



# **Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021**

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I, Richard Colbeck, Minister for Senior Australians and Aged Care Services, make the following instrument.

Dated 12 August 2021

Richard Colbeck  
Minister for Senior Australians and Aged Care Services

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## 1 Name

This instrument is the *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021*.

## 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	1 September 2021.	1 September 2021

Note: This table relates only to the provisions of this instrument as originally made.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 *Aged Care Quality and Safety Commission Act 2018*;
- (c) the *Aged Care (Transitional Provisions) Act 1997*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

#### *Aged Care (Transitional Provisions) Principles 2014*

##### 1 Section 4

Insert:

**enteral feeding supplement** means the enteral feeding supplement referred to in section 44-14 of the Transitional Provisions Act.

Note: See also Division 6 of Part 2 of Chapter 2 of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

**extended aged care at home—dementia** has the meaning given by section 15.8 of the *Flexible Care Subsidy Principles 1997* as in force immediately before 1 August 2013.

**KICA-Cog** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**medical practitioner** has the same meaning as in the *Health Insurance Act 1973*.

**nurse practitioner** has the same meaning as in the *Health Insurance Act 1973*.

**oxygen supplement** means the oxygen supplement referred to in section 44-13 of the Transitional Provisions Act.

Note: See also Division 5 of Part 2 of Chapter 2 of the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*.

**Psychogeriatric Assessment Scales** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**registered nurse** has the same meaning as in the *Health Insurance Act 1973*.

**Rowland Universal Dementia Assessment Scale** has the meaning given by section 4 of the *Subsidy Principles 2014*.

**suspension period**, in relation to the provision of home care, means the period for which the provision of home care is suspended under section 46-2 of the Transitional Provisions Act.

##### 2 Part 2 of Chapter 3

Repeal the Part, substitute:

### Part 2—On what basis is home care subsidy paid?

#### 67 Purpose of this Part

For the purposes of Division 47 of the Transitional Provisions Act, this Part specifies the period within which an approved provider may vary a claim made in respect of a payment period for home care subsidy.

### **67A Variation of claims for home care subsidy**

- (1) For the purposes of subparagraph 47-4A(1)(a)(i) of the Transitional Provisions Act, this section provides for the period within which an approved provider may vary a claim made in respect of a payment period.
- (2) This section applies to a variation to the extent that it relates to a care recipient to whom the approved provider has ceased to provide home care.
- (3) The period is 70 days after:
  - (a) if Subdivision D of Division 3A of Part 3 of the *User Rights Principles 2014* applies—the home care cessation day (within the meaning of section 21D of those Principles); or
  - (b) if Subdivision F of Division 3A of Part 3 of those Principles applies—the home care service cessation day (within the meaning of section 21JA of those Principles).

## **Part 3—What is the amount of home care subsidy?**

### **Division 1—Amount of home care subsidy**

#### **67B Purpose of this Part**

For the purposes of Division 48 of the Transitional Provisions Act, this Part specifies the method for working out the amount of home care subsidy payable to an approved provider in respect of a care recipient in respect of a payment period.

#### **67C Amount of home care subsidy in respect of care recipient in respect of payment period**

The amount of home care subsidy that is payable to an approved provider in respect of a care recipient in respect of a payment period is the sum of the amounts of home care subsidy payable in respect of each day, during the payment period, on which there is in force a home care agreement for provision of home care to the care recipient.

#### **67D Amount of home care subsidy in respect of care recipient in respect of day**

- (1) Subject to subsections (2) and (3), the amount of home care subsidy payable to an approved provider in respect of a day for a care recipient receiving home care is the sum of the following amounts:
  - (a) the basic subsidy amount in respect of the day worked out under Division 2;
  - (b) the amount of the viability supplement in respect of the day worked out under Division 3;
  - (c) the amount of the dementia and cognition supplement (if applicable) in respect of the day worked out under Division 4;
  - (d) the amount of the veterans' supplement (if applicable) in respect of the day worked out under Division 5;
  - (e) the amount of the top-up supplement (if applicable) in respect of the day worked out under Division 6;

- (f) the amount of the oxygen supplement (if applicable) that would be payable in respect of the day if the care recipient were receiving residential care on that day;
  - (g) the amount of the enteral feeding supplement (if applicable) that would be payable in respect of the day if the care recipient were receiving residential care on that day.
- (2) If the provision of home care to a care recipient is suspended, under section 46-2 of the Transitional Provisions Act, on a day referred to in paragraph 67F(2)(b), (4)(b) or (5)(b) of these principles:
- (a) the amount of home care subsidy payable to an approved provider for the care recipient in respect of the day is the sum of:
    - (i) the amount referred to in that paragraph; and
    - (ii) the amount of the viability supplement in respect of the day worked out under Division 3; and
  - (b) no amount of a supplement referred to in paragraphs (1)(c) to (g) is payable in respect of the day.
- (3) If more than one approved provider is eligible for home care subsidy for a day for a particular care recipient, the amount of home care subsidy payable in respect of the day for the care recipient to each approved provider, other than the approved provider that first entered into a home care agreement with the care recipient, is nil.

## Division 2—Basic subsidy amount

### 67E Basic subsidy amount—general

Subject to section 67F, the basic subsidy amount payable in respect of a day for a care recipient is the amount specified in the following table for the level of care that is, on the day, the care recipient's level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*.

