

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Government Services

*Human Services (Medicare) Act 1973*

*Human Services (Medicare) (Medicare Programs) Specification 2021*

### **Background**

A number of Commonwealth laws allow information that has been obtained in administering one program to be used or disclosed to enable the administration of another program, where that other program is a medicare program. For example, the *Health Insurance Act 1973* and the *National Health Act 1953* authorise persons to disclose information obtained under those Acts for the purposes of enabling a person to perform functions in relation to a 'medicare program'. These laws rely on the definition of 'medicare program' in section 41G of the *Human Services (Medicare) Act 1973* to identify the programs for which information may be used or disclosed.

Section 41G of the *Human Services (Medicare) Act 1973* defines a medicare program as a service, benefit, program or facility that is provided under certain health-related legislation referred to in paragraph 41G(a), or that is specified in a legislative instrument made by the Minister under paragraph 41G(b).

By enabling the definition of medicare program to include programs specified in a legislative instrument, section 41G provides a mechanism for updating, from time to time, the list of programs that are classified as medicare programs and in relation to which information can be used and disclosed.

### **Purpose**

The *Human Services (Medicare) (Medicare Programs) Specification 2021* (the 2021 Specification) repeals and replaces the *Human Services (Medicare) (Medicare Programs) Specification 2019* (the 2019 Specification). 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, 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. This gives the Minister power under paragraph 41G(b) of the *Human Services (Medicare) Act 1973* to repeal and replace the 2019 Specification.

The changes to the 2019 Specification in making the 2021 Specification involve specifying an additional program as a medicare program and removing two programs that are no longer required to be classified as medicare programs.

The program being added as a medicare program is the Australian Thalidomide Survivors Support Program (ATSSP). The programs being removed are the Rural

Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program. The Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program were previously specified as medicare programs as they were administered by Services Australia using information obtained under other programs. The Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program are being removed as they are no longer administered by Services Australia and accordingly are not required to be specified to be medicare programs.

The ATSSP is a lifetime support package for recognised thalidomide survivors that helps with out of pocket health care costs and daily living costs. Under the program, survivors may be eligible to:

- receive a lump sum payment and ongoing annual payments;
- access an Extraordinary Assistance Fund (EAF). The EAF helps cover the costs of goods and services to assist with activities of daily living, impacted as a result of thalidomide-related injuries; and
- access a Health Care Assistance Fund (HCAF). The HCAF helps cover out-of-pocket health care costs that are associated with thalidomide-related injuries.

While the ATSSP obtains customers' consent to use of their information for the administration of the ATSSP, adding the program to the list of medicare programs will provide additional authority to use and disclose information for the purposes of administering the program. For example, it will enable information obtained under other programs, such as under Medicare, to be disclosed for the purpose of assessing eligibility for the ATSSP, delivering the program to people and for compliance purposes.

The 2021 Specification is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

## **Commencement**

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

## **Consultation**

The specification is of a machinery nature and ensures that the list of programs that are medicare programs is updated. As the instrument does not alter existing arrangements, no public consultation on the specification was considered necessary.

Services Australia and the Department of Health were consulted on the changes to the specification.

## **Availability of independent review**

The changes to the specification do not affect the availability of independent review, or authorise any new non-reviewable decisions.

## **Explanation of the provisions**

**Section 1** provides that the name of this instrument is the *Human Services (Medicare) (Medicare Programs) Specification 2021*.

**Section 2** provides that the instrument commences the day after it is registered on the Federal Register of Legislation.

**Section 3** repeals the *Human Services (Medicare) (Medicare Programs) Specification 2019*, which is replaced by this instrument.

**Section 4** prescribes the services, benefits, programs and facilities in Schedule 1 to be 'medicare programs' for paragraph 41G(b) of the Act.

### **Schedule 1 – Medicare programs**

Schedule 1 contains the full list of Medicare programs. The programs listed in the 2019 Specification are included with the exception of the Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program.

The 2021 Specification includes one additional program – the Thalidomide Survivors Support Program.

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

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

### ***Human Services (Medicare) (Medicare Programs) Specification 2021***

The specification 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 *Human Services (Medicare) (Medicare Programs) Specification 2021* (the 2021 Specification) specifies, for the purposes of paragraph 41G(b) of the *Human Services (Medicare) Act 1973*, programs as ‘medicare programs’.

