



Human Services (Medicare) Amendment (Aged Care) Regulation 2014

Select Legislative Instrument No. 81, 2014

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 12 June 2014

Peter Cosgrove
Governor-General

By His Excellency's Command

Marise Payne
Minister for Human Services

OPC60565 - A

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1 Name of regulation

This regulation is the *Human Services (Medicare) Amendment (Aged Care) Regulation 2014*.

2 Commencement

This regulation commences on 1 July 2014.

3 Authority

This regulation is made under the *Human Services (Medicare) Act 1973*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Human Services (Medicare) Regulations 1975

1 Regulation 3

Insert:

Aged Care Department means the Department administered by the Aged Care Minister.

Aged Care Minister means the Minister administering the Aged Care Act.

Aged Care Secretary means the Secretary of the Aged Care Department.

Aged Care Transitional Act means the *Aged Care (Transitional Provisions) Act 1997*.

2 Regulation 3 (definition of *Health Secretary*)

Repeal the definition.

3 Regulation 5

Repeal the regulation, substitute:

5 Request information relating to payments

It is a prescribed function of the Chief Executive Medicare, on behalf of the Aged Care Secretary, to request an approved provider to give the Chief Executive Medicare information relating to payments made under the Aged Care Act or the Aged Care Transitional Act, in accordance with subsection 9-3(1) of the Aged Care Act.

4 Regulations 6 and 7

Omit “Health Secretary” (wherever occurring), substitute “Aged Care Secretary”.

5 Regulations 9 to 11

Repeal the regulations, substitute:

9 Payment of subsidies

- (1) Subject to subregulation (3), each of the following is a prescribed function of the Chief Executive Medicare:
 - (a) on behalf of the Aged Care Secretary, to perform the functions conferred on the Aged Care Secretary by:
 - (i) Parts 3.1, 3.2 and 3.3 of the Aged Care Act; and
 - (ii) Parts 3.1, 3.2 and 3.3 of the Aged Care Transitional Act;
 - (b) on behalf of the Commonwealth, to make payments of subsidies, and do anything necessary for the purpose of making such payments, in accordance with any of the provisions mentioned in paragraph (a).
- (2) Each of the following is also a prescribed function of the Chief Executive Medicare:
 - (a) to make a record of information obtained in performing a function specified by subregulation (1);
 - (b) to disclose that information to the Aged Care Minister, Aged Care Secretary or an officer of the Aged Care Department for use by that person in the exercise of powers under the Aged Care Act or the Aged Care Transitional Act.
- (3) It is not a prescribed function of the Chief Executive Medicare to do any of the following:
 - (a) approve a form that the Aged Care Secretary is required to approve under:
 - (i) Part 3.1 or 3.2 of the Aged Care Act; or
 - (ii) Part 3.1 or 3.2 of the Aged Care Transitional Act;
 - (b) make a determination under section 42-5 of the Aged Care Act;
 - (c) revoke a determination under section 42-6 of the Aged Care Act;
 - (d) make a determination under:
 - (i) subsection 44-20(5) or (6) of the Aged Care Act; or
 - (ii) subsection 44-20(5) or (6) of the Aged Care Transitional Act;
 - (e) under section 44-20A of the Aged Care Act:
 - (i) require a person to give information or produce a document; or
 - (ii) make a determination;

- (f) perform a function or exercise a power of the Aged Care Minister in relation to the determination or payment of a subsidy under any of the provisions in paragraph (1)(a);
- (g) enter into an agreement in relation to the payment of flexible care subsidy, in accordance with Part 2 of Chapter 4 of the *Subsidy Principles 2014*.

9A Functions relating to financial hardship

- (1) Subject to subregulation (2), each of the following is a prescribed function of the Chief Executive Medicare, to be carried out on behalf of the Aged Care Secretary:
 - (a) to perform the functions conferred on the Aged Care Secretary by Division 52K of the Aged Care Act;
 - (b) to perform the functions conferred on the Aged Care Secretary by sections 57-14 and 57-15 of the Aged Care Transitional Act;
 - (c) to perform the functions conferred on the Aged Care Secretary by sections 57A-9 and 57A-10 of the Aged Care Transitional Act.
- (2) It is not a prescribed function of the Chief Executive Medicare to approve a form that the Aged Care Secretary is required to approve under a provision mentioned in subregulation (1).

