

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Mental Health and Ageing

Aged Care Act 1997

*Classification Amendment (Dementia and Severe Behaviours Supplement)
Principle 2013*

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act. Among the Principles made under section 96-1 are the *Classification Principles 1997* (the Principles).

Part 2.4 of the Act and the Principles deal with a number of matters relating to the classification of care recipients. The classification of a care recipient may affect the amount of subsidy payable to an approved provider for providing care to the care recipient.

On 20 April 2012, the Government announced the *Living Longer Living Better* aged care reform package. Included in the package of reforms was the creation of a new type of aged care – home care. From 1 August, home care will replace community care and some forms of flexible care. There will be four levels of home care packages to provide for a seamless continuum of care at home. Existing care packages currently delivered in the form of Community Aged Care Packages (CACP) (community care under the Act), Extended Aged Care at Home (EACH) and Extended Aged Care at Home - Dementia (EACH-D) (flexible care under the Act) will transition to home care packages.

Also included in the reform package was the implementation of the new dementia and severe behaviours supplement. The dementia and severe behaviours supplement will provide residential aged care providers with additional funding to provide specialist services to residents with severe behaviours related to dementia or mental illness.

The purpose of the *Classification Amendment (Dementia and Severe Behaviours Supplement) Principle 2013* (the Amending Principle) is to make consequential amendments (consistent with the changes in the Act relating to home care) and to make changes to support the commencement of the dementia and severe behaviours supplement by allowing approved providers to renew the classification of a care recipient if that care recipient becomes eligible for the dementia and severe behaviours supplement. This will allow approved providers to submit an updated claim for funding which reflects the care recipient's current needs and the results of the assessment of their eligibility for the dementia and severe behaviours supplement.

The Amending Principle is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

The *Living Longer Living Better* aged care reform package was developed in close consultation with the aged care sector, including consumers, industry and professional bodies.

As part of the reform, changes have been made to the Act. The changes to the Principles flow from the changes to the Act.

Consultation on the proposed changes to the Act, and to delegated legislation, commenced in November 2012, with the public release of a paper providing an overview of the proposed legislative changes.

A video presentation detailing the changes was also made available through the *Living Longer Living Better* website, to assist with public understanding of the proposed changes.

During November and December 2012, the Department of Health and Ageing (the Department) also held briefing sessions in Melbourne, Sydney and Canberra on the proposed changes.

Stakeholders and the general community were able to provide written comments during a four-week period (21 November – 21 December 2012). The comments were made publicly available on the *Living Longer Living Better* website, unless the author requested otherwise. The Department received 54 submissions from members of the public, peak bodies and approved providers in response to the published overview of legislative amendments. Submissions received via the consultation on the overview of the proposed legislative changes were used to inform drafting of the amending bills and the delegated legislation.

In March and April 2013, the Department held industry briefing sessions across Australia to provide information and to explain, in detail, the proposed legislative changes included in the package of Bills introduced into Parliament on 13 March 2013. The briefing sessions also outlined changes to delegated legislation such as this Amending Principle. For those who were unable to attend the briefings a copy of the presentation, supporting handouts, a detailed Questions and Answers document and an information video were made available on the *Living Longer Living Better* website.

An exposure draft of the Amending Principle was made available on the *Living Longer Living Better* website in May 2013.

The Dementia and Veterans' Supplement Working Group also provided advice to the Department on the proposed changes.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required (OBPR ID 14985).

Commencement

The Amending Principle commences on 1 August 2013.

Details of the Classification Amendment (Dementia and Severe Behaviours Supplement) Principle 2013

Clause 1 states that the name of the Amending Principle is the *Classification Amendment (Dementia and Severe Behaviours Supplement) Principle 2013*.

Clause 2 states that the Amending Principle commences on 1 August 2013.

Clause 3 provides that the authority for the making of the Amending Principle is the *Aged Care Act 1997* (the Act).

Clause 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

Item 1 - Section 9.3 (definition of extended aged care at home)

Item 1 repeals the definition of extended aged care at home (EACH) because, as a consequence of the introduction of home care in the Act, EACH as a form of flexible care will no longer exist.