A number of Commonwealth laws allow information that has been obtained in administering one program to be used or disclosed to enable the administration of another program, where that other program is a medicare program. For example, the *Health Insurance Act 1973* and the *National Health Act 1953* authorise persons to disclose information obtained under those Acts for the purposes of enabling a person to perform functions in relation to a ‘medicare program’. These laws rely on the definition of ‘medicare program’ in section 41G of the *Human Services (Medicare) Act 1973* to identify the programs for which information may be used or disclosed.

Section 41G defines a medicare program as a service, benefit, program or facility that is provided under certain health-related legislation referred to in paragraph 41G(a) or that is specified in a legislative instrument made under section 41G(b).

By enabling the definition of medicare program to include programs specified in a legislative instrument, section 41G provides a mechanism for updating, from time to time, the list of programs that are classified as medicare programs and in relation to which information can be used and disclosed.

The 2021 Specification repeals and replaces the *Human Services (Medicare) (Medicare Programs) Specification 2019*. The changes made by the instrument involve removing the Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program as Medicare programs and including the Australian Thalidomide Survivors Support Program (ATSSP) program as a Medicare program. The Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program were previously specified as Medicare programs as they were administered by Services Australia using information obtained under other programs. The Rural Procedural Grants Program and the Western Australian Visiting Medical Practitioner Program are being removed as they are no longer administered by Services Australia and accordingly are not required to be specified to be Medicare programs.

### **Human rights implications**

The 2021 Specification engages the right to health (in article 12(1) of the *International Covenant on Economic Social and Cultural Rights* (ICESCR)) and the right to privacy (in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR)).

The effect of the 2021 Specification is to make the ATSSP a Medicare program for the purpose of definition of 'Medicare program' in section 41G of the *Human Services (Medicare) Act 1973*.

The ATSSP is a lifetime support package for recognised thalidomide survivors that helps with out of pocket health care costs and daily living costs. This program supports the right to health.

Adding the ATSSP to the list of Medicare programs will provide authority to use and disclose information obtained under particular laws (for example information obtained in administering Medicare or the Pharmaceutical Benefits Scheme), in administering the ATSSP. While the ATSSP obtains customers' consent to use of their information for the administration of the ATSSP, adding the program to the list of Medicare programs will provide additional authority to use and disclose information for the purposes of administering the program. Such information could be used for assessing eligibility for the ATSSP, delivering the program to people or for compliance purposes.

For the purposes of Article 17 of the ICCPR, the collection or use of any personal information would not be "unlawful" as it would be provided for and authorised under legislation. Further, this would not be arbitrary interference with the right to privacy, as it would be for the legitimate and necessary objective of implementing the statutory Medicare program and the Pharmaceutical Benefits Scheme. The listing of ATSSP, as well as continuing programs, is necessary for ensuring the administration of Medicare programs.

The limitation on the right to privacy is proportionate as the provision of any personal information would only be triggered for administering the relevant programs, including payment of a Medicare benefit. Information collection would be subject to robust safeguards preventing unauthorised disclosure. For example, the Australian Privacy Principles in section 14 of the *Privacy Act 1988* govern all stages of the

processing of personal information in applicable cases (including health information that is sensitive information), setting out standards for the collection, storage, use, disclosure and quality of personal information. A breach of an Australian Privacy Principle is an interference with the privacy of an individual and can lead to regulatory action and penalties.

By way of further example, the *National Health (Privacy Rules) 2018*, made by the Australian Information Commissioner under section 135AA of the *National Health Act 1953*, also regulates the use of Medicare and Pharmaceutical Benefits Scheme information. This framework covers all Australian Government agencies handling such information, including storage and handling procedures, reporting obligations to the Information Commissioner, and a complaints mechanism should a person think that a breach of the rules has occurred. Under section 135AB of the *National Health Act 1953*, a breach of the rules is an interference with the privacy of an individual for the purposes of the *Privacy Act 1988*.

## **Conclusion**

The 2021 Specification is compatible with human rights because it advances the protection of the right to health. To the extent that it limits the right to privacy to that end, those limitations are reasonable, necessary and proportionate.

**Linda Reynolds, Minister for Government Services**