

# EXPLANATORY STATEMENT

## **Issued by authority of the Minister for Human Services**

*Human Services (Medicare) Act 1973*

*Human Services (Medicare) Regulations 2017*

The *Human Services (Medicare) Act 1973* (the ‘Act’) sets out the functions and investigative powers of the Chief Executive Medicare, as well as a number of other miscellaneous provisions, relating to the administration of medicare programs.

Section 44 of the Act provides that the Governor-General may make regulations, not inconsistent with that Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The purpose of the *Human Services (Medicare) Regulations 2017* (the ‘Regulations’) is to remake and improve the *Human Services (Medicare) Regulations 1975* prior to their ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed according to the progressive timetable set out in section 50 of that Act. Legislative instruments made in the 1970s that were registered on the Federal Register of Legislation on 1 January 2005, such as the *Human Services (Medicare) Regulations 1975*, will be automatically repealed on 1 October 2017. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the *Human Services (Medicare) Regulations 1975*, by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The Regulations also include some minor, consequential amendments to reflect recent changes made to the aged care legislation. The key changes are:

- repealing redundant provisions, such as references to provisions which have now been repealed and therefore have no effect;
- introducing new provisions to reflect legislative changes, including changes to home care provided through a home care service, as a result of the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* and the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*; and
- making language and formatting changes to reflect contextual changes and align the Regulations with current drafting practices.

Further details of the Regulations are set out in [Attachment A](#).

A finding table, to assist in identifying which provisions in the Regulations correspond to provisions in the *Human Services (Medicare) Regulations 1975*, is set out in Attachment B.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Department of Human Services undertook consultation with the Department of Health and the Department of Veterans' Affairs. Consultation outside the Australian Government was considered unnecessary as the Regulations are of a minor machinery nature and do not substantially alter existing arrangements.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

## **Statement of Compatibility with Human Rights**

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

### ***Human Services (Medicare) Regulations 2017***

This Legislative Instrument 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**

The Regulations remake and improve the *Human Services (Medicare) Regulations 1975* by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation.

The Regulations also include some minor, consequential amendments to reflect changes made by the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* and *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016* to the way in which home care is provided under the aged care system.

## **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

## **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Details of the *Human Services (Medicare) Regulations 2017***

**Part 1 – Preliminary**

*Section 1 – Name of Regulation*

This section provides that the title of the Regulations is the *Human Services (Medicare) Regulations 2017*.

*Section 2 – Commencement*

This section provides that the Regulations commence on the day after the Regulations are registered.

*Section 3 – Authority*

This section provides that the Regulations are made under the *Human Services (Medicare) Act 1973*.

*Section 4 – Schedules*

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

*Section 5 – Definitions*

This section contains defined terms used in the Regulations. Several definitions have been incorporated into this section from the text of other sections of the *Human Services (Medicare) Regulations 1975*. New definitions have been introduced to provide greater clarity around certain prescribed functions.

The definition of ‘recoverable amount’ has been amended to reflect changes made by the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016*. Section 54 of the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016* introduced subsection 95-1(3) into the Aged Care Act, adding a new definition of what constitutes a ‘recoverable amount’ to the Aged Care Act. This new definition took effect from 27 February 2017.

The definition of ‘recoverable amount’ in the *Human Services (Medicare) Regulations 1975* was limited to the meaning given by subsection 95-1(1) of the *Aged Care Act 1997*. To ensure that the Regulations cover the new definition of ‘recoverable amount’ contained in subsection 95-1(3) of the Aged Care Act, the definition of ‘recoverable amount’ in section 5 of the Regulations now provides that a reference to ‘recoverable amount’ has the meaning given by subsections 95-1(1) and 95-1(3) of the Aged Care Act.

Subsection 5(2) has been added to the Regulations to provide that certain expressions (other than recoverable amount) used in Part 2 of the Regulations have the same meaning in that Part as in the *Aged Care Act 1997* (the Aged Care Act). This subsection replicates corresponding provisions of the *Human Services (Medicare) Regulations 1975* and, in particular, section 4 of the *Human Services (Medicare) Regulations 1975*.

#### *Section 6 – Person affected by an emergency*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*, with some minor changes to clarify the meaning of the section without changing its operation.

### **Part 2 – Prescribed functions relating to aged care**

#### *Sections 7 to 9 (inclusive)*

These sections replicate the corresponding provisions in the *Human Services (Medicare) Regulations 1975*. These changes do not impact the operation of the relevant sections.

Subsection 9(2) has been included to make it clear that the Chief Executive Medicare may receive appraisals.

#### *Section 10 – Renewal and change of classifications*

This section has been simplified by referring to the relevant sections of the Aged Care Act, rather than attempting to replicate the wording of those provisions.

#### *Certification of residential care service*

Section 8 of the *Human Services (Medicare) Regulations 1975* prescribed the function of the Chief Executive Medicare keeping a record of the payment of application fees for certification of a residential care service under paragraph 38-1(2)(b) of the Aged Care Act. As paragraph 38-1(2)(b) of the Aged Care Act has been repealed, this prescribed function has not been incorporated into the Regulations.

#### *Section 11 – Payment of subsidies*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*. This section also makes some minor changes to update the wording of the section.

#### *Section 12 – Financial hardship*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*, with some minor changes to clarify the meaning of the section without changing its operation. It is intended that provisions relating to financial hardship in Parts 3.1 and 3.2 of the Aged Care Act (and Aged Care Transitional Act)

will be covered by section 11 and therefore do not need to be expressly referred to in section 12.

