

## **EXPLANATORY STATEMENT**

### ***Aged Care Act 1997***

#### ***Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019***

##### **Authority**

Section 96-1 of the *Aged Care Act 1997* (the Act) provides that the Minister may, by legislative instrument, make Principles providing for matters required or permitted under, or necessary or convenient to be provided to carry out or give effect to, specified parts of the Act.

The power in section 96-1 of the Act to make Principles is relied on, in conjunction with subsection 33(3) of the *Acts Interpretation Act 1901*, to vary the *Information Principles 2014*, the *Quality of Care Principles 2014*, the *User Rights Principles 2014*, and the *Sanctions Principles 2014*.

##### **Purpose**

The purpose of the *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019* is to introduce measures to better inform current and prospective home care recipients by facilitating comparability of pricing information of approved providers of home care.

Improving the comparability of home care pricing information will assist current and prospective care recipients to make a more informed decision about which approved provider of home care is best placed to deliver care. This decision may be made before entering home care, or when a care recipient is deciding to change their approved provider of home care.

##### **Background**

This instrument is part of a phased approach to improve the transparency and comparability of home care pricing information, and to address the high administration costs being charged by some approved providers of home care.

This lack of transparency and comparability directly contradicts the policy intent of the Increasing Choice in Home Care reforms, implemented on 27 February 2017 through the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016*. These reforms aimed to facilitate and support greater consumer choice about home care services.

To give effect to this policy intent, the *User Rights Principles 2014* were amended in September 2018 to require approved providers of home care to provide to the Secretary a written notice of their current pricing information by 30 November 2018.

However, there is significant variation in the information provided by approved providers of home care, including in the description of service offerings, the way pricing information is published, and in the providers' service delivery models, which can impact on the way they price their care and services. These variations in the pricing information undermine the ability of current and prospective home care recipients to understand and compare the information.

It is therefore necessary to introduce further measures in order to ensure that the policy intent is given meaningful effect.

### Consultation

Extensive sector consultation has been undertaken to develop and inform the specific policy and implementation arrangements to address the lack of transparency and comparability in pricing information. This consultation has included senior Australians, consumer representatives, aged care provider peak bodies, home care providers and a home care pricing specialist.

### Regulation Impact Statement

The reforms contained in this instrument have been agreed with the Office of Best Practice Regulation as having no more than a minor regulatory impact on businesses and individuals. Noting this, a Regulation Impact Statement was not required (OBPR ID: 23990).

### Commencement

This instrument will commence on the day after it is registered on the Federal Register of Legislation, with the exception of Schedule 2, which will commence on 1 July 2019.

This Instrument is a legislative instrument for the purpose of the *Legislation Act 2003*.

## **Details of the *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019***

### **1. Name**

Section 1 provides that the name of this instrument is the *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019*.

### **2. Commencement**

Section 2 provides that this instrument is to commence on the day after it is registered, with the exception of Schedule 2, which will commence on 1 July 2019.

### **3. Authority**

Section 3 provides that this instrument is made under the authority of the *Aged Care Act 1997*.

Under subsection 33(3) of the *Acts Interpretation Act 1901* (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 to make Principles is relied on, in conjunction with subsection 33(3) of the Acts Interpretation Act, to vary the:

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

### **4. Schedules**

Section 4 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 – Home care pricing – amendments commencing day after registration**

##### ***Information Principles 2014***

##### **Item 1: At the end of the instrument**

Item 1 introduces a new Part 3 into the *Information Principles 2014* that makes it clear that for the purposes of paragraph 86-9(l)(m) of the Act, the Secretary may make publicly available information given under the *User Rights Principles 2014* division 2A of Part 3 related to home care pricing information (incorporated by reference as per the amendments in this instrument), and under section 21J related to home care exit amounts.

This is to avoid ambiguity about the manner in which this information is to be used, as the intention is to make it transparent and publicly available through the My Aged Care Service Finder.

### ***Quality of Care Principles 2014***

#### **Item 2: Clause 2 of Schedule 3 (at the end of the table)**

Item 2 introduces a new support service to recognise care management within the range of care and services delivered under home care.

Care management has been defined as including, but not limited to:

- reviewing the care recipient's home care agreement and care plan
- coordinating and scheduling care and services
- ensuring care and services are aligned with other supports
- liaising with the care recipient and their representatives
- ensuring that care and services are culturally appropriate, and
- identifying and addressing risks to the care recipient's safety.

### ***User Rights Principles 2014***

#### **Item 3: Section 4**

Item 3 updates the definitions within the *User Rights Principles 2014* to include definitions for business costs and package management. Prior to the commencement of this instrument, these amounts may have been colloquially referred to as 'administration costs'.

