

Aged Care Measures in Budget
Savings (Omnibus) Act

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Aged Care Measures in the Budget Savings (Omnibus) Act 2016

The *Budget Savings (Omnibus) Act 2016* which received Royal Assent on 16 September 2016 enacted previously announced measures affecting aged care. These include increased compliance powers in relation to the administration by providers of appraisals under the Aged Care Funding Instrument (ACFI), red tape reduction measures and changes to means testing arrangements for future residents of aged care homes.

ACFI Compliance Measures

The increased ACFI compliance powers were announced as part of the December 2015 MYEFO in response to greater than budgeted for increases in care funding. These were supplemented by changes to the ACFI announced in the 2016 Budget.

The compliance powers of the Department of Health are increased by:

- Introducing a 60 point penalty if a provider on more than one occasion in a two year period gives false, misleading or inaccurate information in connection with an appraisal or reappraisal. A 60 point penalty equates to a fine of about \$11,000. The fine will be able to be applied for each classification change resulting from false, misleading or inaccurate information.
- Making it easier for the Department of Health to require a provider to reappraise its care recipients

or suspend the provider from making further appraisals if the provider gives false, misleading or inaccurate information in connection with an appraisal or reappraisal. Currently, the Department may only require a reappraisal or suspension if, after the Department has changed a classification, the provider then gives further false, misleading or inaccurate information.

- Allowing the Department to reappraise a resident's classification if the Department suspects on reasonable grounds that the resident's care needs have decreased significantly. Much will depend on how 'decreased significantly' is defined in the subordinate legislation if this measure is not to run counter to the current policy which incentivises providers to improve the wellbeing of residents by not requiring mandatory reappraisal. The Department claims that this is not the intention as it will be directed at only extreme cases. The example given is a resident with a high needs assessment who goes on holidays to Bali.
- Backdating a downgrade or upgrade as a result of a classification review to the date of the original assessment. Currently the maximum backdating allowed is six months.
- Charging an application fee if an approved provider seeks a reconsideration of a classification downgrade as a result of a review. It is intended that the Classification Principles will be amended to deal with a waiver or refund of the application fee, eg. if a reconsideration request is successful.
- Allowing the Department, in deciding on a classification level as part of a review, to take into account the manner in which care is provided to a resident, including the qualifications of a person required to provide care or treatment.
- This measure was not announced as part of the MYEFO measures. It is a late inclusion in anticipation of the Federal Court decision on 23 August 2016 which set aside an Administrative Appeals Tribunal decision which supported the Department's authority to take into account the manner in which care is provided when deciding on

a classification.

The Government estimates that these measures will result in net savings over the forward estimates years to 2019-20 of \$80.5 million.

Red Tape Reduction Measures

The Act includes two red tape reduction measures which had been included in earlier Red Tape Repeal Day Bills which had not been progressed due to other Parliamentary priorities and processes.

The Act removes the requirement for an aged care provider to notify the Department of Health within 28 days of changes to any key personnel. Instead, notification will only be required when the changes to key personnel would materially affect the provider's suitability to be a provider of aged care.

The other red tape reduction measure is to abolish the adviser and administrator panel arrangements under the *Aged Care Act 1997* whereby providers must select an adviser or administrator from the panel in the event of a sanction. Providers instead will be able to choose their own adviser or administrator. Similarly, the requirement for Departmental approval of advisers appointed to undertake ACFI reappraisals in the event of false, misleading or inaccurate information has been removed. In both cases, restrictions will be included in the Classification Principles on who can be an adviser or administrator.

Means Testing Arrangements

The Act also deals with the changes to means testing arrangements for residents of aged care homes announced in the 2015 MYEFO.

The changes provide for the net rental income earned on the former principal residence of residents entering care after 1 January 2017 to be treated in the same way under the pension incomes test as it is under the aged care means test, regardless of how the resident

chooses to pay their accommodation costs (either through a RAD or a daily payment). Currently, net rental income is non-assessable under the pension income test whereas interest from any surplus from the sale of the former principal residence is assessable. The current indefinite exemption of the former principal residence from the pension assets test where the property is rented and the aged care accommodation costs are paid as a daily payment is also removed.

The pension assets test will continue to treat the former residence of a person who enters residential care as their principal home for a period of up to two years from the day the person enters care (unless the home is occupied by a 'protected person', such as a partner).

The Government estimates that these changes to means testing arrangements will reduce age pension outlays by \$117.1 million over the forward estimates period to 2019-20.

Disclosure Statement: The author of this Update, Nick Mersiades, is a member of the Aged Care Financing Authority. The opinions in this Update should not be read as being an expression of the views of the Aged Care Financing Authority.

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