

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Senior Australians and Aged Care Services

Aged Care Act 1997

Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021

Purpose

The purpose of the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021* (Amending Principles) is to amend the *Accountability Principles 2014* (Accountability Principles) and the *Records Principles 2014* (Records Principles) to update the definition of the National Aged Care Mandatory Quality Indicator Program Manual.

The current definition of National Aged Care Mandatory Quality Indicator Program Manual incorporates a document by reference, being the *National Aged Care Mandatory Quality Indicator Program Manual 1.0*. As this document is not an Act, legislative instrument or rule of court, the document is incorporated as existing at the commencement of that definition. This definition commenced on 1 July 2019, as inserted by the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019* (2019 Quality Indicator Program Principles).

The Department of Health (Department) is updating the document to be incorporated by reference into the Accountability Principles and the Records Principles, which will be titled the *National Aged Care Mandatory Quality Indicator Program Manual 2.0 - Part A* (Manual), to set out requirements relating to the collection and reporting of data with respect to five quality indicators:

- pressure injuries;
- physical restraint;
- unplanned weight loss;
- falls and major injury; and
- medication management.

The Manual intends to expand the quality indicators from three to five, with falls and major injury and medication management introduced as new quality indicators. Quality indicators measure aspects of service provision which contribute to the quality of care and services by the provider, and to the care recipients' quality of life and experience of service. Outcomes against these quality indicators are relevant to the care received by the care recipient from the aged care provider.

The new quality indicators were developed through a rigorous process of: evidence review; national face-to-face and written consultations; expert consultation; and a national pilot in residential aged care services.

The clinical information required to be collected under the QI Program complements the Department's increased focus on clinical governance and high quality clinical care in residential aged care.

To require approved providers to comply with the procedures and other requirements in the Manual for the five quality indicators, the definitions in the Accountability Principles and the Records Principles will be amended to refer to the Manual. In effect, from 1 July 2021, the amendments to the Accountability Principles and the Records Principles will require approved providers to collect data relating to care recipients for each quality indicator in accordance with the Manual.

This will support a key object of the *Aged Care Act 1997* (Aged Care Act), namely protecting and enhancing the safety, health, well-being and quality of life of residential aged care recipients and promoting the provision of quality care and services by approved providers of Commonwealth-subsidised aged care services.

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

Background

As part of the 2019-20 Budget measure *More Choices for a Longer Life – Mandatory National Quality Indicators and Reducing the Misuse of Medicines in Residential Aged Care*, the Australian Government announced the expansion of the National Aged Care Mandatory Quality Indicator Program (QI Program) from 1 July 2021 to expand mandatory reporting requirements to include two new quality indicators which are falls and fractures, and medication management. This reform was expanded to include updates to the existing three quality indicators.

The five quality indicators set out in the Manual are pressure injuries, physical restraint, unplanned weight loss, falls and major injury, and medication management.

The QI Program was voluntary for approved providers of residential aged care from 1 January 2016 to 30 June 2019. It was developed, implemented and expanded in consultation with the sector.

The QI Program became mandatory on 1 July 2019 as a result of amendments made to the Accountability Principles and Records Principles by the 2019 Quality Indicator Program Principles. The amendments made by the 2019 Quality Indicator Program Principles set out new responsibilities for approved providers of residential care under paragraph 63-1(1)(m) and Division 88 of the Aged Care Act. These amendments inserted, among other

amendments, section 26 into the Accountability Principles and paragraph 7(v) into the Records Principles.

Section 26 of the Accountability Principles provides that an approved provider of residential care must, in accordance with the National Aged Care Mandatory Quality Indicator Program Manual:

- make measurements or other assessments that relate to care recipients to whom the approved provider provides residential care and are relevant to indicating the quality of the residential care, whether or not making the measurements or other assessments involves collecting or using personal information, or health information, (and therefore sensitive information within the meaning of the *Privacy Act 1988*) about the care recipients; and
- compile or otherwise derive from those measurements and assessments information that is relevant to indicating the quality of the care and is not personal information about any of the care recipients; and
- give the information to the Secretary.

