

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Improved Home Care Payment Administration) Principles 2022

Purpose

The *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Principles 2022* (**amending instrument**) amends the *Subsidy Principles 2014* (**Subsidy Principles**) and the *User Rights Principles 2014* (**User Rights Principles**), specifically to:

1. update the calculation of the shortfall amount paid to approved providers of home care (**providers**) for care recipients who receive the hardship supplement; and
2. introduce requirements for providers to detail the care recipient's home care account balance, and both the Commonwealth portion and care recipient portion of a care recipient's unspent home care amount in the monthly statement.

The amending instrument amends the Subsidy Principles to ensure the accuracy of the shortfall calculator in section 48-13 of the *Aged Care Act 1997* (**Act**), which is used to calculate the amount of home care subsidy paid to a provider. The amendment will ensure that there is no underpayment of home care subsidy to the provider. Currently, the home care subsidy is paid to the care recipient's home care account. After the commencement of the amending instrument, the home care subsidy will be paid directly to the provider. The amount of the home care subsidy to be paid will not otherwise be affected and this measure has no implication on the Aged Care Appropriation.

The amending instrument will also amend the User Rights Principles to introduce additional requirements for providers to identify the distribution of care recipients' unspent funds in the monthly report. The additional requirements will require reporting across the home care account, maintained by Services Australia, and the provider-held Commonwealth and care recipient portions of unspent funds. This change was originally proposed as part of the implementation of Improved Payment Arrangements (**IPA**) but was delayed until 2022 to support the sector's transition to the new arrangements.

The amending instrument supports the implementation of changes made by the *Aged Care Legislation Amendment (Improved Home Care Payment Administration No.2) Act 2021* and *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021*.

The Subsidy Principles and the User Rights Principles are legislative instruments for the purposes of the *Legislation Act 2003*.

Background

As announced at the 2019-20 Budget, payment arrangements for home care have been improved by:

- a. Paying home care subsidies and supplements in arrears (**Phase 1**); and
- b. Paying providers on invoice, based on the services provided in a month, rather than automatically paying the full subsidy (**Phase 2**).

These changes were introduced in two phases:

- Phase 1 came into effect 1 February 2021, and
- Phase 2 came into effect 1 September 2021.

From 1 September 2021, any unspent funds are held by Services Australia in a home care account for each care recipient until needed. These changes do not affect care recipients' subsidy entitlements or the total funds they have available to fund care, services and goods.

Hardship supplement

The hardship supplement is intended to cover all or part of the cost of eligible care recipients' aged care fees (the basic daily care fee and the income tested care fee). When determining the hardship supplement for a care recipient, the basic daily care fee is always covered before the income tested care fee. As such, there are no care recipients who receive the hardship supplement for the income tested care fee, without also receiving it for the basic daily care fee. This amendment to the Subsidy Principles ensures the hardship supplement (as described at section 48-10 of the Act) is correctly accounted for when paying the home care subsidy to providers.

Shortfall calculation

The shortfall calculator is used to calculate the amount paid by the Government to providers. However, since the introduction of IPA, the shortfall calculation has not operated as intended. Where the hardship supplement covers the income tested care fee, the shortfall calculator should account for the reduction in the care recipient contribution amount.

Currently, when a provider submits a price that is less than the maximum contribution amount for the care recipient for the payment period, the shortfall calculator will determine the supplement was to be paid to the care recipient's home care account. This has resulted in providers being out of pocket for the amount that would otherwise have been covered by the hardship supplement.

Monthly reporting requirement

The amendment to the User Rights Principles will support the Government's election commitment to ensure home care recipients receive monthly reporting on where their money is going, as well as their response to Recommendation 124 of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**). These amendments will support increased transparency of care recipient unspent funds.

The Government has committed to require providers to issue home care recipients a monthly report on how their subsidy and fees were allocated and spent over the previous month. This will give effect to Recommendation 124, ‘Standardised statements on services delivered and costs in home care’, delivered by the Royal Commission. The Royal Commission recommended this system be implemented by July 2022.

