



**Australian Government**

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**Department of Health and Ageing**

**REVIEW OF THE ELIGIBILITY OF  
RETIREMENT VISA HOLDERS FOR  
MEDICARE UNDER RELEVANT  
RECIPROCAL HEALTH CARE AGREEMENTS**

This review considers the history and rationale behind the current government policy that holders of the Retirement Visa (Subclass 410) (the 410 visa) are not eligible for Medicare entitlements regardless of whether their country of origin has a Reciprocal Health Care Agreement (RHCA) with Australia and proposes a mechanism to consider applications for Medicare eligibility for 410 visa holders for those from RHCA countries in exceptional circumstances.

## **Reciprocal Health Care Agreements & ‘Ordinarily Resident’**

Section 7 of the *Health Insurance Act 1973* (the HIA) permits the Australian Government to enter into a Reciprocal Health Care Agreement (RHCA) with other countries for the purpose of providing health care to residents of one country when visiting the other. These RHCAs operate in only a few countries where the health systems are similar and it has been agreed that there should be no financial reconciliation between the two parties dependent on the relative use of each country’s health services.

Australia currently has RHCAs with eleven countries including New Zealand, the United Kingdom, the Republic of Ireland, Sweden, Finland, Norway, the Netherlands, Italy, Belgium, Malta and Slovenia. With the exception of the agreement with Italy, all RHCAs are based on a ‘cost waiver’ principle, where each country fully absorbs the costs of providing health care to visitors. To be eligible under a RHCA a person must be:

- ordinarily resident in the United Kingdom or the Republic of Ireland; or
- a New Zealand resident; or
- a resident of Italy, Malta, the Netherlands, Sweden, Finland, Norway, Belgium or Slovenia who is insured in that country’s health system; and
- temporarily in Australia.

The RHCAs define temporarily in Australia in different ways. In relation to:

- the United Kingdom, the Republic of Ireland, Sweden, Finland and Norway, it means ‘lawfully present but not ordinarily resident’;
- New Zealand, the Netherlands, Belgium and Slovenia, it means ‘lawfully present but not resident’;
- Malta, it means ‘present for a period not exceeding 6 months’; and
- Italy, it is not specified, although that agreement does specify that it applies only for six months from the visitor’s time of arrival.

To be eligible to receive Medicare in Australia under the RHCA with the UK, a person must be:

- ordinarily resident in the UK; and
- lawfully present but not ordinarily resident in Australia.

Proof of residence of the UK is defined in the RHCA as a current UK passport, including a passport issued in the Isle of Man, Jersey or Guernsey, or as appropriate one of the following;

- a National Health Service Medical Card (Great Britain and the Isle of Man); or
- a Health Service Medical Card (Northern Ireland); or
- a certificate issued by Social Security Committee of the States of Jersey; or
- proof of Insurance issued by the Guernsey States Insurance Authority; or
- other proof of residence in the Bailiwick of Guernsey.

The RHCA does not refer to the European Health Insurance Card (EHIC) as a form of evidence because the introduction of the EHIC is a relatively recent development. However, an EHIC bearing the initials ‘UK’ would also be considered proof of residence for the purposes of RHCA eligibility. Once they have established their eligibility, UK visitors are entitled to Medicare coverage under the RHCA for the duration of their visa.

The term ‘ordinarily resident’ is not defined in the UK RHCA. The UK relies on case law in this area. For example, the UK National Insurance Manual, which provides guidance on the law relating to National Insurance contributions, cites the House of Lords:

...in their ordinary and natural meaning the words [ordinarily resident] mean ‘that the person must be habitually and normally resident here, apart from temporary or occasional absences of long or short duration’.

The term ‘ordinarily resident’ is not defined in Australian health legislation. A person’s residency status and consequent eligibility or ineligibility under a RHCA is taken to be a question of fact based on the person’s individual circumstances.

This Department has taken the view that ordinarily resident refers to a person’s abode in a particular place or country which he or she has adopted voluntarily and for settled purposes as part of the regular order of his or her life for the time being, whether of short or of long duration.

