

EXPLANATORY STATEMENT

Aged Care Act 1997

Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022

Authority

Section 96-1 of the *Aged Care Act 1997* (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.

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.

Purpose

The *Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022* (the **amending instrument**) amends the following principles to support the implementation of changes made by the *Aged Care Amendment (Implementing Care Reform) Act 2022* (the **Implementing Care Reform Act**):

- *Information Principles 2014*
- *Quality of Care Principles 2014*
- *Records Principles 2014*
- *Subsidy Principles 2014*, and
- *User Rights Principles 2014*.

The amending instrument gives effect to the Australian Government's (the **Government**) commitment to reduce excessive administration and management charges in the Home Care Packages Program. Administration and management costs are often confusing to care recipients and take up a large amount of the home care package. Some costs are charged for separately (for example, charges for care and package management, exit amounts) while some are built into the price of care and services (for example business costs). Other costs are charged for inconsistently across the sector, with some approved providers charging administration and management costs such as staff travel and subcontracting separately and others including these costs in the price for care and services.

From 1 January 2023:

- the amount that can be charged by an approved provider of home care for care management services will be capped at 20 per cent of the basic subsidy amount;
- the amount that can be charged by an approved provider of home care for package management services will be capped at 15 per cent of the basic subsidy amount;
- approved providers of home care cannot charge for package management in a payment period where no services (other than care management) are delivered, except for the first month of care;

- approved providers of home care cannot charge separately for costs associated with the provision of subcontracted care or services; and
- approved providers of home care cannot charge exit amounts.

Additionally, the Government is clarifying that care management is a mandatory support service that must be provided on a monthly basis (being every payment period).

These changes will ensure that more funds are available in the home care package to meet the needs of care recipients and will make it easier for older Australians to compare approved providers of home care.

Consultation

The Department of Health and Aged Care (the **department**) conducted a broad range of consultations to inform the policy included in this amending instrument. Based on evidence collected through the Royal Commission into Aged Care Quality and Safety, and Home Care Assurance Reviews, the department was aware there was a problem with high administration and management charges in the Home Care Packages Program. The department scoped options with a wide range of stakeholders to finalise the policy, including with the provider peak Aged & Community Care Providers Association (**ACCPA**), the Aged Care Quality and Safety Commission, and consumer peak bodies.

The amending instrument commences on 1 January 2023.

The amending instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in the Attachment.

Regulation Impact Statement (RIS)

The Office of Impact Analysis (OIA) was consulted during the development of the amending instrument on the regulatory impact of:

- capping the amount that can be charged by an approved provider of home care for care and package management services; and
- removing the ability for approved providers of home care to charge:
 - for package management in a payment period where no services (other than care management) are delivered, except for the first month of care;
 - separately for costs associated with the provision of subcontracted care or services; and
 - exit amounts.

OIA advised that a RIS was required (OIA ID: 22-02496). The RIS is published on OIA's website: <https://oia.pmc.gov.au/>

Details of the *Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022*

Section 1 Name

This section provides that the name of the instrument is the *Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022 (amending instrument)*.

Section 2 Commencement

This section provides that the amending instrument commences on 1 January 2023.

Section 3 Authority

This section provides that the amending instrument is made under subsection 96-1 of the *Aged Care Act 1997* (the Act).

Section 4 Schedules

This section 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

Information Principles 2014 (Information Principles)

Item 1 – paragraph 8(b)

This item repeals paragraph 8(b) of the Information Principles to remove the ability of the Secretary to make information given to the Secretary under section 21J of the *User Rights Principles 2014* (User Rights Principles) being published exit amounts, publicly available.

This item supports the changes being introduced in Schedule 2 to the *Aged Care Amendment (Implementing Care Reform) Act 2022* (the **Implementing Care Reform Act**) and will commence 1 January 2023.

Quality of Care Principles 2014 (Quality of Care Principles)

Item 2 – section 12

This item replaces the word “may” with “must” in section 12 of the Quality of Care Principles to change the section to: “For paragraph 54-1(1)(a) of the Act, this Part specifies the care and services that an approved provider of a home care service must provide to a care recipient.”

This amendment changes the section to mean that Part 3 of the Quality of Care Principles specifies the care and services that must be provided by an approved provider of a home care service. As section 13 is the only other provision in Part 3, the effect of section 12 is that the care and services specified in section 13 are the care and services that must be provided in a home care package.

