of any other premises situated within 5 kilometres by normal access routes from the first-named premises; and
    - (ii) the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval;
  - (f) approval of a pharmacist in respect of particular premises shall be recommended where a pharmacist is approved under section 90 of the Act in respect of those premises and where that approval is to be cancelled immediately prior to the granting of the first-named approval, as a consequence of a change of ownership arrangements of the premises;

- (g) notwithstanding anything contained in subparagraphs (a) to (f), approval of a pharmacist in respect of particular premises shall be recommended where the pharmacist entered into a financial commitment prior to 9 August 1990 (being the date on which the granting by the Secretary of approvals to pharmacists under section 90 of the Act was restricted pending the passage of legislation for pharmacy restructuring) in the expectation that an approval would be granted in respect of those premises, provided that the Authority is satisfied that there was such a prior commitment and the pharmacist produces to the Authority either -
- (i) a bank statement, supported if necessary by an affidavit by the pharmacist's solicitor or accountant; or
  - (ii) details of any contractual arrangements together with an affidavit by the pharmacist's solicitor or accountant attesting to the correctness of the date that commitment was entered into.

#### Applications for Essential Pharmacy Allowance

4. For the purposes of paragraph 99K(1)(c) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by an approved pharmacist for the payment of an essential pharmacy allowance under section 99ZB of the Act:
- (a) payment of an essential pharmacy allowance to an approved pharmacist shall be recommended in respect of approved premises -
    - (i) for which the average monthly prescription volume was not more than 1,250 during the year commencing on 1 July 1989 and ending on 30 June 1990; and
    - (ii) at which services for the supply of pharmaceutical benefits are available for not less than 20 hours per week; and
    - (iii) which are situated not less than 10 kilometres by normal access routes from the nearest other premises in respect of which a pharmacist is approved;
  - (b) for the purposes of subparagraph (a)(i) "prescription volume" means the aggregate of the number of PBS prescriptions and the number of RPBS prescriptions processed by the Health Insurance Commission on behalf of the Commonwealth during the relevant period, but excludes any prescription for a pharmaceutical benefit the supply and receipt of which is deemed, by virtue of subsection 99(2A), (2AB) or (2B) of the Act, to be a supply and receipt otherwise than under Part VII of the Act (except for the purposes of Division 1A of that Part);
  - (c) the provisions of subparagraph (a) shall be subject to annual review by the Minister and the Pharmacy Guild of Australia;
  - (d) an approved pharmacist to whom the payment of an essential pharmacy allowance has been approved shall be required to make an annual application under subsection 99ZB(1) of the Act for the continued payment of the allowance;
  - (e) the payment of an essential pharmacy allowance may be recommended to be made to an approved pharmacist who is also receiving an isolated pharmacy allowance under section 100 of the Act in respect of the same premises;

- (f) an approved pharmacist who receives an essential pharmacy allowance under section 99ZB of the Act shall not be eligible for a grant of financial assistance under section 99ZD or 99ZE of the Act;
- (g) notwithstanding the provisions of subparagraph (a), the Authority may take special circumstances into account in considering an application under subsection 99ZB(1) of the Act.

#### Applications for Amalgamation and Closure Payments

5. For the purposes of paragraph 99K(1)(d) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by approved pharmacists for financial assistance under section 99ZD of the Act in consequence of an agreement for the amalgamation of the premises in respect of which they are approved, or on an application by an approved pharmacist for financial assistance under section 99ZE of the Act in consequence of a proposal to cease supplying pharmaceutical benefits from the premises in respect of which the pharmacist is approved:
- (a) a grant of financial assistance under section 99ZD or 99ZE of the Act shall be recommended only in respect of each cancellation of approval of a pharmacist resulting in a reduction in the number of premises in respect of which pharmacists are approved under section 90 of the Act;
  - (b) a grant of financial assistance under section 99ZD or 99ZE of the Act shall not be recommended to be made to an approved pharmacist unless the pharmacist agrees in writing to make redundancy payments to staff in accordance with the staff redundancy arrangements agreed to by the Minister and the Pharmacy Guild of Australia and advised to the Australian Council of Trade Unions;
  - (c) a grant of financial assistance under section 99ZD or 99ZE of the Act shall not be recommended where the pharmacist approved in respect of the premises was granted that approval after 30 June 1989;
  - (d) a grant of financial assistance under section 99ZD or 99ZE of the Act shall not be recommended in respect of premises for which an essential pharmacy allowance has been approved under section 99ZB of the Act;
  - (e) a grant of financial assistance under section 99ZD or 99ZE of the Act shall not be recommended in respect of premises which would qualify, in accordance with subparagraph 4(a) of this determination, for the payment of an essential pharmacy allowance under section 99ZB of the Act;
  - (f) the grant of financial assistance under section 99ZD or 99ZE of the Act will be made to the pharmacist approved in respect of the premises from which pharmaceutical benefits will no longer be supplied;