### **Retirement Visa (Subclass 410) & Investor Retirement Visa (Subclass 405)**

In the *Migration Regulations 1994*, as of December 1994, reference is made to a person who ‘intends to settle in Australia’ (see 4.10.224). In the current form of the Regulations reference is made to a person who ‘intends to reside in Australia’ (see 410.221 Schedule 3).

In December 1988, prompted by concerns that permanently resident foreign retirees could place above-average demands on the Australian health and social welfare system, the Government abolished the permanent entry of self-supporting retirees and created a temporary entry visa, the *Retirement Visa (Subclass 410)*, for extended stay retirees in a sound financial position. It was designed for retirees and their partner who wanted to spend some of their retirement years in Australia.

The Investor Retirement Visa (Subclass 405) (the 405 visa) came into force under the *Migration Regulations 1994* on 1 July 2005 and replaced the 410 visa. It is designed for self-funded retirees aged 55 years or older who have no dependants, who want to reside in Australia during their retirement years and are able to make a significant long term financial investment in Australia. The 405 temporary visa is not a pathway to a permanent visa or Australian permanent residence or citizenship. Applicants for 405 visas have a mandatory requirement to hold and maintain adequate health insurance.

The 410 visas have always been intended to provide for persons who intend to reside in Australia, without becoming a ‘permanent resident’, rather than wishing merely to visit Australia temporarily. In establishing the 410 visa subclass it was assumed that the related transfer of visa holders’ capital would be of some benefit to Australia and that this capital transfer plus the pension and/or other income of the visa holders would help to ensure that these persons were not a burden on Australia’s health and social welfare systems.

Prior to 1 December 1998, holders of 410 visas from RHCA countries were provided with Medicare coverage under the relevant RHCA. However, a range of developments in 1998 led the Department to reconsider its policy position on 410 visa holders’ eligibility for Medicare access under an RHCA.

Holders of 410 visas from RHCA countries who applied for their visa after 1 December 1998 have been held to be ineligible for Medicare under the RHCA because the department has taken the view that a successful application for a 410 visa is a reasonable indication that the person will be ‘ordinarily resident’ in Australia once they are in the country. They have adopted Australian abode voluntarily and for settled purposes as part of the regular order of their life.

The validity of this view has been challenged on a number of fronts. The first is that 410 visas are ‘temporary’, rather than ‘permanent’, for the purposes of migration law, and that it follows that holders of 410 visas cannot be held to be resident in Australia. As outlined above, the fact that a 410 visa falls within the classification of ‘temporary visa’ is not inconsistent with the assessment that holders of 410 visas are ‘ordinarily resident’ in Australia.

Secondly, claims have been made that some 410 visa holders are ordinarily resident in the UK and therefore meet the requirements for access to the relevant RHCA. This appears to be predicated upon the assumption that someone who is 'ordinarily resident' in the UK cannot also be 'ordinarily resident' in Australia at the same time. There is no legal basis for that assumption.

Given that each 410 visa holder has implicitly expressed the intention to be 'ordinarily resident' in Australia, this would suggest that they are ineligible to access treatment under the RHCA, regardless of whether they are also 'ordinarily resident' in the UK.

This approach has been consistently supported by the information that is made available to 410 visa applicants and 410 visa holders. Applicants were advised that a condition of the visa was that they '*would not be entitled to public health cover and would be expected to take out private medical and hospital insurance prior to their arrival in Australia*'. There has also been consistent advice provided that such persons will be ineligible to access the RHCA.

However, the position is made more complex by the fact that it is only possible to be confident that a person is, or is not, 'ordinarily resident' in Australia by examining the circumstances of the particular case. It is also apparent that the circumstances of an individual can change over time. For instance, a person may initially be 'ordinarily resident' in Australia, and that status may change over time, where (for instance) a person leaves Australia for a substantial period of time and may revert to their original position subsequently.