Item 2 - Section 9.3 (note at end)

The note to section 9.3 lists a number of terms that are defined in the Act. Consistent with current drafting conventions, terms that are used regularly within all aged care principles, such as ‘aged care’ and ‘approved provider’, have been removed. These terms continue, for the purposes of the Principles, to have the meaning set out in the Dictionary in Schedule 1 to Act. Terms specific to the Principles, such as ‘classification level’, are specified in the note as expressions that are defined in the Act.

Item 3 - Section 9.5

Section 9.5 of the Principles relates to recipients of EACH as a class that is excluded from classification. This item repeals section 9.5 as this section is no longer required with the commencement of home care on 1 August 2013.

Item 4 - Section 9.27

Item 4 repeals section 9.27 and replaces it with a new section.

Section 9.27 – Different expiry dates (Act, 27-2)

This section includes provisions relating to expiry dates for the classification of care recipients.

Subsection 9.27(1) retains the current provision set out in section 9.27 specifying the expiry date for respite care classifications.

Subsection 9.27(2) specifies a different expiry date for the classification of a care recipient whose classification has been renewed because the care recipient becomes eligible for a dementia and severe behaviours supplement..

If a care recipient becomes eligible for the dementia and severe behaviours supplement, the care needs of the care recipient are taken to have changed significantly (see section 9.28 as repealed and substituted by item 5 of this Amending Principle).

Normally when a care recipient's care needs change significantly and their classification is renewed, the new classification expires 6 months after the day on which the renewal took effect.

Subsection 9.27(2) specifies a different expiry date in relation to a care recipient's classification if the classification has been renewed because the care recipient has become eligible for a dementia and severe behaviours supplement. Instead of expiring 6 months after the day on which the renewal took effect, the new classification expires the day immediately after the period of 28 days starting on the day on which the care recipient ceases being provided with residential care (other than because the care recipient is on leave).

The period of 28 days allows for the possibility that, if a care recipient is moving between residential care services or other care options are being explored, there might be a period when the care recipient is temporarily not receiving residential care.

Item 5 - Section 9.28

Item 5 repeals section 9.28 and replaces it with a new section.

Section 9.28 – Circumstances in which care needs are taken to have changed significantly (Act, s27-4)

In addition to the circumstances that were specified prior to the commencement of this Amending Principle, this section includes a new circumstance in which a care recipient's care needs are taken to have changed significantly.

Paragraph 9.28(1)(a) provides that, for subsection 27-4(4) of the Act, a care recipient's care needs are taken to have changed significantly if the care recipient becomes eligible for the dementia and severe behaviours supplement. This provision enables an approved provider to submit an updated appraisal of the care recipient's care needs, resulting in a higher level of subsidy, even if the care recipient's current classification has not been in effect for more than the 12 months mentioned in subsection 27-4(2) of the Act.

Paragraph 9.28(1)(b), formerly paragraph 9.28(1)(a), is amended to clarify that the circumstances in which the care needs of a care recipient are taken to have changed significantly must involve an increase in the level of care that is required and not, for example, an increase in the level of care needed by the care recipient in one domain category and a decrease in another domain category.

Statement of Compatibility with Human Rights

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

Classification Amendment (Dementia and Severe Behaviours Supplement)

Principle 2013

The Legislative 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 2011*.

Overview of the Legislative Instrument

The *Classification Amendment (Dementia and Severe Behaviours Supplement) Principle 2013* (Legislative Instrument) makes consequential amendments consistent with the changes to the *Aged Care Act 1997* relating to home care. In addition, the Legislative Instrument supports the commencement of the dementia and severe behaviours supplement by allowing an approved provider to submit an updated appraisal of a care recipient's care needs, resulting in a higher level of subsidy, even if the care recipient's current classification has not been in effect for more than 12 months.

Human Rights Implications

The Legislative Instrument is 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 Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. It ensures that an approved provider can begin to receive a higher level of subsidy without delay if a care recipient's care needs increase significantly because of severe behaviours.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

**Senator the Hon Jacinta Collins
Minister for Mental Health and Ageing**