

EXPLANATORY STATEMENT

Aged Care Act 1997

User Rights Amendment (Specialist Dementia Care Program) Principles 2018

Authority

Section 96-1 of the *Aged Care Act 1997* (the Act) provides that the Minister may, by legislative instrument, make *User Rights Principles*, providing for matters required or permitted by Part 4.2 of the Act, or necessary or convenient to be provided in order to carry out or give effect to Part 4.2 of the Act.

Purpose

The purpose of the *User Rights Amendment (Specialist Dementia Care Program) Principles 2018* (the instrument) is to give effect to aspects of the Specialist Dementia Care Program (the Program) by amending the *User Rights Principles 2014*. The amendments made by the instrument will only affect an approved provider's responsibility to provide security of tenure to care recipients as it applies to recipients of specialist dementia care under the Program.

The amendments will introduce additional circumstances where a residential care recipient who is receiving specialist dementia care can be required to leave a residential care service or moved to another room in the residential care service. Approved providers will be able to require recipients of specialist dementia care to leave the service or move to another room in the service when the period of specialist dementia care has ended.

Existing provisions preventing the approved provider from taking action to make the person leave the service before suitable accommodation is found, and requiring the provider to give the person notice, will continue to apply. This will ensure that the person continues to receive residential care in the service until suitable alternative accommodation is found.

Background

The Program will provide a person-centred, multidisciplinary approach to care for a small number of people with very severe behavioural and psychological symptoms of dementia, who are unable to be appropriately cared for by mainstream aged care services. Specialist dementia care will be delivered in dedicated units within residential care settings by existing approved providers.

Specialist dementia care will be time-limited. It will provide intensive, specialised residential care with a focus on stabilising and reducing the person's dementia-related symptoms over time with the aim of enabling transition to a less intensive care setting.

Under the Program, the approved provider will be responsible for planning the care recipient's transition out of the specialist dementia care unit and finding suitable alternative accommodation that meets the care recipient's long-term needs. This may include an ongoing mainstream residential care place and this could be in the same service or in another residential care service.

Consultation

The policy design and implementation arrangements for the Program were informed by an independent literature review, public consultation and specialist dementia care Expert Advisory Group, comprising dementia experts and consumer representatives.

Regulation Impact Statement

A preliminary regulatory assessment of the Program determined that a Regulation Impact Statement is not required (Office of Best Practice Regulation ID 21321).

Details

1 Name of Instrument

Section 1 states that the name of the instrument is the *User Rights Amendment (Specialist Dementia Care Program) Principles 2018*.

2 Commencement

Section 2 states that the instrument commences on the day after it is registered.

3 Authority

Section 3 provides that the authority for making the instrument is section 96-1 of the *Aged Care Act 1997*.

4 Schedules

Section 4 provides that each instrument 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: Section 4

The item inserts a definition of ‘specialist dementia care agreement’. This means an agreement between the Secretary and an approved provider, for the provision of specialist care to people exhibiting very severe behavioural and psychological symptoms of dementia, under the Specialist Dementia Care Program.

Item 2: After paragraph 6(2)(c)

The item inserts a new paragraph under subsection 6(2) of the *User Rights Principles 2014*. The new item enables approved providers to ask a care recipient to leave a residential care service if the care recipient is receiving specialist dementia care and a clinical advisory committee has determined that the person is no longer suitable to continue receiving that care.

It should be noted that despite this ability, if a provider asks a care recipient to leave a service, the approved provider is still subject to the requirements of subsection 6(3) and section 7 of the User Rights Principles – including ensuring that before the approved provider takes action to make the care recipient leave, the approved provider finds suitable and affordable alternative accommodation that meets the care recipient’s long-term needs.

Item 3: After paragraph 10(1)(c)

The item inserts a new paragraph under subsection 10(1) of the User Rights Principles. The new item enables approved providers to move a care recipient to another room if the care recipient has been receiving specialist dementia care and a clinical advisory committee has determined that the person is no longer suitable to continue receiving that care.

Statement of Compatibility with Human Rights

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

Overview of the Legislative Instrument

This legislative instrument seeks to make changes to the User Rights Principles to permit approved providers to ask care recipients to leave a service or move to another room of a service in certain circumstances. The instrument seeks to give effect to aspects of the Specialist Dementia Care Program (the Program).

Human Rights Implications

The 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 physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The legislative instrument will assist in promoting specialised care for people exhibiting very severe behavioural and psychological symptoms of dementia. In giving the approved providers the ability to ask care recipients to leave the Program when they no longer need the Program's services, the instrument assists in permitting others who have very severe behavioural and psychological symptoms of dementia to receive the specialised care provided by the Program. It will also assist approved providers to meet one of the Program's service delivery principles, which relates to providing care using the least restrictive practices that promote human rights for people with dementia, and to support and plan for the transition of people to the lowest tier of care appropriate to their needs.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

The Hon Ken Wyatt AM, MP

Minister for Senior Australians and Aged Care