

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018

Authority

Section 96-1 of the *Aged Care Act 1997* (Aged Care Act) provides that the Minister may make principles providing for matters required or permitted, or necessary or convenient to give effect to, the Aged Care Act.

In addition to the power to make principles under section 96-1 of the Aged Care Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

These powers provide the authority to make the amendments set out in this instrument.

Purpose

The purpose of the *Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018* (Amending Principles) is to require approved providers of residential care and flexible care in the form of short-term restorative care (provided in a residential setting) to have in place an annual influenza vaccination scheme for their workforce.

Background

The 2017 influenza season was characterised by a higher than average level of influenza activity in the community and people aged 65 years and older accounted for more than 90% of all reported deaths related to influenza.

Existing guidance on best practice is set out in the *Guidelines for the Prevention, Control and Public Health Management of Influenza Outbreaks in Residential Aged Care Facilities in Australia*, developed by the Communicable Diseases Network of Australia (CDNA). The CDNA guidelines recommend that all residential aged care facilities have an influenza vaccination policy for both residents and staff and to ensure it is implemented each year.

To further reduce the influenza risk to aged care residents, the Amending Principles introduce a new responsibility requiring approved providers to have in place a vaccination scheme for all staff and volunteers.

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Details

The Amending Principles amend the *Quality of Care Principles 2014* and the *Records Principles 2014* to require approved providers of residential care and flexible care in the form of short-term restorative care (provided in a residential setting) to have an annual influenza vaccination scheme in place.

As part of an annual influenza vaccination scheme, approved providers must:

- provide all staff and volunteers with access to a free influenza vaccination either:
 - directly, for example, with vaccinations provided on site; or
 - indirectly, for example, making arrangements for staff to be able to access a vaccine at a local chemist or general practitioner;
- promote the health benefits for staff and care recipients of an annual vaccination for staff and volunteers; and
- hold accurate and timely records of the number of staff and volunteers that have received an influenza vaccination.

Additional information on the details of the Amending Principles is set out in the Attachment.

Consultation

In preparing the Amending Principles, the Department of Health consulted with the Australian Aged Care Quality Agency. Consultation also occurred with the aged care sector during March 2018. This involved a working group comprising the Department and the Quality Agency, providers and consumer peak bodies, providers of aged care services and representatives of the aged care workforce.

In meeting with the working group there was strong support for the policy intent and general support for the proposal. Representatives of providers were supportive of a program that was flexible in how a vaccination scheme could be delivered, particularly for rural and remote providers, and with flexibility in record keeping requirements. These suggestions have been addressed in the Amending Principles. Further details are set out in the Attachment.

Regulation Impact Statement (RIS)

The reforms contained in the Amending Principles have been agreed with the Office of Best Practice Regulation (OBPR) as having no more than a minor regulatory impact on businesses, community organisations or individuals. Noting this, a Regulatory Impact Statement is not required (OBPR ID: 23738).

This instrument commences the day after it is registered on the Federal Register of Legislation.

The instrument is a legislative instrument for the purpose of the *Legislation Act 2003*.

Details of the Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018

1 Name of Instrument

Section 1 provides how the instrument is to be cited, that is, as the *Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018*.

2 Commencement

This section provides for the Amending Principles to commence on the day after the instrument is registered.

3 Authority

Section 3 provides that the Amending Principles are made under the authority of the *Aged Care Act 1997*.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), 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.

Accordingly, the power in section 96-1 of the *Aged Care Act* to make Principles is relied on, in conjunction with subsection 33(3) of the *Acts Interpretation Act*, to vary the *Quality of Care Principles* and the *Records Principles* as set out in Schedule 1.

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

The amendments in Schedule 1 are set out under:

- *Quality of Care Principles 2014*; and
- *Records Principles 2014*.

Quality of Care Principles 2014

Item 1: Section 4

This item inserts definitions of 'premises' and 'service staff'. The word 'premises' has the meaning set out in the *Accountability Principles 2014*. The

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Accountability Principles define 'premises' to be any place where the operation or administration of a residential or flexible care service occurs.

The Accountability Principles are a disallowable legislative instrument and, by section 14 of the *Legislation Act 2003*, the definition is incorporated as in force or existing from time to time.

'Service staff' is defined in relation to an aged care service to mean staff, including volunteers, who are reasonably likely to access the premises operated by the approved provider. Staff include persons who are employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruitment agency) to provide care or other services under the control of the approved provider.