- (g) the amount of a grant of financial assistance under section 99ZD or 99ZE of the Act, from which any staff redundancy payments referred to in subparagraph (b) shall be made, shall be ascertained in accordance with the following table:

<u>Years</u>	<u>Amount of Grant</u>
1 - 3	\$45,000
4 - 5	\$50,000
6 - 7	\$55,000
8 - 9	\$60,000
10 - 11	\$65,000
12 - 13	\$70,000
14 - 15	\$75,000
more than 15	\$80,000

- (h) for the purposes of subparagraph (g), "years" means the number of continuous completed years as at 1 January 1991 that the pharmacist has been approved in respect of particular premises or other premises situated not more than 500 metres by normal access routes from the premises in respect of which the pharmacist is approved at that date;
- (i) for the purposes of subparagraph (g), "years" in relation to premises in respect of which the approved pharmacist is a partnership means the number of continuous completed years during which the longest serving current member of the partnership has been approved in respect of the premises;
- (j) consistent with the procedures of the Authority, the grant of financial assistance under section 99ZD or 99ZE of the Act shall be made within 30 days of the date on which the approval of the pharmacist is cancelled.

Dated this *twelfth*

day of *January*

1991.

  
PETER STAPLES  
MINISTER OF STATE FOR AGED, FAMILY AND HEALTH SERVICES

9115304

## Community Services and Health

### COMMONWEALTH OF AUSTRALIA

#### National Health Act 1953

#### PHARMACEUTICAL BENEFITS

#### DETERMINATION UNDER SECTION 99L

No. PB 4 of 1991

I, PETER RICHARD STAPLES, Minister of State for Aged, Family and Health Services, pursuant to section 99L of the *National Health Act 1953*, hereby make the following Determination:

#### Commencement

1. (a) This Determination shall come into operation on the date on which it is notified in the *Commonwealth of Australia Gazette*.
- (b) The Determination under section 99L of the *National Health Act 1953* made on 9 January 1991 with effect from 23 January 1991 is hereby revoked.

#### Interpretation

2. In this Determination:

"the Act" means the *National Health Act 1953*;

"the Regulations" means the *National Health (Pharmaceutical Benefits) Regulations*;

"the Authority" means the Pharmacy Restructuring Authority established under section 99J of the Act;

"pharmacist" has the same meaning as in subsection 4(1) of the Act;

"approved pharmacist" has the same meaning as in subsection 84(1) of the Act;

"ready-prepared pharmaceutical benefit" means a pharmaceutical benefit in respect of which there is in force a determination under subsection 85(6) of the Act;

"PBS prescription" means a prescription for a pharmaceutical benefit supplied in accordance with the Act, the Regulations and the declarations and determinations made under the Act and the Regulations, and includes—

- (a) a prescription written on an authority form pursuant to regulation 13 of the Regulations, subparagraph 14(d) of the declaration made under subsection 85(2) of the Act or subparagraph 10(d) of the determinations made under sections 85, 85A and 88 of the Act; and
- (b) a repeat authorization under regulation 26 of the Regulations; and
- (c) a deferred supply authorization under regulation 26A of the Regulations; and
- (d) an order form under regulation 16 of the Regulations for the supply of a pharmaceutical benefit to a medical practitioner for the purpose of section 93 of the Act;

"RPBS prescription" means a prescription for a pharmaceutical benefit supplied in accordance with a scheme given effect to by an instrument made pursuant to section 91 of the *Veterans' Entitlements Act 1986* and includes—

- (a) a prescription written on a prior approval form; and
- (b) a repeat authorization; and
- (c) a deferred supply authorization.