The Department is aware from discussions with the *British Expat Retirees in Australia (BERIA)* that there are 410 visa holders in straitened financial circumstances, particularly following the global financial crisis (GFC), and changes to pension arrangements in the UK. There are emerging concerns about the ability of older visa holders to continue to meet their health care requirements as an extension of their stay in Australia as they age, particularly for persons who may not be in a physical condition to travel to their home country. They may also have limited or no remaining connections with their home country.

Concerns have also been expressed about the costs of expensive but necessary pharmaceuticals, such as chemotherapy drugs, and about access to palliative care. These costs attract only limited rebates under available private health insurance policies. There are also concerns about increasing premiums and reducing cover for private health insurance policies available to 410 and 405 visa holders.

### **British Expat Retirees in Australia**

The *British Expat Retirees in Australia (BERIA)* lobby group represents the interests of around 25% of all 410 visa holders in Australia. BERIA's stated aim is to persuade the Australian Government to grant permanent residence to those 410 visa holders who desire it.

At a meeting with Departmental officials in February 2008, Mr John Wittering, then Vice President of BERIA, raised a number of issues relevant to the 410 visa, not all of which related specifically to access to Medicare, but noted the temporary nature of the 410 visa '*although we have all come to Australia to retire, i.e. to spend the rest of our lives here, in the eyes of the Department of Immigration we are temporary residents, ....and we can never become permanent residents or citizens....some of our residents have lived here for 20 years*'.

BERIA on behalf of its membership, and individual members of BERIA, have also raised their concerns about the post-1998 410 visa arrangements with regard to Medicare access with the Department over a number of years and through a range of formal channels including departmental and ministerial correspondence and parliamentary questions on notice. BERIA's concerns include:

- the increasing costs of health insurance for 410 visa holders;
- the disparity in access to Medicare for 410 visa holders; and
- the circumstance that the long-term nature of the visa has enabled them to make significant social and economic contributions to Australia, while the visa's temporary status has

created an environment of uncertainty in which they could find themselves returning, in their advancing years, to a home country with which many have cut all ties.

It is understood that 410 visa holders who applied for their visas in late 1998/early 1999 believed they would be granted permanent residency after 10 years based on documentation and advice about a Bill to this effect, but the Bill was defeated in the upper house of Parliament.

Visa applicants and holders should be cognisant of the fact that conditions applying to a visa are routinely reviewed and advice provided to Government accordingly. Any consequential amendments are a matter for Government.

BERIA is also concerned that 410 holders have to take out private 'visitors' health insurance cover which is much more expensive than insurance available to Australians, but which may not be entirely relevant to a retiree age profile. Additionally, for the purposes of taking out private health insurance, 410 holders are considered to be 'visitors' however they are not considered to be 'visitors' in the context of Medicare and the Pharmaceutical Benefits Scheme (PBS) eligibility under RHCAs.

### **Medicare access and the 410 Visa Holder**

A range of developments in 1998 led the Department of Health to reconsider its policy position on 410 visa holders' eligibility for Medicare access under RHCAs:

- an exchange of letters in May 1998 between the UK and Australia which amended the terms of the RHCA to change the length of coverage under the RHCA from the original six months to the duration of the visitor's stay. The changes in part recognised the need to extend the period of the RHCA's coverage beyond the original six months, given the changes to Medicare access for temporary visitors. This was effected by a change to the RHCA's definition of 'temporarily in the territory' of Australia from 'present in that territory for a period not exceeding six months' to 'lawfully present, but not ordinarily resident' in Australia. This and other amendments resulted in a new (second) RHCA between the two countries which was made on 29 May 1998 and came into effect on 8 March 2000.
- two British 410 visa holders complained to the UK High Commission over their obligation to pay the Medicare levy. They had provided their own health insurance and wanted to opt out of the RHCA on the basis that they were no longer residents of the UK. The Department was advised that the RHCA was intended to provide benefits to residents of the UK while on temporary stays in Australia. Retiree visa holders, by virtue of their intention to reside for an extended period in Australia, are unlikely to be ordinarily resident in the UK and hence are not covered by the RHCA, notwithstanding that their visas are only temporary permits. This appeared to be generally applicable and relevant as the change is clarification to 'lawfully present, but not ordinarily resident'.
- proposed amendments to the Migration Regulations 1994, effective from 1 November 1998, would have provided for those 410 holders who had been resident in Australia for ten years to apply for permanent residency under new parent visa categories. This legislation was, however, disallowed by the Senate on 31 March 1999.
- at the same time, mandatory visa conditions were applied to all new 410 visa applicants. From 1 December 1998, new applicants were required to have adequate health insurance providing cover at least equivalent to Medicare and providing pharmaceutical cover. In addition, applicants were required to meet financial criteria which reflected changes in the Consumer Price Index. The Department of Immigration continued to assess those 410 visa holders who made their applications prior to 1 December 1998 against the previous arrangements.