### *Section 13 – Receiving notifications of start and end of care*

This section makes some changes to the corresponding provision in the *Human Services (Medicare) Regulations 1975* to reflect recent amendments made to the aged care legislation.

Section 7 of Part 2 of the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016* also introduced section 30A into the *Accountability Principles 2014*, which took effect from 27 February 2017, and provided that an approved provider must notify the Secretary of care recipients who cease to be provided with home care through a home care service on or after 27 February 2017. Section 13 of the Regulations now includes the prescribed function of receiving notices when a care recipient ceases to be provided with home care through a home care service. Section 13 of the Regulations now refers to ‘Receiving notifications of start and end of care’ in the section title, instead of the previous title ‘Notification of start of care’, to reflect the inclusion of section 30A in the *Accountability Principles 2014*.

Section 49 of the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016* has introduced subsection 21G(3) into the *User Rights Principles 2014*, which took effect from 27 February 2017. Subsection 21G(3) of the *User Rights Principles 2014* provides that a notice must be provided in relation to certain unspent home care amounts of a care recipient. Section 13 of the Regulations now includes the prescribed function of receiving notices about an unspent home care amount, from providers of the Commonwealth portion of the care recipient’s unspent home care amount, including where the amount is nil.

### *Section 14 – Reconsideration and review of decisions*

This section replicates the corresponding provision, with some minor changes to clarify the meaning of the section without changing its operation.

### *Section 15 - Disclosure of certain information*

This section replicates the corresponding provision.

### *Section 16 – Appointment of authorised officers etc.*

This section replicates the corresponding provision, with a minor change to clarify that only an officer of the Department of Health can be appointed as an authorised officer. The clarification is to better reflect the language of section 90.3 of Aged Care Act under which authorised officers are appointed.

### *Sections 17 to 21 (inclusive)*

These sections replicate the corresponding provisions in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the relevant sections.

### **Part 3—Other prescribed functions**

#### *Sections 22 and 23*

These sections replicate the corresponding provisions in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the relevant sections.

#### *Section 24 – Prescription shoppers*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*, with some minor changes to clarify the meaning of section. The changes include moving the definitions of ‘nominated prescriber’, ‘prescriber’, ‘prescription shopper’, ‘Prescription Shopping Program’ and ‘target pharmaceutical benefits’ to the definitions section of the Regulations, for ease of reference.

#### *Section 25 – Provision of emergency services*

This section replicates the corresponding provisions in the *Human Services (Medicare) Regulations 1975*. Online services have been included as a prescribed function in subsection 25(3) to make it clear that the Chief Executive Medicare is permitted to operate online services in relation to providing a service, benefit, program or facility to a person affected by an emergency. This section has also been reworded to make it clear that the use and disclosure of the information is authorised for the purposes of Australian Privacy Principle 6.2(b) under the *Privacy Act 1988*.

#### *Sections 26 to 28 (inclusive)*

These sections replicate the corresponding provisions in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the relevant sections.

#### *Section 29 – Hearing services*

This section replicates the corresponding provisions in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the relevant sections. The Chief Executive Medicare’s functions include recovering a service provider debt under section 24 of the *Hearing Services Administration Act 1997*, on behalf of the Commonwealth.

#### *Section 30 – Military compensation*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the section.

### *Section 31 – 34 (inclusive)*

These sections replicate the corresponding provisions in the *Human Services (Medicare) Regulations 1975*, with some minor changes to update and clarify the language of the provisions.

### *Section 35 – Allocation of identification numbers*

The function of allocating identification numbers for the purposes of the National Health Act to medical practitioners and to participating dental practitioners has been removed from the Regulations. This is because responsibility for allotting numbers for various types of approvals under the National Health Act is already delegated to the Chief Executive Medicare by the Secretary of the Department of Health, and therefore this legislative basis is no longer required.

## **Part 4—Miscellaneous**

### *Section 36 – Prescribed period*

This section replicates the corresponding provision in the *Human Services (Medicare) Regulations 1975*, with minor formatting changes which do not change the operation of the section.

## **Part 5—Transitional provisions**

### *Section 37 – 39 (inclusive)*

These sections include transitional provisions for things done, or started but not finished, under the *Human Services (Medicare) Regulations 1975*. Together with section 7 of the *Acts Interpretation Act 1901*, it is intended that these transitional provisions will cover situations which could be affected by the repeal and remaking of the Regulations.

## **Schedule 1—Repeals**

### *Section 1 – Repeal of Regulations*

This section provides for the repeal of the *Human Services (Medicare) Regulations 1975* that are due to sunset on 1 October 2017 and are being remade by the Regulations.

## ATTACHMENT B

### FINDING TABLE

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Statement includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Human Services (Medicare) Regulations 1975* unless otherwise specified. References to the new law are to the *Human Services (Medicare) Regulations 2017* unless otherwise specified. Also, in the finding table, 'no equivalent' means that the provision has no equivalent.

*Finding table – old law to new law*

<i>Old law</i>	<i>New law</i>
<i>Human Services (Medicare) Regulations 1975</i>	<i>Human Services (Medicare) Regulations 2017</i>
1	1
2	2
No equivalent	3
No equivalent	4
3	5
3A	6
4	No equivalent
4A	7
5	8
6	9
7	10
8	No equivalent
9	11
9A	12
10	13
11	14



12	15
13	16
14(1)(a) and (b)	17
15	18
14(1)(c)	19
16	20
17	21
18	22
19	23
20	24
21	25
23	26
24	27
25	28
26	29
27	30
28	31
29	32
30	33
30A	34
31	35
32	36
No equivalent	37
No equivalent	38
No equivalent	39
No equivalent	Schedule 1