
Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Allocation of short-term restorative care places		2
<i>Allocation Principles 2014</i>		2
Part 2—Approval of care recipients		4
<i>Approval of Care Recipients Principles 2014</i>		4
<i>Subsidy Principles 2014</i>		5
Part 3—Care and services to be provided		7
<i>Quality of Care Principles 2014</i>		7
Part 4—Payment of flexible care subsidy		18
<i>Subsidy Principles 2014</i>		18
Part 5—Approved provider responsibilities		22
<i>Accountability Principles 2014</i>		22
<i>Quality Agency Principles 2013</i>		23
<i>Quality Agency Reporting Principles 2013</i>		32
<i>User Rights Principles 2014</i>		35

1 Name

These are the *Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	6 May 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Aged Care Act 1997*;
- (b) the *Australian Aged Care Quality Agency Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Part 1—Allocation of short-term restorative care places

Allocation Principles 2014

1 Section 4

Insert:

flexible care agreement has the meaning given by section 4 of the *User Rights Principles 2014*.

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

STRC Programme has the meaning given by section 4 of the *Subsidy Principles 2014*.

2 Section 27

Omit “residential care subsidy or home care subsidy”, substitute “a particular type of subsidy”.

3 Subsection 28(1)

Omit “The Secretary”, substitute “For an allocation of places in respect of residential care subsidy or home care subsidy, the Secretary”.

4 After subsection 28(1)

Insert:

- (1A) For an allocation of places in respect of flexible care subsidy for short-term restorative care, the Secretary must consider the following matters:
- (a) the applicant’s demonstrated experience in delivering restorative care that would meet the objectives of the STRC Programme and ensure appropriate outcomes for care recipients;
 - (b) if the applicant has been a provider of aged care—whether the applicant has complied with its responsibilities as a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care;
 - (c) the model of service delivery that the applicant proposes to adopt in order to meet the objectives of the STRC Programme, including:
 - (i) how the applicant proposes to effectively engage with prospective care recipients, and their carers (if any), to prepare flexible care agreements for the care recipients; and
 - (ii) how the applicant proposes to utilise the connections it has to the community in which it proposes to provide short-term restorative care (including connections to primary care and other service providers)

- and how these connections will support a multi-disciplinary approach to care delivery; and
- (iii) how the applicant proposes to deliver short-term restorative care in a home care setting or a residential care setting, or both a home care setting and a residential care setting; and
 - (iv) how the applicant proposes to transition care recipients between care settings.

5 Subsection 28(2)

After “(e)”, insert “and (1A)(b)”.

6 Sections 29 and 30

Omit “The Secretary”, substitute “For an allocation of places in respect of residential care subsidy or home care subsidy, the Secretary”.

7 Section 31

Omit “The Secretary”, substitute “For an allocation of places in respect of residential care subsidy, home care subsidy or flexible care subsidy for short-term restorative care, the Secretary”.

8 Section 73

Repeal the section, substitute:

73 Purpose of this Division

This Division specifies:

- (a) for subsection 18-5(1) of the Act—the period for which the allocation of a place in respect of flexible care subsidy for short-term restorative care may remain unused before being revoked; and
- (b) for paragraph 18-5(3)(b) of the Act—the matters that the Secretary must consider in deciding whether to revoke the allocation of a place to an approved provider.

73A Period after which allocation may be revoked—allocations in respect of flexible care subsidy for short-term restorative care

For subsection 18-5(1) of the Act, the Secretary may revoke the allocation of the place under that subsection if:

- (a) the allocation is in respect of flexible care subsidy for short-term restorative care; and
- (b) the approved provider to whom the place is allocated has not, for a continuous period of 6 months, provided short-term restorative care in respect of the place.

Part 2—Approval of care recipients

Approval of Care Recipients Principles 2014

9 Section 4

Insert:

Commonwealth home care package means a package of care and services in respect of which home care subsidy is payable.

episode of short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

multi-purpose service has the meaning given by section 4 of the *Subsidy Principles 2014*.

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

10 At the end of Part 2

Add:

8A Flexible care—short-term restorative care

For paragraph 21-4(c) of the Act, a person is eligible to receive flexible care in the form of a single episode of short-term restorative care (the *proposed episode*) only if:

- (a) the person is assessed as experiencing functional decline that is likely to be reversed or slowed through short-term restorative care; and
- (b) the person is at risk of losing independence to such a degree that, without short-term restorative care, it is likely that the person will require home care, residential care or flexible care provided through a multi-purpose service; and
- (c) the person is not receiving residential care, home care through a Commonwealth home care package or flexible care in the form of transition care; and
- (d) the person is not on leave from a residential care service or a flexible care service through which the person is receiving flexible care in the form of transition care; and
- (e) the person would not be assessed as eligible to receive flexible care in the form of transition care if the person applied for flexible care in the form of transition care; and
- (f) the person has not, at any time during the 6 months before the date of assessment, received flexible care in the form of transition care; and
- (g) the person has not, at any time during the 3 months before the date of assessment, been hospitalised for a condition related to the functional decline mentioned in paragraph (a); and
- (h) the person is not receiving end of life care; and
- (i) in receiving the proposed episode, the person will not have received more than 2 episodes of short-term restorative care in any 12 month period.

11 Paragraph 14(a)

After “transition care”, insert “and flexible care in the form of short-term restorative care”.

12 Paragraph 14(b)

After “transition care”, insert “, or flexible care in the form of short-term restorative care,”.

13 Section 15

Before “For”, insert “(1)”.

14 At the end of section 15

Add:

- (2) For paragraph 23-3(1)(a) of the Act, the entry period for a person who is approved as a recipient of flexible care in the form of an episode of short-term restorative care is 6 months beginning on the day after the approval is given under subsection 22-1(2) of the Act.

15 Subsection 16(2)

Repeal the subsection, substitute:

- (2) For subsection 23-3(3) of the Act, the approval of a person as a recipient of flexible care in the form of an episode of short-term restorative care lapses if:
 - (a) the episode of short-term restorative care ends; or
 - (b) both of the following apply:
 - (i) for a period (the *non-care period*) of at least 1 day after the entry period for the person’s approval ends, the person is not provided with the care in respect of which the person is approved;
 - (ii) the provision of care to the person was not suspended in accordance with subsections 111C(3) to (5) of the *Subsidy Principles 2014* for each day in the non-care period.
- (3) In this section:

entry period, for a person’s approval, means:

 - (a) if the person is approved as a recipient of flexible care in the form of transition care—the entry period specified in subsection 15(1); or
 - (b) if the person is approved as a recipient of flexible care in the form of short-term restorative care—the entry period specified in subsection 15(2).

Subsidy Principles 2014

16 Before Part 1 of Chapter 2

Insert:

Part 1A—Meaning of residential care

7A Purpose of this Part

For paragraph 41-3(2)(d) of the Act, this Part specifies care that is not residential care.

7B Care that is not residential care

For paragraph 41-3(2)(d) of the Act, flexible care in the form of short-term restorative care is not residential care.

17 Before Part 1 of Chapter 3

Insert:

Part 1A—Meaning of home care

70A Purpose of this Part

For paragraph 45-3(2)(b) of the Act, this Part specifies care that does not constitute home care.

70B Care that does not constitute home care

For paragraph 45-3(2)(b) of the Act, flexible care in the form of short-term restorative care does not constitute home care.

Part 3—Care and services to be provided

Quality of Care Principles 2014

18 Section 4

Insert:

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

19 After Part 3

Insert:

Part 4—Certain flexible care services

Division 1—Responsibilities of approved providers of short-term restorative care

15A Purpose of this Division

For paragraph 54-1(1)(a) of the Act, this Division specifies the care and services that an approved provider of flexible care in the form of short-term restorative care may provide to a care recipient.

15B Care and services that may be provided in a residential care setting

- (1) This section applies in relation to an approved provider of flexible care in the form of short-term restorative care if the care is provided in a residential care setting.
- (2) The approved provider must, for each item in a table in Part 1 of Schedule 5, provide the care or service specified in column 1 of the item to any care recipient who needs it.
- (3) The content of the care or service specified in column 1 of the item consists of the matter specified in column 2 of the item.
- (4) The care and services must be consistent with the care recipient's care needs identified in the care plan developed for the care recipient in accordance with the Flexible Care Standards for short-term restorative care set out in section 15E.
- (5) The care and services must be provided by the approved provider in a way that meets the Flexible Care Standards for short-term restorative care set out in section 15E.

15C Care and services that may be provided in a home care setting

- (1) This section applies in relation to an approved provider of flexible care in the form of short-term restorative care if the care is provided in a home care setting.
- (2) The approved provider must provide a package of care and services selected from the care and services specified in Division 1 of Part 2 of Schedule 5.
- (3) The package of care and services must not include an item specified in Division 2 of Part 2 of Schedule 5 as an excluded item.
- (4) The care and services must be consistent with the care recipient's care needs identified in the care plan developed for the care recipient in accordance with the Flexible Care Standards for short-term restorative care set out in section 15F.
- (5) The care and services must be provided by the approved provider in a way that meets the Flexible Care Standards for short-term restorative care set out in section 15F.

Division 2—Flexible care standards for short-term restorative care

15D Purpose of this Division

For section 54-5 of the Act, this Division provides for Flexible Care Standards for flexible care in the form of short-term restorative care.

15E Flexible Care Standards for short-term restorative care in a residential care setting

- (1) This section applies in relation to an approved provider of flexible care in the form of short-term restorative care if the care is provided in a residential care setting.
- (2) The Flexible Care Standards are the Accreditation Standards specified in Schedule 2 that would apply if the short-term restorative care were residential care provided through a residential care service.
- (3) For this purpose, the Accreditation Standards specified in Schedule 2 apply as if:
 - (a) a reference to residential care were a reference to short-term restorative care; and
 - (b) a reference to the residential care service were a reference to the flexible care service.

15F Flexible Care Standards for short-term restorative care in a home care setting

- (1) This section applies in relation to an approved provider of flexible care in the form of short-term restorative care if the care is provided in a home care setting.
- (2) The Flexible Care Standards are the Home Care Standards specified in Schedule 4 that would apply if the short-term restorative care were home care provided through a home care service.
- (3) For this purpose, the Home Care Standards specified in Schedule 4 apply as if a reference to home care were a reference to short-term restorative care.

20 At the end of the principles

Add:

Schedule 5—Care and services for short-term restorative care

Note 1: See sections 15B and 15C.

Note 2: The care and services specified in this Schedule are to be provided in a way that meets the Flexible Care Standards set out in section 15E or 15F (as applicable).

Part 1—Care and services that may be provided in a residential care setting

Division 1—Hotel services—to be provided for all care recipients who need them

1 Hotel services—for all care recipients who need them

The following table specifies the hotel services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting.

Hotel services—to be provided for all care recipients who need them		
Item	Column 1 Service	Column 2 Content
1.1	Administration	General operation of the flexible care service, including documentation relating to care recipients.
1.2	Maintenance of buildings and grounds	Adequately maintained buildings and grounds.
1.3	Accommodation	Utilities such as electricity and water.
1.4	Furnishings	Bedside lockers, chairs with arms, containers for personal laundry, dining, lounge and recreational furnishings, draw-screens (for shared rooms), wardrobe space and towel rails. Excludes furnishings a care recipient chooses to provide.
1.5	Bedding	Beds and mattresses, bed linen, blankets, and absorbent or waterproof sheeting.
1.6	Cleaning services, goods and facilities	Cleanliness and tidiness of the entire flexible care service. Excludes a care recipient's personal area if the care recipient chooses and is able to maintain this himself or herself.
1.7	Waste disposal	Safe disposal of organic and inorganic waste material.
1.8	General laundry	Heavy laundry facilities and services, and personal laundry services, including laundering of clothing that can be machine washed. Excludes cleaning of clothing requiring dry cleaning or another special cleaning process, and personal laundry if a care recipient chooses and is able to do this himself or

Schedule 1 Amendments

Part 3 Care and services to be provided

Hotel services—to be provided for all care recipients who need them		
Item	Column 1 Service	Column 2 Content
		herself.
1.9	Toiletry goods	Bath towels, face washers, soap, toilet paper, tissues, toothpaste, toothbrushes, denture cleaning preparations, mouthwashes, moisturiser, shampoo, conditioner, shaving cream, disposable razors and deodorant.
1.10	Meals and refreshments	(a) Meals of adequate variety, quality and quantity for each care recipient, served each day at times generally acceptable to both care recipients and management, and generally consisting of 3 meals per day plus morning tea, afternoon tea and supper; (b) Special dietary requirements, having regard to either medical need or religious or cultural observance; (c) Food, including fruit of adequate variety, quality and quantity, and non-alcoholic beverages, including fruit juice.
1.11	Care recipient social activities	Programs to encourage care recipients to take part in social activities that promote and protect their dignity, and to take part in community life outside the flexible care service.
1.12	Emergency assistance	At least one responsible person is continuously on call and in reasonable proximity to render emergency assistance.

Division 2—Care and services—to be provided for all care recipients who need them

2 Care and services—for all care recipients who need them

The following table specifies the care and services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting.

Care and services—to be provided for all care recipients who need them		
Item	Column 1 Care or service	Column 2 Content
2.1	Daily living activities assistance	<p>Personal assistance, including individual attention, individual supervision, and physical assistance, with the following:</p> <ul style="list-style-type: none"> (a) bathing, showering, personal hygiene and grooming; (b) maintaining continence or managing incontinence, and using aids and appliances designed to assist continence management; (c) eating and eating aids, and using eating utensils and eating aids (including actual feeding if necessary); (d) dressing, undressing, and using dressing aids; (e) moving, walking, wheelchair use, and using devices and appliances designed to aid mobility, including the fitting of artificial limbs and other personal mobility aids; (f) communication, including to address difficulties arising from impaired hearing, sight or speech, or lack of common language (including fitting sensory communication aids), and checking hearing aid batteries and cleaning spectacles. <p>Excludes hairdressing.</p>
2.2	Meals and refreshments	Special diet not normally provided.
2.3	Emotional support	Emotional support to, and supervision of, care recipients.
2.4	Treatments and procedures	<p>Treatments and procedures that are carried out according to the instructions of a health professional or a person responsible for assessing a care recipient's personal care needs, including supervision and physical assistance with taking medications, and ordering and reordering medications, subject to requirements of State or Territory law.</p> <p>Includes bandages, dressings, swabs and saline.</p>
2.5	Recreational therapy	Recreational activities suited to care recipients, participation in the activities, and communal recreational equipment.
2.6	Rehabilitation support	Individual therapy programs designed by health professionals that are aimed at maintaining or restoring a care recipient's ability to perform daily tasks for himself or herself, or assisting care recipients to obtain access to such programs.
2.7	Assistance in obtaining health practitioner services	Arrangements for aural, community health, dental, medical, psychiatric and other health practitioners to visit care recipients, whether the arrangements are made by care recipients, relatives or other persons representing the interests of care recipients, or are made direct with a health practitioner.
2.8	Assistance in obtaining access to specialised therapy services	Making arrangements for speech therapists, podiatrists, occupational or physiotherapy practitioners to visit care recipients, whether the arrangements are made by care recipients, relatives or other persons representing the interests of care recipients.
2.9	Support for care recipients with cognitive	Individual attention and support to care recipients with cognitive impairment (for example, dementia and behavioural disorders), including individual therapy activities and specific

Schedule 1 Amendments

Part 3 Care and services to be provided

Care and services—to be provided for all care recipients who need them

Item	Column 1 Care or service	Column 2 Content
	impairment	programs designed and carried out to prevent or manage a particular condition or behaviour and to enhance the quality of life and care for such care recipients and ongoing support (including specific encouragement) to motivate or enable such care recipients to take part in general activities of the residential care service.

Division 3—Care and services—to be provided for all care recipients who need them—fees may apply

3 Care and services—for all care recipients who need them—fees may apply

The following table specifies the care and services that an approved provider of short-term restorative care must provide for all care recipients who need them, if the short-term restorative care is provided in a residential care setting.

Care and services—to be provided for all care recipients who need them

Item	Column 1 Care or service	Column 2 Content
3.1	Furnishings	Over-bed tables.
3.2	Bedding materials	Bed rails, incontinence sheets, ripple mattresses, sheepskins, tri-pillows, and water and air mattresses appropriate to each care recipient's condition.
3.3	Goods to assist care recipients to move themselves	Crutches, quadruped walkers, walking frames, walking sticks, and wheelchairs. Excludes motorised wheelchairs and custom made aids.
3.4	Goods to assist staff to move care recipients	Mechanical devices for lifting care recipients, stretchers, and trolleys.
3.5	Goods to assist with toileting and incontinence management	Absorbent aids, commode chairs, disposable bed pans and urinal covers, disposable pads, over-toilet chairs, shower chairs and urodomes, catheter and urinary drainage appliances, and disposable enemas.

Care and services—to be provided for all care recipients who need them		
Item	Column 1 Care or service	Column 2 Content
3.6	Nursing services	<p>Initial assessment and care planning carried out by a nurse practitioner or registered nurse, and ongoing management and evaluation carried out by a nurse practitioner, registered nurse or enrolled nurse acting within their scope of practice.</p> <p>Nursing services carried out by a nurse practitioner, registered nurse or enrolled nurse, or other professional appropriate to the service (for example, medical practitioner, stoma therapist, speech pathologist, physiotherapist or qualified practitioner from a palliative care team), acting within their scope of practice.</p> <p>Services may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> (a) establishment and supervision of a complex pain management or palliative care program, including monitoring and managing any side effects; (b) insertion, care and maintenance of tubes, including intravenous and naso-gastric tubes; (c) establishing and reviewing a catheter care program, including the insertion, removal and replacement of catheters; (d) establishing and reviewing a stoma care program; (e) complex wound management; (f) insertion of suppositories; (g) risk management procedures relating to acute or chronic infectious conditions; (h) special feeding for care recipients with dysphagia (difficulty with swallowing); (i) suctioning of airways; (j) tracheostomy care; (k) enema administration; (l) oxygen therapy requiring ongoing supervision because of a care recipient's variable need; (m) dialysis treatment.
3.7	Therapy services, such as, recreational, speech therapy, podiatry, occupational, and physiotherapy services	<ul style="list-style-type: none"> (a) Maintenance therapy delivered by health professionals, or care staff as directed by health professionals, designed to maintain care recipients' levels of independence in activities of daily living; (b) More intensive therapy delivered by health professionals, or care staff as directed by health professionals, on a temporary basis that is designed to allow care recipients to reach a level of independence at which maintenance therapy will meet their needs. <p>Excludes intensive, long-term rehabilitation services required following, for example, serious illness or injury, surgery or trauma.</p>

Part 2—Care and services that may be provided in a home care setting

Division 1—Care and services that may be provided

4 Care services

The following table specifies the care services that an approved provider of short-term restorative care may provide if the care is provided in a home care setting.

Care services		
Item	Column 1 Service	Column 2 Content
4.1	Personal services	Personal assistance, including individual attention, individual supervision and physical assistance, with: <ul style="list-style-type: none"> (a) bathing, showering including providing shower chairs if necessary, personal hygiene and grooming, dressing and undressing, and using dressing aids; and (b) toileting; and (c) dressing and undressing; and (d) mobility; and (e) transfer (including in and out of bed).
4.2	Activities of daily living	Personal assistance, including individual attention, individual supervision and physical assistance, with communication including assistance to address difficulties arising from impaired hearing, sight or speech, or lack of common language, assistance with the fitting of sensory communication aids, checking hearing aid batteries, cleaning spectacles and assistance in using the telephone.
4.3	Nutrition, hydration, meal preparation and diet	Includes: <ul style="list-style-type: none"> (a) assistance with preparing meals; and (b) assistance with special diet for health, religious, cultural or other reasons; and (c) assistance with using eating utensils and eating aids and assistance with actual feeding, if necessary; and (d) providing enteral feeding formula and equipment.
4.4	Management of skin integrity	Includes providing bandages, dressings, and skin emollients.
4.5	Continence management	Includes: <ul style="list-style-type: none"> (a) assessment for and, if required, providing disposable pads and absorbent aids, commode chairs, bedpans and urinals, catheter and urinary drainage appliances and enemas; and (b) assistance in using continence aids and appliances and managing continence.
4.6	Mobility and dexterity	Includes: <ul style="list-style-type: none"> (a) providing crutches, quadruped walkers, walking frames, walking sticks and wheelchairs; and (b) providing mechanical devices for lifting, bed rails, slide

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- sheets, sheepskins, tri-pillows, and pressure relieving mattresses; and
(c) assistance in using the above aids.
-

5 Support services

The following table specifies the support services that an approved provider of short-term restorative care may provide if the care is provided in a home care setting.

Support services		
Item	Column 1 Service	Column 2 Content
5.1	Support services	<p>Includes:</p> <ul style="list-style-type: none"> (a) cleaning; and (b) personal laundry services, including laundering of care recipient's clothing and bedding that can be machine-washed, and ironing; and (c) arranging for dry-cleaning of care recipient's clothing and bedding that cannot be machine-washed; and (d) gardening; and (e) medication management; and (f) rehabilitative support, or helping to access rehabilitative support, to meet a professionally determined therapeutic need; and (g) emotional support including ongoing support in adjusting to a lifestyle involving increased dependency and assistance for the care recipient and carer, if appropriate; and (h) support for care recipients with cognitive impairment, including individual therapy, activities and access to specific programs designed to prevent or manage a particular condition or behaviour, enhance quality of life and provide ongoing support; and (i) providing 24-hour on-call access to emergency assistance including access to an emergency call system if the care recipient is assessed as requiring it; and (j) transport and personal assistance to help the care recipient shop, visit health practitioners or attend social activities; and (k) respite care; and (l) home maintenance, reasonably required to maintain the home and garden in a condition of functional safety and provide an adequate level of security; and (m) modifications to the home, such as easy access taps, shower hose or bath rails; and (n) assisting the care recipient, and the homeowner if the homeowner is not the care recipient, to access technical advice on major home modifications; and (o) advising the care recipient on areas of concern in their home that pose safety risks and ways to mitigate the risks; and (p) arranging social activities and providing or coordinating transport to social functions, entertainment activities and other out-of-home services; and

Schedule 1 Amendments

Part 3 Care and services to be provided

Support services		
Item	Column 1 Service	Column 2 Content
		(q) assistance to access support services to maintain personal affairs.
5.2	Leisure, interests and activities	Includes encouragement to take part in social and community activities that promote and protect the care recipient's lifestyle, interests and wellbeing.

6 Clinical services

The following table specifies the clinical services that an approved provider of short-term restorative care may provide if the care is provided in a home care setting.

Clinical services		
Item	Column 1 Service	Column 2 Content
6.1	Clinical care	Includes: (a) nursing, allied health and therapy services such as speech therapy, podiatry, occupational or physiotherapy services; and (b) other clinical services such as hearing and vision services.
6.2	Access to other health and related services	Includes referral to health practitioners or other related service providers.

Division 2—Excluded care and services

7 Items that must not be included in package of care and services

The following table specifies the items that must not be included in the package of care and services provided under section 15C.

Excluded items		
Item	Column 1	Column 2
7.1	Excluded items	The following items must not be included in the package of care and services provided under section 15C: (a) use of the package funds as a source of general income for the care recipient; (b) purchase of food, except as part of enteral feeding requirements; (c) payment for permanent accommodation, including assistance with home purchase, mortgage payments or rent; (d) payment of flexible care fees; (e) payment of fees or charges for other types of care funded or jointly funded by the Australian Government; (f) home modifications or capital items that are not related to the

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- care recipient's care needs;
 - (g) travel and accommodation for holidays;
 - (h) cost of entertainment activities, such as club memberships and tickets to sporting events;
 - (i) gambling activities;
 - (j) payment for services and items covered by the Medicare Benefits Schedule or the Pharmaceutical Benefits Scheme.
-

Part 4—Payment of flexible care subsidy

Subsidy Principles 2014

21 Section 4

Insert:

episode of short-term restorative care: see section 111C.

home care setting: short-term restorative care is provided in a *home care setting* if it is provided other than in a facility where residential care is provided through a residential care service.

payment period, in relation to flexible care provided as short-term restorative care, means a period under section 111B in respect of which flexible care subsidy is payable in respect of flexible care provided as short-term restorative care.

residential care setting: short-term restorative care is provided in a *residential care setting* if it is provided in a facility where residential care is provided through a residential care service.

short-term restorative care: see section 106A.

STRC Programme means the program administered by the Commonwealth and known as the Short-term Restorative Care Programme.

22 At the end of section 103

Add:

; (d) flexible care provided as short-term restorative care.

23 At the end of Division 3 of Part 1 of Chapter 4

Add:

106A Short-term restorative care

Short-term restorative care is a form of flexible care that:

- (a) is aimed at reversing or slowing functional decline in older people through the provision of a package of care and services designed for, and approved by, the care recipient who is to receive the care and services; and
- (b) depending on the needs of the care recipient, is provided in either or both of the following settings:
 - (i) a residential care setting;
 - (ii) a home care setting; and
- (c) can be characterised as:
 - (i) goal-oriented; and
 - (ii) multidisciplinary; and
 - (iii) time-limited.

24 Section 107

Repeal the section, substitute:

Division 1—Purpose of this Part

107 Purpose of this Part

For Division 51 of the Act, this Part deals with the basis on which flexible care subsidy may be paid, including the following:

- (a) the periods in which flexible care subsidy is payable;
- (b) for flexible care subsidy in respect of flexible care provided as short-term restorative care:
 - (i) the payment of flexible care subsidy in advance; and
 - (ii) the way in which claims for flexible care subsidy are to be made;
- (c) other matters relating to the payment of flexible care subsidy.

Division 2—Flexible care provided through a multi-purpose service

25 Before section 110

Insert:

Division 3—Flexible care provided through an innovative care service

26 Before section 111

Insert:

Division 4—Flexible care provided as transition care

27 At the end of Part 2 of Chapter 4

Add:

Division 5—Flexible care provided as short-term restorative care

111A Periods in respect of which flexible care subsidy is payable

- (1) Flexible care subsidy in respect of flexible care provided by an approved provider as short-term restorative care is payable to the approved provider in respect of each payment period during which the approved provider is eligible under this section. However, it is not payable in respect of any days during that period on which the approved provider is not eligible.
- (2) Flexible care subsidy is separately payable in respect of each flexible care service through which an approved provider provides flexible care as short-term restorative care.
- (3) An approved provider is eligible for flexible care subsidy if the approved provider provides short-term restorative care to an approved care recipient in accordance with an agreed care plan.

Note: The amount of flexible care subsidy that is payable in respect of a day is the amount determined by the Minister in writing under paragraph 52-1(1)(a) of the Act.

- (4) The maximum number of days for which flexible care subsidy is payable in respect of an episode of short-term restorative care that the approved provider provides to the care recipient is 56 days.

111B Meaning of *payment period*

For flexible care subsidy in respect of flexible care provided as short-term restorative care, a *payment period* is a calendar month.

111C Meaning of *episode of short-term restorative care*

- (1) An *episode of short-term restorative care* consists of a period during which an approved provider provides a care recipient with flexible care in the form of short-term restorative care.
- (2) The period must be:
 - (a) continuous; or
 - (b) broken only by 1 or more days for which the provision of the care is suspended in accordance with subsections (3) to (5).
- (3) The care recipient may request the approved provider to suspend the provision of short-term restorative care on a temporary basis for one or more days (specified in the request) during the episode of short-term restorative care if, on that day or those days, the care recipient will be absent overnight from the residential care setting or home care setting where the short-term restorative care is being provided.
- (4) The approved provider must comply with the request.
- (5) However, the provision of short-term restorative care must not be suspended during an episode of short-term restorative care on more than a total of 7 days.

111D Payments of flexible care subsidy in advance

- (1) Subject to subsection (2), flexible care subsidy in respect of flexible care provided as short-term restorative care is payable in advance, in respect of a payment period, at such times as the Secretary thinks fit.
- (2) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of the first payment period for a flexible care service by estimating the amount of flexible care subsidy that will be payable for the days in that period and in the following payment period.
- (3) The Secretary must work out the amount of an advance to be paid to an approved provider in respect of subsequent payment periods for a flexible care service by:
 - (a) estimating the amount of flexible care subsidy that will be payable for the days in the period; and
 - (b) increasing or reducing that amount to make any adjustments that the Secretary reasonably believes are necessary to take account of likely underpayments or overpayments in respect of advances previously paid under this section.

111E Claims for flexible care subsidy

- (1) For the purpose of obtaining payment of flexible care subsidy in respect of a flexible care service through which an approved provider provides flexible care as short-term restorative care, the approved provider must, as soon as practicable after the end of each payment period, give to the Secretary:
 - (a) a claim, in the form approved by the Secretary, for flexible care subsidy that is, or may become, payable in respect of the service for that payment period; and
 - (b) any information relating to the claim that is stated in the form to be required, or that the Secretary requests.
- (2) An advance of flexible care subsidy is not payable in respect of a payment period for the flexible care service if the approved provider has not given to the Secretary, under subsection (1), a claim relating to the second last preceding payment period for the service.

Note: For example, an advance of subsidy is not payable for March if the Secretary has not been given a claim for January of the same year.

111F Variations of claims for flexible care subsidy

- (1) An approved provider may vary the claim made in respect of a payment period within:
 - (a) 2 years after the end of that payment period; or
 - (b) such longer period as is determined in respect of the claim by the Secretary.
- (2) In determining a longer period for the purposes of paragraph (1)(b), the Secretary must be satisfied that a variation is required:
 - (a) due to an administrative error made by the Commonwealth or an agent of the Commonwealth; or
 - (b) because the Commonwealth or an agent of the Commonwealth considers that the circumstances of a care recipient are different from those on the basis of which subsidy was claimed; or
 - (c) in order to manage STRC programme expenditure, including overpayments.

Part 5—Approved provider responsibilities

Accountability Principles 2014

28 Section 4

Insert:

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

29 Section 4 (paragraph (a) of the definition of *premises*)

After “residential care service”, insert “or a flexible care service through which short-term restorative care is provided in a residential care setting”.

30 Section 4 (paragraph (b) of the definition of *premises*)

After “home care service”, insert “or a flexible care service through which short-term restorative care is provided in a home care setting”.

31 Section 4 (paragraph (a) of the definition of *relevant official*)

After “residential care service”, insert “or a flexible care service through which short-term restorative care is provided in a residential care setting”.

32 Section 4 (paragraph (b) of the definition of *relevant official*)

After “home care service”, insert “or a flexible care service through which short-term restorative care is provided in a home care setting”.

33 Section 4

Insert:

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

34 Division 1 of Part 2 (heading)

Repeal the heading, substitute:

Division 1—Access to residential care services and certain flexible care services

35 Section 9

After “residential care service”, insert “, or a flexible care service through which short-term restorative care is provided in a residential care setting,”.

36 Subsection 10(1)

After “residential care service”, insert “, or a flexible care service through which short-term restorative care is provided in a residential care setting,”.

37 Section 11

After “residential care service”, insert “, or a flexible care service through which short-term restorative care is provided in a residential care setting”.

38 Division 2 of Part 2 (heading)

Repeal the heading, substitute:

Division 2—Access to home care services and certain flexible care services

39 Section 16

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting”.

40 Subsection 17(1)

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting”.

41 Subsection 17(1) (note)

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting”.

42 Section 18

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting”.

43 Paragraphs 19(a) and (b)

Omit “or a home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

44 Subsections 20(1) and (2) and 21(1)

Omit “or a home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

45 Sections 22 and 23

Omit “or a home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

Quality Agency Principles 2013

46 Section 1.4 (definition of *accredited service*)

Repeal the definition, substitute:

accredited service means:

- (a) a residential care service that is accredited under:
 - (i) these principles; or
 - (ii) the *Accreditation Grant Principles 2011* (as in force at any time before they were repealed); or
 - (iii) the *Accreditation Grant Principles 1999* (as in force at any time before they were revoked); or
- (b) a residential care service for which a determination under section 42-5 of the Aged Care Act is in force; or

- (c) a flexible care service that is accredited under these principles or that is taken to be an accredited service.

Note: See section 5.1 for when a flexible care service is taken to be an accredited service.

47 Section 1.4 (paragraph (b) of the definition of *assessment contact*)

After “service”, insert “or a flexible care service through which short-term restorative care is provided in a home care setting”.

48 Section 1.4 (at the end of the definition of *care recipient*)

Add:

- ; and (c) of a flexible care service through which short-term restorative care is provided—a person who is being provided with short-term restorative care by the flexible care service.

49 Section 1.4

Insert:

externally accredited service has the meaning given by section 1.6.

flexible care place means a capacity within a flexible care service for provision of flexible care in the form of short-term restorative care to a person.

flexible care service has the meaning given by the Dictionary in Schedule 1 to the Aged Care Act.

Flexible Care Standards means the Flexible Care Standards set out in the Quality of Care Principles made under section 96-1 of the Aged Care Act.

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

50 Section 1.4 (paragraphs (a) and (b) of the definition of *identifying information*)

Omit “or home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

51 Section 1.4 (paragraph (b) of the definition of *plan for continuous improvement*)

After “service”, insert “or a flexible care service through which short-term restorative care is provided in a home care setting”.

52 Section 1.4 (definition of *previously accredited service*)

Repeal the definition, substitute:

previously accredited service means:

- (a) a residential care service, or a flexible care service through which short-term restorative care is provided, that was, but is no longer, an accredited service; or
- (b) a flexible care service through which short-term restorative care is provided that was, but is no longer, an externally accredited service; or
- (c) a flexible care service through which short-term restorative care is provided that is taken to be a previously accredited service.

Note: See section 5.2 for when a flexible care service through which short-term restorative care is provided is taken to be a previously accredited service.

53 Section 1.4 (definition of *quality reviewer*)

After “services”, insert “or flexible care services”.

54 Section 1.4

Insert:

relevant home care service has the meaning given by section 3.2.

55 Section 1.4 (definition of *representative*)

Omit “or a home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

56 Section 1.4

Insert:

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

57 Section 1.4 (at the end of the definition of *self-assessment information*)

Add:

; and (c) for a flexible care service through which short-term restorative care is provided—means written information from the approved provider of the service that demonstrates the provider’s performance, in relation to the service, against the Flexible Care Standards that apply to the service.

58 Section 1.4

Insert:

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

59 Section 1.4 (definition of *site audit*)

After “residential care service”, insert “or a flexible care service through which short-term restorative care is provided”.

60 Section 1.4 (definition of *site visit*)

After “home care service”, insert “or a flexible care service through which short-term restorative care is provided”.

61 Section 1.5

Before “A residential”, insert “(1)”.

62 At the end of section 1.5

Add:

(2) A flexible care service through which short-term restorative care is provided in a residential care setting is a *commencing service* if:

- (a) the short-term restorative care is provided in a facility where residential care is provided through a residential care service; and
- (b) that residential care service is a commencing service; and
- (c) the flexible care service is not an externally accredited service.

63 At the end of Chapter 1

Add:

1.6 Meaning of *externally accredited service*

A flexible care service through which short-term restorative care is provided is an *externally accredited service* if:

- (a) an approved provider has been allocated flexible care places, under Division 14 of the Aged Care Act, for the flexible care service; and
- (b) short-term restorative care has not previously been provided for those places through the service; and
- (c) the service is not, and has never previously been, accredited under these principles; and
- (d) the service is not taken to be an accredited service or a previously accredited service; and
- (e) the approved provider has not previously received residential care subsidy, home care subsidy or flexible care subsidy under Chapter 3 of the Aged Care Act or under Chapter 3 of the *Aged Care (Transitional Provisions) Act 1997*; and
- (f) either:
 - (i) there is in force an accreditation of the service issued by a government body (other than the Quality Agency); or
 - (ii) there is in force an accreditation of the service issued by a non-government body and the Secretary has notified the approved provider, in writing, that the non-government body is approved for the purposes of this subparagraph.

Note: See sections 5.1 and 5.2 for when a flexible care service is taken to be an accredited service or a previously accredited service.

64 Chapter 2 (heading)

Repeal the heading, substitute:

Chapter 2—Residential care services and certain flexible care services

65 Part 1 of Chapter 2 (heading)

Repeal the heading, substitute:

Part 1—Accreditation

66 Paragraph 2.3(1)(c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

67 Subparagraph 2.7(3)(a)(iii)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

68 Paragraphs 2.8(1)(b), 2.14(2)(b) and 2.17(2)(a)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

69 Subparagraph 2.18(3)(a)(v)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

70 Paragraphs 2.19(1)(b) and 2.20(1)(a)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

71 Section 2.22

After “service”, insert “or a flexible care service through which short-term restorative care is provided”.

72 Paragraphs 2.23(2)(e), 2.24(2)(c), 2.25(2)(d), 2.28(a) and 2.28(b)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

73 Section 2.28 (note)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

74 Paragraph 2.30(c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

75 After section 2.30

Insert:

2.30A Assessment contacts for certain accredited services with the same approved provider

If a residential care service and a flexible care service through which short-term restorative care is provided in a residential care setting have the same approved provider, the CEO of the Quality Agency may, if he or she considers it appropriate to do so, perform an assessment contact for both services at the same time.

76 Section 2.31 (note 1)

Omit “residential care”.

77 Paragraphs 2.34(b), 2.35(1)(a), 2.38(2)(b) and 2.41(2)(a)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

78 Subparagraph 2.42(2)(a)(v)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

79 Paragraphs 2.43(1)(a), 2.44(1)(a), 2.45(2)(d), 2.46(2)(c) and 2.47(2)(d)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

80 Subsections 2.58(2), 2.59(1) and 2.59(2)

After “residential care service”, insert “or a flexible care service through which short-term restorative care is provided”.

81 At the end of subsection 2.61(1)

Add “or a flexible care service through which short-term restorative care is provided”.

82 Section 2.62

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

83 Section 2.62 (note)

Omit “Paragraph 54(1)(d)”, substitute “Paragraph 54-1(1)(d)”.

84 Section 2.62 (at the end of the note)

Add “and paragraph 54-1(1)(g) of that Act requires an approved provider of a flexible care service to comply with any Flexible Care Standards that apply to the service”.

85 Section 2.63 (heading)

Repeal the heading, substitute:

2.63 Failure to comply with Accreditation Standards or Flexible Care Standards

86 At the end of subsection 2.63(1)

Add “or the Flexible Care Standards that apply to the service”.

87 Subparagraph 2.63(2)(b)(iii)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

88 Subsection 2.63(3)

After “Standards” (wherever occurring), insert “or Flexible Care Standards (as applicable)”.

89 At the end of paragraph 2.64(1)(b)

Add “or Flexible Care Standards (as applicable)”.

90 Chapter 3 (heading)

Repeal the heading, substitute:

Chapter 3—Home care services and certain flexible care services

91 Section 3.2

Repeal the section, substitute:

3.2 Purpose of this Part

The purpose of this Part is to make provision in relation to the quality review of the following services (referred to in this Chapter as a *relevant home care service*):

- (a) home care services;
- (b) flexible care services through which short-term restorative care is provided in a home care setting (other than externally accredited services).

Note: See paragraph 12(b) of the Quality Agency Act, and the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*.

92 Subsection 3.3(1)

Before “home”, insert “relevant”.

93 At the end of section 3.3

Add:

- (3) If a home care service and a flexible care service through which short-term restorative care is provided in a home care setting have the same approved provider, the CEO of the Quality Agency may, if he or she considers it appropriate to do so:
- (a) conduct the quality review of both services at the same time; and
 - (b) apply the results of the quality review to both services.

94 Section 3.4

Before “home”, insert “relevant”.

95 Subsection 3.5(1)

Before “home”, insert “relevant”.

96 Sections 3.6 and 3.7

Before “home”, insert “relevant”.

97 Paragraph 3.7(b)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

98 Subsections 3.8(1) and 3.9(1)

Before “home”, insert “relevant”.

99 Paragraph 3.9(2)(a)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

100 Subsection 3.10(1)

Before “home”, insert “relevant”.

101 Paragraphs 3.10(2)(a) and (c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

102 Section 3.11 (heading)

Repeal the heading, substitute:

3.11 When plan for continuous improvement must be revised

103 Subsection 3.11(1)

Before “home”, insert “relevant”.

104 Subsections 3.11(1), (2) and (4)

After “Standards” (wherever occurring), insert “or Flexible Care Standards (as applicable)”.

105 Section 3.12

Before “home”, insert “relevant”.

106 Section 3.12

After “Standards” (wherever occurring), insert “or Flexible Care Standards (as applicable)”.

107 Section 3.13

Before “home” (wherever occurring), insert “relevant”.

108 Section 3.14 (heading)

Repeal the heading, substitute:

3.14 Meaning of *assessment contact* for home care services and certain flexible care services

109 Section 3.14

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting,”.

110 Paragraph 3.14(c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

111 Subsection 3.15(1)

Before “home”, insert “relevant”.

112 After section 3.15

Insert:

3.15A Assessment contacts for certain relevant care services with the same approved provider

If a home care service and a flexible care service through which short-term restorative care is provided in a home care setting have the same approved provider, the CEO of the Quality Agency may, if he or she considers it appropriate to do so, perform an assessment contact for both services at the same time.

113 Section 3.16

Before “home”, insert “relevant”.

114 Section 3.16

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

115 Section 3.17

Before “home” (first occurring), insert “relevant”.

116 Section 3.17

After “Standards” (first occurring), insert “or Flexible Care Standards (as applicable)”.

117 Section 3.17 (note)

Omit “Paragraph 54(1)(f)”, substitute “Paragraph 54-1(1)(f)”.

118 Section 3.17 (at the end of the note)

Add “and paragraph 54-1(1)(g) of that Act requires an approved provider of a flexible care service to comply with any Flexible Care Standards that apply to the service”.

119 Section 3.18 (heading)

Repeal the heading, substitute:

3.18 Failure to comply with Home Care Standards or Flexible Care Standards

120 Subsection 3.18(1)

Repeal the subsection, substitute:

- (1) This section applies if the CEO of the Quality Agency finds that:
 - (a) an approved provider of a home care service has failed to meet one or more expected outcomes in the Home Care Standards in relation to the service;
or
 - (b) an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting has failed to meet one or more expected outcomes in the Flexible Care Standards that apply to the service.

121 Subparagraph 3.18(2)(b)(iii)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

122 Subsection 3.18(3)

After “Standards” (wherever occurring), insert “or Flexible Care Standards (as applicable)”.

123 Paragraph 3.19(1)(a)

Before “home”, insert “relevant”.

124 At the end of paragraph 3.19(1)(b)

Add “or Flexible Care Standards (as applicable)”.

125 Subsections 4.1(1) and (3)

Omit “or a home care service”, substitute “, a home care service or a flexible care service through which short-term restorative care is provided”.

126 At the end of the principles

Add:

Chapter 5—Transitional provisions

Part 1—Transitional provisions relating to the Aged Care Legislation Amendment (Short-term Restorative Care) Principles 2016

5.1 Flexible care services taken to be accredited services

- (1) This section applies in relation to a flexible care service through which short-term restorative care is provided if the short-term restorative care is provided in a facility where residential care is provided through a residential care service (the *relevant residential care service*).
- (2) If, on the day the approved provider is allocated flexible care places under Division 14 of the Aged Care Act for the flexible care service, the relevant residential care service is an accredited service for a particular period, the flexible care service is taken to be an accredited service on and from that day until the end of that period.
- (3) If the relevant residential care service is re-accredited for a particular period, the flexible care service is taken to be an accredited service on and from the commencement of that period until the end of that period.

5.2 Flexible care services taken to be previously accredited services

- (1) This section applies in relation to a flexible care service through which short-term restorative care is provided if the short-term restorative care is provided in a facility where residential care is provided through a residential care service (the *relevant residential care service*).
- (2) If, on the day the approved provider is allocated flexible care places under Division 14 of the Aged Care Act for the flexible care service, the relevant residential care service is a previously accredited service, the flexible care service is taken to be a previously accredited service on and from that day until the flexible care service is accredited under these principles.

Quality Agency Reporting Principles 2013

127 Section 5

Insert:

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

128 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Information relating to residential care services and certain flexible care services

129 Section 6

Repeal the section, substitute:

6 Purpose of this Part

The purpose of this Part is to specify:

- (a) the circumstances in which the CEO of the Quality Agency must provide, to the Secretary for the purposes of Part 4.4 of the Aged Care Act, information relating to:
 - (i) residential care services; and
 - (ii) flexible care services through which short-term restorative care is provided in a residential care setting; and
- (b) the kind of information that must be provided.

Note: See paragraph 12(a) of the Quality Agency Act, section 65-1A of the Aged Care Act and the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*.

130 Section 7 (heading)

Repeal the heading, substitute:

7 Information about decision to accredit or re-accredit service

131 Section 8 (heading)

Repeal the heading, substitute:

8 Information about decision not to accredit or re-accredit service

132 Subsection 12(1)

Repeal the subsection, substitute:

- (1) This section applies if the CEO of the Quality Agency becomes aware of evidence of a failure by:
 - (a) an approved provider of a residential care service; or
 - (b) an approved provider of a flexible care service through which short-term restorative care is provided in a residential care setting;to comply with one or more of the approved provider's responsibilities under Part 4.1, 4.2 or 4.3 of the Aged Care Act.

133 Paragraph 13(1)(a)

Repeal the paragraph, substitute:

- (a) the CEO of the Quality Agency finds that:
 - (i) an approved provider of a residential care service has failed to meet one or more expected outcomes in the Accreditation Standards in relation to the service; or
 - (ii) an approved provider of a flexible care service through which short-term restorative care is provided in a residential care setting has

failed to meet one or more expected outcomes in the Flexible Care Standards that apply to the service; and

134 Paragraph 13(2)(c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

135 At the end of paragraph 14(1)(b)

Add “, or Flexible Care Standards, that apply to the service”.

136 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Information relating to home care services and certain flexible care services

137 Section 17

Repeal the section, substitute:

17 Purpose of this Part

The purpose of this Part is to specify:

- (a) the circumstances in which the CEO of the Quality Agency must provide, to the Secretary for the purposes of Part 4.4 of the Aged Care Act, information relating to:
 - (i) home care services; and
 - (ii) flexible care services through which short-term restorative care is provided in a home care setting; and
- (b) the kind of information that must be provided.

Note: See paragraph 12(b) of the Quality Agency Act, section 65-1A of the Aged Care Act and the *Australian Aged Care Quality Agency (Other Functions) Instrument 2015*.

138 Section 18

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting,”.

139 Subsection 19(1)

Repeal the subsection, substitute:

- (1) This section applies if the CEO of the Quality Agency becomes aware of evidence of a failure by:
 - (a) an approved provider of a home care service; or
 - (b) an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting;to comply with one or more of the approved provider’s responsibilities under Part 4.1, 4.2 or 4.3 of the Aged Care Act.

140 Paragraph 20(1)(a)

Repeal the paragraph, substitute:

- (a) the CEO of the Quality Agency finds that:

- (i) an approved provider of a home care service has failed to meet one or more expected outcomes in the Home Care Standards in relation to the service; or
- (ii) an approved provider of a flexible care service through which short-term restorative care is provided in a home care setting has failed to meet one or more expected outcomes in the Flexible Care Standards that apply to the service; and

141 Paragraph 20(2)(c)

After “Standards”, insert “or Flexible Care Standards (as applicable)”.

142 Section 21 (heading)

Repeal the heading, substitute:

21 Information relating to improvements of service

143 Paragraph 21(1)(a)

After “home care service”, insert “, or a flexible care service through which short-term restorative care is provided in a home care setting,”.

144 At the end of paragraph 21(1)(b)

Add “, or Flexible Care Standards, that apply to the service”.

User Rights Principles 2014

145 Section 4

Insert:

flexible care agreement means an agreement referred to in Division 4 of Part 3A.

home care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

residential care setting has the meaning given by section 4 of the *Subsidy Principles 2014*.

short-term restorative care has the meaning given by section 4 of the *Subsidy Principles 2014*.

146 After Part 3

Insert:

Part 3A—Flexible care services

Division 1—Purpose of this Part

23AA Purpose of this Part

For section 56-3 of the Act, this Part specifies responsibilities of an approved provider of a flexible service in relation to care recipients to whom the approved

provider provides, or is to provide, flexible care in the form of short-term restorative care, including in relation to the following:

- (a) the maximum amount that an approved provider may charge for the provision of care and services (see paragraph 56-3(a) of the Act);
- (b) the access that an advocate may have to the service (see paragraph 56-3(k) of the Act);
- (c) the rights and responsibilities of care recipients (see paragraph 56-3(l) of the Act);
- (d) the information the provider must give care recipients (see paragraph 56-3(m) of the Act);
- (e) flexible care agreements in respect of short-term restorative care (see paragraph 56-3(m) of the Act).

Division 2—Responsibilities of approved providers of flexible care—general

23AB Maximum amount that may be charged for care and services—short-term restorative care

- (1) For paragraph 56-3(a) of the Act, this section specifies the maximum amount that an approved provider may charge for the provision of care and services in respect of flexible care in the form of short-term restorative care.
- (2) If the short-term restorative care is provided in a residential care setting, the maximum amount is the amount obtained by rounding down to the nearest cent the amount equal to 85% of the basic age pension amount (worked out on a per day basis).
- (3) If the short-term restorative care is provided in a home care setting, the maximum amount is the amount obtained by rounding down to the nearest cent the amount equal to 17.5% of the basic age pension amount (worked out on a per day basis).

23AC Access by advocates to flexible care service—short-term restorative care

For paragraph 56-3(k) of the Act, an approved provider of a flexible care service through which short-term restorative care is provided must allow a person acting as an advocate for a body that has been paid an advocacy grant access to the provider's flexible care service.

23AD Rights and responsibilities of care recipients—short-term restorative care

For paragraph 56-3(l) of the Act, the rights and responsibilities of a care recipient who is being provided with, or is to be provided with, short-term restorative care include the rights and responsibilities mentioned in the “Charter of care recipients’ rights and responsibilities—short term restorative care” set out in Schedule 3.

Note: An approved provider must not act in a way which is inconsistent with any rights and responsibilities of care recipients specified in these principles—see paragraph 56-3(l) of the Act.

Division 3—Responsibilities of approved providers of flexible care— provision of information

23AE Information to be given to new care recipient about rights and responsibilities—short-term restorative care

- (1) An approved provider of a flexible care service through which short-term restorative care is provided must give a prospective care recipient information about the rights and responsibilities of the care recipient and provider.
- (2) The information must be given before confirmation of the date for the start of the short-term restorative care.
- (3) The approved provider must assist the care recipient to understand the information.

Division 4—Flexible care agreements

23AF Entry into flexible care agreement—short-term restorative care

- (1) An approved provider of a flexible care service through which short-term restorative care is to be provided must offer a flexible care agreement to a prospective care recipient before a date for the start of the provision of short-term restorative care is agreed.
- (2) The approved provider must ensure that the care recipient is informed of, and helped to understand, the terms of the flexible care agreement, in particular the terms about the following:
 - (a) the care recipient's rights and responsibilities;
 - (b) the services to be provided to the care recipient;
 - (c) the fees and other charges to be paid under the agreement.

23AG Provisions of flexible care agreement—short-term restorative care

- (1) A flexible care agreement in respect of short-term restorative care must contain the following:
 - (a) the care recipient's goals;
 - (b) the care and services that the care recipient will receive, in the form of an agreed care plan;
 - (c) the period for which the care and services will be provided;
 - (d) the policies and practices that the approved provider will follow in setting the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services;
 - (e) a statement of the fees that the care recipient will be liable to pay to the approved provider for the provision of the care and services provided;
 - (f) a statement that the care recipient may suspend, on a temporary basis for up to 7 days, the provision of the short-term restorative care, including the circumstances in which the short-term restorative care may be suspended;
 - (g) the conditions under which either party may terminate the provision of short-term restorative care;
 - (h) the care recipient's responsibilities as a recipient of the short-term restorative care.

- (2) A flexible care agreement in respect of short-term restorative care must provide:
 - (a) that the agreement may be varied by mutual consent, following adequate consultation, of the care recipient and approved provider; and
 - (b) that the agreement must not be varied in a way that is inconsistent with the *Aged Care Act 1997* or the *Extra Service Principles 2014*.
- (3) A flexible care agreement in respect of short-term restorative care must:
 - (a) include details of the complaints resolution mechanism that the approved provider will use to address complaints made by, or on behalf of, the care recipient; and
 - (b) state that the care recipient will also be entitled to make a complaint about the provision of the short-term restorative care to the Aged Care Complaints Commissioner; and
 - (c) state that the approved provider will allow authorised complaints officers such access to the approved provider's flexible care service as the Aged Care Complaints Commissioner considers necessary to investigate and resolve any complaint made to the Commissioner.
- (4) A flexible care agreement in respect of short-term restorative care must be expressed in plain language and be readily understandable by the care recipient.
- (5) A flexible care agreement in respect of short-term restorative care must not contain any provision that would have the effect of the care recipient being treated less favourably in relation to any matter than the care recipient would otherwise be treated, under any law of the Commonwealth, in relation to that matter.

147 At the end of the principles

Add:

Schedule 3—Charter of care recipients' rights and responsibilities—short-term restorative care

Note: See section 23AD.

Part 1—Short-term restorative care provided in a residential care setting

1 Application of this Part

This Part applies in relation to a care recipient who is provided with short-term restorative care in a residential care setting.

2 Care recipients' rights

Each care recipient has the following rights:

- (a) to full and effective use of his or her personal, civil, legal and consumer rights;
- (b) to quality care appropriate to his or her needs;
- (c) to full information about his or her own state of health and about available treatments;

- (d) to be treated with dignity and respect, and to live without exploitation, abuse or neglect;
- (e) to live without discrimination or victimisation, and without being obliged to feel grateful to those providing his or her care and accommodation;
- (f) to personal privacy;
- (g) to live in a safe, secure and homelike environment, and to move freely both within and outside the flexible care service without undue restriction;
- (h) to be treated and accepted as an individual, and to have his or her individual preferences taken into account and treated with respect;
- (i) to continue his or her cultural and religious practices, and to keep the language of his or her choice, without discrimination;
- (j) to select and maintain social and personal relationships with anyone else without fear, criticism or restriction;
- (k) to freedom of speech;
- (l) to maintain his or her personal independence;
- (m) to accept personal responsibility for his or her own actions and choices, even though these may involve an element of risk, because the care recipient has the right to accept the risk and not to have the risk used as a ground for preventing or restricting his or her actions and choices;
- (n) to maintain control over, and to continue making decisions about, the personal aspects of his or her daily life, financial affairs and possessions;
- (o) to be involved in the activities, associations and friendships of his or her choice, both within and outside the flexible care service;
- (p) to have access to services and activities available generally in the community;
- (q) to be consulted on, and to choose to have input into, decisions about the living arrangements of the flexible care service;
- (r) to have access to information about his or her rights, care, accommodation and any other information that relates to the care recipient personally;
- (s) to complain and to take action to resolve disputes;
- (t) to have access to advocates and other avenues of redress;
- (u) to be free from reprisal, or a well-founded fear of reprisal, in any form for taking action to enforce his or her rights.

3 Care recipients' responsibilities

Each care recipient has the following responsibilities:

- (a) to respect the rights and needs of other people within the flexible care service, and to respect the needs of the flexible care service community as a whole;
- (b) to respect the rights of staff to work in an environment free from harassment;
- (c) to care for his or her own health and well-being, as far as he or she is capable;
- (d) to inform his or her medical practitioner, as far as he or she is able, about his or her relevant medical history and current state of health.

Part 2—Short-term restorative care provided in a home care setting

4 Application of this Part

This Part applies in relation to a care recipient who is provided with short-term restorative care in a home care setting.

5 Care recipients' rights

General

- (1) Each care recipient has the following rights:
 - (a) to be treated and accepted as an individual, and to have his or her individual preferences respected;
 - (b) to be treated with dignity, with his or her privacy respected;
 - (c) to receive care that is respectful of him or her, and his or her family and home;
 - (d) to receive care without being obliged to feel grateful to those providing the care;
 - (e) to full and effective use of all human, legal and consumer rights, including the right to freedom of speech regarding his or her care;
 - (f) to have access to advocates and other avenues of redress;
 - (g) to be treated without exploitation, abuse, discrimination, harassment or neglect.

Consumer directed care—choice and flexibility

- (2) Each care recipient has the following rights:
 - (a) to be supported by the approved provider:
 - (i) to set goals in relation to the outcomes he or she seeks from short-term restorative care; and
 - (ii) to determine the level of ongoing involvement and control that he or she wishes to have in the provision of the short-term restorative care; and
 - (iii) to make decisions relating to his or her own care; and
 - (iv) to maintain his or her independence as far as possible;
 - (b) to choose the care and services that best meet his or her goals and assessed needs and preferences, within the limits of the resources available;
 - (c) to have choice and flexibility in the way the care and services are provided at home;
 - (d) to participate in making decisions that affect him or her;
 - (e) to have his or her representative participate in decisions relating to his or her care if he or she requests it or if he or she does not have capacity.

Consumer directed care—care and services

- (3) Each care recipient has the following rights:
 - (a) to receive reliable, coordinated, safe, quality care and services which are appropriate to meeting his or her goals and assessed needs;

- (b) to be given before, or within 7 days after, he or she commences receiving short-term restorative care, a written plan of the care and services that he or she expects to receive;
- (c) to receive care and services that take account of his or her other care arrangements and preferences;
- (d) to ongoing review of the care and services he or she receives (both periodic and in response to changes in his or her personal circumstances), and modification of the care and services as required.

Personal information

- (4) Each care recipient has the following rights:
 - (a) to privacy and confidentiality of his or her personal information;
 - (b) to access his or her personal information.

Communication

- (5) Each care recipient has the following rights:
 - (a) to be helped to understand any information he or she is given;
 - (b) to be given a copy of this Charter;
 - (c) to be offered a written agreement that includes all agreed matters;
 - (d) to choose a person to speak on his or her behalf for any purpose.

Comments and complaints

- (6) Each care recipient has the following rights:
 - (a) to be given information on how to make comments and complaints about the care and services he or she receives;
 - (b) to complain about the care and services he or she receives, without fear of losing the care or being disadvantaged in any other way;
 - (c) to have complaints investigated fairly and confidentially, and to have appropriate steps taken to resolve issues of concern.

Fees

- (7) Each care recipient has the following rights:
 - (a) to have his or her fees determined in a way that is transparent, accessible and fair;
 - (b) to receive invoices that are clear and in a format that is understandable;
 - (c) to have his or her fees reviewed on request when there are changes to his or her financial circumstances;
 - (d) not to be denied care and services because of his or her inability to pay a fee for reasons beyond his or her control.

6 Care recipients' responsibilities

General

- (1) Each care recipient has the following responsibilities:
 - (a) to respect the rights of care workers to their human, legal and workplace rights including the right to work in a safe environment;

- (b) to treat care workers without exploitation, abuse, discrimination or harassment.

Care and services

- (2) Each care recipient has the following responsibilities:
 - (a) to abide by the terms of the written flexible care agreement;
 - (b) to acknowledge that his or her needs may change and to negotiate modifications of care and service if his or her care needs change;
 - (c) to accept responsibility for his or her own actions and choices even though some actions and choices may involve an element of risk.

Communication

- (3) Each care recipient has the following responsibilities:
 - (a) to give enough information to assist the approved provider to develop, deliver and review a care plan;
 - (b) to tell the approved provider and their staff about any problems with the care and services.

Access

- (4) Each care recipient has the responsibility to allow safe and reasonable access for care workers at the times specified in his or her care plan or otherwise by agreement.

Fees

- (5) Each care recipient has the responsibility to pay any fees as specified in the flexible care agreement or to negotiate an alternative arrangement with the provider if any changes occur in his or her financial circumstances.