

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

*Aged Care Act 1997*

*Quality of Care 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 care recipients.

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 are the *Quality of Care Principles 2014* (the Principles).

These Principles set out the responsibilities of approved providers in providing care and services for residential and home care. The Principles:

- specify the care and services that an approved provider of residential care is to provide;
- set out the Accreditation Standards that must be met by a residential care service to achieve accreditation;
- specify the care and services that an approved provider of home care is to provide; and
- set out the Home Care Standards that a home care provider is expected to meet as a part of quality review.

From 1 July 2014, these Principles will replace the existing *Quality of Care Principles 1997*. The new Principles reflect the outcome of a review of the Schedule of Specified Care and Services for Residential Care Services conducted by the Department of Social Services in consultation with the National Aged Care Alliance. These Principles also reflect the removal of the distinction between high level residential care and low level residential care. This has resulted in changes, including to Schedule 1 which specifies the care and services to be provided in residential care.

In addition, the Principles include minor wording changes to improve the clarity of the Principles, no longer include redundant provisions, and include minor technical amendments to ensure consistency across the 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 April and May 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 Quality of Care Principles 2014**

**Part 1 – Preliminary**

**Section 1 – Name of principles**

This section states that the name of the Principles is the *Quality of Care Principles 2014* (the Principles).

**Section 2 – Commencement**

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

**Section 3 – Authority**

This section provides that the authority for making the Principles 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*.

*ADL domain* is defined in the *Classification Principles 2014* to mean the group of questions in the Answer Appraisal Pack relating to activities of daily living. The Answer Appraisal pack is the 1 July 2014 version of the Aged Care Funding Instrument (ACFI) Answer Appraisal Pack, which consists of a care recipient's ACFI assessment and the required supporting documentation for their classification. The Answer Appraisal Pack may be accessed online at <http://www.dss.gov.au>.

*behaviour domain* is defined in the *Classification Principles 2014* to mean the group of questions in the Answer Appraisal Pack relating to behaviour.

*CHC domain* is defined in the *Classification Principles 2014* to mean the group of questions in the Answer Appraisal Pack relating to complex health care.

*domain* is defined in the *Classification Principles 2014* to mean a collection of questions in the Answer Appraisal Pack relating to daily living activities, behaviour or complex health care.

*domain category* is defined in the *Classification Principles 2014* to mean a domain category mentioned in one of the tables in Schedule 2 of the *Classification Principles 2014*, ranging from nil to high.

*organisation* means the approved provider of an aged care service.

*representative* of a care recipient has the meaning given by section 5.

*service provider* means the approved provider of an aged care service.

**service user** means a care recipient who is being provided with care through an aged care service.

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

### **Section 5 – Meaning of *representative***

This section describes the meaning of the word *representative*, in relation to care recipients. A representative is a person:

- nominated by the care recipient as a person who can be told about matters affecting the safety, health and well-being of a care recipient; or
- who nominates himself or herself as a person to be told about matters affecting a care recipient, provided that the approved provider is satisfied that the person has a connection with the care recipient, and is concerned for the safety, health and well-being of the care recipient.

For the purposes of the definition, a person is considered to have a connection with a care recipient if:

- the person is a partner, close relation or other relative of the care recipient;
- the person holds an enduring power of attorney given by the care recipient;
- the person has been appointed by a State or Territory guardianship board (however described) to deal with the care recipient's affairs; or
- the person represents the care recipient in dealings with the approved provider.

The definition of *representative* recognises the role of informal substitute decision makers as representatives of care recipients in their dealings with approved providers; however, it does not confer on a representative, the powers of a formally appointed substitute decision-maker such as a guardian or financial manager. A note at the end of the section confirms that nothing in the definition is intended to affect the powers of a substitute decision maker appointed under a law of a State or Territory.

## **Part 2 – Residential care services**

### **Division 1 – Responsibilities of approved providers**

#### **Section 6 – Purpose of this Division**

This section states that Division 1 of Part 2 specifies the care and services that must be provided by an approved provider of a residential care service and other responsibilities of a provider in relation to the quality of care provided at the service.

#### **Section 7 – Care and services that must be provided**

This section provides that:

- an approved provider of a residential care service must, for each item in a table in Schedule 1, provide the care or service specified in columns 1 and 2 of Schedule 1 to any care recipient who needs it (including continuing care recipients, that is those care recipients who were in care prior to 1 July 2014); and
- the care and services provided to a care recipient, by an approved provider must meet the Accreditation Standards as specified in Schedule 2.

