

Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021

I, Greg Hunt, Minister for Health and Aged Care, make the following instrument.

Dated 28 June 2021

Greg Hunt

Minister for Health and Aged Care

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1 Name

This instrument is the *Aged Care Legislation Amendment (Subsidies—Royal Commission Response) Instrument 2021*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 1 July 2021. | 1 July 2021 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

(a) the *Aged Care Act 1997*;

(b) the *Aged Care (Transitional Provisions) Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Aged Care (Subsidy, Fees and Payments) Determination 2014

1 At the end of Part 4 of Chapter 2

Add:

Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

64E Purpose of this Division

(1) For the purposes of subsection 44‑27(3) of the Act, this Division sets out the amount of the 2021 basic daily fee supplement for a day for a care recipient.

(2) For the purposes of this Division, the 2021 basic daily fee supplement is the 2021 basic daily fee supplement set out in Subdivision H of Division 5 of Part 3 of Chapter 2 of the *Subsidy Principles 2014*.

64F Amount of 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

The amount of the 2021 basic daily fee supplement for a day for a care recipient is $10.00.

2 After section 91B

Insert:

91C Amount of flexible care subsidy on and after 1 July 2021 (addition of 2021 basic daily fee supplement equivalent amount)

(1) Despite section 91, the amount of flexible care subsidy payable for a day in respect of flexible care that is provided through a multi‑purpose service is, for a day on or after 1 July 2021 for which the approved provider of the service meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount under section 91D, the sum of:

(a) the amount worked out under section 91 for the day and the service; and

(b) the amount worked out by multiplying:

(i) the 2021 basic daily fee supplement equivalent amount; and

(ii) the number of high care places and low care places allocated in respect of the service.

(2) In this section:

***2021 basic daily fee supplement equivalent amount*** means $10.00.

91D Eligibility for 2021 basic daily fee supplement equivalent amount

Notice to Secretary

(1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.

(2) The notice must:

(a) be in writing, in a form approved by the Secretary; and

(b) include an undertaking to give the Secretary reports in accordance with subsection (8) relating to the quarter in which the notice is given and each subsequent quarter; and

(c) include any other statements or information required by the approved form.

Eligibility based on giving notice—initial quarter

(3) If the notice is given on or before the 21st day of a quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the first day of the quarter and the 21st day of the following quarter.

(4) If the notice is given after the 21st day of a quarter and before the end of the quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the day the notice is given and the 21st day of the following quarter.

Eligibility based on giving reports—later quarters

(5) Subsections (6) and (7) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.

(6) If, on or before the 21st day of a later quarter (the ***current quarter***), the approved provider gives the Secretary a report relating to the previous quarter in accordance with subsection (8), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the 22nd day of the current quarter and the 21st day of the following quarter.

(7) If, after the 21st day of a later quarter (the ***current quarter***) and on or before the 21st day of the immediately following quarter (the ***following quarter***), the approved provider gives the Secretary a report relating to the quarter immediately before the current quarter in accordance with subsection (8), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement equivalent amount on each day between the day the report is given and the 21st day of the following quarter.

Reports

(8) For the purposes of paragraph (2)(b) and subsections (6) and (7), a report relating to a quarter must:

(a) be in writing, in a form approved by the Secretary; and

(b) include the information required by the approved form about the quality and quantity of daily living services, with a focus on food and nutrition, provided in the quarter by each multi‑purpose service through which the approved provider provides flexible care.

Meaning of **quarter**

(9) In this section:

***quarter*** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in a year.

Aged Care (Transitional Provisions) Principles 2014

3 Subparagraph 17(c)(v)

Before “basic”, insert “2012”.

4 At the end of paragraph 17(h)

Add:

; (v) the 2021 basic daily fee supplement.

5 Subdivision E of Division 4 of Part 3 of Chapter 2 (heading)

Omit “**Basic**”, substitute “**2012 basic**”.

6 Section 38 (heading)

Omit “**Basic**”, substitute “**2012 basic**”.

7 Section 38

Before “basic” (wherever occurring), insert “2012”.

8 Section 39 (heading)

Before “**basic**”, insert “**2012**”.

9 Section 39

Before “basic daily”, insert “2012”.