For an approved provider of home care, business costs have been defined as the costs of running a business that are not directly related to the provision of home care (for example amounts related to office rent, insurance and marketing). The definition also specifically excludes the prices of the matters mentioned in paragraphs 19B(1)(b), 19B(1)(c) and 19B(1)(d) related to certain travel, subcontracting arrangements and package management.

Package management has been defined as the activities that an approved provider of home care is required to undertake, by or under the Act, in managing the provision of a package of care and services to a care recipient to whom the approved provider provides, or is to provide, home care, and in managing the quality of care and services included in the package. The definition specifically excludes care management which has been defined by reference to item 3 of the table in clause 2 of Schedule 3 to the *Quality of Care Principles 2014*.

The definition of package management also includes a note that provides examples of package management. This includes activities required to comply with accountability responsibilities under section 63-1 of the Act, activities required to comply with standards set out in the *Quality of Care Principles 2014*, making claims for home care subsidy under section 47-4 of the Act and the preparation of individualised budgets and monthly statements under sections 21A and 21B of the *User Rights Principles 2014*. These examples are not intended to be exhaustive.

**Item 4: Paragraph 16(1)(ca)**

Item 4 updates the purpose of Part 3 – Home care services, to reflect the change to the information an approved provider of home care must provide to the Secretary about “the prices and fees for providing care and services”.

All references to ‘price’ in this Instrument are also intended to include the plural (‘prices’), as per section 23 of the Acts Interpretation Act. Publication of more than one price for a care or service is intended to only occur in limited circumstances (for example, where an approved provider of home care offers genuine choice to their care recipients of different prices for a service).

**Item 5: At the end of subsection 16(1)**

Item 5 further updates the purpose of Part 3 – Home care services, to also include “the prices and fees that the approved provider may charge care recipients for providing care and services”.

**Item 6: Subsection 19A(1)**

Item 6 removes the wording “for publication by the Secretary” from the requirement to give pricing information to the Secretary.

**Item 7: At the end of Division 2A of Part 3**

A new note has been inserted which includes that the Secretary may make the information in a notice under subsection 19A(1) publicly available as per section 86-9 of the Act and the *Information Principles 2014*.

**Notice of common care and services and prices and fees**

Subsection 19B(1) requires approved providers of home care to give to the Secretary a written notice of their pricing information, in a standardised format.

The written notice must include the price the provider charges current or prospective care recipients for each of the following common care and services and prices and fees:

- personal care
- nursing by a registered nurse
- cleaning and household tasks
- light gardening
- in-home respite care
- care management
- any per kilometre costs for travel to a care recipient for the purpose of providing care or services
- any costs related to providing care or services through a subcontracting arrangement where necessary to give effect to a request by a care recipient
- any package management costs
- any Basic Daily Care Fee.

The care and services listed in subparagraph 19B(1)(a)(i) to (vi) are correlated with those provided for in Schedule 3 of the *Quality of Care Principles 2014*. For example:

- personal care may align with ‘personal services’ in item 1 of clause 1, and with ‘medication management’ in item 1(e) of clause 2
- nursing by a registered nurse may align with ‘clinical care’ in item 1 of clause 3
- cleaning and household tasks may align with ‘cleaning’ in item 1(a) of clause 2, and with ‘personal laundry services’ in item 1(b) of clause 2
- light gardening may align with ‘gardening’ in item 1(d) of clause 2
- in-home respite care may align with ‘respite care’ in item 1(k) of clause 2
- care management, which is defined in item 3 of the table in clause 2 of Schedule 1 to this instrument.

Subparagraphs 19B(1)(b) to (f) are not aligned with care and services listed under the *Quality of Care Principles 2014*. However, based on the sector consultation processes, these are the most common elements across approved providers of home care and are therefore important elements for approved providers to include in this notice, and for current and prospective care recipients to understand.

It is intended that the price published is the specific dollar value of the cost, and not, for example a percentage of total package value. This approach has been adopted to ensure an equitable, ‘like’ for ‘like’ comparison of pricing information.

Subparagraph 19B(1)(g) requires the approved provider of home care to provide contact details for people to obtain further information about the approved provider’s prices and fees.

Subsection 19B(2) requires existing providers (those who are approved providers before this section commences) to give the notice before 1 July 2019. Those who become approved providers in the interim period between the commencement of these sections and 1 July 2019 are required to comply either by 1 July 2019 or before they offer to enter into a home care agreement with a care recipient (whichever occurs last). New providers (those who become approved providers on or after 1 July 2019) will be required to give the notice before they offer to enter into a home care agreement with a care recipient.

