

EXPLANATORY STATEMENT

Issued at the authority of the Minister for Aged Care

Aged Care Act 1997

Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022

Purpose

The purpose of the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022* (Amendment Principles) is to expand the National Aged Care Mandatory Quality Indicator Program (QI Program) by mandating quarterly reporting by approved providers of residential aged care on additional quality indicators from 1 April 2023 across:

- activities of daily living;
- incontinence care;
- hospitalisation;
- workforce;
- consumer experience; and
- quality of life.

The proposed amendments achieve this by amending the Accountability Principles 2014 (Accountability Principles) and the Records Principles 2014 (Records Principles) to update the definition of the National Aged Care Mandatory Quality Indicator Program Manual.

The Department of Health and Aged Care (Department) is updating the document to be incorporated by reference into the Accountability Principles and the Records Principles, which will be titled the *National Aged Care Mandatory Quality Indicator Program Manual 3.0 - Part A* (Manual). The Manual details requirements relating to the collection and reporting of data for the National Aged Care Mandatory Quality Indicator Program (QI Program).

The Manual will expand the QI Program to 11 critical areas by building on the existing five quality indicators which include:

- pressure injuries;
- physical restraint;
- unplanned weight loss;
- falls and major injury; and
- medication management.

Background

As part of the 2021-22 Budget measure *Residential Aged Care Quality and Safety (Pillar 3 of the Royal Commission response – Empowering consumers of aged care with information to exercise choice)*, the Australian Government committed to additional quality indicators and consumer experience and quality of life measures in residential aged care. The new quality indicators and measures will be implemented through

expansion of the existing QI Program.

On 1 July 2019, amendments were made to the Accountability Principles and Records Principles by the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019*. These amendments set out new responsibilities for approved providers of residential care for the purposes of paragraph 63-1(1)(m) and Division 88 of the Aged Care Act, and required approved providers to make (and keep records of) measurements and assessments relating to the quality of residential care in accordance with the National Aged Care Mandatory Quality Indicator Program Manual.

Further amendments were made to the Accountability Principles and Records Principles by the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021*, requiring approved providers to report against five new and updated quality indicators and to keep appropriate and timely records as set by the *National Aged Care Mandatory Quality Indicator Program Manual 2.0*.

Upon the commencement of the Amendment Principles, the QI Program will expand to 11 quality indicators in line with the 2021-22 Budget commitment. The Amendment Principles will also amend the definition of the National Aged Care Mandatory Quality Indicator Program Manual to refer to the new Manual.

Quality indicators measure aspects of quality of care that can affect the health, wellbeing and quality of life of care recipients. Quality indicator outcomes are relevant to the care provided for care recipients, and poor quality indicator results can reflect substandard care quality. By measuring, monitoring and comparing these quality indicator results the QI Program can support providers with quality improvement.

The information collected through the QI Program complements the Department's increased focus on improving the quality of aged care and empowering older Australians with access to information to make informed decisions about aged care.

The Australian Institute of Health and Welfare publishes de-identified national state and territory level QI Program data on the GEN Aged Care Data website (www.gen-agedcaredata.gov.au). From 1 April 2023, upon commencement of the Amendment Principles, this will include data on the 11 quality indicators as set out in the Manual. In addition, the existing five quality indicators will be published as part of the Star Ratings on My Aged Care for all residential aged care services from the end of 2022.

The Amendment Principles are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Additional information on the details of the Amendment Principles is set out in **Attachment** below.

Authority

Section 96-1 of the Aged Care Act provides that the Minister may make Principles providing for matters required or permitted, or necessary or convenient to give effect to the relevant Part or section of the Aged Care Act.

Accountability Principles

The Accountability Principles are made under section 96-1 of the Aged Care Act and set out matters for the purpose of Part 4.3 of the Aged Care Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

Record Keeping Principles

The Records Principles are made under section 96-1 of the Aged Care Act and set out matters for the purpose of Part 6.3 of the Aged Care Act (or matters necessary or convenient to carry out and give effect to the matters set out in that Part).

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.

Documents incorporated by reference

The Manual will be incorporated by reference into the Accountability Principles and the Records Principles as it exists at the commencement of the Amendment Principles on 1 April 2023, in accordance with paragraph 14(1)(b) of the Legislation Act.