Item 2: Section 8

This item inserts a new section 8 into the Quality of Care Principles, to require the approved providers of a residential aged care service have in place an annual influenza vaccination scheme for their service staff. As part of this annual influenza vaccination scheme, the approved provider must:

- Ensure that their service staff have access to a free annual influenza vaccination. This access could be direct, for example with a qualified person providing vaccinations on site at the service, or indirect, for example through a voucher or reimbursement system with a local chemist or General Practitioner.
- Promote the benefits for service staff and care recipients from service staff receiving annual influenza vaccinations. This is designed to encourage service staff to receive an influenza vaccination, thereby lifting workforce vaccination rates in residential aged care. This requirement could be met through measures such as correspondence and discussions with service staff, and through public signs and posters around the service.

Item 3: Section 15A

This item replaces existing section 15A of the *Quality of Care Principles 2014* to explain that approved providers of flexible care in the form of short term restorative care in a residential care setting, have a new responsibility to ensure service staff have access to an annual influenza vaccination as set out in Division 1 of Part 4 of these Principles.

Item 4: Section 15BA

This item inserts the same requirement as Item 2 in the case of approved providers of short term restorative care in a residential care setting, to ensure consistent arrangements for providers of aged care in a residential care setting.

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Records Principles

Item 5: Section 4

This item inserts into the Records Principles the same definition of 'service staff' as provided in Item 1.

This definition of 'service staff' is incorporated by reference from the Quality of Care Principles.

The Quality of Care Principles is a disallowable legislative instrument and, by section 14 of the *Legislation Act 2003*, the definition is incorporated as in force or existing from time to time.

Item 6: Section 9

This item makes a consequential change to the title of section 9.

Item 7: Section 10A

This item inserts a new section 10A into the Records Principles.

This section requires approved providers of residential care and flexible care in the form of short-term restorative care provided in a residential setting to keep up to date records about the number of service staff that receive an influenza vaccination each year, whether from the approved provider's influenza vaccination scheme or otherwise.

This section is designed to be flexible for providers, enabling them to collect records in a manner that maintains the privacy of personal health information for staff. One way in which these records could be kept is in the form of a vaccination register, which the CDNA Guidelines recommend that all residential aged care services have in place. However, it remains open to providers to meet this requirement in a manner that best meets their requirements.

Item 8: Section 12

This item inserts a transitional provision to make clear that providers are only required to keep records under section 10A in relation to influenza vaccinations received by service staff on or after the commencement of the Amending Principles.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018

This 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 *Aged Care Legislation Amendment (Influenza Vaccination in Residential Care) Principles 2018* (Amending Principles) amends the *Quality of Care Principles 2014* (Quality of Care Principles) and the *Records Principles 2014* (Records Principles) to require the approved providers of a residential aged care service to provide an annual influenza vaccination scheme for their workforce and to keep and maintain related records.

Human rights implications

The instrument engages the following human rights:

- the right to freedom of thought, conscience and religion
- the right to work
- the right to safe and healthy working conditions, and
- the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 18 of the International Covenant on Civil and Political Rights provides individuals with the right to freedom of thought, conscience and religion. The article states that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The instrument makes it a requirement that the approved providers of a residential aged care services provide access to a free influenza vaccination on an annual basis to all staff and volunteers that would reasonably be expected to have access to the premises of a residential aged care service during the influenza season. The instrument does not make it mandatory for staff or volunteers to have the vaccination. Under the Quality of Care Principles approved providers are required to have in place an infection control program including plans, procedures, practices and equipment that is effective in identifying and containing infection.

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Article 6 of the International Covenant on Economic, Social and Cultural Rights recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. The article also recognises the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular safe and healthy working conditions.

The instrument does not prohibit or restrict the right to work expressed in article 6. It places a requirement on approved providers of a residential aged care service to provide specific staff and volunteers with access to a free influenza vaccination on an annual basis. The requirement implements existing guidance on best practice set out in the *Guidelines for the Prevention, Control and Public Health Management of Influenza Outbreaks in Residential Aged Care Facilities in Australia*, developed by the Communicable Diseases Network of Australia thereby supporting safe and health working conditions.

The instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11 and article 12 of the International Convention on Economic, Social and Cultural Rights, and articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities*. The purpose of the instrument is to further reduce the risk to the care recipients of residential aged care services contracting influenza by ensuring that all residential aged care services provide a vaccination scheme for all staff and volunteers. The requirement supports care recipients to achieve a high standard of living and high standards in their physical and mental health.

Conclusion

The 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*. The instrument promotes the right to an adequate standard of living, the highest standard of physical and mental health and safe and healthy working conditions without prohibiting or restricting the right to freedom of thought, conscience and religion and the right to work.

The Hon Ken Wyatt
Minister for Aged Care