Item 3 – section 13 (heading)

This item replaces the word “may” with “must” in the heading of section 13 of the Quality of Care Principles to change the section heading to: “Care and services that must be provided”.

As with Item 2 of this Schedule, this change means that the care and services specified in section 13 are care and services that must be provided by an approved provider of a home care service.

Item 4 –subsection 13(1)

This item repeals the existing subsection 13(1) of the Quality of Care Principles and replaces it.

This amendment aims to do the following:

- make this a more direct statement of the requirement to include care management in a home care package;
- make it clear that approved providers of a home care service must also provide at least one other service from the list specified in Part 1 of Schedule 3 or agreed under subsection 13(2) of the Quality of Care Principles; and
- make it clear that it would be possible for a home care package to include only care management and at least one other service agreed under subsection (2) of this section.

Item 5 – Clause 1 of Schedule 3 (at the end of the heading)

This item adds “that may be provided” to the heading of Clause 1 of Part 1 of Schedule 3 to the Quality of Care Principles to change the section heading to: “Care services that may be provided”.

This amendment differentiates the list of care services that may be provided from the list of care services that must be provided.

Item 6 – after Clause 1 of Schedule 3

This item inserts Clause 1A after Clause 1 of Part 1 of Schedule 3 to introduce an updated definition of care management and to specify that care management must be provided by an approved provider of a home care service and be delivered on at least a monthly basis (being each payment period).

The item sets out the activities from the existing description and adds an opening description to:

- describe care management as “Ongoing assessment and planning to ensure that the care recipient receives the care and services they need”; and
- build in the requirement that care management must occur at least monthly.

The item also adds “regularly assessing the person’s needs, goals and preferences” as an activity to the service and updates the language of the existing activities.

This amendment reflects the existing requirement for approved providers to deliver services in a way that meets the Aged Care Quality Standards in Schedule 2 to the Quality of Care Principles. If an approved provider of home care does not undertake the activities listed at this item, the provider may not be meeting their requirements, including:

- Standard 1 – Support care recipients to make informed choices;
- Standard 2 – Initial and ongoing assessment and planning with care recipients;
- Standard 3 – Deliver safe and effective personal and clinical care;
- Standard 4 – Provide safe and effective services and supports to support daily living and allow independence;

- Standard 8 – Engage and support care recipients in the development, delivery and evaluation of care and services.

Some care recipients are more proactive in the management of their own home care package, such as those people who “self-manage” their home care package. Approved providers of home care must provide care management to ensure they deliver safe and quality care and services based on the care recipient’s needs, goals and preferences. This item inserts a definition of care management that permits approved providers to provide a level of care management to be based on the care recipient’s capacity and needs.

The addition of “regularly assessing the person’s needs, goals and preferences” in the definition of care management is to reflect that there are care management activities that require an approved provider to make their own assessment of the care recipient’s needs, goals and preferences. Specifying this activity in the definition of care management clarifies the Government’s expectation for approved providers of home care in delivering care management.

Additional changes to the definition were to update the language:

- “partnering” instead of “liaising” with the care recipient to be consistent with the Aged Care Quality Standards, and so that the activity reads: “**partnering** with the care recipient and the care recipient’s representatives about their care”
- adding “about their care” to increase clarity, and so that the activity reads: “partnering with the care recipient and the care recipient’s representatives **about their care**”
- updating to the term “culturally safe” instead of “culturally appropriate”, as this is contemporary language, and so the activity reads: “ensuring that care and services are **culturally safe**”.
- Adding “health and wellbeing” to the definition to align with the Aged Care Quality Standards, and so the activity reads: “identifying and addressing risks to the care recipient’s safety, **health and wellbeing**.”

Item 7 – Clause 2 of Schedule 3 (at the end of the heading)

This item adds “that may be provided” to the heading of Clause 2 of Part 1 of the Schedule 3 to the Quality of Care Principles to change the section heading to: “Support services that may be provided”.

This amendment differentiates the list of support services that may be provided from the list of support services that must be provided. Item 6 of this Schedule inserts the list of support services that must be provided.

Item 8 – Clause 2 of Schedule 3 (table item 3)

This item repeals table item 3, column 2 in Clause 2 of Part 1 of Schedule 3, which is the definition of the care management service.

This amendment supports Item 6 of this Schedule, where the care management service is moved to its own section as a support service that must be provided.

Item 9 – Clause 3 of Schedule 3 (at the end of the heading)

This item adds “that may be provided” to the heading of Clause 3 of Part 1 of Schedule 3 to the Quality of Care Principles to change the section heading to: “Clinical services that may be provided”.