**Applications for Approval to Supply Pharmaceutical Benefits**

3. For the purposes of paragraph 99K(1)(b) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by a pharmacist under section 90 of the Act:
- (a) approval of a pharmacist shall not be recommended in respect of premises located within 5 kilometres by normal access routes from other premises in respect of which a pharmacist is already approved;
  - (b) approval of a pharmacist in respect of particular premises shall not be recommended unless the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval;
  - (c) approval of a pharmacist in respect of particular premises shall not be recommended (except in the circumstances provided for in subparagraph (d)) if those premises are situated within 5 kilometres by normal access routes of other premises in respect of which there has been granted financial assistance under section 99ZC or 99ZD of the Act;
  - (d) approval of a pharmacist in respect of particular premises shall be recommended where those premises are located not more than 500 metres from other premises in respect of which that pharmacist is already approved under section 90 of the Act and from which the pharmacist proposes to cease supplying pharmaceutical benefits;
  - (e) approval of a pharmacist in respect of particular premises shall be recommended where those premises are located more than 500 metres but not more than 5 kilometres by normal access routes from other premises in respect of which that pharmacist is already approved under section 90 of the Act and from which the pharmacist proposes to cease supplying pharmaceutical benefits, provided that—
    - (i) there has been no grant of financial assistance made under section 99ZC or 99ZD of the Act in respect of any other premises situated within 5 kilometres by normal access routes from the first-named premises; and
    - (ii) the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval;
  - (f) approval of a pharmacist in respect of particular premises shall be recommended where a pharmacist is approved under section 90 of the Act in respect of those premises and where that approval is to be cancelled immediately prior to the granting of the first-named approval, as a consequence of a change of ownership arrangements of the premises;
  - (g) notwithstanding anything contained in subparagraphs (a) to (f), approval of a pharmacist in respect of particular premises shall be recommended where the pharmacist entered into a financial commitment prior to 9 August 1990 (being the date on which the granting by the Secretary of approvals to pharmacists under section 90 of the Act was restricted pending the passage of legislation for pharmacy restructuring) in the expectation that an approval would be granted in respect of those premises, provided that the Authority is satisfied that there was such a prior commitment and the pharmacist produces to the Authority either—
    - (i) a bank statement, supported if necessary by an affidavit by the pharmacist's solicitor or accountant; or
    - (ii) details of any contractual arrangements together with an affidavit by the pharmacist's solicitor or accountant attesting to the correctness of the date that commitment was entered into.
  - (h) notwithstanding anything contained in subparagraphs (a) to (g), approval of a pharmacist in respect of particular premises shall be recommended where the application for approval of the pharmacist in respect of those premises was made prior to 9 August 1990 (being the date on which the granting by the Secretary of approvals to pharmacists under section 90 of the Act was restricted pending the passage of legislation for pharmacy restructuring).



#### Applications for Essential Pharmacy Allowance

4. For the purposes of paragraph 99K(1)(c) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by an approved pharmacist for the payment of an essential pharmacy allowance under section 99ZA of the Act:
- (a) payment of an essential pharmacy allowance to an approved pharmacist shall be recommended in respect of approved premises—
    - (i) for which the average monthly prescription volume was not more than 1,250 during the year commencing on 1 July 1989 and ending on 30 June 1990; and
    - (ii) at which services for the supply of pharmaceutical benefits are available for not less than 20 hours per week; and
    - (iii) which are situated not less than 10 kilometres by normal access routes from the nearest other premises in respect of which a pharmacist is approved;
  - (b) for the purposes of subparagraph (a)(i) "prescription volume" means the aggregate of the number of PBS prescriptions and the number of RPBS prescriptions processed by the Health Insurance Commission on behalf of the Commonwealth during the relevant period, but excludes any prescription for a pharmaceutical benefit the supply and receipt of which is deemed, by virtue of subsection 99(2A), (2AB) or (2B) of the Act, to be a supply and receipt otherwise than under Part VII of the Act (except for the purposes of Division 1A of that Part);
  - (c) the provisions of subparagraph (a) shall be subject to annual review by the Minister and the Pharmacy Guild of Australia;
  - (d) subject to subparagraph (e), payment of the essential pharmacy allowance shall be made at a rate per PBS prescription and RPBS prescription equal to 10 per cent of the amount determined from time to time under subsection 98B(1) of the Act to be the fee for dispensing a ready-prepared pharmaceutical benefit, rounded to the nearest cent, one half cent being taken to be one cent;
  - (e) payment of the essential pharmacy allowance shall be made in respect of a total of not more than 1,000 PBS prescriptions and RPBS prescriptions supplied in any calendar month;
  - (f) an approved pharmacist to whom the payment of an essential pharmacy allowance has been approved shall be required to make an annual application under subsection 99ZA(1) of the Act for the continued payment of the allowance;
  - (g) the payment of an essential pharmacy allowance may be recommended to be made to an approved pharmacist who is also receiving an isolated pharmacy allowance under section 100 of the Act in respect of the same premises;
  - (h) an approved pharmacist who receives an essential pharmacy allowance under section 99ZA of the Act shall not be eligible for a grant of financial assistance under section 99ZC or 99ZD of the Act;
  - (i) notwithstanding the provisions of subparagraph (a), the Authority may take special circumstances into account in considering an application under subsection 99ZA(1) of the Act.