Basic subsidy amount—general		
Item	Level of home care	Amount (\$)
1	Level 1	24.73
2	Level 2	43.50
3	Level 3	94.66
4	Level 4	143.50

### 67F Basic subsidy amount—during suspension period

- (1) If the provision of home care to a care recipient is suspended, on a temporary basis, under section 46-2 of the Transitional Provisions Act, the basic subsidy amount payable for the care recipient in respect of a day during the suspension period is the amount worked out in accordance with subsection (2), (4) or (5) of this section.



*Suspension for transition care or hospital treatment*

- (2) If the provision of home care is suspended because the care recipient is receiving transition care, or is attending hospital for the purpose of receiving hospital treatment, the amount is the following:
- (a) for up to 28 consecutive days in the suspension period—the amount specified in the table in section 67E for the level of care that is, on the day, the care recipient’s level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*;
  - (b) for a subsequent consecutive day in the suspension period—the amount that is 25% of the amount specified in the table in section 67E for the level of care that is, on the day, the care recipient’s level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*.
- (3) If a suspension period starts in a financial year and ends in the next financial year, then, for the purpose of calculating the number of consecutive days in subsection (2), the number of days restarts on 1 July of that next financial year.

*Suspension for respite care*

- (4) If the provision of home care is suspended because the care recipient is receiving respite care for which subsidy is payable to an approved provider, the amount is the following:
- (a) for up to 28 days in a financial year when the provision of home care is suspended because the care recipient is receiving the respite care—the amount specified in the table in section 67E for the level of care that is, on the day, the care recipient’s level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*;
  - (b) for a subsequent day in the financial year when the provision of home care is suspended because the care recipient is receiving the respite care—the amount that is 25% of the amount specified in the table in section 67E for the level of care that is, on the day, the care recipient’s level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*.

Note: The 28 days referred to in paragraph (a) do not need to be consecutive days.

*Suspension for other reason*

- (5) If the provision of home care is suspended for a reason other than those referred to in subsection (2) or (4), the amount is the following:
- (a) for up to 28 days in a financial year when the provision of home care to the care recipient is suspended for a reason other than those referred to in subsection (2) or (4)—the amount specified in the table in section 67E for the level of care that is, on the day, the care recipient’s level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*;
  - (b) for a subsequent day in the financial year when the provision of home care to the care recipient is suspended for a reason other than those referred to in subsection (2) or (4)—the amount that is 25% of the amount specified in the table in section 67E for the level of care that is, on the day, the care

recipient's level of care as a prioritised home care recipient determined under subsection 23B-1(1) of the *Aged Care Act 1997*.

Note: The 28 days referred to in paragraph (a) do not need to be consecutive days.

- (6) If, during a financial year, the determination made under subsection 23B-1(1) of the *Aged Care Act 1997* in relation to the care recipient is varied (under subsection 23B-2(1) of that Act) to increase the care recipient's level of care as a prioritised home care recipient to a new level, only days on which the provision of home care to the care recipient was suspended whilst the care recipient's level of care as a prioritised home care recipient is the new level are to be counted for the purpose of calculating a number of days under subsection (2), (4) or (5) of this section for the new level.

### Division 3—Viability supplement

#### 67G Amount of viability supplement

The amount of the viability supplement payable in respect of a day for a care recipient is the amount of the viability supplement that would apply for the day for the care recipient under Division 2 of Part 4 of Chapter 3 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* if:

- (a) the care recipient were not a continuing care recipient; and
- (b) the viability supplement applied to the care recipient under the *Aged Care Act 1997*.

### Division 4—Dementia and cognition supplement

#### 67H Eligibility for dementia and cognition supplement

- (1) The dementia and cognition supplement applies to a care recipient (in this Division called an *eligible care recipient*) in respect of a day if:
  - (a) there was in force on the day a home care agreement under which the care recipient was to be provided with home care, whether or not the care was provided on the day; and
  - (b) subsection (2), (3), (4) or (5) applied to the care recipient on the day; and
  - (c) if subsection (2), (3) or (4) applied to the care recipient on the day—the approved provider had a record of the assessment referred to in that subsection that was conducted in relation to the care recipient; and
  - (d) an amount of veterans' supplement is not payable under Division 5 in respect of the day for the care recipient.
- (2) This subsection applies to a care recipient on a day if:
  - (a) the care recipient has been assessed in accordance with the Psychogeriatric Assessment Scales; and
  - (b) the assessment was conducted by a registered nurse, nurse practitioner or medical practitioner; and
  - (c) the assessment resulted in a score of 10 or more.
- (3) This subsection applies to a care recipient on a day if:
  - (a) the care recipient is from a culturally or linguistically diverse background; and

- (b) the care recipient has been assessed in accordance with the Rowland Universal Dementia Assessment Scale; and
  - (c) the assessment was conducted by a registered nurse, nurse practitioner or medical practitioner; and
  - (d) the assessment resulted in a score of 22 or less.
- (4) This subsection applies to a care recipient on a day if:
- (a) the care recipient is an Aboriginal person, or a Torres Strait Islander, who lives in a rural or remote area; and
  - (b) the care recipient has been assessed in accordance with the KICA-Cog; and
  - (c) the assessment was conducted by:
    - (i) a registered nurse, nurse practitioner or medical practitioner; or
    - (ii) another health practitioner trained in assessing a person in accordance with the KICA-Cog; and
  - (d) the assessment resulted in a score of 33 or less.
- (5) This subsection applies to a care recipient on a day if, immediately before 1 August 2013, the care recipient was receiving care, or was approved to receive care, in respect of a place allocated for the provision of flexible care in the form called extended aged care at home—dementia.

