New Aged Care Act Rules Release 2b – Higher Everyday Living Fees – Supplementary submission

Prepared **by**

COTA Australia

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About COTA Australia

COTA Australia is the leading national peak body supporting and advocating for older Australians since 1958. COTA (Council on the Ageing) promotes the rights, interests and good futures of older Australians over 50.

Our broad agenda is focussed on challenging ageism, respecting diversity, and empowering people to live their best life as we age.

Authorised by:

Patricia Sparrow
Chief Executive Officer
psparrow@cota.org.au

Prepared by:

David Wright-Howie
Senior Policy Officer
dwright-howie@cota.org.au

COTA Australia
Suite 17B, 16 National Circuit
Barton ACT 2600
02 6154 9740
www.cota.org.au

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Introduction

We have drafted a supplementary submission focussed solely on the new Higher Everyday Living Fees (HELF) regime. This new system must live up to its promise to protect older Australians from the current practice of older people and families having to agree to pay additional service fees as a condition of entry into an aged care home.

Implementation of this must ensure this protection is upheld but also be simple to understand for both older people and providers.

The following comments are provided to ensure our position and expectations for older people and their families are clear. COTA Australia is happy to be involved in any discussions on the finalisation of these rules.

Chapter 8 - Funding of aged care services – individual fees and contributions

Fees for higher everyday living

Clarity is needed on what services a HELF fee can be charged. Options include that participants can only be charged for the services listed in the Act or that a fee can be applied to any goods and services regardless of whether they are listed under any of the categories. This needs to be clarified.

COTA Australia favours an option that gives older people maximum choice.

For this approach to be successful and fair the Service Lists/Specified Care & Services Schedule needs to clearly outline the services provided with Government subsidy and participant contribution to ensure that charges are not made on any of those items.

However, it needs to be made clear that accommodation and capital costs should be funded through the RAD/DAP payment combinations.

We are concerned that ambiguity about the draft rules may allow providers to deliver "higher" services to low means or partially low means individuals for a fee. People eligible for hardship support should not be charged higher everyday living fees.

Requirements for entering into higher everyday living agreements

The reference to the "standard that the Act requires" is unclear and more information is needed.

Ensuring a clear definition of what is required to be delivered for the Government subsidy plus the participants contribution – an aged care guarantee – is essential. Without this there will continue to be uncertainty about what can and can't be charged for as HELF.

The Rules and supporting documentation must be clearer on what this means.

It is unclear what the difference between higher standard (i.e. service is on the service list), and "additional connected service" means. There is no definition of an "additional

connected service" and no rationale for its necessity. This needs to be reviewed based on the clarification of what services the HELF regime applies to so that there is clear and consistent language and definitions used throughout.

Recommendation 1: Further details are required to explain standards and "connected services" related to higher everyday living agreements

Contracting on Entry

The legislation states that HELF cannot be offered or agreed/accepted prior to a person entering residential care. This is the main and minimal protection that can be afforded to older people. The Rules uphold the need to ensure that people are not forced to pay more as a condition of entry to any facility.

However, providers should be able to provide general information, such as a brochure, on HELF before entry for discussion and decision following entry.

After the person has entered and settled into the service, a conversation can occur on whether the participant wants to purchase any HELF. This transaction could be reflected in a contract variation, or a purchase order, that clearly states the type, quantity and pricing of the services they are purchasing under the HELF arrangement.

Ensuring that HELF is not presented to people as a condition of entry should also remove the possibility of "cherry picking" participants who are willing to pay.

Recommendation 2: In Section 284-5 (4) add a clause to enable amendments to resident agreements to incorporate participant HELF fee requests. Amendments should only be implemented after agreements are established.

If a provider is offering a "bundled service" as part of any agreement and/or billing, they should demonstrate the individual service costs and how pricing of the bundled services is less than individual components. Bundled service packages must demonstrate benefits to individual participants. Participants must be fully aware of all the service elements of a bundled service package and agree to them. This should all be made clear in the Rules.

Requirements that higher everyday living agreements must comply with

While we accept that an individual or provider notifying the other is an acceptable way to terminate a HELF Agreement it must be in writing with relevant signatures obtained before any changes are implemented.

Provider refund policies should be outlined in the Resident Agreement and not varied for the life of the Agreement. It isn't fair to change Terms and Conditions within an agreed contracting period.

