

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Approval of Care Recipients Principles 2014

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 residents.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act.

Among the Principles made under section 96-1 is the *Approval of Care Recipients Principles 2014* (the Principles).

Part 2.3 of the Act is about the approval of care recipients. A person must be approved to receive either residential care or home care before an approved provider can be paid residential care subsidy or home care subsidy for providing the care. In some cases, approval to receive flexible care is required before flexible care subsidy can be paid.

The Principles deal with:

- eligibility requirements for a person to receive residential, home or flexible care;
- the circumstances in which approvals of a care recipient for one or more types of aged care, may be limited;
- when an approval to receive care will come into effect;
- the lapsing of approvals; and
- transitional arrangements to ensure the appropriate treatment of care recipients who commenced receiving residential care before 1 July 2014 but who did not receive an approval until after 1 July 2014.

From 1 July 2014, these Principles will replace the existing *Approval of Care Recipients Principles 1997*. The new Principles:

- no longer reference high and low residential care, reflecting the removal of this concept from 1 July 2014;
- retain a concept of low and high for residential care provided as respite care;
- remove provisions that relate to the lapsing of an approval for residential care because residential care approvals will not lapse from 1 July 2014;
- remove provisions relating to the entry period for home care because home care approvals will not lapse from 1 July 2014 and as a result, there will no longer be an entry period;
- retain provisions relating to the lapsing of approvals for transition care (a type of flexible care). Approvals for transition care will lapse as eligibility for transition

care is dependent, among other things, on a recent hospital stay. These provisions have also been redrafted to simplify the provisions and improve understanding;

- include minor wording changes to improve the clarity of the Principles; and
- include minor technical amendments to ensure consistency across aged care principles.

The Principles are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

In April 2012, the former Government launched a major program of aged care reforms. The reform agenda was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the consultation on the proposed changes to the Act, and to delegated legislation, arising from the reforms, the former Government communicated its intention to examine the delegated legislation and, where possible, simplify it.

This intent was communicated in November 2012, with the public release of a paper providing an overview of the proposed legislative changes. A video presentation detailing the proposed reforms was also made available online to assist members of the public to understand these changes.

During late 2012 and in the first half of 2013, briefing sessions were held across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. As part of these consultations, the intention to make related changes to delegated legislation was again discussed. For those interested members of the public unable to attend the briefings, the presentation, supporting handouts, a detailed Question and Answer document and an information video were made available online.

During March and April 2014, an exposure draft of these Principles was made available for comment on the Department of Social Services' website, along with an explanatory document entitled *Overview: Proposed changes from 1 July 2014 to the Aged Care Principles made under the Aged Care Act 1997 - April 2014*. Comments on the draft Principles were invited and taken into account in the finalisation of these Principles.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 16682).

Commencement

The Principles commence on 1 July 2014.

Details of the Approval of Care Recipients Principles 2014

Part 1 – Preliminary

Section 1 – Name of principles

This section states that the name of the principles is the *Approval of Care Recipients Principles 2014* (the Principles).

Section 2 – Commencement

This section provides that the Principles commence on 1 July 2014.

Section 3 – Authority

This section provides that the authority under which these Principles are made is section 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 – Definitions

This section defines certain terms used in the Principles.

Act means the *Aged Care Act 1997*.

in-patient hospital episode is defined in section 4 of the *Subsidy Principles 2014* to mean a continuous period during which the care recipient is an in-patient of a hospital and is provided with acute care or subacute care, or both.

transition care is defined in section 4 of the *Subsidy Principles 2014*. In summary, transition care is a type of flexible care provided to a care recipient at the conclusion of an in-patient hospital episode, as a package of services that includes at least low intensity therapy and nursing support or personal care. The transition care is characterised as goal-oriented, time-limited, therapy-focused, targeted towards older people and necessary to complete the care recipient's restorative process.

A number of other expressions used throughout the Principles are defined in Schedule 1 of the Act.

Part 2 – Eligibility to receive care

Section 5 – Purpose of this Part

Sections 21-2, 21-3 and 21-4 of the Act describe when a person is eligible to receive residential care, home care or flexible care. These sections also enable additional criteria to be described in the Approval of Care Recipients Principles.

This section therefore states that, for the purposes of sections 21-2, 21-3 and 21-4 of the Act, this Part specifies additional criteria that must be met in order for care recipients to be eligible to receive residential, home or flexible care.

Section 6 – Residential care

This section provides that, for paragraph 21-2(c) of the Act, a person is eligible to receive residential care only if:

- the person is assessed as having a condition of frailty or disability requiring continuing personal care and being incapable of living in the community without support; and
- for a person who is not an aged person - there are no other care facilities or care services more appropriate to meet the person's needs.

When the Secretary is deciding if a person meets these criteria, the Secretary must consider the person's medical, physical, psychological and social circumstances, including (if relevant) any evidence of:

- a diagnosed medical condition;
- absence or loss of:
 - physical function;
 - cognitive functioning;
 - social functioning; or
- significant risk to a person's life or health if residential care is not received.

Section 7 – Home care

Home care – levels 1 and 2

Subsection 7(1) provides, for paragraph 21-3(c) of the Act, that a person is eligible to receive home care at level 1 or 2 only if:

- the person is assessed as needing care that can only be met by a coordinated package of care services;
- the person is assessed as needing a low level of home care;
- the person would prefer to live at home;
- the person is assessed as being able to continue to live at home with the support of a home care package at level 1 or 2; and
- if the person is not aged - there are no other suitable services or facilities that are more appropriate to meet the person's needs.

Home care – levels 3 and 4

Subsection 7(2) provides, for paragraph 21-3(c) of the Act, that a person is eligible to receive home care at level 3 or 4 only if:

- the person is assessed as needing care that can only be met by a coordinated package of care services;
- the person is assessed as needing a high level of home care;
- the person would prefer to live at home;
- the person is assessed as being able to continue to live at home with the support of a home care package at level 3 or 4; and
- if the person is not aged - there are no other suitable services or facilities that are more appropriate to meet the person's needs.

Section 8 – Flexible care – transition care

This section provides that, for paragraph 21-4(c) of the Act, a person is eligible to receive transition care (which is a form of flexible care) only if the person:

- is assessed in hospital as: being in the final stage of an in-patient hospital episode; being medically stable; and having the potential to benefit from transition care; and

- would be assessed as eligible for residential care if they applied.

Part 3 – Limitation of approvals

Section 9 – Purpose of this Part

Section 22-2 of the Act enables the Secretary to limit approvals in certain circumstances. This section states that, for the purposes of section 22-2 of the Act, Part 3 specifies matters and circumstances that may limit a person's approval as a care recipient of one or more types of aged care.

Section 10 – Residential care provided as respite care

This section provides that a person's approval for residential care may be limited to respite care if this is assessed as appropriate for the person, the person's carer or both. If a person's approval is limited to residential care provided as respite care, the approval may be limited to a high or a low level of residential respite care.

However, if the person is approved for a high level of residential respite care, this does not prevent the person receiving low level residential respite care.

Section 11 – Home care

This section provides that a person's approval for receiving home care may be limited to any of the levels from 1 to 4, with level 4 being the highest and level 1 being the lowest. If a person is approved for a particular level of home care, that approval does not limit the person from receiving home care at a lower level. For example, a person approved to receive level 3 home care would be eligible to receive home care at level 1, level 2 or level 3.

Part 4 – Date of effect of approval

Section 12 – Purpose of this Part

Section 22-5(2)(b) of the Act provides that an approval takes effect on the day on which the Secretary approves the person as a care recipient. However, if an approval is granted after the person actually enters care, the approval is taken to have had effect from the day on which the care started if:

- the application for approval is made within five business days (or such extended time) after the day on which the care started; and
- the Secretary is satisfied, in accordance with the Approval of Care Recipients Principles, that the person urgently needed the care when it started, and that it was not practicable to apply for approval beforehand.

This section states that, for the purposes of the provision, Part 4 sets out how the Secretary may be satisfied that a person urgently received a type of care before being approved for it.

Section 13 – Care provided in emergency circumstances

This section states that if an emergency existed when a person started receiving care, the Secretary may be satisfied that the person urgently needed that type of care.

Part 5 – Lapsing of approval

Section 14 – Purpose of this Part

This section states that Part 5 specifies entry periods for flexible care in the form of transition care and circumstances in which approvals for flexible care in the form of transition care lapses.

Section 15 – Entry period

Section 23-3(1)(a) of the Act provides that a person's approval as a recipient of flexible care lapses if the person is not provided with the care within the entry period specified in the Approval of Care Recipients Principles or if no such period is specified—12 months starting on the day after the approval was given.

This section sets out an alternative lapsing period for a specific type of flexible care, namely transition care.

This section provides that the entry period for a recipient of transition care is four weeks from the day after approval is given under subsection 22-1(2) of the Act.

Section 16 – Circumstances in which approval lapses

Subsection 23-3(3) of the Act states that a person's approval as a recipient of flexible care lapses if the person ceases, in the circumstances specified in the Approval of Care Recipients Principles, to be provided with the care in respect of which he or she is approved.

Section 16 of the Principles states that approval for flexible care provided as transition care lapses if transition care is not provided for at least one day after the four week entry period for the person's approval ends. This means that a person can move between hospital care and transition care as often as required during a period of four weeks beginning on the day after the person is approved to receive transition care, but if the person does not enter transition care within this entry period, or enters transition care during the entry period, and leaves for at least one day after the end of the entry period (for example, because the person is no longer medically stable and needs to return to hospital), the person's eligibility to receive transition care would need to be reassessed before they could continue to receive transition care.

Part 6 – Transitional provisions

Section 17 – Residential care started before 1 July 2014 but approval given after that date

This section applies to a person:

- who started to be provided with residential care (other than residential care provided as respite care) before 1 July 2014; and
- who is approved as a recipient of residential care on or after 1 July 2014; and
- whose approval as a recipient of residential care is taken to have had effect from the day on which the care started because of subsection 22-5(2) of the Act.

For such care recipients, the approval may be limited to a high level of residential care or a low level of residential care (as defined in section 9.3 of the *Classification Principles 1997* as in force immediately before 1 July 2014). However, if the person is approved as a recipient of a high level of residential care, the limitation of the

approval does not prevent the person receiving residential care at any classification level.

In other words, this transitional provision deals with people who enter care before 1 July 2014, but who receive an Aged Care Assessment Team (ACAT) approval after 1 July 2014. For these people to be charged an accommodation bond or an accommodation charge (in accordance with the arrangements that existed before 1 July 2014), the ACAT needs to be able to limit the person's approval to high or low level residential care (because eligibility to pay an accommodation bond or charge is dependent on these concepts). This transitional provision ensures that people in this situation are subject to the same rules as other continuing care recipients.

Statement of Compatibility with Human Rights

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

Approval of Care Recipients Principles 2014

The *Approval of Care Recipients Principles 2014* (the Principles) 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

Part 2.3 of the Act is about the approval of care recipients. A person must be approved to receive either residential care or home care before an approved provider can be paid residential care subsidy or home care subsidy for providing the care. In some cases, approval to receive flexible care is required before flexible care subsidy can be paid.

The Principles deal with:

- eligibility requirements for a person to receive residential, home or flexible care;
- the circumstances in which approvals of a care recipient for one or more types of aged care may be limited;
- when an approval to receive care will come into effect;
- the lapsing of approvals; and
- transitional arrangements to ensure the appropriate treatment of care recipients who commenced receiving residential care before 1 July 2014, but who did not receive an approval until after 1 July 2014.

Human Rights Implications

These Principles are 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.

To the extent that a person's eligibility to receive aged care may be limited to receiving a specified level of care, this limitation is necessary, reasonable and proportionate having due regard to the resources available to support aged care services and the need to consider equity in accessing those resources.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

**Senator the Hon Mitch Fifield
Assistant Minister for Social Services**