Note: *KICA-Cog, Psychogeriatric Assessment Scales* and *Rowland Universal Dementia Assessment Scale* have the meanings given by section 4 of the *Subsidy Principles 2014* (see section 4 of these principles).

## **67J Amount of dementia and cognition supplement**

The amount of the dementia and cognition supplement payable in respect of a day for an eligible care recipient is the amount that is 11.5% of the basic subsidy amount that is payable in respect of the day for the care recipient under section 67E.

## **Division 5—Veterans’ supplement**

### **67K Eligibility for veterans’ supplement**

The veterans’ supplement applies to a care recipient (in this Division called an *eligible care recipient*) in respect of a day if:

- (a) on that day:
  - (i) there was in force a home care agreement under which the care recipient was to be provided with home care by an approved provider, whether or not the care was provided on the day; and
  - (ii) the care recipient was a veteran who had an accepted mental health condition; and
- (b) the care recipient has before, on or after the day, authorised either, or both, of the following to disclose to the approved provider that the care recipient is a veteran with an accepted mental health condition:
  - (i) the Secretary of the Department administered by the Minister administering the *Veterans’ Entitlements Act 1986*;
  - (ii) the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

## 67L Amount of veterans' supplement

The amount of the veterans' supplement payable in respect of a day for an eligible care recipient is the amount that is 11.5% of the basic subsidy amount that is payable in respect of the day for the care recipient under section 67E.

## Division 6—Top-up supplement

### 67M Eligibility for top-up supplement

The top-up supplement applies to a care recipient (in this Division called an *eligible care recipient*) in respect of a day (the *relevant day*) if:

- (a) on a day (the *eligibility start day*) within the period of 28 days ending immediately before 1 August 2013, the care recipient was being provided with care in respect of a place allocated for the provision of flexible care in the form of extended aged care at home—dementia; and
- (b) during the relevant day, there was in force a home care agreement under which the care recipient was to be provided with home care level 4 by an approved provider, whether or not the care was to be provided on the relevant day; and
- (c) there has not been 28 consecutive days within the period beginning on the eligibility start day and ending on the relevant day during which:
  - (i) care of a kind referred to in paragraph (a); or
  - (ii) home care in accordance with a home care agreement; was not provided to the care recipient.

Note: If the provision of home care to the eligible care recipient is suspended for a period under section 46-2 of the Transitional Provisions Act, the home care agreement under which the home care is provided is taken to remain in force during the suspension period, and the care recipient is taken to have been provided with home care, as required by the agreement, on each day of the suspension period (see Part 1 of this Chapter).

### 67N Amount of top-up supplement amount

The amount of the top-up supplement payable in respect of a day for an eligible care recipient is \$2.84.

## *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*

### 3 Chapter 3

Repeal the chapter.

### *Subsidy Principles 2014*

### 4 Section 4

Insert:

*available home care fees amount* has the meaning given by section 99A.

*home care fees* has the meaning given by subsection 52D-1(1) of the Act.

## **5 After Part 1 of Chapter 3**

Insert:

### **Part 1B—On what basis is home care subsidy paid?**

#### **Division 1—Purpose of this Part**

##### **72A Purpose of this Part**

For the purposes of Division 47 of the Act, this Part specifies the period within which an approved provider may vary a claim made in respect of a payment period for home care subsidy.

#### **Division 2—Variation of claims for home care subsidy**

##### **72B Variation of claims for home care subsidy**

- (1) For the purposes of subparagraph 47-4A(1)(a)(i) of the Act, this section provides for the period within which an approved provider may vary a claim made in respect of a payment period.
- (2) This section applies to a variation to the extent that it relates to a care recipient to whom the approved provider has ceased to provide home care.
- (3) The period is 70 days after:
  - (a) if Subdivision D of Division 3A of Part 3 of the *User Rights Principles 2014* applies—the home care cessation day (within the meaning of section 21D of those Principles); or
  - (b) if Subdivision F of Division 3A of Part 3 of those Principles applies—the home care service cessation day (within the meaning of section 21JA of those Principles).

## **6 Section 73**

Repeal the section, substitute:

### **73 Purpose of this Part**

For the purposes of Division 48 of the Act, this Part sets out matters in relation to the amount of home care subsidy payable to an approved provider for a home care service in respect of a payment period, including the following:

- (a) primary supplements for care recipients (Division 2);
- (b) reductions in subsidy for care recipients (Division 3);
- (c) other supplements for care recipients (Division 4);
- (d) matters relating to working out the shortfall amount for care recipients (Division 5);
- (e) matters relating to home care accounts for care recipients (Division 6).

## **7 At the end of Part 2 of Chapter 3**

Add:

## Division 5—Shortfall amount

### 99A Meaning of *available home care fees amount*

The *available home care fees amount* for a care recipient in respect of a payment period is worked out as follows.

#### ***Available home care fees amount calculator***

- Step 1. Work out the amount of home care fees paid or payable by the care recipient in respect of the payment period (if any).
- Step 2. Subtract the care subsidy reduction (if any) for the care recipient for the payment period worked out under subsection 48-7(1) of the Act. If the result is negative, the amount is taken to be nil.