This amendment differentiates the list of clinical services that may be provided from the list of clinical services that must be provided.

Records Principles 2014 (Records Principles)

Item 10 – paragraph 7(u)

This item repeals paragraph 7(u) of the Records Principles, which requires an approved provider to keep a record of the copies of notices of published exit amounts given under section 21J of the User Rights Principles.

This section is repealed as a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence on 1 January 2023.

Subsidy Principles 2014 (Subsidy Principles)

Item 11 – section 99B (method statement, step 2)

This item replaces parts of step 2 of the method statement at section 99B of the Subsidy Principles to remove the reference to paragraph 19B(1)(c) of the User Rights Principles, which is repealed in Item 22 of this Schedule.

This amendment is a consequence of updated section 21K of the User Rights Principles (Item 32 of this Schedule), which introduces a provision that approved providers of home care must not charge separately for costs of providing care or services through a subcontracting arrangement. This provision means that when working out the price for home care in accordance with section 99B of the Subsidy Principles, approved providers of home care will not need to calculate the costs of subcontracting separately from the charges referenced in step 1 of the method statement.

Item 12 – after Chapter 4

Inserts a new chapter, Chapter 5, which sets out the application, saving and transitional provisions regarding the amendments made by the amending instrument.

This new chapter inserts new section 112 of the Subsidy Principles, which provides that the amendments made to the Subsidy Principles by the amending instrument are to take effect for payment periods that commence on or after 1 January 2023. The calculation of the price for home care in accordance with section 99B of the Subsidy Principles prior to 1 January 2023 has not been amended.

User Rights Principles 2014

Item 13 – section 4 (definition of *agreement exit amount*)

This item repeals the definition of agreement exit amount from section 4 of the User Rights Principles.

This section is repealed as a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 14– section 4 (paragraph (b) of the definition of *business costs*)

This item updates the definition of business costs in section 4 of the User Rights Principles to remove the reference to paragraph 19B(1)(c) of the User Rights Principles, which is repealed in Item 22 of this Schedule. The reference is replaced by subparagraph (ii) the costs of providing care or services through a subcontracting arrangement.

Business costs must continue to not include costs of providing care or services through a subcontracting arrangement.

Item 15 – section 4

This item inserts a definition of care management in section 4 of the User Rights Principles. The definition refers to Clause 1A of Schedule 3 of the Quality of Care Principles, which is inserted at Item 6 of this Schedule.

This amendment is to support references to care management throughout the User Rights Principles.

Item 16 – section 4

This item repeals the definition of the exit amount from section 4 of the User Rights Principles.

This section is repealed as a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 17 – section 4 (paragraph (b) of the definition of *package management*)

This item updates the definition of package management under section 4 of the User Rights Principles. The item removes the reference to the Quality of Care Principles when defining care management.

This amendment is made as a consequence of Item 15 of this Schedule, which inserts the definition of care management into section 4 of the User Rights Principles.

Item 18 – section 4 (at the end of the note to the definition of *package management*)

This item updates the definition of package management under section 4 of the User Rights Principles. This item adds activities the Secretary requires of approved providers when conducting home care assurance reviews as an example of the activities that may be funded through package management.

This amendment is as a result of home care assurance reviews previously conducted by the department and feedback received from approved providers that covering the costs of complying with the home care assurance review as part of package management was not clearly specified in the legislation.

Item 19 – section 4 (definition of *published exit amount*)

This item repeals the definition of the published exit amount from section 4 of the User Rights Principles.

This section is repealed as a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 20 – paragraph 16(1)(e)

This item amends paragraph 16(1)(e) of the User Rights Principles to refer to subsection 56-2(ab) of the Act, in addition to the existing reference to subsection 56-2(1).

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 21 – paragraph (16(2)(a)

This item amends paragraph 16(2)(a) of the User Rights Principles to remove the reference to exit amounts at the end of the paragraph.

This amendment is a consequence of the changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 22 – paragraph 19B(1)(c)

This item repeals paragraph 19B(1)(c) of the User Rights Principles to remove the requirement for approved providers of home care to publish the price (if any) that the provider charges for providing care or services through a subcontracting arrangement that is necessary to give effect to a request by a care recipient.

This amendment is a consequence of updated section 21K of the User Rights Principles (Item 32 of this Schedule), which introduces a provision that approved providers of home care must not charge separately for costs of providing care or services through a subcontracting arrangement.