Subsection 19B(3) requires that the approved provider of home care provides an updated notice to the Secretary if this information changes. This ensures the currency and accuracy of the information.

Subsection 19B(4) requires that the notices are provided in a form approved, in writing, by the Secretary.

The note makes clear that the Secretary may make the information in a notice under subsection 19B(1) or 19B(3) publicly available, as per section 86-9 of the Act and the *Information Principles 2014*.

The intention is for approved providers of home care to provide this information via the My Aged Care Provider Portal, for publication on the My Aged Care Service Finder. My Aged Care is the national entry point for all Commonwealth-subsidised aged care services and was introduced to make it easier for senior Australians to navigate the aged care system. Publishing home care pricing information through My Aged Care will provide a means for transparent and comparable disclosure for current and prospective care recipients of home care.

#### Notice of all care and services and prices and fees

Subsection 19C(1) requires approved providers of home care to give the Secretary notice of all prices and fees charged by the approved provider, for the care and services provided to current care recipients, or that will be provided to prospective care recipients.

This requirement will enable care recipients to see all care and services and prices and fees of an approved provider in home care. The additional requirement in subsection 19C(1) will enable prospective and current care recipients to see not just the common services to which section 19B relates but also all of the care and services and prices and fees of a particular provider.

Subsection 19C(2) requires existing providers (those who are approved providers before this section commences) to give the prescribed notice to the Secretary before 1 July 2019. Those who become approved providers in the interim period between the commencement of these sections and 1 July 2019 are required to comply either by 1 July 2019 or before they offer to enter into a home care agreement with a care recipient (whichever occurs last). New providers (those who become approved providers on or after 1 July 2019) will be required to give the notice before they offer to enter into a home care agreement with a care recipient.

Subsection 19C(3) requires that the approved provider of home care provides an updated notice to the Secretary if this information changes. This ensures the currency and accuracy of the information.

Subsection 19C(4) requires that the notices are provided in a form approved, in writing, by the Secretary.

The note makes clear that the Secretary may make the information in a notice under subsection 19B(1) or 19B(3) publicly available, as per section 86-9 of the Act and the *Information Principles 2014*. Again, the intention is for approved providers of home care to provide this information via the My Aged Care Provider Portal, for publication on the My Aged Care Service Finder. This will enable transparent and comparable disclosure for current and prospective care recipients of home care.

#### Annual review of notices of care and services and prices and fees

Subsection 19D requires approved providers of home care to review the information that they have provided in the notices required under subsections 19B(1) and 19C(1) at a minimum once every 12 calendar months.

Following a review, the approved provider of home care must either provide the Secretary with an updated notice, or written notice to confirm that they have reviewed the information within a 12 month period.

These notices must be provided in a form approved, in writing, by the Secretary. Again, it is intended that approved providers of home care will undertake this requirement electronically, through the My Aged Care Provider Portal.

The specific time of year when a review under section 19D is undertaken is a matter for each approved provider. For example, whether they choose to review and/or update this information in line with the financial year, or more frequently. At least one review must be conducted every 12 calendar months, noting the requirement in proposed subsections 19B(3) and 19C(3) that if at any time, there is a change to the information in a notice given to the Secretary under section 19B or 19C respectively, the approved provider must give the Secretary an updated notice with the current information.

**Item 8: Subsection 21J(1)**

Item 8 removes the wording “for publication by the Secretary” from the published exit amounts section.

**Item 9: At the end of section 21J**

Item 9 introduces a new note, stating that the Secretary may make publicly available information provided in a notice under subsection 21J(1), as per section 86-9 of the Act and the *Information Principles 2014*. This note confirms that the Secretary may publish information obtained from a notice given under subsection 21J(1) and is consistent with the notes of sections 19A, 19B and 19C.

**Schedule 2 – Home care pricing – amendments commencing 1 July 2019**

***Sanctions Principles 2014***

**Item 1: At the end of Part 2A**

Item 1 introduces a new sanction where an approved provider of home care overcharges a care recipient.

If an approved provider charges a care recipient to whom the approved provider provides home care; an amount for care or a service that is greater than the amount that the approved provider is required to charge under section 21M of the *User Rights Principles 2014* for the care or service, the Secretary may, by notice under section 67-5 of the Act, require the provider to repay the overcharged amount to the care recipient’s home care package budget within the period specified in the notice.

***User Rights Principles 2014***

**Item 2: Section 19A**

Item 2 repeals the one-off obligation to provide the Secretary with a written notice of their pricing information.