The result (including a nil amount) is the *available home care fees amount* for the care recipient in respect of the payment period.

### 99B *Price for home care*

For the purposes of step 1 of the shortfall amount calculator in subsection 48-13(1) of the Act, the *price* for the home care provided during a payment period to a care recipient by an approved provider is worked out as follows.

#### **Calculator for *price for home care***

- Step 1. Work out the total amount of the prices that the approved provider charged for the care and services provided to the care recipient during the payment period.
- Step 2. Work out the total amount of the prices (if any) that the approved provider charged for the matters mentioned in paragraphs 19B(1)(b), (c) and (d) of the *User Rights Principles 2014* (certain travel, subcontracting arrangements and package management) in respect of the care recipient in the payment period.
- Step 3. Add the total amounts worked out under steps 1 and 2.
- Step 4. Subtract the available home care fees amount for the care recipient in respect of the payment period from the total amount worked out under step 3. If the result is negative, the amount is taken to be nil.

The result (including a nil amount) is the *price* for the home care provided during the payment period to the care recipient by the approved provider.

Note: For the care and services that an approved provider may provide, see the *Quality of Care Principles 2014* (Part 3 and Schedule 3).

## 99C Care recipient contribution amount

For the purposes of step 2 of the shortfall amount calculator in subsection 48-13(1) of the Act, the *care recipient contribution amount* for a care recipient in respect of a payment period is the amount equal to the care subsidy reduction (if any) for the care recipient for the payment period worked out under subsection 48-7(1) of the Act.

Note: The income tested care fee for a care recipient, which is used in calculating the maximum daily amount of home care fees payable by the care recipient, is equal to the care subsidy reduction for the care recipient (see Division 52D of the Act).

## Division 6—Home care accounts

### 99D Home care credits

For the purposes of item 2 of the table in section 48-15 of the Act, the following table specifies circumstances in which a credit arises in a care recipient's home care account, the amount of the credit and the time the credit arises.

<b>Home care credits</b>			
<b>Item</b>	<b>Column 1 In the following circumstances ...</b>	<b>Column 2 the amount of the credit is ...</b>	<b>Column 3 and the time the credit arises is ...</b>
1	Both: (a) in a payment period, an approved provider ceases to provide home care to the care recipient; and (b) item 3 of the table in subsection 21F(2) of the <i>User Rights Principles 2014</i> applies	an amount equal to the amount payable to the Commonwealth under subsection 21F(3) of those Principles	when the amount payable to the Commonwealth under subsection 21F(3) of those Principles is paid.
2	Both: (a) in a payment period, the approved provider ceases to provide home care to a care recipient through a particular home care service; and (b) Subdivision F of Division 3A of Part 3 of the <i>User Rights Principles 2014</i> applies	an amount equal to the amount payable to the Commonwealth under section 21JB of those Principles	when the amount payable to the Commonwealth under section 21JB of those Principles is paid.
3	Both: (a) an approved provider ceased to provide home care to the care recipient before 1 September 2021; and (b) section 37 of the <i>User Rights Principles 2014</i> applies	an amount equal to the amount payable to the Commonwealth under subsection 37(3) of those Principles	when the amount payable to the Commonwealth under subsection 37(3) of those Principles is paid.

## *User Rights Principles 2014*

### 8 Section 4

Insert:

*available home care fees amount* has the same meaning as in the *Subsidy Principles 2014*.

**9 Section 4 (definition of care recipient portion)**

Omit “step 7 of the calculator in section 21D”, substitute “section 21CB”.

**10 Section 4**

Insert:

*ceasing home care provider* has the meaning given by section 21D.

**11 Section 4 (definition of Commonwealth portion)**

Omit “step 6 of the calculator in section 21D”, substitute “section 21CA”.

**12 Section 4 (definition of exit amount)**

After “out”, insert “the care recipient portion of”.

**13 Section 4**

Insert:

*home care account balance* has the meaning given by section 48-17 of the Act.

*home care cessation day* has the meaning given by section 21D.

*home care fees* has the meaning given by subsection 52D-1(1) of the Act.

*home care service cessation day* has the meaning given by section 21JA.

*implementation date care recipient portion* has the meaning given by section 21BD.

*implementation date Commonwealth portion* has the meaning given by section 21BC.

*implementation date unpaid fees*, for an ongoing care recipient, means an amount of home care fees that was payable by the care recipient to the approved provider, but had not been paid, immediately before 1 September 2021.

*implementation date unspent home care amount* has the meaning given by section 21BB.

*ongoing home care recipient*: a care recipient who is being provided with home care by an approved provider through a home care service on 1 September 2021 is an *ongoing home care recipient* if the approved provider was providing home care to the care recipient through a home care service immediately before 1 September 2021.

**14 Section 4 (note to definition of package management)**

Repeal the note, substitute:

- Note: Package management includes, for example, the following:
- (a) activities required to comply with responsibilities under section 63-1 of the Act (accountability);
  - (b) activities required to comply with standards set out in the *Quality of Care Principles 2014*;



- (c) making claims for home care subsidy under section 47-4 of the Act;
- (d) the preparation of individualised budgets under section 21A of these principles;
- (e) the preparation of financial information statements under section 21B of these principles.

## **15 Section 4**

Insert:

*price*, for the home care provided during a payment period to a care recipient by an approved provider, has the meaning given by section 99B of the *Subsidy Principles 2014*.