Authority

Section 96-1 of the Act provides that the Minister may, by legislative instrument, make Principles specified in the second column of the table in that section providing for matters required or permitted, or necessary or convenient, to give effect to the corresponding Part or section of the Act specified in the third column of the table. Those include Subsidy Principles in relation to home care subsidy matters (Part 3.2 of the Act), and the User Rights Principles in relation to user rights matters (Part 4.2 of the Act).

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

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

Commencement

The amending instrument is to commence 1 September 2022.

Consultation

The Aged Care Financing Authority (ACFA) (now abolished) previously examined and advised on the potential financial impact on home care providers of the Government’s 2019-20 Budget measure to change the way providers are paid Government subsidies. ACFA was also asked to advise on any significant impact of the new arrangements on consumers and assess the cash flow and viability impacts on providers expected as a result of these changes. Notwithstanding concerns about implementation timeframes attached to these changes, ACFA’s report concluded that the vast majority of home care providers would manage these changes from a cash flow perspective.

These subsequent amendments are in line with the initial proposal for the IPA and have been discussed with the sector through peak organisations including the Aged and Community Care Providers Association, formerly Leading Aged Services Australia and Aged and Community Services Australia and providing information about the changes to providers via the Department of Health and Aged Care’s website (**Department**). The Department has also discussed the proposed amendments with the provider peak organisations, care recipients, and providers through the monthly home

care working group, as well through ad hoc meetings between the Department and the peak organisations.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (**OBPR**) has advised that a regulation impact statement (**RIS**) is not necessary as the Deputy Secretary of the Ageing and Aged Care Group has determined that the prior consultation process undertaken by the Department and the then ACFA is equivalent in nature to a RIS analysis.
OBPR ID 24520.

Details of the Aged Care Legislation Amendment (Improved Home Care Payment Administration) Principles 2022

Section 1 provides that the name of this instrument is the *Error! Use the Home tab to apply ShortT to the text that you want to appear here.* (instrument).

Section 2 provides that the instrument commences on 1 September 2022.

Section 3 states that the authority for making the instrument is the *Aged Care Act 1997* (Act).

Section 4 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 – Amount of home care subsidy

Subsidy Principles 2014 (Subsidy Principles)

Item 1

This item inserts a new definition for a **hardship reduction amount** in section 4 of the Subsidy Principles. The hardship reduction amount has the meaning given by new section 99AA of the Subsidy Principles. The hardship reduction amount is introduced to calculate the care recipient contribution amount in section 99C of the Subsidy Principles.

Item 2

This item repeals and replaces Step 2 of the calculator at section 99A of the Subsidy Principles for the **available home care fees** amount. The new step subtracts the care recipient contribution amount (worked out under section 99C), instead of the care subsidy reduction (worked out under subsection 48-7(1) of the Act).

This amendment is to ensure that when calculating the price (worked out under section 99B of the Subsidy Principles) the available home care fees have been reduced by the amount a care recipient receiving the hardship supplement pays for the income tested care fee (see Division 52 of the Act) rather than the maximum income tested care fee they may be liable to pay.

Item 3

This item introduces section 99AA into the Subsidy Principles, which calculates the **hardship reduction amount**. The hardship reduction amount calculator reduces the total of a care recipient's hardship supplement for the payment period by the maximum basic daily care fees (has the meaning given by section 52D-3 of the Act) payable for the same period. The hardship reduction amount must be calculated for all care recipients but will only affect those who receive the hardship supplement for the income tested care fee. Note: all care recipients who receive the hardship supplement

for the income tested care fee receive the supplement to cover the maximum basic daily care fee as well.

Item 4

This item repeals section 99C of the Subsidy Principles and replaces it with a two-step calculator for the **care recipient contribution amount**. The care subsidy reduction, also known as the income tested care fee, is reduced by the hardship reduction amount. This is used to calculate the care recipient contribution amount where a care recipient receives the hardship supplement to cover some or all of the income tested care fee. For care recipients who do not receive the hardship supplement or only receive it to cover the basic daily fee, this item will not affect their care recipient contribution amount.