Instead, the proposed section 19C and section 19D, as per item 6 of Schedule 1 of this Instrument introduce an ongoing requirement for an approved provider of home care to provide written notice of all current care and services and prices and fees, and to keep this information up-to-date.

**Item 3: After Division 3A of Part 3**

Business costs not to be charged for separately

Section 21K requires approved providers of home care not to charge separately for costs (however described) that are business costs.

Prices and business costs to be kept to reasonable amounts

Section 21L requires that the costs described in paragraph 19B(1)(b), 19B(1)(c) or 19B(1)(d), when taken together, cannot total more than what is a reasonable amount. The section also requires that business costs that are part of the price that the approved provider charges the care recipient (as this Instrument prevents these from being charged separately), cannot be more than a reasonable amount.

What is reasonable will likely vary depending on the specific circumstances. For example, what is reasonable is likely to vary between an approved provider of home care operating in a metropolitan area as compared to one delivering services in very remote Australia.

Prices charged for common care and services, and fees, to be those in home care agreement

Section 21M requires the approved provider of home care to charge care recipients the price and fees as stated in each person's home care agreement, as per the requirement under paragraph 23(2)(ba) to 23(2)(c).

In most instances this price will be a specific value. However, where the provider can offer a range of genuine options, the price may be between a minimum and maximum price point.

This requirement is intended to operate so that the price specified in the written notice under subsection 19B(1) is a meaningful and accurate indication of the costs that will be charged under a home care package with a particular approved provider of home care.

There may be some exceptions whereby an approved provider of home care has negotiated and agreed a different price or fee directly with their care recipient. This price or fee could be a higher or lower amount than that specified in their written notice. In these instances, this different price or fee, and the accompanying reason will need to be clearly outlined within the Home Care Agreement. Subsections 21M(3), 21M(4), 21M(5) and 21M(6) provide for this requirement.

**Item 4: Paragraph 23(2)(c)**

Item 4 repeals the existing subparagraph 23(2)(c) and replaces it with the requirement for the approved provider of home care to include a copy of their written notice under subsection 19B(1) within the care recipient's Home Care Agreement. It also provides that where any prices or fees vary, the different price and the reason for the difference must also be specified in the Home Care Agreement.

**Item 5: At the end of paragraph 23(2)(ca)**

Item 5 is a further amendment to give effect to the intention that in the instance where a continuing care recipient is charged an amount that is different to the Basic Daily Fee, the different amount and the reason for that amount must be specified in the Home Care Agreement.

**Item 6: In the appropriate position in Part 5**

Item 6 provides for transitional provisions relating to home care agreements and pricing information.

Subsection 34(1) states that the transitional provisions only apply to an existing approved provider and care recipient, if the care recipient is in care with that approved provider of home care on 30 June 2019.

Subsections 34(2) and 34(3) provide a 12 month transition period for the requirements in section 23, and division 3B of Part 3 as per Schedule 2 of this instrument. Full compliance with the new requirements imposed by this instrument is therefore required on and after 1 July 2020.

**Schedule 3 – Technical amendments*****User Rights Principles 2014***

Item 1 to Item 14 in Schedule 3 outlines a number of technical amendments, to ensure consistency of language when referring to an approved provider of home care with the Act. It updates references to “approved provider of home care service” to “approved provider of home care”.

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

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

### ***Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019***

This 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 *Aged Care Legislation Amendment (Comparability of Home Care Pricing Information) Principles 2019* introduces a number of measures to better inform current and prospective care recipients and allow them to compare the pricing information of approved providers of home care. This is intended to better support current and prospective home care recipients to make a more informed decision about which approved provider of home care is best placed to deliver care.

#### **Human rights implications**

This instrument promotes the right to an adequate standard of living, as set out in Article 11 of the International Covenant on Economic, Social and Cultural Rights; and also rights of persons with disabilities with regard to their choice and independence, as per Article 3(a) of the Convention on the Rights of Persons with Disabilities.

This is because this instrument provides for the publication of transparent and comparable information by approved providers of home care services about the prices and fees charged associated with providing (both common and all) care and services to care recipients. This will provide care recipients, which may include people with a disability, with information they require to make an informed decision that enables them to receive the care that best meets their individual needs. The transparent and comparable publication of this information may also encourage further competition within the home care sector, leading to increased innovation in the delivery of care more suited to the needs of the care recipient.

#### **Conclusion**

The 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*. The instrument promotes the protection of human rights to an adequate standard of living, the right to choice for persons with disabilities and the right to freedom of opinion and expression.

The Hon Ken Wyatt AM, MP

Minister for Senior Australians and Aged Care