## **16 Section 4 (definition of *transfer portion*)**

Repeal the definition.

## **17 After paragraph 16(2)(a)**

Insert:

- (aa) for the purposes of step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act, how an approved provider may elect to return the Commonwealth portion of a care recipient's unspent home care amount to the Commonwealth; and

## **18 Section 21B**

Repeal the section, substitute:

### **21B Financial information statements for payment periods**

- (1) If an approved provider provides a care recipient with home care through a home care service in a payment period, the approved provider must give a written statement to the care recipient relating to the payment period.

*What statement must contain*

- (2) The statement must inform the care recipient of:
  - (a) transactions during the payment period relating to the care recipient; and
  - (b) any unpaid home care fees relating to previous payment periods.
- (3) The statement must include the following:
  - (a) the amount of home care subsidy for the care recipient in respect of the payment period;
  - (b) the amount of home care fees (if any) paid or payable by the care recipient in respect of the payment period;
  - (c) an itemised list of:
    - (i) the care and services provided to the care recipient during the payment period; and
    - (ii) the matters mentioned in paragraphs 19B(1)(b), (c) and (d) (certain travel, subcontracting arrangements and package management) for which the care recipient was charged in respect of the payment period;
  - (d) for each item of care and services, and each matter mentioned in paragraphs 19B(1)(b), (c) and (d)—the price that the approved provider charged the care recipient in respect of the payment period;

- (e) the total of the prices mentioned in paragraph (d) in respect of the payment period;
- (f) the care recipient's unspent home care amount in respect of:
  - (i) the previous payment period; and
  - (ii) the payment period;
- (g) if, during the payment period, the approved provider received an amount of the care recipient portion of the care recipient's unspent home care amount from another approved provider—the amount that was received.

*Partial periods*

- (4) If the approved provider did not provide the care recipient with home care during the whole of the payment period, the statement must cover the part of the payment period during which the approved provider provided the care recipient with home care.

*When statement must be given*

- (5) The approved provider must give the statement to the care recipient as soon as practicable after the approved provider has all the necessary information to complete it.

*Informing care recipient of, and helping care recipient to understand, statement*

- (6) The care recipient must be informed of, and helped to understand, the statement.

### **19 Division 3A of Part 3**

Repeal the Division, substitute:

### **Division 3A—Responsibilities of approved providers of home care— unspent home care amounts and exit amounts**

#### **Subdivision A—Election to return, and reporting, Commonwealth portion of unspent home care amount**

#### **21BA Election to return Commonwealth portion of unspent home care amount**

- (1) An approved provider may elect to return the Commonwealth portion of a care recipient's unspent home care amount to the Commonwealth.
- (2) The election:
  - (a) must be in writing; and
  - (b) must be made before 1 March 2022; and
  - (c) must be made in a claim for home care subsidy in respect of a payment period; and
  - (d) must state the Commonwealth portion of the care recipient's unspent home care amount at the end of the previous payment period.
- (3) The election is irrevocable.

## **21BAA Responsibility to report Commonwealth portion of unspent home care amount**

- (1) This section applies to an approved provider if on 1 September 2021, a care recipient to whom the approved provider is providing home care through a home care service is an ongoing home care recipient.
- (2) The approved provider must, not later than 31 December 2021, report to the Secretary the Commonwealth portion of the care recipient's unspent home care amount at the end of any one of the following payment periods (the *reporting payment period*):
  - (a) the payment period beginning on 1 September 2021;
  - (b) the payment period beginning on 1 October 2021;
  - (c) the payment period beginning on 1 November 2021.
- (3) The report must be made in a claim for home care subsidy in respect of the reporting payment period.
- (4) Subsection (2) ceases to apply to an approved provider if, not later than 31 December 2021, the approved provider makes an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.

Note: An election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth must be made in a claim for home care subsidy in respect of a payment period and must state the Commonwealth portion of the care recipient's unspent home care amount at the end of the previous payment period (see paragraphs 21BA(2)(c) and (d)).

## **Subdivision B—Implementation date amounts for ongoing home care recipients**

### **21BB Meaning of *implementation date unspent home care amount***

The *implementation date unspent home care amount* of an ongoing home care recipient is the amount that would have been the unspent home care amount of the care recipient, worked out in accordance with section 21C of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and
- (b) disregarding step 4 of the method statement in that section (which deals with exit amounts).

### **21BC Meaning of *implementation date Commonwealth portion***

The *implementation date Commonwealth portion* of an ongoing home care recipient is the amount that would have been the Commonwealth portion of the care recipient's implementation date unspent home care amount, worked out in accordance with section 21D of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and

- (b) as if references in that section to the care recipient's unspent home care amount were references to the implementation date unspent home care amount of the care recipient.

### **21BD Meaning of *implementation date care recipient portion***

The *implementation date care recipient portion* of an ongoing home care recipient is the amount that would have been the care recipient portion of the care recipient's implementation date unspent home care amount, worked out in accordance with section 21D of these principles as that section was in force immediately before 1 September 2021:

- (a) if the approved provider providing home care to the care recipient had ceased to provide home care to the care recipient immediately before 1 September 2021; and
- (b) as if references in that section to the care recipient's unspent home care amount were references to the implementation date unspent home care amount of the care recipient.