10 At the end of Division 8 of Part 3 of Chapter 2

Add:

Subdivision G—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

64B 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

For the purposes of paragraph 44‑27(1)(e) of the Transitional Provisions Act, the 2021 basic daily fee supplement for a care recipient in respect of a payment period beginning on or after 1 July 2021 and before 1 October 2022 is the sum of all the 2021 basic daily fee supplements for the days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) the approved provider of the service met the requirements for eligibility for a 2021 basic daily fee supplement under section 64C.

64C Eligibility for 2021 basic daily fee supplement

Notice to Secretary

(1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.

(2) The notice must:

(a) be in writing, in a form approved by the Secretary; and

(b) include an undertaking to give the Secretary reports in accordance with subsection (10) relating to the quarter in which the notice is given and each subsequent quarter; and

(c) include any other statements or information required by the approved form.

Eligibility based on giving notice—initial quarter

(3) If the notice is given on or before the 21st day of a quarter (the ***initial quarter***), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the first day of the initial quarter and:

(a) if paragraph (b) does not apply—the 21st day of the following quarter; or

(b) if the initial quarter begins on 1 July 2022—30 September 2022.

(4) If the notice is given after the 21st day of a quarter (the ***initial quarter***) and before the end of the initial quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the notice is given and:

(a) if paragraph (b) does not apply—the 21st day of the following quarter; or

(b) if the initial quarter begins on 1 July 2022—30 September 2022.

Eligibility based on giving reports—later quarters

(5) Subsections (6) to (9) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.

(6) Subject to subsection (7), if, on or before the 21st day of a later quarter (the ***current quarter***), the approved provider gives the Secretary a report relating to the previous quarter in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the 22nd day of the current quarter and the 21st day of the following quarter.

(7) If, on or before 21 July 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between 22 July 2022 and 30 September 2022.

(8) Subject to subsection (9), if, after the 21st day of a later quarter (the ***current quarter***) and on or before the 21st day of the immediately following quarter (the ***following quarter***), the approved provider gives the Secretary a report relating to the quarter immediately before the current quarter in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and the 21st day of the following quarter.

(9) If, after 21 July 2022 and on or before 30 September 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and 30 September 2022.

Reports

(10) For the purposes of paragraph (2)(b) and subsections (6) to (9), a report relating to a quarter must:

(a) be in writing, in a form approved by the Secretary; and

(b) include the information required by the approved form about the quality and quantity of daily living services, with a focus on food and nutrition, provided in the quarter by each residential care service through which the approved provider provides residential care.

Meaning of **quarter**

(11) In this section:

***quarter*** means a quarter beginning on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.

Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014

11 Division 11 of Part 2 of Chapter 2 (heading)

Omit “**Basic**”, substitute “**2012 basic**”.

12 Section 58

Before “basic” (wherever occurring), insert “2012”.

13 Section 59 (definition of *eligible care recipient*)

Before “basic”, insert “2012”.

14 Section 60 (heading)

Before “**basic**”, insert “**2012**”.

15 Section 60

Before “basic daily”, insert “2012”.

16 At the end of Part 4 of Chapter 2

Add:

Division 8—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

79E Purpose of this Division

(1) For the purposes of subsection 44‑27(3) of the Transitional Provisions Act, this Division sets out the amount of the 2021 basic daily fee supplement for a day for a care recipient.

(2) For the purposes of this Division, the 2021 basic daily fee supplement is the 2021 basic daily fee supplement set out in Subdivision G of Division 8 of Part 3 of Chapter 2 of the Transitional Provisions Principles.

79F Amount of 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

The amount of the 2021 basic daily fee supplement for a day for a care recipient is $10.00.

Information Principles 2014

17 At the end of section 8

Add:

; (c) information about whether an approved provider of a residential care service:

(i) has given a notice in accordance with subsection 70AG(2) of the *Subsidy Principles 2014* or subsection 64C(2) of the *Aged Care (Transitional Provisions) Principles 2014*; or

(ii) has given a report for a quarter in accordance with subsection 70AG(10) of the *Subsidy Principles 2014* or subsection 64C(10) of the *Aged Care (Transitional Provisions) Principles 2014*;

(d) information about whether an approved provider of flexible care provided through a multi‑purpose service:

(i) has given a notice in accordance with subsection 91D(2) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*; or

(ii) has given a report for a quarter in accordance with subsection 91D(8) of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Subsidy Principles 2014

18 At the end of paragraph 20(e)

Add:

; (vi) the 2021 basic daily fee supplement.