Paragraph 7(v) of the Records Principles provides that an approved provider must keep records required by the National Aged Care Mandatory Quality Indicator Program Manual to be kept.

After the amendments introduced by the Amending Principles, approved providers will be required to keep appropriate and timely records as identified in the Manual.

Additional information on the details of the Amending Principles is set out in **Attachment A** below.

Authority

Section 96-1 of the Aged Care Act provides that the Minister may make Principles providing for matters required or permitted, or necessary or convenient to give effect to the relevant Part of section of the Aged Care Act.

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.

Documents Incorporated by Reference

The Manual will be incorporated by reference into the Accountability Principles and the Records Principles as it exists at the commencement of the Amendment Principles on 1 July 2021, in accordance with paragraph 14(1)(b) of the Legislation Act.

The Manual will be accessible and freely available, through the Department of Health's website at <https://www.health.gov.au>, to all providers of residential aged care, as well as care recipients and their families and carers.

The Manual will set out the requirements for all providers of residential aged care to comply with under the QI Program. The Manual prescribes the specific methods for collecting, recording, submitting and interpreting information for the QI Program. The Manual is designed specifically for residential aged care services and provides a user-friendly document that facilitates implementation of the QI Program for providers.

The Manual is supported by the *National Aged Care Mandatory Quality Indicator Program Manual 2.0 Part B* (Part B) which aims to support an increased focus on the use of quality indicators for continuous improvement. While not encompassed by legislation, Part B provides information, tools and resources relevant to quality improvement across quality indicator areas.

Consultation

The Department did not engage with the aged care sector in the development of the Amending Principles. However, the QI Program has been mandatory for Commonwealth-subsidised residential aged care services since 1 July 2019. The expansion of the QI Program, including development of the new and updated quality indicators and the Manual, has been informed by extensive consultation with the sector.

The Australian Government has responded to an extensive number of inquiries, reviews and reports, which have supported a mandatory and expanded QI Program, including:

- *The Productivity Commission report, Caring for Older Australians* (2011);
- *Australian National Audit Office report, Monitoring and Compliance Arrangements Supporting Quality of Care in Residential Aged Care Homes* (2011);
- *National Aged Care Quality Indicator Programme – Residential Care Pilot Outcomes* (2016)
- *Review of National Aged Care Quality Regulatory Processes* (the Carnell/Paterson Review) (2017);
- *COTA Project Report: Measuring Quality and Consumer Choice in Aged Care* (2018);

- the House of Representatives Standing Committee on Health, Aged Care and Sport *Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia* (2018); and
- *Development of Aged Care Quality Indicators – Summary Report* (2020).

The QI Program is consistent with the government's focus on raising the quality of care for residents of residential aged care services and empowering consumers to make informed decisions regarding their ongoing care needs.

Commencement

The Amending Principles commence on 1 July 2021.

Details of the Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021

1 Name of Instrument

Section 1 provides how the Amendment Principles are to be cited, that is, as the *Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021*.

2 Commencement

This section states that the Amendment Principles commence on 1 July 2021.

3 Authority

Section 3 provides that the authority for the making of the Amendment Principles is the Aged Care Act.

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

Schedule 1 amends the *Accountability Principles 2014* and the *Records Principles 2014*.

Accountability Principles 2014

Item 1: Section 4 (definition of *National Aged Care Mandatory Quality Indicator Program Manual*)

Item 1 repeals the definition of *National Aged Care Mandatory Quality Indicator Program Manual* in section 4 of the *Accountability Principles* and substitutes a new definition. The new definition of *National Aged Care Mandatory Quality Indicator Program Manual* means the *National Aged Care Mandatory Quality Indicator Program Manual 2.0-Part A* (Manual), published on the Department's website, as existing at the start of 1 July 2021.

