

Deactivation of pharmacist approvals made under section 90 of the *National Health Act 1953*.

Guidelines

1. Purpose of these Guidelines

These Guidelines aim to assist approved pharmacists who wish to temporarily “deactivate” an approval to supply pharmaceutical benefits under s90 of the *National Health Act 1953*.

These Guidelines outline the circumstances in which the Delegate *may* be prepared to allow an approval to be temporarily “deactivated” for a period of up to six months.

This process is also known as “parking an approval”.

2. Background

Section 98(3) of the *National Health Act 1953* provides that the Secretary to the Department of Health and Ageing may cancel an approval where he/she is satisfied that an approved pharmacist is not carrying on business as a pharmacist at the premises in respect of which the pharmacist is approved.

The Chief Executive Officer (CEO) of Medicare Australia has been given the function to exercise this power on behalf of the Secretary and has delegated this power to certain Medicare Officers.

Accordingly, any approved pharmacist who ceases to carry on business as a pharmacist at the premises in respect of which the pharmacist is approved—subject to these Guidelines (that is, without Medicare Australia’s prior endorsement)—*places themselves at immediate risk of having their approval cancelled*.

Deactivation is not an expression used or defined in the *National Health Act 1953*. It is, instead an administrative concept, intended to describe—in a shorthand way—the situation which arises when a Delegate decides not to cancel an approval under s98(3), notwithstanding that the statutory precondition to such a decision (namely, that the holder of an approval under s90 of the *National Health Act 1953* has ceased to carry on business as a pharmacist at the premises in respect of which the pharmacist is approved) has been satisfied.

This process involves the exercise of a statutory discretion. These Guidelines are designed to ensure the consistent and appropriate use of that discretion by delegates on a national basis.

Please note: These Guidelines must be read subject to the provisions of the *National Health Act 1953* (the Act) and related legislation. They aim to describe the way in which a Delegate is likely to exercise his/her discretion to cancel an approval under that section. They do not bind the Delegate who is legally obliged to take into account all relevant circumstances in reaching a decision in individual cases.

In the event of any conflict between these Guidelines and the legislation, the legislation prevails.

3. Important Statement of Policy

An approved pharmacist who needs to cease carrying on business as a pharmacist for a short and specific period of time at the premises in respect of which the pharmacist is approved may apply to the Delegate to request deactivation of his/her approval.

An approved pharmacist wanting to deactivate their approval to supply pharmaceutical benefits must make written application to Medicare Australia giving reasons for the request ***prior to ceasing to supply pharmaceutical benefits***. An approved pharmacist who ceases carrying on business as a pharmacist at the premises in respect of which the pharmacist is approved without obtaining the prior endorsement to deactivate the approval from Medicare Australia in writing will usually have their approval cancelled under s98(3) of the Act.

Any decision associated with a request to deactivate an approval which will result in the cessation of the supply of pharmaceutical benefits from particular premises can only be made by a Medicare Australia Delegate under s98 of the Act.

The need for convenient and ongoing supply of pharmaceutical benefits to the particular communities serviced by the pharmacy is an important consideration for the Delegate when considering whether or not to grant deactivation, and how long a deactivation period should be.

It is important to note that the continuing commercial viability of a pharmacy is not a relevant consideration for the Delegate when making a decision whether to endorse the deactivation of a pharmacy approval.

4. Relationship to the Australian Community Pharmacy Authority (ACPA) Process

The ACPA has advised that they will not consider an application for relocation of a pharmacy that is not trading unless the Delegate has endorsed the application to deactivate the approval in accordance with these Guidelines.

5. Applications for Deactivation

The Delegate will consider an application to deactivate an approval for a short and specific period of time (no more than six months) in the following circumstances:

(1) *Relevant considerations where there is no proposed change in the location of the pharmacy or the approved pharmacist*

Where:

- a) the approved pharmacist needs to cease carrying on business as a pharmacist at the premises in respect of which the pharmacist is approved for compelling and demonstrated personal reasons (eg. illness) and the service of a locum pharmacist could not be obtained to run the pharmacy business; or
- b) where the approved pharmacist is unable to open his/her pharmacy for reasons which are beyond the control of the approved pharmacist, such as fire, flood, shop renovation.

(2) *Relevant considerations where there is a proposed change in the approved pharmacist and no proposed change in the location of the pharmacy*

Where:

- a) the approved pharmacist has entered into a contract for sale, transfer or disposal of the pharmacy business at its current location; and
- b) the approved pharmacist is unable for reasons, which are beyond his/her control, to continue carrying on business as a pharmacist at the premises in respect of which the pharmacist is approved until the transfer of ownership occurs.

(3) *Relevant considerations where there is a proposed change in the location of the pharmacy irrespective of whether there is also a proposed change in the approved pharmacist*

Where:

- a) the approved pharmacist wishes to relocate the pharmacy to other premises and an application has been made to the ACPA to relocate the pharmacy and the approved pharmacist cannot, for reasons, which are beyond his/her control, continue to carry on business as a pharmacist at the premises in respect of which the pharmacist is approved; or
- b) the ACPA has made a recommendation to the Medicare Australia Delegate to approve the application to relocate the pharmacy and the existing approved pharmacist cannot, for reasons which are beyond his/her control, continue to carry on business as a pharmacist at the premises in respect of which the pharmacist is approved or at the proposed premises.

6 Addressing the Criteria and Extension of the Period of Deactivation

The application should be framed in terms of meeting the criteria set out in point 5 and written documentation must be provided that clearly supports the reasons for wanting to deactivate their s.90 approval. Some examples include:

- written advice from the shopping complex management advising that the premises are to be renovated and the pharmacy will need to vacate;
- evidence of significant structural damage to the premises (e.g. due to flood, fire etc);
- written confirmation of an inability to operate the pharmacy due to illness; and
- evidence that the services of a locum pharmacist could not be obtained to continue the business of the pharmacy.

The application must also include the period of time for which the applicant is seeking deactivation.

The Delegate will consider this information when deciding whether to endorse the applicant's request for deactivation.

The application to deactivate the approval should be directed to the

Pharmacy Program Officer
Medicare Australia

in the State where the pharmacy is located.

The Delegate will only extend the period of deactivation beyond six months in exceptional circumstances. In circumstances where there is a proposed change in the location of the pharmacy, it is usually a precondition to an extension of the period of deactivation beyond six months that the ACPA has made a recommendation to the Delegate to approve the application to relocate the pharmacy and that the ACPA has extended the period of that recommendation to a date at or after the end of the period of the proposed extension.

7. Change of Circumstances

Any deactivation period endorsed by Medicare Australia is directly linked to the reasons outlined in the application to deactivate.

The Medicare Australia Delegate must be advised in writing if the circumstances change at any stage during the deactivation period. If the application is successful, but the circumstances change for deactivation and the pharmacy cannot be reopened then the **Medicare Australia Delegate must be advised in writing of the inability to meet that commitment prior to the expiry date of the nominated period.**

If Medicare Australia becomes aware of any significant change in circumstances, the approved pharmacist will be asked to provide reasons in writing as to why their approval should not be cancelled.

8. More Information

For any enquiries regarding the deactivation of an approval please contact your State Pharmacy Program Officer on **132 290***.

* Local call rates. Normal mobile and public phone charges apply.