The Manual will be accessible and freely available, through the Department's website at www.health.gov.au, to all approved providers of residential care, as well as care recipients and their families and carers.

The Manual will set out the requirements for approved providers of residential aged care to comply with the QI Program. The Manual prescribes the specific methods for collecting, recording, submitting and interpreting information for the QI Program.

The Manual is supplemented by the *National Aged Care Mandatory Quality Indicator Program Manual 3.0 - Part B* (Part B) which aims to support the use of quality indicators for continuous improvement. While not specified under legislation, Part B provides information, tools and resources for quality improvement relevant to the quality indicators.

Commencement

The Amendment Principles commence on 1 April 2023.

Consultation

The Department did not engage with the aged care sector in extending the existing subordinate legislation to include the new quality indicators.

However, the Department undertook extensive consultation to develop the new quality indicators enacted by the Amending Principles, including:

- seeking stakeholder feedback through 61 workshops with 922 older Australians, aged care providers and peak organisations;
- obtaining technical input from 20 expert organisations¹; and

¹Aged Care Quality and Safety Commission, Aged Care Workforce Industry Council, Australian College of Nursing, Australian Commission on Safety and Quality in Health Care, Australian Institute of Health and Welfare, Australian Medical Association,

- conducting a six-week national pilot with over 130 residential aged care services nationally to test the relevance, appropriateness, and usability of the quality indicators.

This process produced a suite of quality indicators responding to feedback on the crucial areas of care as preferred by older Australians, aged care providers and peak organisations, aligning the measures with routine areas of care to decrease administrative burden whilst supporting quality improvement.

Australian Pain Society, Australian Physiotherapy Association, Continence Australia, Department of Health and Aged Care, Dietitians Australia, an expert psychiatrist, Flinders University, Macquarie University, Occupational Therapy Australia, Pharmaceutical Society of Australia, Registry of Senior Australians, Royal Australian College of General Practitioners, Rural Doctors Association of Victoria, University of Queensland, and Wounds Australia.

Details of the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022*

Section 1 provides that the name of the instrument is the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022* (Amendment Principles).

Section 2 provides that the Amendment Principles commence on 1 April 2023.

Section 3 states that the authority for making the Amendment Principles is the *Aged Care Act 1997*.

Section 4 provides that each provision specified in a Schedule to this instrument is amended or repealed as set out in the Schedule, and any other item in a Schedule to this Instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 amends the *Accountability Principles 2014* and the *Records Principles 2014*.

Accountability Principles 2014

Item 1: Section 4 (definition of *National Aged Care Mandatory Quality Indicator Program Manual*)

Item 1 repeals the definition of National Aged Care Mandatory Quality Indicator Program Manual in Section 4 of the *Accountability Principles* and substitutes a new definition. The National Aged Care Mandatory Quality Indicator Program Manual will now be defined as the *National Aged Care Mandatory Quality Indicator Program Manual 3.0-Part A* (Manual), published on the Department's website, as existing at the start of 1 April 2023.

The Manual is titled the *National Aged Care Mandatory Quality Indicator Program Manual 3.0-Part A* as a supplementary Part B has been developed to support the quality improvement ethos of the QI Program, beyond the legislated requirements. Part A of the Manual sets out the reporting requirements approved providers of residential aged care must comply with under the QI Program. Part B provides information, resources and evidence-based tools to allow approved providers to engage in continuous quality improvement.

Item 2: Paragraph 26(b)

Item 2 omits “in accordance with the *National Aged Care Mandatory Quality Indicator Program Manual* as existing before 1 July 2021” from paragraph 26(b) and substitutes “before 1 April 2023 in accordance with previous versions of the *National Aged Care Mandatory Quality Indicator Program Manual*”.

The effect of this amendment is to ensure approved providers of residential aged care make measurements or other assessments in accordance with the Manual, as well as any relevant measurements and assessments made in accordance with previous versions of the National Aged Care Mandatory Quality Indicator Program Manual, as existing before 1 April 2023.

As an example, the QI Program will continue to require approved providers to report on unplanned weight loss, which includes a comparative weight recorded in the previous quarter. For the first quarter of reporting under the Manual, the comparative weight from the previous quarter will be gathered under the *National Aged Care Mandatory Quality Indicator Program Manual 2.0*.