The Manual is titled the *National Aged Care Mandatory Quality Indicator Program Manual 2.0-Part A* as a supplementary Part B has been developed to support the quality improvement ethos of the QI Program, beyond the legislated requirements. Part A of the Manual sets out the requirements for all providers of residential aged care to comply with under the QI Program and

Part B supports aged care providers with information, resources and evidence-based tools to engage in continuous quality improvement.

Item 2: Paragraph 26(b)

Item 2 omits the words “those measurements and assessments” from paragraph 26(b) of the Accountability Principles and substitutes the words “those measurements and assessments (and any relevant measurements and assessments made in accordance with the National Aged Care Mandatory Quality Indicator Program Manual as existing before 1 July 2021)”.

Paragraph 26(a) of the Accountability Principles requires an approved provider of residential care to, in accordance with the National Aged Care Mandatory Quality Indicator Manual, make measurements or assessments that (among other requirements) are relevant to indicating the quality of residential care.

Paragraph 26(b) then relevantly requires an approved provider to compile or derive information from those measurements and assessments relevant to indicating the quality of the care. In compiling or deriving such information to report to the Secretary, approved providers do must not report personal information about care recipients (in accordance with subparagraph 26(b)(i) of the Accountability Principles).

The effect of this amendment is to require approved providers of a residential aged care service to compile or otherwise derive information from measurements or assessments under the Manual, as well as information from any relevant measurements and assessments made in accordance with the National Aged Care Mandatory Quality Indicator Program Manual as existing before 1 July 2021. As an example, the QI Program will continue to require approved providers to report on unplanned weight loss, which includes a comparative weight recorded in the previous quarter. For the first quarter of the expanded QI Program, this comparative weight from the previous quarter will be gathered under the *National Aged Care Mandatory Quality Indicator Program Manual 1.0*.

Once approved providers compile or otherwise derive the relevant information from measurements or assessments in accordance with the Manual, paragraph 26(c) of the Accountability Principles requires approved providers to give that information to the Secretary.

Item 3: Section 56

Item 3 repeals section 56 of the Accountability Principles. Section 56 was a transitional provision relating to approved providers compiling, deriving and giving information relating to measurements and assessments before 1 July 2019.

The QI Program was voluntary prior to 1 July 2019. This transitional provision applied if:

- apart from section 56, section 26 would require an approved provider of residential care to give the information compiled or derived from a measurement or assessment made before 1 July 2019 in relation to a care recipient to whom the approved provider provided residential care; and
- the provider did not take part in the program known as the National Aged Care Quality Indicator Program in the three months ending on 30 June 2019.

If those requirements were met, the approved provider was not required under section 26 to compile or derive the relevant information, or give it to the Secretary.

As the QI Program is now mandatory for all approved providers of residential care, those transitioned approved providers have participated in the QI Program since 1 July 2019. As such, approved providers will have been providing information compiled or derived from measurements or assessments made from that date in accordance with section 26 of the Accountability Principles. Therefore, the transitional provision no longer applies.

Records Principles 2014

Item 4: Section 4

Item 4 repeals the definition of *National Aged Care Mandatory Quality Indicator Program Manual* in section 4 of the Records Principles and substitutes a new definition. The new definition of *National Aged Care Mandatory Quality Indicator Program Manual* means the *National Aged Care Mandatory Quality Indicator Program Manual 2.0-Part A*, published on the Department's website, as existing at the start of 1 July 2021. The Manual is the same document incorporated by reference into the Accountability Principles (for further information, see Item 1).

The Manual provides for data collection and recording methods for each of the five quality indicators. In addition, the Manual specifies instructions for providers to submit their collated data through the My Aged Care provider portal as well as the dates for collection and submission of data. Approved providers are required to keep records required by the Manual to be kept, in accordance with paragraph 7(v) of the Records Principles.

Statement of Compatibility with Human Rights

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

Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021

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 Aged Care Legislation Amendment (Quality Indicator Program) Principles 2021 (Amendment Principles) amends the Accountability Principles 2014 (Accountability Principles) and the Records Principles 2014 (Records Principles) to update the definition of the National Aged Care Mandatory Quality Indicator Program Manual.