Item 23 – subparagraph 21B(3)(c)(ii)

This item replaces subparagraph 21B(3)(c)(ii) of the User Rights Principles to remove the reference to paragraph 19B(1)(c) of the User Rights Principles, which is repealed at Item 22 of this Schedule. This removes the requirement for approved providers of home care to include in an itemised list in the financial information statement (also known as a monthly statement) if they provided and charged a separate price for providing care or services through a subcontracting arrangement that is necessary to give effect to a request by a care recipient.

This amendment is a consequence of updated section 21K of the User Rights Principles (Item 32 of this Schedule), which introduces a provision that approved providers of home care must not charge separately for costs of providing care or services through a subcontracting arrangement.

Item 24 – paragraph 21B(3)(d)

This item updates paragraph 21B(3)(d) of the User Rights Principles to remove the reference to paragraph 19B(1)(c), which is repealed at Item 22 of this Schedule. This removes the requirement for approved providers of home care to include in their financial statement (also known as a monthly statement) the price (if any) that the approved provider charged for providing care or services through a subcontracting arrangement that is necessary to give effect to a request by a care recipient.

This amendment is a consequence of updated section 21K of the User Rights Principles (Item 32 of this Schedule), which introduces a provision that approved providers of home care must not charge separately for costs of providing care or services through a subcontracting arrangement.

Item 25 – Division 3A of Part 3 (Heading)

This item removes the reference to exit amounts from the heading of Division 3A of Part 3 of the User Rights Principles.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 26 – paragraph 21BB(b)

This item removes the reference to exit amounts from paragraph 21BB(b) of the User Rights Principles. This provision refers to section 21C of the User Rights Principles as that section was in force immediately before 1 September 2021. This amendment does not affect how approved providers should calculate the implementation date Commonwealth portion for their unspent home care amount.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 27 – subsection 21CB(1) (method statement, step 7)

This item repeals subsection 21CB(1) (method statement, step 7) to remove the reference to exit amounts from the Care recipient portion calculator. The calculator is used to work out the amount of the care recipient portion of a care recipient's unspent home care amount in respect of a payment period.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 28 – subsection 21CB(1) (method statement)

This item updates subsection 21CB(1) (method statement) to remove the reference to step 7 of the Care recipient portion calculator, which is repealed in Item 27 of this Schedule.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 29 – subparagraph 21E(2)(a)(v)

This item repeals subparagraph 21E(2)(a)(v) to remove the reference to step 7 of the Care recipient portion calculator, which is repealed in Item 27 of this Schedule.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 30 – section 21H

This item repeals section 21H of the User Rights Principles to remove responsibilities in relation to exit amounts for approved providers of home care.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 31 – subdivision E of Division 3A of Part 3

This item repeals Subdivision E of Division 3A of Part 3. The Subdivision outlines the responsibility of approved providers of home care to give notice to the Commonwealth of their published exit amount (if any).

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 32 – sections 21K and 21L

This item replaces sections 21K and 21L of the User Rights Principles and introduces 21KA.

The new **section 21K** of the User Rights Principles introduces a provision that approved providers of home care must not charge separately for costs of providing care or services through a subcontracting arrangement. This is to make costs more transparent and easier for care recipients to understand and compare.

The definitions of care management (as amended by Item 6 of this Schedule) and package management (as amended by Item 18 of this Schedule) mean that most, if not all additional costs to an approved provider associated with providing care or services through a subcontracting arrangement will be recouped through charges for care and package management services. In most cases, only the actual cost of the subcontracted care or service and the approved provider's business costs (as amended by Item 14 of this Schedule) would be incorporated into the price that the approved provider charges care recipients for providing the care or service.

Subsection 21KA(1) of the User Rights Principles (*Maximum daily prices for care management and package management*) introduces maximum daily prices that can be charged by approved providers for care and package management services.

The maximum daily prices for care and package management were calculated as a percentage of the basic subsidy amount in the table at section 67 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014* (Subsidy Determination). Care management is capped at 20 per cent of the basic subsidy amount and package management is capped at 15 per cent of the basic subsidy amount. This amount was then rounded to two decimal places to give a dollar figure.

Care and package management charges are usually set by providers as a percentage of the basic subsidy amount. If a provider were to charge the maximum amount for both care and package management, they would use 35 per cent of the basic subsidy amount for that care recipient. This amount was the **most** the department considered could be justifiable, such as when a care recipient has high needs.