## **Subdivision C—Unspent home care amounts**

### **21C Meaning of *unspent home care amount***

The *unspent home care amount* of a care recipient in respect of a payment period is the sum of the following amounts:

- (a) the Commonwealth portion of the care recipient's unspent home care amount in respect of the payment period;
- (b) the care recipient portion of the care recipient's unspent home care amount in respect of the payment period.

### **21CA Meaning of *Commonwealth portion***

*Commonwealth portion—if approved provider has not made election under section 21BA*

- (1) Subsection (2) applies to a care recipient in respect of a payment period if the approved provider providing the care recipient with home care through a home care service has not, under section 21BA, made an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.
- (2) The *Commonwealth portion* of the care recipient's unspent home care amount in respect of the payment period is worked out as follows.

***Commonwealth portion calculator (if no election made)***

- Step 1. Identify the amount of the Commonwealth portion of the care recipient's unspent home care amount in respect of the previous payment period.
- Step 2. If section 21CC applies, subtract the amount (if any) of the second difference amount under that section. If the result is negative, the amount is taken to be nil.

The amount (including a nil amount) is the **Commonwealth portion** of the care recipient's unspent home care amount in respect of the payment period.

*Commonwealth portion—if approved provider has made election under section 21BA*

- (3) Subsection (4) applies in relation to a care recipient if the approved provider has, under section 21BA, made an election to return the Commonwealth portion of the care recipient's unspent home care amount to the Commonwealth.
- (4) The **Commonwealth portion** of a care recipient's unspent home care amount in respect of a payment period is worked out as follows.

**Commonwealth portion calculator (if election made)**

- Step 1. Identify the amount of the Commonwealth portion of the care recipient's unspent home care amount in respect of the previous payment period.
- Step 2. Subtract the amount (if any) by which, under step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act, the price for the home care provided during the payment period to the care recipient was reduced.

The amount (including a nil amount) is the **Commonwealth portion** of the care recipient's unspent home care amount in respect of the payment period.

*Commonwealth portion—payment period ending immediately before 1 September 2021*

- (5) For the purposes of this section, the amount of the Commonwealth portion of a care recipient's unspent home care amount in respect of the payment period ending immediately before 1 September 2021 is:
  - (a) for an ongoing home care recipient—the implementation date Commonwealth portion for the care recipient; and
  - (b) for any other care recipient—nil.

**21CB Meaning of care recipient portion**

- (1) The **care recipient portion** of a care recipient's unspent home care amount in respect of a payment period is worked out as follows.

**Care recipient portion calculator**

- Step 1. Identify the amount of the care recipient portion of the care recipient's unspent home care amount in respect of the previous payment period.
- Step 2. Add the amount (if any) of the care recipient portion of the care recipient's unspent home care amount paid to the approved provider providing the care recipient with home care in the payment period (the

**current provider**) by another approved provider under subsection 21F(2) or 37(2).

- Step 3. Add the amount (if any) of the care recipient's implementation date unpaid fees paid in the payment period by the care recipient to the current provider.
- Step 4. Add the amount (if any) by which the available home care fees amount for the care recipient in respect of the payment period (if any) exceeds the total amount worked out under step 3 of the calculator in section 99B of the *Subsidy Principles 2014*.

This is the **base care recipient portion** for the payment period.

- Step 5. If section 21CC applies, subtract the amount of the first difference amount under that section. If the result is negative, the amount is taken to be nil.
- Step 6. If the current provider ceases to provide home care to the care recipient on a day in the payment period and Subdivision D applies, subtract the amount of any home care fees that are payable by the care recipient to the current provider, but have not been paid. If the result is negative, the amount is taken to be nil.
- Step 7. If:
- (a) the current provider ceases to provide home care to the care recipient on a day in the payment period and Subdivision D applies; and
  - (b) an exit amount may be deducted by the current provider in accordance with section 21H;

subtract the exit amount from the amount worked out under step 6.

Note: The exit amount must not be more than the amount worked out under step 6 (see paragraph 21H(2)(c)).

The amount (including a nil amount) worked out under step 6 or 7 (as applicable) is the **care recipient portion** of the care recipient's unspent home care amount in respect of the payment period.

*Care recipient portion for payment period ending immediately before 1 September 2021*

- (2) For the purposes of step 1, the amount of the care recipient portion for the payment period ending immediately before 1 September 2021 is:
- (a) for an ongoing home care recipient—the implementation date care recipient portion of the care recipient; and
  - (b) for any other care recipient—nil.

*Care recipient portion for previous payment period for new care recipients*

- (3) For the purposes of step 1, if a care recipient first began receiving home care from an approved provider in a payment period, the amount of the care recipient portion of the care recipient's unspent home care amount in respect of the previous payment period is nil.

## **21CC Difference amounts**

- (1) This section applies if the price for the home care provided during a payment period to a care recipient by an approved provider is greater than the sum of the following:
  - (a) the amount (if any) by which the price was reduced under step 1A of the shortfall amount calculator in subsection 48-13(1) of the Act;
  - (b) the care recipient contribution amount (if any) under section 99C of the *Subsidy Principles 2014* for the care recipient in respect of the payment period;
  - (c) the amount of home care subsidy for the care recipient in respect of the payment period.
- (2) The amount by which the price exceeds the sum of the amounts mentioned in subsection (1) is the **first difference amount**.
- (3) The amount (if any) by which the first difference amount exceeds the base care recipient portion under subsection 21CB(1) is the **second difference amount**.