These developments in combination resulted in the Department taking the view that a successful application for a 410 visa is a reasonable indication that the person will be 'ordinarily resident' in Australia once they are in the country. They have adopted Australian abode voluntarily and for settled purposes as part of the regular order of their life.

Given that each 410 visa holder has implicitly expressed the intention to be ‘ordinarily resident’ in Australia, this would suggest that they are ineligible to access treatment under the RHCA, regardless of whether they are also ‘ordinarily resident’ in the UK.

Consequently, on 18 November 1998, the then Health Insurance Commission (HIC) wrote to 410 visa holders from RHCA countries and advised them that their entitlement to Medicare had formally ceased on 1 November 1998, but that they would be allowed to access Medicare until 31 December 1998. The reason given for the cessation of Medicare access was that their eligibility had been due to a generous interpretation of the RHCA’s terms, and that this position had changed as the facts in most cases no longer supported the contention that 410 visa holders from a RHCA country were resident in that country (as required by RHCA eligibility criteria). This letter also advised recipients that as their entitlement to Medicare had ceased, they could apply for an exemption from paying the Medicare levy.

A separate letter was sent to new 410 visa applicants who had applied after 1 November 1998, advising them that they were not entitled to Medicare under the 410 visa arrangements. At the same time, the DIAC website advised of the need for adequate health insurance as a mandatory visa condition for new 410 applicants from 1 December 1998, and advised applicants that they would not be entitled to Medicare or social security benefits unless a reciprocal arrangement was in place between their home country and Australia.

In February 1999, following expressions of concern from some UK visa holders, the policy regarding access to health cover under the reciprocal arrangements was brought into line with the Department of Immigration’s approach which is that all 410 visa holders from reciprocal agreement countries who applied for their visa prior to 1 December 1998 were offered the choice of either retaining the health cover available under their RHCA or opting to obtain adequate health insurance and applying for a Medicare Levy exemption, while the new policy was applied only to those 410 visa holders who made their applications on or after 1 December 1998.

In 2005, changes to Schedule 1 and Schedule 2 of the *Migration Regulations 1994*, effective from 1 July 2005 (Migration Amendment Regulations 2005 No.3) closed the 410 visa subclass to new applicants (except for a new spouse of a 410 visa holder and previous holders of the 410 visa who have not held another substantive visa).

To accommodate the closure of the 410 visa subclass to new applicants, a new temporary Investor Retirement Visa (Subclass 405) was created ‘*for persons of retirement age who can benefit Australia through significant investment in State/Territory government bonds, and whose presence in Australia will be at no net cost to the Australian community.*’ Visa Condition 8501, which imposes the requirement for adequate health insurance, that is, *fully comprehensive, providing cover that is at least equivalent to Medicare (including cover of 85% of costs for hospital, emergency and GP services), and providing coverage for pharmaceuticals* is mandatory for this visa.

Persons who applied for a 410 visa after 1 December 1998 are advised on the Medicare website and on the visa application form that they are not eligible for enrolment in the Medicare program and are not eligible under the applicable RHCA.

Current Visa Condition 8501 requiring the holder to take out adequate health insurance is applied to all 410 visas, except to visas held by pre-1 December 1998 applicants who have elected RHCA coverage and are enrolled in Medicare.