These amounts have been introduced to reduce excessive charging for care and package management services, but they are not an indication of what the Government considers a reasonable price for care and package management (an updated requirement for prices to be reasonable is inserted in this Item at section 21L of the User Rights Principles).

Table 1: calculations for paragraph 21KA(1) of the User Rights Principles

Level of home care	Basic Subsidy Amount from section 67 of the Subsidy Determination	Calculation for care management	Maximum price for care management for the day for the care recipient	Calculation for package management	Maximum price for package management for the day for the care recipient
Level 1	\$25.15	25.15 x 20%	\$5.03	25.15 x 15%	\$3.77
Level 2	\$44.24	44.24 x 20%	\$8.85	44.24 x 15%	\$6.64
Level 3	\$96.27	96.27 x 20%	\$19.25	96.27 x 15%	\$14.44
Level 4	\$145.94	145.94 x 20%	\$29.19	145.94 x 15%	\$21.89

While the amounts listed in this subsection were calculated using the basic subsidy amount, the maximum amount a provider can charge in any period is not linked to the care recipient being in the approved provider's care on that day. How to calculate the maximum amount an approved provider can charge in a given period is stepped out in subsections 21KA(2) and (3).

Subsections 21KA(2) and (3) of the User Rights Principles (*Cap on care management price for a period* and *Cap on package management price for a period*) set out how much an approved provider of home care can charge for care and package management in a period. Unlike other services, which have an hourly price (such as personal care or gardening) or have a one-off purchase price (such as a mobility scooter), care and package management are charged at flat rates for a given period. The provisions do not specify the length of the period, as there are multiple ways providers may calculate the amount they will charge for care and package, set out as follows:

- An approved provider of home care is required to publish their prices for care and package management per fortnight;
 - This is because section 19B of the User Rights Principles states that an approved provider of home care must give to the Secretary a written notice of the price they charge for care management (19B(1)(a)(vi)) and package management (19B(1)(d)), and that the notice must be given in a form approved, in writing, by the Secretary (19B(4)). The Secretary currently requires that an approved provider of home care provides the prices for care and package management per fortnight through My Aged Care;
- An approved provider of home care is not required to charge for care and package management for any set period;
 - Many providers charge care and package management as a flat monthly rate to align with the issuing of the financial statements, which are required per section 21B of the User Rights Principles;
 - An approved provider of home care can charge a price that is different from the published price in line with section 21M of the User Rights Principles;
 - Note that an approved provider may not charge above the maximum amount even if the care recipient agrees.

The provision also allows for an approved provider of home care to charge for care and package management in a period where service was provided without the provider needing to pro rata the price if the care recipient ceases their home care part way through the period. In practice, this means that if a care recipient has agreed to pay the maximum amount for care and package management in a month but ceases care with an approved provider of home care midway through the period, the provider can still charge the maximum amount for the entire month if that has been agreed in the home care agreement. The provider cannot charge for care and package management in a period where the care recipient has ceased care for the entire period.

Subsections 21KA(4) and (5) of the User Rights Principles (*Payment periods in respect of which no charge for package management permitted*) introduces a requirement for an approved provider of home care to not charge for package management in a calendar month where no services (other than care management) are delivered, except for the first month of care.

In practice, this means that if a care recipient requests to not receive care and services for an entire payment period, but does not want to suspend their home care services per section 46- 2 of the Act, the approved provider must charge \$0 for package management in that month. The provider is still required to meet their legislative obligations and cannot stop delivering care management during this period.

Section 21L of the User Rights Principles expands on the current section 21L, and adds that all prices and costs must be reasonable. This includes prices charged for care and services covered by the Quality of Care Principles, certain travel and package management, and those costs that must not be charged separately (business costs and costs for subcontracting).

This amendment strengthens the existing responsibility not to act inconsistently with legal and consumer rights of care recipients set out at section 19AA of the User Rights Principles.

Item 33 – paragraph 21M(2)(b)

This item removes the reference to paragraph 19B(1)(c) of the User Rights Principles, which is repealed at Item 22 of this Schedule, from paragraph 21M(2)(b).

This amendment removes the requirement for approved providers of home care to include the price (if any) in the care recipient’s home care agreement that the provider will charge for providing care or services through a subcontracting arrangement that is necessary to give effect to a request by a care recipient.

Item 34 – paragraph 23(2)(cba)

This item repeals paragraph 23(2)(cba) from the User Rights Principles. This amendment removes the provider’s requirement to include in the home care agreement the exit amount they intend to deduct from the unspent home care amount when the provider ceases to provide home care to the care recipient.