#### Applications for Amalgamation and Closure Payments

5. For the purposes of paragraph 99K(1)(d) of the Act, the following are guidelines with which the Authority must comply in making a recommendation on an application by approved pharmacists for financial assistance under section 99ZC of the Act in consequence of an agreement for the amalgamation of the premises in respect of which they are approved, or on an application by an approved pharmacist for financial assistance under section 99ZD of the Act in consequence of a proposal to cease supplying pharmaceutical benefits from the premises in respect of which the pharmacist is approved:
- (a) a grant of financial assistance under section 99ZC or 99ZD of the Act shall be recommended only in respect of each cancellation of approval of a pharmacist resulting in a reduction in the number of premises in respect of which pharmacists are approved under section 90 of the Act;

- (b) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended to be made to an approved pharmacist unless the pharmacist agrees in writing to make redundancy payments to staff in accordance with the staff redundancy arrangements agreed to by the Minister and the Pharmacy Guild of Australia and advised to the Australian Council of Trade Unions;
- (c) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended where the pharmacist approved in respect of the premises was granted that approval after 30 June 1989;
- (d) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended in respect of premises for which an essential pharmacy allowance has been approved under section 99ZA of the Act;
- (e) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended in respect of premises which would qualify, in accordance with subparagraph 4(a) of this determination, for the payment of an essential pharmacy allowance under section 99ZA of the Act;
- (f) the grant of financial assistance under section 99ZC or 99ZD of the Act will be made to the pharmacist approved in respect of the premises from which pharmaceutical benefits will no longer be supplied;
- (g) the amount of a grant of financial assistance under section 99ZC or 99ZD of the Act, from which any staff redundancy payments referred to in subparagraph (b) shall be made, shall be ascertained in accordance with the following table:

<u>Years</u>	<u>Amount of Grant</u>
1 — 3	\$45,000
4 — 5	\$50,000
6 — 7	\$55,000
8 — 9	\$60,000
10 — 11	\$65,000
12 — 13	\$70,000
14 — 15	\$75,000
more than 15	\$80,000

- (h) for the purposes of subparagraph (g), "years" means the number of continuous completed years as at 1 January 1991 that the pharmacist has been approved in respect of particular premises or other premises situated not more than 500 metres by normal access routes from the premises in respect of which the pharmacist is approved at that date;
- (i) for the purposes of subparagraph (g), "years" in relation to premises in respect of which the approved pharmacist is a partnership means the number of continuous completed years during which the longest serving current member of the partnership has been approved in respect of the premises;
- (j) consistent with the procedures of the Authority, the grant of financial assistance under section 99ZC or 99ZD of the Act shall be made within 30 days of the date on which the approval of the pharmacist is cancelled.

Dated this Sixteenth day of May 1991.



PETER STAPLES  
Minister of State for Aged, Family and Health Services

3808 Government departments

COMMONWEALTH OF AUSTRALIA  
National Health Act 1953  
PHARMACEUTICAL BENEFITS  
DETERMINATION UNDER SECTION 99L

No. PB 10 of 1991

I, PETER RICHARD STAPLES, Minister of State for Aged, Family and Health Services, pursuant to section 99L of the *National Health Act 1953*, hereby make the following Determination:

1. (a) Subject to subparagraph (b), this Determination shall come into operation on the day on which it is published in the *Commonwealth of Australia Gazette*.

(b) Paragraph 3 of this Determination shall come into operation on 1 January 1992.

2. Determination No. PB 4 of 1991 under section 99L of the *National Health Act 1953* made on 16 May 1991 with effect from 29 May 1991 is, in this Determination, referred to as the Principal Determination.

3. Subparagraph 4 (d) of the Principal Determination is amended by omitting "10" and substituting "20".

4. Paragraph 4 of the Principal Determination is further amended by inserting, after subparagraph (e), the following subparagraphs:

"(ea) subject to subparagraph (eb), payment of the essential pharmacy allowance shall be made in respect of PBS prescriptions and RPBS prescriptions supplied on and from the first day of the calendar month following the day on which the payment of the allowance was approved;

(eb) where an application for the payment of an essential pharmacy allowance was made before 1 July 1991 and has been approved, payment of the allowance shall be made in respect of PBS prescriptions and RPBS prescriptions supplied on and from 1 January 1991:"

5. Paragraph 4 of the Principal Determination is further amended by omitting subparagraph (f) and substituting the following subparagraph:

"(f) an approved pharmacist to whom the payment of an essential pharmacy allowance has been approved shall not be required to make an annual application for the continued payment of the allowance, but shall be required to notify the Authority of any change of circumstances in relation to any of the matters specified in subparagraph (a):"

Dated this

twelfth

day of

November

1991.



PETER STAPLES  
Minister for Aged, Family and Health Services

91.52724

COMMONWEALTH OF AUSTRALIA  
*National Health Act 1953*  
PHARMACEUTICAL BENEFITS  
DETERMINATION UNDER SECTION 99L

No. PB 14 of 1991

I, PETER RICHARD STAPLES, Minister of State for Aged, Family and Health Services, pursuant to section 99L of the *National Health Act 1953*, hereby make the following Determination:

1. (a) Subject to paragraph (b), this Determination shall come into operation on the day on which it is published in the *Commonwealth of Australia Gazette*.

(b) Paragraphs 5 and 6 of this Determination shall come into operation on 1 January 1992.