## **Medicare Eligibility and Entitlements**

Medicare is the foundation of Australia’s public health care system and provides Australians with access to health services at no or reduced (subsidised) cost. Eligibility for Medicare is governed by the HIA, and eligible persons can choose to have Medicare cover only, or a combination of Medicare and private health insurance. An ‘eligible person’ is defined in subsection 3(1) of the HIA, as either an Australian resident or an ‘eligible overseas representative’.

The category of ‘Australian resident’ includes persons who reside in Australia and are either New Zealand citizens, holders of permanent residence visas and applicants for permanent residence in certain circumstances. Eligible overseas representatives include members of a diplomatic mission and their families, from countries with which Australia has a RHCA.

From the inception of Medicare in 1984, all persons legally entitled to remain in Australia for longer than a 6 month period, including the Class 410 permit holders, were able to access Medicare from their arrival date in Australia by virtue of being determined as ‘eligible persons’ under subsection 6(1) orders dated 24 January 1984 (revoked and replaced on 7 March 1984) and 7 March 1984 (revoked and replaced on 25 August 1986).

With the introduction of RHCAs from 1986, subsection 7(2) of the HIA allowed for persons to whom an RHCA applied to be treated as ‘eligible persons’ for the purposes of the HIA. The first agreements, signed with the United Kingdom (UK), Northern Ireland and New Zealand, came into force on 1 July 1986, followed by agreements with Italy (1988), Malta (1988) and Sweden (1989). These RHCAs provided coverage for six months only, because any visitor staying longer than six months had full Medicare access from their date of arrival.

However, during 1988, changes were made to the definition of ‘Australian resident’ under subsection 3(1) of the HIA which restricted Medicare eligibility to persons who were lawfully permanent residents of Australia. These changes to Medicare eligibility were in line with changes to eligibility for social security benefits and ‘veterans’ entitlements that were made in 1987.

As persons who did not meet the new definition of ‘Australian resident’ were not eligible for Medicare, the 1984 and 1986 subsection 6(1) orders determining that all persons (including 410 holders) entitled to stay in Australia longer than 6 months were eligible for Medicare, were revoked effective from 1 February 1989.

To cover persons who were residents of a RHCA country as at 1 February 1989 but staying longer than the six-month period covered by RHCAs at that time, subsection 6(1) orders were issued, effective from 1 February 1989, in relation to the RHCAs with the UK and Northern Ireland, New Zealand and Sweden. These orders granted persons from these countries, who were visiting Australia for longer than six months, benefits equivalent to the benefits available under the terms of the relevant RHCA.

Under the legislative framework in place since 1 February 1989, persons coming to Australia are not eligible for Medicare unless they:

- meet the definition of ‘Australian resident’ under subsection 3(1) of the HIA; or
- are from a RHCA country and meet the eligibility criteria for the relevant RHCA; or
- are the subject of a subsection 6(1) order.

Generally, in order to meet the conditions of Medicare eligibility under the RHCAs a person must be ‘ordinarily resident’ in their home country and either ‘not ordinarily resident in Australia’ or ‘lawfully present but not resident in Australia’.

A person may also be determined to be an ‘eligible person’ by an order under subsection 6(1) of the HIA. Whilst subsection 6(1) provides the Minister for Health with discretionary powers to make Medicare-ineligible persons eligible, since 1990 due to changes to health and migration legislation, subsection 6(1) has been rarely used for ad hoc requests relating to individuals. The overhaul of the Migration Act in 1994 made visas compulsory for all categories of entry with visa conditions strengthened to minimise the impact of visitors on public resources, through health checks and health insurance requirements. Subsection 6(1) orders are therefore made only where they are captured under a defined policy approval supported by relevant legislation and the broader policy context including that access to Medicare should be in line with immigration policy (that is, where visa conditions allow access) and with Government objectives in relation to humanitarian and other groups.

