

# **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Aged Care**

*Aged Care Act 1997*

*Classification Amendment (CHC Domain Scores) Principles 2016*

## **Purpose**

The purpose of the *Classification Amendment (CHC Domain Scores) Principles 2016* (the Amending Principles) is to amend the *Classification Principles 2014* to give effect to the “Aged Care Provider Funding – revision to the Aged Care Funding Instrument Complex Health Care domain” measure announced in the Mid-Year Economic and Fiscal Outlook 2015-16.

## **Background**

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 and supplement 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 is the *Classification Principles 2014* (the Principles).

The Amending Principles refine the scoring matrix in Part 3 of Schedule 1 of the Principles which determines the level of funding for the Complex Health Care domain within the Aged Care Funding Instrument (ACFI). The funding for the Complex Health Care domain is based on a scoring matrix which considers the scores achieved for questions 11 (medication) and 12 (complex health care) collectively.

These amendments will apply to all new ACFI appraisals (new appraisals and reappraisals) undertaken for care recipients from 1 July 2016.

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

## **Commencement**

The Amending Principles commence on 1 July 2016.

## **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.

### **Consultation**

Consultation on broad options for improvements to the operation of the ACFI, in the context of the higher than estimated growth in residential care subsidy, occurred through the ACFI Expenditure Working Group (the Group), a sub-committee of the Aged Care Sector Committee.

The Group brings together key stakeholders in the aged care sector.

The Government's intent to refine the Complex Health Care domain scoring matrix was publicly communicated on 16 December 2015, with Minister Ley and Assistant Minister Wyatt's joint media release, *Stronger Compliance to Protect Integrity of Aged Care Sector*.

Information about the changes to the Complex Health Care domain scoring matrix arising from the MYEFO measure will be disseminated via electronic media to approved providers.

### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised that no Regulation Impact Statement is required (OBPR ID 19762).

**Details of the Classification Amendment (CHC Domain Scores) Principles 2016**

**Section 1**

This section provides how the proposed instrument is to be cited, that is, as *Classification Amendment (CHC Domain Scores) Principles 2016*.

**Section 2**

This section sets out the commencement of this instrument. The commencement date is 1 July 2016.

**Section 3**

This section provides the authority for making this instrument. This instrument is made under section 96-1 of the *Aged Care Act 1997* (the Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act), 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.

Accordingly, the power in section 96-1 of the Act is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary the Principle.

**Section 4**

This section provides that each instrument 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- Clause 3 of Part 3 of Schedule 1**

This item substitutes a new Clause 3 of Part 3 of Schedule 1 to include a new scoring matrix for the Complex Health Care domain. The schedule determines the score for each combination of ratings in the domain.

The changes mean there is a reduction to the score and hence funding in CHC where there is a rating of ‘D’ for medication and ‘C’ for complex health, and also where there is a rating of ‘A’ for medication and ‘C’ for complex health.

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

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

### ***Classification Amendment (CHC Domain Scores) Principles 2016***

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 Legislative Instrument**

This legislative instrument amends the *Classification Principles 2014*, and refines the scoring matrix that determines the level of funding for the Complex Health Care domain. The scoring and funding for the Complex Health Care domain is based on a matrix which considers the scores achieved for questions 11 (medication) and 12 (complex health needs) collectively. These changes ensure that the highest level of funding goes to residents with the highest needs.

#### **Human Rights Implications**

This 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.

This legislative instrument concerns the amount of subsidy payable to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health.

Specifically, the scoring and funding for the Complex Health Care domain is based on a matrix which considers the scores achieved for questions 11 (medication) and 12 (complex health care) collectively. Proposed changes to the matrix will reduce the scoring and funding for certain combinations of medication and complex health needs.

Question 11 of the ACFI relates to the assessed need for assistance with medications. Question 12 of the ACFI relates to the assessed need for ongoing complex health care procedures and activities. The ratings in this question relate to the technical complexity and frequency of the procedures.

#### **Conclusion**

This legislative instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

**Minister for Health**

**Minister for Aged Care**

**Minister for Sport**

**The Hon Sussan Ley, MP**