## **Subdivision D—Responsibilities if approved provider ceases to provide care**

### **21D Application of Subdivision**

This Subdivision applies if:

- (a) an approved provider (the **ceasing home care provider**) ceases on a particular day (the **home care cessation day**) to provide home care to a care recipient; and
- (b) Subdivision F does not apply.

### **21E Responsibility to give notice to care recipient or their estate**

- (1) The ceasing home care provider must give a notice in accordance with this section.
- (2) The notice must (subject to subsection (3)):
  - (a) specify:
    - (i) the home care cessation day; and
    - (ii) the care recipient's unspent home care amount; and
    - (iii) the Commonwealth portion and care recipient portion of the care recipient's unspent home care amount; and
    - (iv) if unpaid home care fees were deducted by the ceasing home care provider under step 6 of the care recipient portion calculator in subsection 21CB(1)—the amount of fees that were deducted; and

- (v) if an exit amount was deducted by the ceasing home care provider under step 7 of the care recipient portion calculator in subsection 21CB(1)—the exit amount; and
- (b) explain:
  - (i) if the ceasing home care provider ceases to provide home care to the care recipient because the care recipient has died—the effect of item 1 of the table in subsection 21F(2); and
  - (ii) otherwise—the effect of items 2 and 3 of that table and the effect of subsection 21F(3).
- (3) However, if the unspent home care amount, the Commonwealth portion or the care recipient portion is nil, the notice must state that the amount or portion is nil.

*When notice must be given*

- (4) The notice must be given within 56 days after the home care cessation day.

*Who notice is given to*

- (5) The notice must be given to:
  - (a) the care recipient; or
  - (b) if the care recipient has died—the care recipient’s legal personal representative.

Note: A copy of the notice may also be required to be given to a new approved provider of a care recipient under subsection 21G(1).

**21F Responsibility to pay care recipient portion and Commonwealth portion of unspent home care amount**

- (1) Each of the care recipient portion and the Commonwealth portion of a care recipient’s unspent home care amount in respect of the payment period in which the approved provider ceased to provide home care to the care recipient is payable in accordance with this section if the portion is more than nil.

Note: Notices may be required to be given under section 21G in relation to payments made under this section.

*Payment of care recipient portion*

- (2) The ceasing home care provider must pay the care recipient portion in accordance with the following table.

<b>Payment of care recipient portion</b>			
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the approved provider must pay the care recipient portion to this person ...</b>	<b>Column 3 within this period ...</b>
1	the ceasing home care provider ceases to provide home care to the care recipient because the care recipient dies	the care recipient’s estate	14 days after the ceasing home care provider is shown the probate of the will of the care recipient or letters of administration of the estate of the care



<b>Payment of care recipient portion</b>			
<b>Item</b>	<b>Column 1 If ...</b>	<b>Column 2 the approved provider must pay the care recipient portion to this person ...</b>	<b>Column 3 within this period ...</b>
			recipient.
2	the ceasing home care provider is notified, within 56 days after the home care cessation day, that the care recipient has entered into a home care agreement with a new approved provider	the new approved provider	70 days after the home care cessation day.
3	neither item 1 nor 2 applies	the care recipient	70 days after the home care cessation day.

*When Commonwealth portion becomes due and payable*

- (3) The Commonwealth portion is due and payable by the approved provider to the Commonwealth at the end of 70 days after the home care cessation day.

Note: The Commonwealth portion of a care recipient's unspent home care amount is a recoverable amount and may, under section 95-3 of the Act, be deducted from other amounts payable to the approved provider.

**21G Responsibility to give notices to new approved provider and the Commonwealth**

*Notice for new approved provider*

- (1) If the ceasing home care provider pays another approved provider (the **new provider**) the care recipient portion of the care recipient's unspent home care amount under item 2 of the table in subsection 21F(2), the ceasing home care provider must give a copy of the notice given under section 21E relating to the care recipient to the new provider at the time the amount is paid.

*Notice for the Commonwealth*

- (3) If:
- (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under subsection 21F(3); or
  - (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;

the ceasing home care provider must, within 70 days after the home care cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

**21H Responsibilities in relation to exit amounts**

- (1) An exit amount must not be deducted in working out the care recipient portion of a care recipient's unspent home care amount unless:

- (a) the home care agreement entered into between the approved provider and the care recipient specifies an agreement exit amount (whether that amount was specified at the time the agreement was entered into or later); and
  - (b) a published exit amount was given to the Secretary under section 21J before that agreement exit amount was first specified in the home care agreement.
- (2) The exit amount that is deducted must not be more than any of the following:
- (a) the published exit amount that was most recently given to the Secretary under section 21J by the approved provider before the agreement first specified the agreement exit amount referred to in paragraph (1)(a);
  - (b) the agreement exit amount referred to in paragraph (1)(a);
  - (c) the amount worked out under step 6 of the care recipient portion calculator in subsection 21CB(1).

### **Subdivision E—Published exit amounts**

#### **21J Responsibility to give notice to the Commonwealth**

- (1) If any home care agreement of an approved provider specifies or is to specify an agreement exit amount, the approved provider must give to the Secretary a written notice of the maximum exit amount (the *published exit amount*) that may be deducted by the approved provider in working out any care recipient's unspent home care amount when the approved provider ceases to provide home care to the care recipient.
- (2) The notice must be given in a form approved, in writing, by the Secretary.

Note: The Secretary may make the information in a notice under subsection (1) publicly available (see section 86-9 of the Act and the *Information Principles 2014*).