2. Determination No. PB 4 of 1991 under section 99L of the *National Health Act 1953* made on 16 May 1991 with effect from 29 May 1991, as amended by Determination No. PB 10 of 1991 under section 99L of the *National Health Act 1953* made on 12 November 1991 with effect from 4 December 1991, is, in this Determination, referred to as the Principal Determination.

3. Paragraph 3 of the Principal Determination is amended by omitting "(except in the circumstances provided for in subparagraph (d))" from subparagraph (c) and substituting "(except as provided by subparagraph (d) or (ea))".

4. Paragraph 3 of the Principal Determination is further amended by inserting, after subparagraph (c), the following subparagraph:

"(ea) notwithstanding anything contained in subparagraph (c) or (e), approval of a pharmacist shall be recommended in respect of premises situated not less than 10 kilometres by normal access routes from the nearest other premises in respect of which a pharmacist is approved, provided that the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval."

5. Paragraph 4 of the Principal Determination is amended by omitting subsubparagraphs (a) (i) and (ii) and subparagraph (b).

6. Paragraph 4 of the Principal Determination is further amended by omitting "any of the matters" from subparagraph (f) and substituting "the manner".

7. Paragraph 5 of the Principal Determination is amended by omitting subparagraphs (d) and (e) and substituting the following subparagraph:

"(d) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended in respect of premises if the cancellation of the approval of the pharmacist approved in respect of those premises would result in there being no premises in respect of which a pharmacist is approved within 10 kilometres by normal access routes of the first-named premises;"

Dated this

fourth

day of

December

1991.



PETER STAPLES  
Minister of State for Aged, Family and Health Services

9153215

COMMONWEALTH OF AUSTRALIA  
National Health Act 1953  
PHARMACEUTICAL BENEFITS  
DETERMINATION UNDER SECTION 99L

No. PB 10 of 1991

I, PETER RICHARD STAPLES, Minister for Aged, Family and Health Services, pursuant to section 99L of the *National Health Act 1953*, hereby make the following Determination:

1. (a) Subject to subparagraph (b), this Determination shall come into operation on the day on which it is published in the *Commonwealth of Australia Gazette*.  
  
(b) Paragraph 3 of this Determination shall come into operation on 1 January 1992.
2. Determination No. PB 4 of 1991 under section 99L of the *National Health Act 1953* made on 16 May 1991 with effect from 29 May 1991 is, in this Determination, referred to as the Principal Determination.
3. Subparagraph 4 (d) of the Principal Determination is amended by omitting "10" and substituting "20".
4. Paragraph 4 of the Principal Determination is further amended by inserting, after subparagraph (e), the following subparagraphs:  
  
"(ea) subject to subparagraph (eb), payment of the essential pharmacy allowance shall be made in respect of PBS prescriptions and RPBS prescriptions supplied on and from the first day of the calendar month following the day on which the payment of the allowance was approved;  
  
(eb) where an application for the payment of an essential pharmacy allowance was made before 1 July 1991 and has been approved, payment of the allowance shall be made in respect of PBS prescriptions and RPBS prescriptions supplied on and from 1 January 1991;"
5. Paragraph 4 of the Principal Determination is further amended by omitting subparagraph (f) and substituting the following subparagraph:  
  
"(f) an approved pharmacist to whom the payment of an essential pharmacy allowance has been approved shall not be required to make an annual application for the continued payment of the allowance, but shall be required to notify the Authority of any change of circumstances in relation to any of the matters specified in subparagraph (a);".

Dated this

*twelfth*

day of

*November*

1991.

  
PETER STAPLES  
Minister for Aged, Family and Health Services

9152724

COMMONWEALTH OF AUSTRALIA  
National Health Act 1953  
PHARMACEUTICAL BENEFITS  
DETERMINATION UNDER SECTION 99L

No. PB 14 of 1991

I, PETER RICHARD STAPLES, Minister of State for Aged, Family and Health Services, pursuant to section 99L of the *National Health Act 1953*, hereby make the following Determination:

1. (a) Subject to paragraph (b), this Determination shall come into operation on the day on which it is published in the *Commonwealth of Australia Gazette*.

(b) Paragraphs 5 and 6 of this Determination shall come into operation on 1 January 1992.

2. Determination No. PB 4 of 1991 under section 99L of the *National Health Act 1953* made on 16 May 1991 with effect from 29 May 1991, as amended by Determination No. PB 10 of 1991 under section 99L of the *National Health Act 1953* made on 12 November 1991 with effect from 4 December 1991, is, in this Determination, referred to as the Principal Determination.

3. Paragraph 3 of the Principal Determination is amended by omitting "(except in the circumstances provided for in subparagraph (d))" from subparagraph (c) and substituting "(except as provided by subparagraph (d) or (ea))".