If any part of a bundled service is not delivered, we would support the individual being able to terminate the entire service as the 'bundle' sold is not being delivered at the specified standard or at all.

Annual reviews can quite simply be an annual review of what has been agreed within the HELF Agreement and for which the participant is paying extra fees.

The application of indexation should be outlined in the agreement (this could be part of the generic terms and conditions) to be clear to participants.

Recommendation 3: Any variation or termination of a HELF Agreement must be in writing before actioned.

Recommendation 4: The Rules should specify that a participant should be able terminate an entire bundled service if any component part of that service is not delivered as this is not meeting the standard required.

Recommendation 5: The application of indexation should be outlined in the higher everyday living agreement so that it is transparent to participants.

Circumstances in which higher everyday living fee not to be charged to individuals

COTA Australia strongly supports the principle that, in most cases, the assessment of an individual's capacity to pay for any service including any additional services and higher everyday living fees should not be based on the financial contribution of a third party.

In some circumstances, a separate agreement could be made with a third party to pay for higher everyday living fees for the resident. Irrespective of this, an individual who has been assessed to be in hardship, must NOT be charged a higher everyday living fee (which they are today under additional services).

Recommendation 6: The Rules must be clear that if an individual has been assessed to be in hardship, then they must not be charged a higher everyday living fee.

Aged care participants, regardless of their financial status, should still have the choice to purchase smaller scale items such as a barista coffee or a glass of wine, at a time of their choosing, if this is available.

It needs to be clear that a registered provider is not required to provide higher everyday living services or additional services when a higher everyday living fee cannot be charged.

Pending our final view of higher everyday living fees, how the partially low means client applies (i.e. which fees will first vs last be reduced for partially low means clients) should be considered.

Indexation of agreed amounts

The Rules state that "if the indexation factor on 1 July 2026 or a later 1 July (an ***indexation day***) is greater than 1, an agreed amount specified in a higher everyday living agreement is replaced by the amount worked out using the following formula." There could be scenarios where inflation can be negative or less than 1 as there has been previously. An approach which is fair to participants should be referenced if this occurs in future.

The indexation amount is to be rounded to the nearest whole dollar (rounding to 50 cents upwards). Potentially if each individual item is itemised and every item is rounded up with inflation, small cost items (E.g. Coffees, newspapers etc) will begin to cost a lot as they will be mandated to rise by $1, penalising participants. The Rules should exempt this round up to the nearest dollar requirement for amounts less than $25.

Circumstances in which higher everyday living fee not to be charged to individuals

As discussed in relation to ***231-25 Fee reduction supplement—reduction of fees, payments and contributions*** we note that HELF should be added to the list to make clear the priority order in which HELF will cease to be charged for partially supported/low means residents.

Our understanding of the operation of this section is that, should a person be deemed to be in hardship either partial, or in full, that the provider would not be able to charge any amount of HELF. Unlike other charges that may be progressively reduced, it appears that the structure of how hardship interacts with HELF is simply an on/off switch.

A HELF should not be charged by a provider for a participant, because they have identified a third party's wealth to pay for a supported/low means resident's services, unless there is a specific agreement in place as discussed above.

Our position is that:

1) HELF would switch off immediately as part of any fully or partially supported resident determination based on eligibility for hardship.
2) The Accommodation Payment would reduce to $0 at the end of the list (as currently identified)

3) A son, daughter or other person of an individual accessing aged care services may enter into an agreement with the provider, separate from the residential agreement by the individual, to pay for HELF type goods and services. Further exploration of whether there is any legislative restriction to allow this to happen and whether the contract would be governed by consumer or aged care law is required.

Refund of amounts paid in advance if individual dies or stops accessing services

Under Section 285-5 (a) (i), the Rules state that if the individual has died the registered provider must refund the amount "*if, within 14 days after the provider becomes aware of the individual's death, the provider is shown the probate of the will of the individual or letters of administration of the estate of the individual—to the individual's estate within 14 days after the day on which the provider was so shown;"*

This clause about refunds should apply to higher everyday living fees.

Extra service fees

We support the 12-month transition of extra services and seek confirmation that the transition time is 1 July 2025 with extra services stopping on 1 July 2026.

A rule should be introduced that ensures a registered provider cannot charge both a Higher Everyday Living Fee and an Additional Services or Extra Services Fee.

Additional service fees

We support additional service fees ceasing in 12 months' time (1/7/2026) with providers having that period to negotiate with existing residents to move to the new HELF regime.