Visitors to Australia from RHCA countries, who are eligible under the RHCA, are treated under subsection 7(2) of the HIA as eligible persons during their stay in Australia, with Medicare access determined by the terms of the relevant RHCA.

Eligible persons must enroll with the Department of Human Services (DHS)-Medicare to receive Medicare benefits, and will be issued with one of three types of Medicare card:

- green Medicare card is issued to permanent Australian residents. Cards may be issued for individuals or families; or
- blue Medicare card bearing the words ‘Interim Card’ is issued to applicants for permanent residence; or
- visitors to Australia from RHCA countries receive a yellow Medicare card bearing the words ‘Reciprocal Health Care’.

Medicare covers services provided only in Australia. It does not subsidise or refund treatment overseas, or overseas medical evacuation expenses. Medicare provides access to free treatment as a public patient in a public hospital, and for services by doctors outside a hospital, Medicare will reimburse 100% of the fee specified in the Medicare Benefits Schedule (MBS) for a general practitioner and 85% of the MBS fee for other practitioners. If a doctor bills Medicare directly—‘bulk billing’, where the doctor accepts the patient benefit as full payment for the service—the patient does not have to pay anything.

Medicare entitlements include free treatment as a public patient in a public hospital, and subsidised medicines through the Pharmaceutical Benefits Scheme (PBS). For out-of-hospital services provided by private practitioners, Medicare provides patients benefits for:

- consultations with doctors, including specialists;
- tests and examinations by doctors needed to treat illnesses, such as x-rays and pathology tests;
- eye tests performed by optometrists;
- most surgical and other therapeutic procedures performed by doctors;
- some surgical procedures performed by approved dentists;
- specific items under the Cleft Lip and Cleft Palate Scheme; and
- specific items under the Enhanced Primary Care (EPC) program.

Where people receive treatment in hospital as a private patient they are eligible for a Medicare benefit equal to 75% of the MBS fee. If they hold private health insurance (PHI), they may also receive a rebate from their PHI fund (see below).

Medicare does not cover:

- private patient hospital costs (for example, theatre fees or accommodation);
- medical and hospital costs incurred overseas;
- medical and hospital services which are not clinically necessary, or surgery solely for cosmetic reasons;
- examinations for life insurance, superannuation or memberships for which someone else is responsible (for example, a compensation insurer, employer or government authority);
- ambulance services;
- most dental examinations and treatment;
- most physiotherapy, occupational therapy, speech therapy, eye therapy, chiropractic services, podiatry or psychology services;
- acupuncture (unless part of a doctor's consultation);
- glasses and contact lenses;
- hearing aids and other appliances; or
- home nursing.



The PBS is available to all Australian residents who hold a current Medicare card. The PBS provides affordable access for all Australian residents to effective and cost-effective medicines. As holders of a Medicare card, visitors from RHCA countries and other visa holders who are eligible for a Medicare card are able to access PBS entitlements.

### **Overseas visitors health insurance and overseas visitors access to Medicare**

While Medicare covers Australian residents for a wide range of health services, it does not cover everything. Private health insurance (PHI) provides consumers with additional health care options and more comprehensive cover for hospital and/or general treatment. The PHI industry is regulated by the *Private Health Insurance Act 2007* (PHI Act). This legislation:

- provides incentives to encourage people to have private health insurance;
- sets out the rules governing private health insurance products; and
- imposes requirements about how insurers conduct health insurance business.

Unlike Australian citizens who can use Medicare for their medical expenses and as private patients their hospital expenses, overseas visitors who hold temporary visas aren't generally eligible to use Medicare. However under certain circumstances, Medicare may be available.

Eligibility and non-eligibility for Medicare for visitors can be grouped into three categories:

- a) visitors from RHCA countries are eligible for immediately necessary medical treatment if they are eligible under the RHCA. These RHCAs provide for free public hospital treatment, Medicare benefits for out-of-hospital services and subsidised pharmaceuticals through the PBS. (The RHCAs with New Zealand and Ireland only provide public hospital services and PBS drugs.); or
- b) visitors who are subject to a HIA subsection 6(1) order. Subsection 6(1) orders enable the person(s) covered by the order to be treated as an eligible person for the purposes of Medicare eligibility for the period specified in the order. The extent of their access to Medicare will be determined by any conditions specified in the order; or
- c) visitors who are not from a RHCA country, or do not have a subsection 6(1) order in place, are not eligible for Medicare at all.