4. Paragraph 3 of the Principal Determination is further amended by inserting, after subparagraph (e), the following subparagraph:

"(ea) notwithstanding anything contained in subparagraph (c) or (e), approval of a pharmacist shall be recommended in respect of premises situated not less than 10 kilometres by normal access routes from the nearest other premises in respect of which a pharmacist is approved, provided that the pharmacist demonstrates to the Authority that there is a definite unmet public need for that approval;"

5. Paragraph 4 of the Principal Determination is amended by omitting subparagraphs (a) (i) and (ii) and subparagraph (b).

6. Paragraph 4 of the Principal Determination is further amended by omitting "any of the matters" from subparagraph (f) and substituting "the matter".

7. Paragraph 5 of the Principal Determination is amended by omitting subparagraphs (d) and (e) and substituting the following subparagraph:

"(d) a grant of financial assistance under section 99ZC or 99ZD of the Act shall not be recommended in respect of premises if the cancellation of the approval of the pharmacist approved in respect of those premises would result in there being no premises in respect of which a pharmacist is approved within 10 kilometres by normal access routes of the first-named premises;"


Dated this

fourth

day of

December

1991.



PETER STAPLES  
Minister of State for Aged, Family and Health Services

9153215

NATIONAL HEALTH ACT 1953

(prior to 18 December 1990)

**Approved pharmacists**

90 (1) The Secretary may, in the Secretary's discretion, upon application by a pharmacist who is willing to supply pharmaceutical benefits on demand at particular premises, approve the pharmacist for the purpose of supplying pharmaceutical benefits at or from these premises.

(2) Where a pharmacist desires to supply pharmaceutical benefits at or from several premises (being premises at which he or she carries on, or is about to carry on, business as a pharmacist) a separate application shall be made in respect of each of the premises and, where approval is granted in respect of 2 or more premises, a separate approval shall be granted in respect of each of the premises.

(3) Where an approved pharmacist desires to supply pharmaceutical benefits at or from premises (being premises at which the pharmacist carries on, or is about to carry on, business as a pharmacist) other than premises in respect of which approval has been granted, the Secretary may, in the Secretary's discretion, on application by the approved pharmacist, grant approval in respect of these premises.

(4) Nothing in this section authorises the Secretary to grant approval to a pharmacist in respect of premises at which that pharmacist is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.

(5) Where the Secretary makes a decision granting or rejecting an application made by a pharmacist under this section, the Secretary shall cause to be served on the pharmacist, notice in writing of that decision.

*National Health Act 1953*

(since .18 December 1990)

**Approved pharmacists**

90. (1) Subject to this section, the Secretary may, upon application by a pharmacist who is willing to supply pharmaceutical benefits on demand at particular premises, approve that pharmacist for the purpose of supplying pharmaceutical benefits at or from those premises.
- (2) Where a pharmacist desires to supply pharmaceutical benefits at or from several premises (being premises at which he or she carries on, or is about to carry on, business as a pharmacist) a separate application shall be made in respect of each of the premises and, where approval is granted in respect of 2 or more premises, a separate approval shall be granted in respect of each of the premises.
- (3) Subject to this section, where an approved pharmacist desires to supply pharmaceutical benefits at or from premises (being premises at which the pharmacist carries on, or is about to carry on, business as a pharmacist) other than premises in respect of which approval has been granted, the Secretary may on application by the approved pharmacist, grant approval in respect of those other premises.
- (3A) An application under this section must be referred to the Authority.
- (3B) An approval may be granted under this section only if the Authority has recommended the grant of the approval, but the Secretary may refuse to grant an approval even if the grant has been recommended by the Authority.
- (3C) Unless sooner repealed, subsections (3A) and (3B) cease to have effect at the end of 31 March 1995.
- (4) Nothing in this section authorizes the Secretary to grant approval to a pharmacist in respect of premises at which that pharmacist is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
- (5) Where the Secretary makes a decision granting or rejecting an application made by a pharmacist under this section, the Secretary shall cause to be served on the pharmacist, notice in writing of that decision.



## s. 99L

- (ii) if a grant of financial assistance is recommended—recommendations in respect of the amount of the grant and the conditions (if any) subject to which the grant should be made; and
  - (e) to advise the Minister upon any matter concerning the operation of Division 4C of this Part that is referred to it by the Minister.
- (2) In making a recommendation under subsection (1), the Authority must comply with the relevant guidelines determined by the Minister under section 99L.
- (3) All recommendations of the Authority under subsection (1) are to be made to the Secretary.

**Determination of guidelines by Minister**

99L. (1) The Minister must determine in writing the guidelines subject to which the Authority is to make recommendations under subsection 99K (1).

