

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs and the Minister for Immigration
and Multicultural Affairs

Migration Regulations 1994

Migration (Specification of Health Service Provider) Instrument (LIN 24/040) 2024

- 1 The instrument, departmental reference LIN 24/040, is made under subregulation 1.15AA(2) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument also repeals *Migration Regulations 1994 – Specification of Health Service Provider – IMMI 14/085* (F2014L01278) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument. IMMI 14/085 would otherwise be repealed by sunseting on 1 October 2024 by operation of section 50 of the *Legislation Act 2003* (the Legislation Act).
- 3 The instrument commences on the day after the instrument is registered. It is a legislative instrument for the Legislation Act.

Purpose

- 4 The instrument operates to specify Bupa as a health service provider for the purposes of the definition of ‘carer’ in regulation 1.15AA of the Migration Regulations. The Regulations require the relative in Australia who has the medical condition giving rise to the need for a carer to undertake a medical assessment by a health services provider specified by the Minister in an Instrument in writing
- 5 Subregulation 1.15AA of the Migration Regulations provides a definition of ‘carer’ for the purposes of an applicant for a visa. Paragraph 1.15AA(1)(b) provides that an applicant for a visa is a carer of a person if:
 - the applicant is a relative of the person; and
 - according to a certificate that meets the requirements in subregulation 1.15AA(2), the person (or a member of the family unit of the person):
 - i. has a medical condition; and
 - ii. the medical condition is causing physical, intellectual or sensory impairment of the ability of that person to attend to the practical aspects of daily life; and
 - iii. the impairment has, under the Impairment Tables (within the meaning of subsection 23(1) of the *Social Security Act 1991*), the rating that is specified in the certificate; and
 - iv. because of the medical condition, the person has, and will continue for at least 2 years to have, a need for direct assistance in attending to the practical aspects of daily life.

- 6 The certificate will meet the requirements in subregulation 1.15AA(2) if it is a certificate:
 - in relation to a medical assessment carried out by or on behalf of a health service provider specified by the Minister in an instrument in writing; and
 - signed by the medical adviser who carried it out.
- 7 Alternatively, a certificate also meets the requirements if it is a certificate issued by a health service provider specified by the Minister in an instrument in writing in relation to a review of an opinion in a certificate that was carried out by the health service provider in accordance with its procedures.
- 8 Under subregulation 1.15AA(3), the Minister is to take the opinion in a certificate to be correct for the purposes of deciding whether an applicant satisfies a criterion that the applicant is a carer.
- 9 The purpose of the instrument is to specify Bupa Health Services Pty Ltd, trading as Bupa Medical Visa Services (Bupa), as the health service provider for the purposes of subregulation 1.15AA(2). The instrument repeals IMMI 14/085 (which would otherwise have sunset on 1 October 2024), but maintains existing arrangements by continuing to specify Bupa as the relevant health service provider.

Consultation

- 10 Bupa Health Services Pty Ltd was the successful tenderer to an open market tender process conducted by the Department of Home Affairs. No other consultation was considered necessary in relation to this instrument, as it does not substantially alter existing arrangements, and maintains current commercial and operational arrangements in relation to health services to support effective visa processing.
- 11 The Office of Impact Analysis (OIA) was consulted and considered that a detailed Impact Analysis is not required. The OIA reference number is OIA24-07186.

Details of the instrument

- 12 Details of the instrument are set out in the Attachment.

Parliamentary scrutiny etc.

- 13 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Part 1 of the Migration Regulations, which is prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Legislation Act by subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 14 The instrument was made by the Minister for Home Affairs and the Minister for Immigration and Multicultural Affairs in accordance with the Migration Regulations.

Details of the Migration (Specification of Health Service Provider) Instrument (LIN 24/040) 2024

1. Section 1 provides that the name of the instrument is the *Migration (Specification of Health Service Provider) Instrument (LIN 24/040) 2024*.
2. Section 2 provides the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.
3. Section 3 sets out the authority under which the instrument is made, which is subregulation 1.15AA(2) of the *Migration Regulations 1994*.
4. Section 4 sets out the details of the specified health service provider, being Bupa Health Services Pty Ltd, trading as Bupa Medical Visa Services.
5. Section 5 provides the instrument *Migration Regulations 1994 – Specification of Health Service Provider – IMMI 14/085* is repealed. IMMI 14/085 was due to sunset on 1 October 2024 in accordance with subsection 50(1) of the Legislation Act. This instrument maintains the arrangements set out in IMMI 14/085 and reflecting the current name of the health service provider, with any changes to the approach to the instrument intended to simplify and modernise the drafting.