19 At the end of Division 5 of Part 3 of Chapter 2

Add:

Subdivision H—2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

70AE 2021 basic daily fee supplement (for payment periods July 2021 to September 2022)

For the purposes of paragraph 44‑27(1)(c) of the Act, the 2021 basic daily fee supplement for a care recipient in respect of a payment period beginning on or after 1 July 2021 and before 1 October 2022 is the sum of all the 2021 basic daily fee supplements for the days during the period on which:

(a) the care recipient was provided with residential care through the residential care service in question; and

(b) the care recipient was eligible for a 2021 basic daily fee supplement under section 70AF; and

(c) the approved provider of the service met the requirements for eligibility for a 2021 basic daily fee supplement under section 70AG.

70AF Eligibility for 2021 basic daily fee supplement—care recipients

(1) A care recipient is eligible for a 2021 basic daily fee supplementon a particular day if, on that day, the care recipient is being provided with residential care other than as respite care.

(2) A care recipient is eligible for a 2021 basic daily fee supplement on a particular day if, on that day:

(a) the care recipient is being provided with residential care as respite care; and

(b) under Division 2 of Part 1 of Chapter 2 of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*, the basic subsidy amount for the day for the care recipient is not nil.

70AG Eligibility for 2021 basic daily fee supplement—approved providers

Notice to Secretary

(1) An approved provider may give the Secretary a notice in accordance with subsection (2), but may give such a notice only once.

(2) The notice must:

(a) be in writing, in a form approved by the Secretary; and

(b) include an undertaking to give the Secretary reports in accordance with subsection (10) relating to the quarter in which the notice is given and each subsequent quarter; and

(c) include any other statements or information required by the approved form.

Eligibility based on giving notice—initial quarter

(3) If the notice is given on or before the 21st day of a quarter (the ***initial quarter***), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the first day of the initial quarter and:

(a) if paragraph (b) does not apply—the 21st day of the following quarter; or

(b) if the initial quarter begins on 1 July 2022—30 September 2022.

(4) If the notice is given after the 21st day of a quarter (the ***initial quarter***) and before the end of the initial quarter, the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the notice is given and:

(a) if paragraph (b) does not apply—the 21st day of the following quarter; or

(b) if the initial quarter begins on 1 July 2022—30 September 2022.

Eligibility based on giving reports—later quarters

(5) Subsections (6) to (9) apply to an approved provider that has given a notice in accordance with subsection (2) in a quarter.

(6) Subject to subsection (7), if, on or before the 21st day of a later quarter (the ***current quarter***), the approved provider gives the Secretary a report relating to the previous quarter in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the 22nd day of the current quarter and the 21st day of the following quarter.

(7) If, on or before 21 July 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between 22 July 2022 and 30 September 2022.

(8) Subject to subsection (9), if, after the 21st day of a later quarter (the ***current quarter***) and on or before the 21st day of the immediately following quarter (the ***following quarter***), the approved provider gives the Secretary a report relating to the quarter immediately before the current quarter in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and the 21st day of the following quarter.

(9) If, after 21 July 2022 and on or before 30 September 2022, the approved provider gives the Secretary a report relating to the quarter beginning on 1 April 2022 in accordance with subsection (10), the approved provider meets the requirements for eligibility for a 2021 basic daily fee supplement on each day between the day the report is given and 30 September 2022.

Reports

(10) For the purposes of paragraph (2)(b) and subsections (6) to (9), a report relating to a quarter must:

(a) be in writing, in a form approved by the Secretary; and

(b) include the information required by the approved form about the quality and quantity of daily living services, with a focus on food and nutrition, provided in the quarter by each residential care service through which the approved provider provides residential care.

Meaning of **quarter**

(11) In this section:

***quarter*** means a quarter beginning on 1 July 2021, 1 October 2021, 1 January 2022, 1 April 2022 or 1 July 2022.