(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Powers**

99M. The Authority has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**Membership**

99N. (1) The Authority consists of the following members:

- (a) a Chairperson;
  - (b) 2 persons who are to be chosen from 4 persons nominated by the Pharmacy Guild of Australia;
  - (c) one person (other than the 2 persons chosen under paragraph (b)) having experience in matters relating to the pharmacy industry;
  - (d) 3 other persons.
- (2) All members are to be appointed by the Minister on a part-time basis.

**Terms and conditions not provided for by this Act**

99P. A member holds office on such terms and conditions (if any), in respect of matters not provided for by this Act, as are determined in writing by the Minister.

**Defective appointment not invalid**

99Q. The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the appointment.

**Remuneration and allowances**

99R. (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, a member is to be paid such remuneration as is prescribed.

(2) A member is to be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

**Leave of absence**

99S. The Minister may grant to a member leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

**Disclosure of interests**

99T. (1) A member who has a direct or indirect pecuniary interest in a matter being considered by the Authority must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Authority and the member may not, unless the Minister otherwise determines:

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take any part in any decision of the Authority with respect to that matter.

**Resignation**

99U. A member may resign by writing signed and delivered to the Minister.

## s. 99V

**Termination of appointment**

**99V. (1)** The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors;
- (b) fails, without reasonable excuse, to comply with an obligation imposed by section 99T; or
- (c) is absent, except on leave of absence granted under section 99S, from 3 consecutive meetings of the Authority;

the Minister may terminate the appointment of the member.

**Meetings**

**99W. (1)** The Chairperson may convene such meetings of the Authority as the Chairperson considers necessary for the efficient performance of the Authority's functions.

(2) Meetings are to be held at such places as the Chairperson determines.

(3) The Chairperson presides at all meetings at which he or she is present.

(4) Where the Chairperson is not present at a meeting, the members present must appoint one of their number to preside at the meeting.

(5) Subject to this Act, the person presiding at a meeting may give directions regarding the procedure to be followed at or in connection with that meeting.

(6) At a meeting:

- (a) 4 members constitute a quorum; and
- (b) all questions are to be decided by a majority of votes of the members present and voting; and
- (c) the person presiding has a deliberative vote and, if necessary, also has a casting vote.

(7) The Authority must keep records of its meetings.

**Committees**

**99X. (1)** The Authority:

- (a) may, with the approval in writing of the Minister, establish committees to assist it in performing its functions; and

- (b) must, if the Minister so requires in writing, establish a committee to assist it in advising the Minister on a particular matter referred to it by the Minister.
- (2) A committee consists of the persons (whether or not members of the Authority) appointed by the Minister to be its members.
- (3) An appointment under subsection (2) is on a part-time basis.
- (4) For the purposes of section 99R, the members of a committee who are not members of the Authority are taken to be members of the Authority.

#### Cessation of operation

99Y.<sup>5</sup> Unless sooner repealed, this Division ceases to have effect at the end of 31 March 1995.

#### *Division 4C—Financial assistance for restructuring of pharmacy industry*

#### Interpretation

99Z. In this Division:  
“amalgamation agreement” means an agreement of the kind referred to in section 99ZB.

#### Essential pharmacy allowance

99ZA. (1) Subject to this section, the Secretary may, upon application by the pharmacist or pharmacists approved under section 90 in respect of particular premises, approve the payment to the pharmacist or pharmacists of an essential pharmacy allowance in respect of the premises.

(2) An application under subsection (1) must be referred to the Authority.

(3) The payment of an allowance may be approved under this section only if the Authority has recommended the making of the payment, but the Secretary may refuse to approve a payment even if it has been recommended by the Authority.

(4) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the rate at which the allowance is payable;
- (b) any conditions subject to which the allowance is payable.

## s. 99ZB

**Amalgamation agreement**

**99ZB. (1)** An amalgamation agreement is an agreement the purpose of which is to reduce the number of premises from which pharmaceutical benefits are supplied.

(2) The agreement may be in respect of 2 or more such premises in an area.

(3) The agreement is to the effect that:

- (a) pharmaceutical benefits are to be supplied at or from one of those premises; and
- (b) pharmaceutical benefits will cease to be supplied at or from the other premises.

(4) The parties to the agreement are the pharmacist or pharmacists (as the case may be) approved under section 90 in respect of each of the premises to which the agreement relates.

**Financial assistance—amalgamation of pharmacies**

**99ZC. (1)** All pharmacists who are parties to a particular amalgamation agreement may together make an application to the Secretary for financial assistance under this section.

(2) An application under subsection (1) must be referred to the Authority.

(3) Subject to this section, the Secretary may approve the grant of financial assistance to the pharmacists who have made an application under subsection (1).

(4) A grant may be approved under this section only if the Authority has recommended the making of the grant, but the Secretary may refuse to approve a grant even if it has been recommended by the Authority.

(5) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the amount of the grant;
- (b) any conditions subject to which the grant is made.

