

## EXPLANATORY STATEMENT

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

*Aged Care Act 1997*

*Quality of Care Amendment (Home Care) 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 for 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 *Quality of Care Principles 1997* (the Principles).

The Principles deal with the responsibilities of approved providers, accreditation standards, home care standards and flexible care standards in relation to the quality of aged care detailed in Part 4.1 of the Act.

On 20 April 2012, the Government announced the *Living Longer Living Better* (LLLB) aged care reform package. As part of the reform, 'community care' will be replaced with 'home care'. Home care will consist of four levels of home care packages. Level 2 packages will be the equivalent of what is now known as a Community Aged Care Package (CACP), a kind of community care. Level 4 packages will be the equivalent of what is currently a kind of flexible care known as an Extended Aged Care at Home (EACH).

The purpose of the *Quality of Care Amendment (Home Care) Principle 2013* (the Amending Principle) is to make changes to reflect the establishment of home care and to outline the care and services that may be provided as part of home care packages. The Amending Principle also removes references to the Community Care Common Standards and replaces them with references to the Home Care Common Standards. Details of the amendments are set out in the Attachment.

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

A number of the proposed amendments described in this Amending Principle rely on amendments described in the *Aged Care (Living Longer Living Better) Act 2013* which commence on 1 August 2013. This Amending Principle is being made in advance of this commencement date. This is possible in accordance with section 4 of the *Acts Interpretation Act 1901*, which allows for the exercise of powers between enactment and commencement of an Act including, for example, the power to make changes to delegated legislation which flow from changes made to the primary legislation (in this case, changes to the *Aged Care Act 1997*).

## 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 are needed 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 these Amending Principles. 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.

The Home Care Packages Working Group was formed to provide advice to the Department on the new home care packages program. Draft Guidelines for home care packages were released in April 2013 for comment. Feedback from these consultation processes has contributed to this Amending Principle.

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

### Regulation Impact Statement

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

### Commencement

The Amending Principle commences on 1 August 2013.

**Details of the *Quality of Care Amendment (Home Care) Principle 2013***

**Clause 1** states that the name of the Amending Principle is the *Quality of Care Amendment (Home Care) Principle 2013*.

**Clause 2** states that the Amending Principle is to commence on 1 August 2013.

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

**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 18.3**

Section 18.3 sets out definitions of terms used in the Principles. This item repeals the section of definitions and replaces it with a new section to ensure consistency with the Act and eliminate references to EACH and EACH-D as this terminology will no longer exist under the new arrangements.

**Item 2 - Note after section 18.3**

The note to section 18.3 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 ‘Secretary’ and ‘entry’, 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. This item repeals this note accordingly.

**Item 3 - Section 18.6A**

Section 18.6A outlines the purpose of Division 2.2, Part 2 of the Principles. The purpose of this Division is to specify other responsibilities of an approved provider in relation to the quality of aged care provided. This item repeals section 18.6A and replaces it with a new section. This change is necessary in order to ensure that residential care can be dealt with in one Division and home care can be dealt with in a new and separate Division.

***Section 18.6A - Purpose of Division (Act, s 54-1)***

This section provides that the Division specifies other responsibilities of an approved provider of a residential care service in relation to the quality of the aged care provided.

**Item 4 - After section 18.6B**

This item inserts a new Division into Part 2 of the Principles to outline the responsibilities of approved providers in relation to specified care and services for home care.

### ***Division 2.3- Specified care and services for home care services***

#### ***Section 18.6C - Purpose of Division (Act, s 54-1)***

This section outlines the purpose of the Division. The purpose of this Division is to specify the care and services that an approved provider of a home care service may provide to a care recipient.

#### ***Section 18.6D - Specification of care and services***

This section specifies the care and services which may be provided to a care recipient receiving a home care package. This section provides that:

- an approved provider of a home care service must provide a package of care and services selected from the care and services specified in Part 1 of Schedule 4 of the Principles;
- the care recipient and the approved provider may agree to the inclusion of other care and services required to support the care recipient to live at home, which are able to be paid for within the limits of the resources available. For example, this may include the use of telehealth and digital technology, such as remote monitoring;
- the care and services must not include any of the items listed in Part 2 of Schedule 4 as an excluded item;
- the care and services must be consistent with the care recipient's care needs identified in their care plan; and
- the care and services must be provided by the approved provider in a way that meets the Home Care Standards as specified in section 18.14.

#### **Item 5 – Section 18.8 (note at the end)**

Section 18.8 relates to the Accreditation Standards set out in Schedule 2 of the Principles. This item repeals the note at the end of section 18.8 which provides that the four matters dealt with in the Accreditation Standards are dealt with in separate parts of Schedule 2.

#### **Item 6 – Part 5 (including note)**

Part 5 currently outlines the Community Care Standards. This item repeals the part and replaces it with a new Part which sets out the Home Care Standards. The Home Care Standards are the same common standards as the Community Care Common Standards however they have been re-named to reflect the establishment of home care from 1 August 2013.