Records Principles 2014

Item 3: Section 4

Item 3 repeals the definition of *National Aged Care Mandatory Quality Indicator Program Manual* in Section 4 of the Records Principles and substitutes a new definition. The new definition of *National Aged Care Mandatory Quality Indicator Program Manual* means the *National Aged Care Mandatory Quality Indicator Program Manual 3.0-Part A*, published on the Department's website, as existing at the start of 1 April 2023. This is the same document incorporated by reference into the Accountability Principles (for further information, see Item 1).

The Manual provides data collection and recording methods for each of the 11 quality indicators. In addition, the Manual specifies instructions for providers to submit their collated data through the My Aged Care provider portal as well as the dates for collection and submission of data.

In accordance with paragraph 7(v) of the Records Principles, approved providers must keep records that are required by the Manual to be kept.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022

The *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2022* (Amendment Principles) 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) Act 2011*.

Overview of the legislative instrument

The Amendment Principles amends the *Accountability Principles 2014* (Accountability Principles) and the *Records Principles 2014* (Records Principles) to update the definition of the National Aged Care Mandatory Quality Indicator Program Manual.

The Department of Health and Aged Care (Department) is updating the document to be incorporated by reference into the Accountability Principles and the Records Principles, which will be titled the *National Aged Care Mandatory Quality Indicator Program Manual 3.0 - Part A* (Manual). The Manual details requirements relating to the collection and reporting of data for the National Aged Care Mandatory Quality Indicator Program (QI Program).

The Manual will expand the QI Program from the existing* five quality indicators to include 11 critical areas:

- pressure injuries;*
- physical restraint;*
- unplanned weight loss;*
- falls and major injury;*
- medication management;*
- activities of daily living;
- incontinence care;
- hospitalisation;
- workforce;
- consumer experience; and
- quality of life.

From 1 April 2023, amendments to the Accountability Principles and the Records Principles will require approved providers of residential aged care to collect data for each quality indicator in accordance with the Manual.

Human rights implications

The Amendment Principles engage the following human rights:

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the right to prevent acts of cruel, degrading or in humane treatment or punishment; and
- the right that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The Amendment Principles are 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 Convent on Economic, Social and Cultural Rights*.

Quality indicators measure aspects of service provision contributing to the quality of care and services for care recipients. The intent of the QI Program is to enable providers to have robust, valid data to measure, monitor, compare and improve their performance. Information gathered through the QI Program will complement the Department's increased focus on clinical governance, as well as supporting a national focus on high quality care and quality of life for older Australians.

The QI Program aims to achieve quality outcomes against quality indicators directly affecting a care recipient's standard of living and physical health and wellbeing.

- Monitoring and intervention to improve pressure injuries, physical restraint, unplanned weight loss, falls and major injuries, medication management, activities of daily living, incontinence care, hospitalisation, workforce, consumer experience and quality of life, will reduce associated adverse outcomes.
- The medication management quality indicator aims to promote appropriate use of antipsychotics and contributes to reducing the misuse of medications.
- Identifying and monitoring workforce turnover will increase focus on staff retention, which is crucial to support quality and continuity of care.
- Undertaking consumer experience and quality of life assessments aims to promote person centred care to support improved physical and mental health for care recipients.

Further, the Amendment Principles are compatible with the right to prevent acts of cruel, degrading or inhumane treatment or punishment as contained in article 16(1) of the *Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*.

The physical restraint quality indicator aims to promote a restraint-free environment and contribute to alleviating any degrading and inhumane treatment, including physical injuries of aged care recipients (noting that approved providers also have responsibilities in relation to the use of restrictive practices set out in the *Quality of Care Principles 2014*).

The Amendment Principles are also compatible with the right that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation as contained in article 17(1) of the *International Covenant on Civil and Political Rights*.

QI Program data is collected by approved providers of residential aged care aligns through existing routine care and management practices. The data is de-identified (without the inclusion of personal information) prior to being provided to the Secretary of the Department. Any infringement of the individual right to privacy is minimised and the risk of an infringement is no greater than the risk under existing arrangements in the provision of residential aged care.

Conclusion

The Amendment Principles are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Amendment Principles promote care recipients' rights to an adequate standard of living, to optimal physical and mental health, to live without fear of cruel, degrading, inhumane treatment while maintaining the right to privacy.

Minister the Hon Anika Wells
Minister for Aged Care