This section is repealed as a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 35 – sections 29 and 31

This item repeals sections 29 and 31 from the User Rights Principles. These sections are a part of the transitional provisions relating to the *Aged Care Legislation Amendment (Increasing Consumer Choice) Principles 2016*.

This amendment is a consequence of changes being introduced in Schedule 2 to the Implementing Care Reform Act and will commence 1 January 2023.

Item 36 – in the appropriate position in Part 5

This item introduces Division 7—Transitional provisions relating to this amending instrument in Part 5 of the User Rights Principles. The transitional provisions allow for exit amounts to be treated in line with old principles (the User Rights Principles as in effect immediately before 1 January 2023) when a care recipient ceases care prior to the commencement of this amending instrument. This means that if a care recipient ceases care before 1 January 2023, in line with the old principles, an approved provider:

- can agree and deduct an exit amount; and
- must give notice of the exit amount to the care recipient or their estate.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022

This Disallowable 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 Disallowable Legislative Instrument

The *Aged Care Legislation Amendment (Capping Home Care Charges) Principles 2022* (the Disallowable Legislative Instrument) gives effect to the Australian Government's (the Government) commitment to reduce excessive administration and management charges in the Home Care Packages Program. Administration and management costs are often confusing to care recipients and take up a large amount of the home care package. Some costs are charged for separately (for example, charges for care and package management, exit amounts) while some are built into the price of care and services (for example, business costs). Other costs are charged for inconsistently across the sector, with some approved providers charging administration and management costs such as staff travel and subcontracting separately and others including their costs in the price for care and services.

The Disallowable Legislative Instrument will make the following changes commencing 1 January 2023:

- the amount that can be charged by an approved provider for care management services will be capped at 20 per cent of the basic subsidy amount;
- the amount that can be charged by an approved provider for package management services will be capped at 15 per cent of the basic subsidy amount;
- approved providers cannot charge for package management in a payment period where no services (other than care management) are delivered, except for the first month of care;
- approved providers cannot charge separately for costs associated with the provision of subcontracted care or services; and
- approved providers cannot charge exit amounts.

Additionally, the Disallowable Legislative Instrument clarifies that care management is a mandatory support service that must be provided on a monthly basis (being every payment period).

These changes will ensure that more funds are available in the home care package to meet the needs of care recipients and make it easier for older Australians to compare approved providers.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the right to health in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 25 of the Convention on the Rights of Persons with Disabilities (CRPD); and
- the right to an adequate standard of living and social protection in article 11 of the ICESCR and article 28 of the CRPD.

Right to health

The right to health is contained under article 12 of the ICESCR and article 25 of the CRPD. These articles refer to the right of individuals, including persons with disability, to the highest attainable standard of physical and mental health.

The Disallowable Legislative Instrument promotes the right to health by supporting older people with complex needs to remain living in their own home for as long as possible. The Government subsidises in-home aged care to provide comprehensive home care that can improve older Australians' quality of life and help them remain active and connected to their communities.

The Government pays subsidy to approved providers for the provision of care and services to people with a condition of frailty who require assistance to achieve and maintain the highest attainable standard of physical and mental health. In-home aged care also allows for services to be provided as close as possible to people's own communities, including in rural areas. The Disallowable Legislative Instrument will reduce the amount of Government subsidy going to administration and management costs and therefore, maximises the funds available to address older people's care needs.

Right to an adequate standard of living and social protection

The right to an adequate standard of living and social protection is contained under article 11 of ICESCR and article 28 of the CRPD. This article refers to the right of individuals, including persons with disability, to an adequate standard of living for themselves and their families, and to the continuous improvement of living conditions. The commitment to this right safeguards and promotes people's right to live without discrimination on the basis of disability.

The Disallowable Legislative Instrument positively engages the rights for persons with disabilities set out in Article 28 of the CRPD and article 11 of ICESCR, by providing genuine consumer direction of care. The Disallowable Legislative Instrument will no longer allow providers to charge separately for exit amounts or for costs associated with using subcontracting arrangements to deliver care and services. This will improve the way older people and their families compare home care services, as providers must incorporate all administration costs into their published prices.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights as it promotes the rights of to attain the highest standard of physical and mental health, and the right to an adequate standard of living, 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*.

Circulated by the authority of the Minister for Aged Care, the Hon Anika Wells MP