

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Residential Care Subsidy Amendment (Leave from Care) Determination 2013

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Part 3.1 of the Act relates to residential care subsidy. Residential care subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients.

Subsection 44-3(2) of the Act provides that the Minister may determine, by legislative instrument, the amount of the basic subsidy for a day. The Minister may also determine the amounts of primary and other supplements payable to an approved provider, including amounts that are payable when a care recipient is on leave from a residential care service.

The purpose of the *Residential Care Subsidy Amendment (Leave from Care) Determination 2013* (the Amending Determination) is to improve consistency in subsidies paid to aged care providers by:

- aligning residential care leave provisions with similar provisions in home care; and
- reducing the subsidy paid to an approved provider if a care recipient is on certain leave from residential care services.

The Amending Determination provides that:

- when a recipient of residential care is on extended hospital leave under section 42-2 of the Act, the subsidy paid to the approved provider will reduce to 50% of the full subsidy after 28 consecutive days; and
- during the period of up to seven days prior to an approved care recipient entering a residential care service, known as pre-entry leave, the subsidy paid to a provider will reduce to 30% of the full amount of basic subsidy. In addition, providers will no longer receive the accommodation supplement, concessional resident supplement, charge exempt resident supplement, accommodation charge top-up supplement, transitional supplement, transitional accommodation supplement and/or hardship supplement (whichever is applicable) on behalf of the care recipient for the period of pre-entry leave.

The Amending Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

Recent amendments were made to the Act as part of the previous governments aged care reform package. These amendments were developed in consultation with the aged care sector, including consumers, industry and professional bodies.

Consultation on the proposed amendments to the Act, and to delegated legislation, commenced in November 2012, with the public release of a paper providing an overview of the proposed legislative changes and a video presentation detailing the proposed reforms.

The consultations continued in 2013 with further industry briefings on the proposed changes in Melbourne, Sydney and Canberra.

Whilst no specific consultation was undertaken with respect to this determination, as part of the broader consultation process, issues were raised in relation to improving consistency in leave arrangements across both Residential and Home Care.

Information about this amendment to leave arrangements was disseminated via electronic media to approved providers on 14 December 2013.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required OBPR ID 15163.

Commencement

The Amending Determination commences on 1 January 2014.

Details of the Residential Aged Care Subsidy Amendment (Leave from Care) Determination 2013

Clause 1 states that the name of the determination is the *Residential Care Subsidy Amendment (Leave from Care) Determination 2013*.

Clause 2 states that the determination commences on 1 January 2014.

Clause 3 provides that the authority for the making of the determination is the *Aged Care Act 1997*.

Clause 4 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 to this instrument has effect according to its terms.

Schedule 1 – Amendments

Aged Care (Residential Care – Amount of Basic Subsidy) Determination 2013 (No. 1)

Item 1 – Subsection 10(2)

Currently the full amount of basic subsidy is paid to a provider of residential care, in respect of a care recipient, until the end of the 29th day that the care recipient is on continuous hospital leave. If a care recipient remains on hospital leave beyond this time, the provider receives 50% of the basic subsidy amount.

This item amends subsection 10(2) of the Aged Care (Residential Care – Amount of Basic Subsidy) Determination 2013 (No. 1) so that, from 1 January 2014, if a care recipient is on hospital leave the basic subsidy payable to the provider will reduce to 50% of the full amount after 28 consecutive days.

This amendment improves consistency in subsidies paid to aged care providers by aligning residential care leave provisions with similar provisions in home care.

It is appropriate for the full care subsidy to be paid for a period of 28 days of consecutive leave, due to rostering and other staff management arrangements impacting on costs for providers. It is also appropriate for the provider to continue to receive a portion of the subsidy for periods longer than 28 days to cover ongoing indirect costs of keeping the place available for the care recipient upon their return.

A transitional provision has also been included (at paragraph 10(2)(c)) to ensure that a provider is not disadvantaged in respect of a care recipient whose 29th day of hospital leave occurs on 31 December 2013 (immediately before the change in policy takes effect). In this case, the provider will be paid the full subsidy for the 29th day (occurring on 31 December 2013) and the subsidy will reduce to 50% from 1 January 2014.

Item 2 – After section 10

When a client accepts a place in a residential aged care service, a period of up to seven days prior to entering care is known as the period of pre-entry leave. During this pre-entry period, providers currently receive the full basic subsidy on behalf of the care recipient.

From 1 January 2014 the amount of basic subsidy payable during the period of pre-entry leave will reduce to 30% of full basic subsidy amount.