**Financial assistance—closure of pharmacies**

**99ZD. (1)** Subject to subsection (2), where the pharmacist or pharmacists approved under section 90 in respect of particular premises propose to cease supplying pharmaceutical benefits at or from those premises, the pharmacist, or the pharmacists together, may make an application to the Secretary for financial assistance under this section.

(2) The pharmacist or pharmacists may not make an application under subsection (1) if the supply of pharmaceutical benefits at or from the premises is to cease because the pharmacist or pharmacists have agreed to do so under an amalgamation agreement.

(3) An application under subsection (1) must be referred to the Authority.

(4) Subject to this section, the Secretary may approve the grant of financial assistance to the pharmacist or pharmacists who have made an application under subsection (1).

(5) A grant may be approved under this section only if the Authority has recommended the making of the grant, but the Secretary may refuse to approve a grant even if it has been recommended by the Authority.

(6) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the amount of the grant;
- (b) any conditions subject to which the grant is made.

#### **Time limit for making applications**

99ZE. An application may not be made under this Division after 28 February 1995.

#### **Appropriation**

99ZF. Payments approved under this Division are to be made out of money appropriated by Parliament for the purposes of this Division.

#### **Cessation of operation**

99ZG. Unless sooner repealed, this Division ceases to have effect at the end of 6 months after the day on which the first determination that the Tribunal makes after 31 March 1995 comes into operation.



Statutory Rules 1989 No. 195<sup>1</sup>

## Health Insurance Commission Regulations<sup>2</sup> (Amendment)

### **Additional functions of the Commission: provision of pharmaceutical benefits**

"3E. For the purposes of subsection 8E (1) of the Act, the following functions are prescribed:

- (a) on behalf of the Secretary to the Department, to perform the functions conferred on the Secretary by Part VII of the National Health Act, other than:
  - (i) to make appointments under paragraph 101 (1) (a) of that Act; and
  - (ii) to make arrangements for the testing or analysis of pharmaceutical benefits or drugs that may be used as pharmaceutical benefits under section 102 of that Act;
- (b) on behalf of the Minister, to perform the following functions conferred on the Minister by Part VII of the National Health Act:
  - (i) to approve hospital authorities and hospitals under section 94 of that Act;
  - (ii) to vary, suspend or revoke approvals under subsection 94 (5A) of that Act;
  - (iii) to determine periods of suspension under subsection 94 (5B) of that Act;
  - (iv) to cancel approvals under subsection 98AA (1) of that Act;
  - (v) to make special arrangements for the availability of pharmaceutical services under subsection 100 (1) of that Act;
- (c) on behalf of the Minister, to perform the functions conferred on the Minister by Part VIII or IX of the National Health Act in relation to the provision of pharmaceutical benefits;
- (d) on behalf of the Secretary to the Department, to perform the functions conferred on the Secretary by Part VIII or IX of the National Health Act in relation to the provision of pharmaceutical benefits;

- (e) on behalf of the Secretary to the Department, to perform the functions conferred on the Secretary by the National Health (Pharmaceutical Benefits) Regulations;
  - (f) on behalf of the Minister, to perform the functions conferred on the Minister by the National Health (Pharmaceutical Benefits) Regulations, other than the function of determining the rate at which, and the conditions subject to which, payments of pharmaceutical benefits are to be made under regulation 18 of those Regulations;
  - (g) for the purposes of Part VII of the National Health Act, to process claims for payment relating to the provision of pharmaceutical benefits and to make payments of those claims;
  - (h) to process, on behalf of the Repatriation Commission, claims for payment relating to the provision of pharmaceutical benefits under section 91 of the *Veterans' Entitlements Act 1986* and to make payments of those claims;
  - (i) to devise and implement measures intended to prevent, or facilitate the detection of, contraventions of Part VII of the National Health Act or the National Health (Pharmaceutical Benefits) Regulations;
  - (j) to investigate cases where there are reasonable grounds to suspect that an act done by a person in relation to the provision of a pharmaceutical benefit may constitute an offence under the National Health Act, the *Crimes Act 1914* or the National Health (Pharmaceutical Benefits) Regulations and, where an investigation discloses that there is sufficient evidence to warrant a prosecution, to refer the case investigated and the information obtained in the course of the investigation to the Australian Federal Police or the Director of Public Prosecutions;
  - (k) to undertake, on behalf of the Commonwealth, action (including the institution of legal proceedings) to recover from a person an amount in respect of a pharmaceutical benefit that is recoverable by the Commonwealth from that person under the National Health Act, the National Health (Pharmaceutical Benefits) Regulations or otherwise;
  - (l) on behalf of the Secretary to the Department, to certify in accordance with section 139A of the National Health Act in relation to medical practitioners, dental practitioners, pharmacists and hospital authorities.”.
6. Regulation 4A of the Principal Regulations is repealed and the following regulation substituted: