

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care and Minister for Indigenous Health.

Aged Care Act 1997

Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017

Authority

The authority for the *Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017* (the Amending Determination) is section 52-1 of the *Aged Care Act 1997* (the Act).

Purpose

The purpose of the Amending Determination is to amend the Determination to reflect the changes in governance arrangements from the approved provider Renmark Paringa District Hospital Inc. (RPDH) to Country Health SA Local Health Network Incorporated (CHSA).

Background

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

The Act provides that for each type of aged care, the Minister may determine the amount of subsidy payable to an approved provider for the provision of that type of aged care. Section 52-1 of the Act provides authority for the Minister to determine the amount of subsidy payable in respect of flexible care to an approved provider who provides flexible care to care recipients. Currently the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (the Determination) sets out the amount of such subsidy for each kind of flexible care.

The Act allows allocation of places to approved providers for which to provide care. Places to address the disability-aged care interface were originally allocated as part of an “Aged Care Innovative Pool” funding round which sought applications from approved providers to pilot innovative service delivery models. In July 2002 applications were sought for an Innovative Care Pilot to address the disability-aged care interface. Nine pilots were established nationally under the Act to explore the provision of aged care services for people with disabilities, who were ageing in state and territory government funded disability accommodation. Renmark Paringa District Hospital Inc (RPDH) was one of two provider’s allocated places for disability-ageing in South Australia.

Innovative care is a kind of flexible care under the Act and *Subsidy Principles 2014*.

Since the allocation was made, the South Australian Government has restructured its governance arrangements, with the dissolution of regional boards and centralisation of

governance to the newly established CHSA. As part of this restructure, RPDH vested its undertakings in either CHSA or the Renmark Paringa District Health Advisory Council Inc. (part of the governance structure of CHSA, and a separate body to RPDH).

The amount of subsidy payable by the Commonwealth for flexible care provided as innovative care is set through the Determination. The Determination lists an amount of subsidy for each individual provider of innovative care. The Amending Determination will set the amount of subsidy payable in respect of CHSA.

Details

The Amending Determination substitutes the name of the approved provider in item 1 at the table in subsection 104(2), from Renmark Paringa District Hospital Inc. to Country Health SA Local Health Network Incorporated in order to ensure correct payment of flexible care subsidy under the Act.

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

Reliance on subsection 33(3) of the Acts Interpretation Act 1901

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The Amending Determination commences on the day after registration on the Federal Register of Legislation.

Consultation

The South Australian Government was consulted on and expressed support for this proposal. As this proposal is machinery in nature, no other external consultation was undertaken.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that the proposal is machinery in nature and will not result in any regulatory impacts (OBPR ID 21970).

Details of the *Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017*

1. Name of Determination

Section 1 states that the name of the Amending Determination is the *Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017*.

2. Commencement

Section 2 states that these amendments commence on the day after it is registered.

3. Authority

This section provides the authority for making this instrument. This instrument is made under the *Aged Care Act 1997*.

4. Schedules

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

Schedule 1 Amendments

Item 1 – Subsection 104(2)

This item amends subsection 104(2) to substitute the name of the approved provider in the table from Renmark Paringa District Hospital Inc. to Country Health SA Local Health Network Incorporated.

Statement of Compatibility with Human Rights

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

Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017

The *Aged Care (Subsidy, Fees and Payments) Amendment (Innovative Care) Determination 2017* 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 legislative instrument

This legislative instrument amends the *Aged Care (Subsidy, Fees and Payments) Determination 2014* to substitute the name of an approved provider of flexible care (innovative care) to reflect changed governance arrangements.

Human rights implications

This legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of health and well-being 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.

This legislative instrument concerns the subsidy payable to an approved provider for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

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.

The Hon Ken Wyatt
Minister for Aged Care
Minister for Indigenous Health