If the care recipient falls into any of the following classes then the approved provider must not charge the care recipient an additional amount over and above the maximum daily amount of resident fees, for the care and services specified in Schedule 1:

- care recipients whose classification level includes either a high ADL domain category, a high CHC domain category, a high behaviour domain category or a medium domain category in at least two domains;
- a care recipient with a high level residential respite care classification;
- a care recipient with no classification and who is taken to be classified at the lowest applicable classification level;
- a continuing care recipient who was receiving high level residential care on 19 March 2008; or
- a care recipient who on 31 December 2009, was receiving high level residential care and between 1 January 2010 and 30 June 2014, was not eligible to receive a high level of residential care solely because of the amendment to the meaning of high level of residential care in the *Classification Principles 1997*, that commenced on 1 January 2010, and is being provided with residential care through the same residential care service from which he or she was receiving care on 31 December 2009.

If the care recipient does not fall into any of the classes described above, the approved provider must not charge an additional amount, over and above the maximum daily amount of resident fees, for the care and services specified in Part 1 or 2 of Schedule 1, but may charge an additional amount for any care or services specified in Part 3 of Schedule 1 that the care recipient needs. Any additional amount charged for care and services listed in Part 3 must be agreed beforehand with the care recipient and the care recipient must be given an itemised account of the care and services, as required by paragraph 56-1(e) of the Act.

In either case, the maximum daily amount of resident fees is:

- the amount permitted under Division 58 of the *Aged Care (Transitional Provisions) Act 1997* if the care recipient is a continuing care recipient of residential care; or
- otherwise, the amount permitted under Division 52C of the Act.

### **Section 8 – Other responsibilities – fire safety exception notice**

This section provides that if an approved provider is notified by a State, Territory or local government authority that they are not complying with laws in relation to fire safety, the approved provider must give the Secretary a fire safety exception notice.

The fire safety exception notice must:

- be in a form approved by the Secretary;
- include all of the required information; and
- be provided to the Secretary within 28 days of the approved provider receiving the notice from the State, Territory or local government authority.

## **Division 2 – Accreditation Standards**

### **Section 9 – Purpose of this Division**

Section 9 states that Division 2 of Part 2 provides for Accreditation Standards, which are standards for quality of care and quality of life that must be met by residential care providers.

### **Section 10 – Accreditation Standards**

This section states that Schedule 2 specifies the Accreditation Standards.

The matters that are dealt with in the Accreditation Standards include:

- management systems, staffing and organisational development (Part 1 of Schedule 2);
- health and personal care (Part 2 of Schedule 2);
- care recipient lifestyle (Part 3 of Schedule 2); and
- physical environment and safe systems (Part 4 of Schedule 2).

The accreditation standard for a matter consists of:

- the Principle for the matter as set out in the relevant Part of Schedule 2; and
- the expected outcome for each matter as specified in the table of the relevant Part of Schedule 2.

### **Section 11 – Application of Accreditation Standards**

This section outlines how the Accreditation Standards are to be applied in a residential care service. The Accreditation Standards:

- are intended to provide a structured approach to the management of quality and represent clear statements of expected performance;
- do not provide an instruction or recipe for satisfying expectations but, rather, opportunities to pursue quality in ways that best suit the characteristics of each individual residential care service and the needs of its care recipients. It is not expected that all residential care services should respond to a standard in the same way; and
- apply equally for the benefit of each care recipient, irrespective of the care recipient's financial status, applicable fees and charges, amount of residential care subsidy payable, agreements entered into, or any other matter.

## **Part 3 – Home care services**

### **Division 1 – Responsibilities of approved providers**

#### **Section 12 – Purpose of this Division**

This section states that Division 1 of Part 3 specifies the care and services that may be provided by an approved provider of home care, to a care recipient.

#### **Section 13 – Care and services that may be provided**

This section provides that:

- an approved provider of home care must provide a package of care and services selected from the care and services specified in Part 1 of Schedule 3;

- the care recipient and the approved provider may agree to include in the package of care and services additional care and services to support the care recipient to live at home, provided that the additional care and services are able to be provided within resource limits, and the item is not excluded by Part 2 of Schedule 3. This provides significant flexibility for the care recipient and the approved provider to agree on individualised package of care and services;
- if agreed to by the care recipient and the approved provider, the package of care and services may be used to support the use of telehealth and digital technology;
- the care and services provided to a care recipient by an approved provider must be consistent with the care needs identified in the care plan in accordance with table item 2.3 of clause 2 of the Home Care Common Standards set out in Schedule 4. This table item requires that each service user and/or their representative, participates in the development of a care/service plan that is based on assessed needs and is provided with the care and/or services described in their plan; and
- the care and services must be provided in a way that meets the Home Care Common Standards specified in Schedule 4.

## **Division 2 – Home Care Standards**

### **Section 14 – Purpose of this Division**

This section states that Division 2 of Part 3 provides for Home Care Standards which are standards for the quality of care and quality of life that are to be met in the provision of home care.

### **Section 15 – Home Care Standards**

This section states that the Home Care Standards are the Home Care Common Standards as set out in Schedule 4. They are referred to as the ‘common’ standards because they were developed jointly by the Australian Government and the State and Territory Governments to apply to a number of community care programs from 1 March 2011.

The following matters are dealt with in the Home Care Common Standards:

- effective management (Part 1 of Schedule 4);
- appropriate access and service delivery (Part 2 of Schedule 4); and
- service user rights and responsibilities (Part 3 of Schedule 4).

The home care standard for a matter consists of:

- the Principle for the matter as set out in the relevant Part of Schedule 4; and
- the expected outcome for each matter indicator for the matter as set out in the table in the relevant Part of Schedule 4.

### **Schedule 1 – Care and services for residential care services**

This Schedule describes:

- the hotel services that are to be provided to all residential care recipients who need them (Part 1 of Schedule 1);
- the care and services that are to be provided to all residential care recipients who need them (Part 2 of Schedule 1); and

- other care and services that are to be provided to all residential care recipients who need them, but for which certain care recipients may be charged an additional fee (Part 3 of Schedule 1).

## **Schedule 2 – Accreditation Standards**

This Schedule describes the Accreditation Standards.

There are four Standards:

- Standard one – Management systems, staffing and organisational development;
- Standard two – Health and personal care;
- Standard three – Care recipient lifestyle; and
- Standard four – Physical environment and safe systems.

Each Standard consists of a principle and a number of expected outcomes. Standard one also has an ‘intention’ which indicates it acts as the umbrella for the other three Standards.

There are 44 expected outcomes across the four Standards. Residential care services must comply with all 44 expected outcomes at all times.

## **Schedule 3 – Care and services for home care services**

Part 1 of this Schedule outlines the range of care and services available to be provided to a care recipient under a home care package in relation to care, support and clinical services.

Care services include personal care, services relating to activities of daily living, nutrition, hydration, meal preparation and diet, management of skin integrity, continence management, and mobility and dexterity.

Support services include additional support services for the care recipient for example cleaning and transport as well as services related to a person’s leisure, interests and activities.

Clinical services include services related to clinical care, for example nursing, allied health and therapy services such as speech therapy, podiatry, occupational or physiotherapy services and access to other health and related services.

Part 2 outlines the items that must not be included in a package of care and services provided under home care. These include:

- use of the package funds as a source of general income for the care recipient;
- purchase of food, except as part of enteral feeding requirements;
- payment for permanent accommodation, including assistance with home purchase, mortgage payments or rent;
- payment of home care fees;
- payment of fees or charges for other types of care funded or jointly funded by the Australian Government;
- home modifications or capital items that are not related to the care recipient’s care needs;



- travel and accommodation for holidays;
- cost of entertainment activities, such as club memberships and tickets to sporting events;
- gambling activities; and
- payment for services and items covered by the Medicare Benefits Schedule or the Pharmaceutical Benefits Scheme.

#### **Schedule 4 – Home Care Common Standards**

In relation to the provision of home care:

- Part 1 of this Schedule specifies the standards relating to effective management;
- Part 2 specifies the standards relating to appropriate access and service delivery; and
- Part 3 specifies the standards relating to the rights and responsibilities of service users.

## Statement of Compatibility with Human Rights

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

### **Quality of Care Principles 2014**

The *Quality of Care 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 4.1 of the Act is about the responsibilities of approved providers for the quality of the aged care they provide through their aged care service.

These Principles set out the responsibilities of approved providers in providing care and services for residential and home care. The Principles:

- specify the care and services that an approved provider of residential aged care is to provide;
- set out the Accreditation Standards that must be met by a residential care service to achieve accreditation;
- specify the care and services that an approved provider of home care is to provide; and
- set out the Home Care Standards that a home care provider is expected to meet as a part of quality review.

### **Human Rights Implications**

The 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. The Principles specify the care and services that approved providers of residential aged care must provide to all care recipients who need them. The Principles also specify the range of care and services that may be included in the package of care and services that an approved provider of home care must provide to care recipients. In addition, the Principles set out quality standards against which the care and services provided to recipients of residential aged care and home care are audited by the Australian Aged Care Quality Agency in accordance with the *Quality Agency Principles 2013* made under the *Australian Aged Care Quality Agency Act 2013*.

### **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**