It is appropriate to pay some subsidy as the provider would have some indirect costs during the period including maintenance, cleaning and administration. However the provider is not bearing the full costs of caring for the new resident.

This item achieves this effect by adding a new section (section 10A) to the *Aged Care (Residential Care – Amount of Basic Subsidy) Determination 2013 (No. 1)*. Section 10A changes the basic subsidy amount payable to an approved provider for a care recipient on pre-entry leave (as described in subsection 42-2(3) of the Act) to 30% of the full subsidy amount.

Schedules 2 to 8 - Amendments

From 1 January 2014, certain supplements will not be payable in respect of care recipients who are on pre-entry leave.

Specifically, providers will not receive (during any period that a care recipient is on pre-entry leave):

- the hardship supplement
- the accommodation supplement;
- the concessional resident supplement;
- the charge exempt resident supplement;
- the accommodation charge top-up supplement;
- the transitional supplement; or
- the transitional accommodation supplement.

These supplements will only become payable, in respect of eligible care recipients, from the date that the care recipient actually physically enters the service (that is, after any period of pre-entry leave).

In order to achieve this effect, amendments are required to each of the determinations that set the dollar values for these supplements.

These Schedules therefore amend:

- the *Aged Care (Residential care subsidy – amount of hardship supplement) Determination 2009 (No. 1)*. Schedule 2 inserts a new section 7 in this determination to provide that the amount of hardship supplement for any period of pre-entry leave is \$0.00.

- the *Aged Care (Residential Care Subsidy – Amount of Accommodation Supplement) Determination 2013 (No. 2)*. Schedule 3 adds a new section 6 to this determination to provide that the amount of accommodation supplement payable for supported residents on pre-entry leave is \$0.00.
- the *Aged Care (Residential Care Subsidy – Amount of Concessional Resident Supplement) Determination 2013 (No. 2)*. Schedule 4 adds a new section 6 to this determination to provide that the amount of the concessional resident supplement payable for a day on which the care recipient is on pre-entry leave is \$0.00.
- the *Aged Care (Residential care subsidy – amount of charge exempt resident supplement) Determination 2008*. Schedule 5 repeals section 5 and replaces it with a new section that includes a provision that sets the amount of charge exempt resident supplement at \$0.00 for a care recipient who is on pre-entry leave;
- the *Aged Care (Residential care subsidy – amount of accommodation charge top-up supplement) Determination 2008 (No. 2)*. Schedule 6 repeals section 5 and replaces it with a new section that includes a provision that sets the amount of accommodation charge top-up supplement at \$0.00 for a care recipient who is on pre-entry leave;
- the *Aged Care (Residential Care Subsidy – Amount of Transitional Supplement) Determination 2013 (No. 2)*. Schedule 7 adds a new section 6 to this determination to provide that the amount of transitional supplement payable for a care recipient on pre-entry leave is \$0.00; and
- the *Aged Care (Residential Care Subsidy – Amount of Transitional Accommodation Supplement) Determination 2013 (No. 2)*. Schedule 8 adds a new section 6 to this determination to provide that the amount of transitional accommodation supplement payable for a care recipient on pre-entry leave is \$0.00.

Statement of Compatibility with Human Rights

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

Residential Care Subsidy Amendment (Leave from Care) Determination 2013

The 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 purpose of the *Residential Care Subsidy Amendment (Leave from Care) Determination 2013* (the Amending Determination) is to reduce the amount of basic subsidy and certain supplements paid to an approved provider when a recipient of residential care is on certain types of leave from care. The amount of basic subsidy is reduced to 50% of the full basic subsidy amount after the 28th day of a period of extended hospital leave from a residential care service. The amount of basic subsidy is also reduced to 30% of the full basic subsidy amount for a period of up to 7 days pre-entry leave before a care recipient commences receiving care from a residential care service. In addition, the Amending Determination provides that certain supplements that are payable once an eligible care recipient enters a residential care service are not payable while the care recipient is on pre-entry leave.

Human Rights Implications

The legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. The legislative instrument engages the right of everyone to the enjoyment of the highest attainable standard of physical and mental health by ensuring that, if a care recipient is on leave from a residential care service, the approved provider receives the amount of subsidy to cover the provider's indirect costs during the period of leave. This helps to ensure that the standard of care and services provided to recipients of residential care services is maintained.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living. To the extent that the instrument limits this right by limiting the amount of basic subsidy and supplements payable to an approved provider while a care recipient is on certain types of leave from residential care, the limitation is reasonable and proportionate.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services