10 Notification of start of care

- (1) Each of the following is a prescribed function of the Chief Executive Medicare, to be carried out on behalf of the Aged Care Secretary:
 - (a) to receive notice under subsection 63-1B(2) of the Aged Care Act of a care recipient who enters a residential care service;
 - (b) to receive notice under Division 2 of Part 3 of the *Accountability Principles 2014* of a care recipient who starts to be provided with home care.
- (2) The prescribed functions in subregulation (1) do not include the function of approving the form in which notice is to be given.

11 Reconsideration and review of decisions

Each of the following is a prescribed function of the Chief Executive Medicare, to be carried out on behalf of the Aged Care Secretary:

- (a) to exercise the powers and perform the functions of the Aged Care Secretary under Part 6.1 of the Aged Care Act for a reviewable decision described in any of the following items of the table in section 85-1 of that Act:
 - (i) items 28 to 31;
 - (ii) items 39AA and 39AB;
 - (iii) items 45 to 49B;
 - (iv) items 53 to 53D;
 - (v) items 53F to 53H;
- (b) to exercise the powers and perform the functions of the Aged Care Secretary under Part 6.1 of the Aged Care Transitional Act for a reviewable decision described in any of the following items of the table in section 85-1 of that Act:
 - (i) items 39AA to 41;
 - (ii) items 44 to 46;
 - (iii) items 48 to 53C;
- (c) to act in any legal proceeding that concerns the exercise of powers or performance of functions by the Chief Executive Medicare under paragraph (a) or (b).

6 Regulations 12 and 13

Omit “Health Secretary” (wherever occurring), substitute “Aged Care Secretary”.

7 Paragraph 14(1)(a)

After “Aged Care Act”, insert “or Chapter 3 of the Aged Care Transitional Act”.

8 Paragraph 14(1)(c)

Repeal the paragraph, substitute:

- (c) on behalf of the Aged Care Secretary, to determine to do anything permitted by section 95-6 of the Aged Care Act in relation to a debt or class of debts arising, or an amount of a debt payable, under Chapter 3 of that Act or Chapter 3 of the Aged Care Transitional Act.

9 At the end of paragraph 15(1)(a)

Add “or the Aged Care Transitional Act”.

10 Paragraph 15(1)(b)

Repeal the paragraph, substitute:

- (b) to decide, for section 95-4 of the Aged Care Act, if a recoverable amount (or part of it) should be deducted from one or more other amounts payable under that Act or the Aged Care Transitional Act to a transferee (within the meaning given by section 95-4 of the Aged Care Act);

11 Regulation 16

Before “It is”, insert “(1)”.

12 Regulation 16

Omit “Health Secretary”, substitute “Aged Care Secretary”.

13 At the end of regulation 16

Add:

- (2) It is a prescribed function of the Chief Executive Medicare, on behalf of the Aged Care Secretary, under subsection 96-7(2) of the Aged Care Transitional Act:
 - (a) to receive and consider an applicant’s request to extend a period in which the applicant has been requested to give further information in relation to an application under that Act; and
 - (b) to extend the period if the Chief Executive Medicare considers it appropriate to do so.

14 Subregulations 17(1) and (2)

Repeal the subregulations, substitute:

- (1) This regulation applies if:
 - (a) it is a prescribed function of the Chief Executive Medicare under this Part to perform a function, or exercise a power, of the Aged Care Secretary on behalf of the Aged Care Secretary; and
 - (b) the performance of that function or the exercise of that power by the Aged Care Secretary requires or permits the Aged Care Secretary to act under, or in accordance with, a

provision of any Principles made under section 96-1 of the Aged Care Act or section 96-1 of the Aged Care Transitional Act.

- (2) It is a prescribed function of the Chief Executive Medicare to act on behalf of the Aged Care Secretary under, or in accordance with, the relevant provision of the Principles.

15 Regulation 22

Repeal the regulation.