### ***Part 5 - Home Care Standards***

#### ***Section 18.13 - Purpose of Part (Act, s 54-4)***

This section outlines the purpose of the Part. The purpose of Part 5 is to set out the Home Care Standards which are the standards which approved providers must meet in relation to the quality of care and quality of life in providing home care.

### ***Section 18.14 - Home Care Standards***

This section provides that the Home Care Standards are the Home Care Common Standards set out in Schedule 5. They are referred to as the ‘common’ standards because they were developed jointly by the Australian Government and the State and Territory Governments to apply to a number of community care programs from 1 March 2011. The Home Care Common Standards deal with three matters in relation to service provision including effective management; appropriate access and service delivery; and service user rights and responsibilities. This section also provides that the standard for each matter consists of the principle for the matter; and the expected outcome for each matter indicator for the matter.

### **Item 7 – Part 6 (including note)**

Part 6 currently references the Flexible Care Standards. The Flexible Care Standards are the standards that apply to EACH and EACH-D. As these types of care are becoming home care from 1 August 2013, the Flexible Care Standards are no longer necessary. Instead, all home care (which will include existing EACH and EACH-D) will be subject to the Home Care Standards.

### **Item 8 – Schedule 1 (note after heading)**

Schedule 1 describes the specified care and services for residential care services. This item repeals the note and inserts a new note that states that subsection 18.6(1A) provides that the care and services listed in Schedule 1 are to be provided in a way that meets the Accreditation Standards set out in Schedule 2. The change to the note has no substantive effect but simply removes references to redundant provisions.

### **Item 9 – Schedule 4**

Schedule 4 currently sets out the Community Care Standards, which were the standards for care provided through a community care service before 1 March 2011. This item repeals the redundant schedule and replaces it with a new schedule which sets out the specified care and services for home care services.

### ***Schedule 4 - Specified care and services for home care services***

#### ***Part 1 - Care and services***

This Part outlines the range of care and services available to be provided to a care recipient under a home care package in relation to care, support and clinical services.

Care services include services relating to activities of daily living, nutrition, hydration, meal preparation and diet, management of skin integrity, continence management, and mobility and dexterity.

Support services include additional support services for the care recipient for example cleaning and transport as well as services related to a person’s leisure, interests and activities.

Clinical services includes services related to clinical care, for example nursing, allied health and therapy services such as speech therapy, podiatry, occupational or physiotherapy services and access to other health and related services.

***Part 2 - Excluded items***

This Part outlines the items which must not be included in the package of care and services provided under home care. These include:

- use of the package funds as a source of general income for the care recipient;
- purchase of food, except as part of enteral feeding requirements;
- payment for permanent accommodation, including assistance with home purchase, mortgage payments or rent;
- payment of home care fees;
- payment of fees or charges for other types of care funded or jointly funded by the Australian Government;
- home modifications or capital items that are not related to the care recipient's care needs;
- travel and accommodation for holidays;
- cost of entertainment activities, such as club memberships and tickets to sporting events;
- gambling activities; and
- payment for services and items covered by the Medicare Benefits Schedule or the Pharmaceutical Benefits Scheme.

**Item 10 – Schedule 5 heading and reference under heading**

This item repeals the heading to reflect the renaming of the Community Care Common Standards as the Home Care Common Standards, given the establishment of home care from 1 August 2013.

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

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

### ***Quality of Care Amendment (Home Care) Principle 2013***

This 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 *Quality of Care Amendment (Home Care) Principle 2013* (the Legislative Instrument) renames the ‘Community Care Common Standards’ the ‘Home Care Common Standards’ to reflect the replacement of community care by a new kind of care, home care. In addition, the Legislative Instrument removes references to the Flexible Care Standards which only apply to two types of flexible care, extended aged care at home and extended aged care at home—dementia, as they will become types of home care subject to the Home Care Common Standards. The Legislative Instrument will replace ‘community care’ with ‘home care’ throughout.

In addition to these changes in terminology, the Legislative Instrument specifies the care and services that an approved provider of home care must provide. In addition to agreeing on a selection from the care and services specified in Part 1 of the Schedule of specified care and services for home care, the care recipient and the approved provider may agree to the inclusion of other care and services required to support the care recipient to live at home provided that the approved provider is able to provide the care and services within the limits of the resources available and the item is not listed in Part 2 of the Schedule as an excluded item.

### **Human Rights Implications**

This Legislative Instrument promotes the human right to the enjoyment of the highest attainable standard of physical and mental health contained in article 12 of the International Covenant on Economic Social and Cultural Rights. The legislative instrument introduces more choice and flexibility in the care and services available for people who wish to remain living at home for as long as possible and who are able to do so with the assistance of a coordinated package of care and services.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it promotes the human right to health.

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