### **Subdivision F—Responsibilities if care recipient transfers between home care services operated by same approved provider**

#### **21JA Application of Subdivision**

This Subdivision applies if an approved provider:

- (a) ceases on a particular day (the *home care service cessation day*) to provide home care to a care recipient through a particular home care service; and
- (b) starts to provide home care to the care recipient through another home care service;

without ceasing to provide home care to the care recipient.

#### **21JB Responsibility to pay Commonwealth portion of unspent home care amount**

- (1) The Commonwealth portion of a care recipient's unspent home care amount in respect of the payment period in which the approved provider ceased to provide home care to the care recipient through the particular home care service is payable in accordance with this section if the Commonwealth portion is more than nil.

- (2) The Commonwealth portion is due and payable by the approved provider to the Commonwealth at the end of 70 days after the home care service cessation day.

Note: The Commonwealth portion of a care recipient's unspent home care amount is a recoverable amount and may, under section 95-3 of the Act, be deducted from other amounts payable to the approved provider.

### **21JC Responsibility to give notice to the Commonwealth**

If:

- (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under section 21JB; or
- (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;

the ceasing home care provider must, within 70 days after the home care service cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

### **20 Paragraph 23(2)(cba)**

After "out", insert "the care recipient portion of".

### **21 Paragraph 23(2)(cc)**

Omit "or transfer portion".

### **22 In the appropriate position in Part 5**

Insert:

## **Division 6—Transitional provisions relating to the Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021**

### **35 Definitions**

In this Division:

*care recipient portion* has the same meaning as in the old principles.

*cessation day* has the same meaning as in sections 21E, 21F and 21G of the old principles.

*Commonwealth portion* has the same meaning as in the old principles.

*old principles* means these principles as in force immediately before 1 September 2021.

*transfer portion* has the same meaning as in the old principles.

*unspent home care amount* has the same meaning as in the old principles.

### **36 Giving notices and making payments—general**

- (1) This section applies if:

- (a) before 1 September 2021, an approved provider ceased to provide home care to a care recipient; and
  - (b) immediately before 1 September 2021, the approved provider had not:
    - (i) given a notice relating to the care recipient under section 21E of the old principles; or
    - (ii) if the care recipient portion or the Commonwealth portion of the care recipient's unspent home care amount was more than nil, and item 1 or 3 of the table in subsection 21F(2) of the old principles applied—paid that portion in accordance with section 21F of the old principles; or
    - (iii) given a notice relating to the Commonwealth portion of the care recipient's unspent home care amount under subsection 21G(3) of the old principles.
- (2) Despite the amendments made by the *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021*, the old principles continue to apply to the approved provider in relation to each thing mentioned in paragraph (1)(b) that the approved provider had not done before 1 September 2021.

### **37 Giving notices and making payments—transfer portion**

- (1) This section applies if:
- (a) before 1 September 2021, an approved provider (the *first provider*) had ceased to provide home care to a care recipient; and
  - (b) the transfer portion of the care recipient's unspent home care amount was more than nil; and
  - (c) the first provider is notified, within 56 days after the cessation day, that the care recipient has entered into a home care agreement with a new approved provider; and
  - (d) immediately before 1 September 2021, the first provider had not paid the transfer portion of the care recipient's unspent home care amount to the new approved provider in accordance with item 2 of the table in subsection 21F(2) of the old principles.

#### *Payment and notice—care recipient portion*

- (2) The first provider must:
- (a) pay the care recipient portion of the care recipient's unspent home care amount to the new approved provider within 70 days after the cessation day; and
  - (b) at the time the care recipient portion is paid, give the new approved provider a copy of the notice given by the first provider under section 21E of the old principles relating to the care recipient.

#### *Payment and notice—Commonwealth portion*

- (3) The Commonwealth portion of the care recipient's unspent home care amount is due and payable by the first provider to the Commonwealth at the end of 70 days after the cessation day.

Note: The Commonwealth portion of a care recipient's unspent home care amount is a recoverable amount and may, under section 95-3 of the Act, be deducted from other amounts payable to the approved provider.

(4) If:

- (a) the Commonwealth portion of the care recipient's unspent home care amount will become due and payable to the Commonwealth under subsection (3); or
- (b) the Commonwealth portion of the care recipient's unspent home care amount is nil;

the first provider must, within 70 days after the cessation day, give a notice containing that information to the Secretary, in a form approved, in writing, by the Secretary.

## Part 2—Consequential amendments

### *Aged Care Quality and Safety Commission Rules 2018*

#### **23 Paragraph 111D(a)**

Repeal the paragraph, substitute:

- (a) if an approved provider has not made a payment as required under section 21F of the *User Rights Principles 2014* (as in force before 1 September 2021)—requiring the provider to make the payment within a specified period;
- (aa) if an approved provider has not made a payment as required under section 21F or 37 of the *User Rights Principles 2014* (as in force on or after 1 September 2021)—requiring the provider to make the payment within a specified period;

### *Records Principles 2014*

#### **24 Paragraph 7(t)**

Omit “2014;”, substitute “2014 (as in force before 1 September 2021);”.

#### **25 After paragraph 7(t)**

Insert:

- (ta) records relating to the payment of the care recipient portion of a care recipient’s unspent home care amount under section 21F or 37 of the *User Rights Principles 2014* (as in force on or after 1 September 2021);