The Department of Health (Department) is updating the document to be incorporated by reference into the Accountability Principles and the Records Principles, which will be titled the *National Aged Care Mandatory Quality Indicator Manual 2.0 - Part A (Manual)*, to set out requirements relating to the collection and reporting of data with respect to five quality indicators:

- pressure injuries;
- physical restraint;
- unplanned weight loss;
- falls and major injury; and
- medication management.

The Manual intends to expand the quality indicators from three to five, with falls and major injury and medication management introduced as new quality indicators. Quality indicators measure aspects of service provision which contribute to the quality of care and services by the provider, and to the care recipients' quality of life and experience of service. Outcomes against these quality indicators are considered to be directly attributable to the level of care received by the care recipient from the aged care provider.

To require approved providers to comply with the procedures and other requirements in the Manual for the five quality indicators, the definitions in the Accountability Principles and the Records Principles will be amended to refer to the Manual. In effect, from 1 July 2021, the amendments to the Accountability Principles and the Records Principles will require approved providers to collect data relating to care recipients for each quality indicator in accordance with the Manual.

This will support a key object of the *Aged Care Act 1997*, namely protecting and enhancing the safety, health, well-being and quality of life of residential aged care recipients and promoting the provision of quality care and services by approved providers of Commonwealth-subsidised aged care services.

Human rights implications

The instrument engages the following human rights:

- the right to an adequate standard of living;
- the right to the enjoyment of the highest attainable standard of physical and mental health;
- the right to prevent acts of cruel, degrading or in humane treatment or punishment; and
- the right that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.

The Amendment Principles are 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 Convent on Economic, Social and Cultural Rights.

The Amendment Principles are compatible to the right to prevent acts of cruel, degrading or inhumane treatment or punishment as contained in article 16(1) of the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment. The Amendment Principles are also compatible with the right that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation as contained in article 17(1) of the International Covenant on Civil and Political Rights.

Quality indicators measure aspects of service provision which contribute to the quality of care and services for care recipients, and are used by providers as part of their internal management of care and continuous improvement. The intent of the National Aged Care Mandatory Quality Indicator Program (QI Program) is to enable providers to have robust, valid data to measure and monitor their performance, support continuous quality improvement, to compare themselves to their counterparts and better manage risks. The clinical information will complement the increased focus on clinical governance and support a national focus on high quality clinical care in residential aged care.

The QI Program aims to achieve quality outcomes against five clinical quality indicators; pressure injuries, physical restraint, unplanned weight loss, falls and major injury, and medication management for care recipients. The level of care provided by the aged care provider against each of these indicators can directly affect a care recipient's quality of life and standard of living.

The physical restraint quality indicator aims to promote a restraint-free environment and contribute to alleviating any degrading and inhumane treatment, including physical injuries of aged care recipients (noting that approved providers have responsibilities in relation to the use of restrictive practices set out in the Quality of Care Principles 2014). The medication management quality indicator aims to promote appropriate use of antipsychotics, and contribute to reducing the misuse of medications. Monitoring, recognising and addressing pressure injuries, unplanned weight loss and falls and major injury will work to reduce the common adverse events associated with these conditions such as infection, reduced physical function, pain, increased risk of hip fractures and poor wound healing. All these issues can reduce a care recipient's right to the enjoyment of the highest attainable standard of physical and mental health.

The collection of the required personal data by approved providers of aged care goes no further than currently required for the proper care of residential care recipients. The data is then provided in de-identified form (without the inclusion of care recipients' personal information) to the Secretary of the Department. Hence any infringement of the individual right to privacy is minimised and is no more than necessary for existing residential care arrangements.

Conclusion

The Amendment Principles are 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 Amendment Principles promote the care recipient's rights to an adequate standard of living, to live without fear of cruel, degrading, inhumane treatment and optimises each care recipient's physical and mental health while maintaining the care recipient's right to privacy.

Senator the Hon Richard Colbeck

Minister for Senior Australians and Aged Care Services