User Rights Principles 2014 (User Rights Principles)

Item 5

This item amends section 21CC(1)(b) of the User Rights Principles to reflect that the care recipient contribution amount is now calculated at section 99C of the Subsidy Principles.

Schedule 2 – Amendments – Financial information statements

User Rights Principles

Item 1

This item introduces a requirement at paragraph 21B(3)(e) of the User Rights Principles for an approved provider of home care to state the **home care account balance** at the end of the current and previous payment periods in the care recipient monthly statement. Home care account balance has the meaning given by section 48-17 of the Act.

Item 2

This item introduces a requirement at paragraph 21B (3)(f) of the User Rights Principles for an approved provider of home care to state the amount of the provider-held unspent funds for a care recipient split into the:

- Commonwealth portion (has the meaning given by section 21CA of the User Rights Principles)
- care recipient portion (has the meaning given by section 21CB of the User Rights Principles)

These amounts must be for the current and previous payment periods.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2022

The *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2022* (Amending 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) Act 2011*.

Overview of the Amending Instrument

In the 2019-20 Budget, the Government announced reforms to improve payment administration for home care packages to address concerns regarding unspent funds and align home care arrangements with other Government programs. The last phase of these reforms was implemented 1 September 2021.

The Amending Instrument amends the *User Rights Principles 2014* and the *Subsidy Principles 2014*, specifically to update the calculation of the shortfall amount paid to approved providers of home care for care recipients who receive the hardship supplement; and introduce requirements for approved providers to detail the care recipient's home care account balance, and both the Commonwealth portion and care recipient portion of a care recipient's unspent home care amount in the monthly statement.

This supports the implementation of changes made by the *Aged Care Legislation Amendment (Improved Home Care Payment Administration No.2) Act 2021* and *Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021*.

Human rights implications

The Amending Instrument engages the following human rights as contained in Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Articles 3, 5, 25 and 28 of Convention of the Rights of Persons with Disabilities (CRPD):

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the rights of equality and non-discrimination; and
- the right to choice for persons with disabilities.

The Government recognises that older people want to remain living in their own home for as long as possible and may need to receive care to do so. As such, the Government subsidises home care packages to provide comprehensive home care that

can improve older Australians' quality of life and help them remain active and connected to their communities.

This involves the payment of subsidy to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

The Home Care Packages Program ensures access to care that is affordable by, and appropriate to, the needs of people who require it.

The measures in the Amending Instrument improve financial accountability and allow for better transparency over the actual use of funds for home care service delivery by requiring approved providers to report the Commonwealth and recipient portions of unspent funds, as well as the home care account balance to care recipients each month.

The Amending Instrument promotes the rights of equality and non-discrimination, as set out in Article 5 of the CRPD, by improving the financial accountability of, and allowing for better transparency over the actual use of the subsidies paid to provide care and services to those who need them, regardless of race, culture, language, gender, economic circumstances or geographic location.

The Home Care Packages Program positively engages the rights for persons with disabilities set out in Articles 25 and 28 of the CRPD, including the right to enjoyment of the highest attainable standard of health and the right to an adequate standard of living without discrimination on the basis of disability, by providing genuine consumer direction of care. Improving the home care payment administration arrangements by introducing more transparency over the actual use of home care subsidy further engages these rights.

The Amending Instrument is part of the second stage of reforms to improve payment administration arrangements for home care packages and strengthens the integrity of the Home Care Packages Program. As facilitated by this Amending Instrument, strengthening the Home Care Packages Program leads to an improvement in the lives of older Australians, including those with disabilities.

The Amending Instrument will not affect the eligibility of home care recipients for home care subsidy or the amount of home care subsidy payable for eligible home care recipients. The measures in the Amending Instrument ensure that there is no underpayment to the home care provider.

Conclusion

The Amending Instrument promotes human rights to the highest attainable standard of physical and mental health and is compatible with the human rights and freedoms recognised and declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**The Hon Anika Wells MP
Minister for Aged Care**