While visitors from reciprocal health care countries are eligible for certain benefits under Medicare, they are not eligible to receive Medicare benefits for hospital services as a private patient because of the terms of the RHCAs. Under these circumstances, if they chose to purchase a PHI complying health insurance policy from a registered health insurer, they would not be able to benefit from the full coverage of the policy.

Health insurance policies for visitors to Australia are different to policies for Australian residents who are eligible for full Medicare. Policies for visitors are designed to provide basic to top health insurance coverage, but cap the amount of pharmaceutical cover.

Because Australian health insurance is underwritten in part by the Medicare system, health insurance for overseas visitors, who are not eligible for Medicare, needs to meet the requirements of the visitor and, in many cases, meet the requirement of visa conditions.

Under current Government policy, 410 visa holders from countries with which Australia has a RHCA, who applied for their visa before 1 December 1998, may choose to access health cover under the relevant RHCA or they may choose to make their own health insurance arrangements and seek an exemption from paying the Medicare levy.

Visa holders choosing the first option are known as 'established applicants' under clause 410.11 (now repealed) of the Migration Regulations 1994. An order under subsection 6(1) of the HIA makes these persons 'eligible persons' for the purposes of Medicare. Subsection 6(1) of the HIA provides the Minister for Health with discretionary power to make ineligible people eligible for Medicare.

The Private Health Insurance Ombudsman website at [www.privatehealth.gov.au](http://www.privatehealth.gov.au) advises visitors to Australia who hold a temporary visa to consider taking out overseas visitor health cover

(OVHC). OVHC is not regulated by the government under the PHI Act, and can be offered by health insurers and by general insurers.

OVHC is a general description that is given to any health insurance cover that is offered to someone from overseas who is not eligible for Medicare. OVHC can be offered by an Australian insurer (who is not necessarily an Australian private health insurer) or an insurer based overseas. It is a general insurance product and insurers are free to change their benefit outlays as they see fit, whenever they see fit. Additionally, benefit outlays change depending on the product purchased and there are many products available worldwide. For example, travel insurance is sufficient for certain visa holders.

OVHC offered by general insurers is ‘risk-rated’ and the premium payable by a potential policy holder is based on various factors particular to that individual, such as the risk of a claim occurring, the value of any such claims, and the older the person the higher the premiums.

Where an OVHC is offered by a health insurer registered under the PHI Act, the policy is defined as ‘health-related business’ under the PHI Act and the health insurer can offer OVHC from their health benefits fund and can risk-rate OVHC policies. Health insurers risk-rate OVHC on the basis of availability, that is some health insurers refuse entry into their product on the basis of risk. However, once entry has been granted by a health insurer, health insurers offer OVHC at the same price for each specific OVHC policy they offer, although these can change at any time.

The following table summarises the type of OVHC products offered by Australian funds and the costs for ‘Basic’ and ‘Top’ cover in 2011:

	<b>Basic (per year) – single person</b>	<b>Top (per year) – single person</b>
Medibank Private	\$1267 -only for a few visas incl 457, all services covered by Medicare, medical	\$2499 – 70Visitors cover - all services covered by Medicare, private and public hosp (\$4247 85Visitors cover)
Australian Unity	\$1015 Budget - private hosp, day surgery, ICU	\$1850 – Visa 457 comprehensive cover -private & public hosp; ICU; ambulance; psych)
HBF	\$1274 – Standard O/S Visitors Cover -shared accom, hospital + pharmacy,	\$2899 – Comprehensive O/S Visitors Cover - all hospital procedures incl drs, ambulance, psych care
HBA (BUPA)	\$1022- Classic - hospital, medical, ambulance, no excess	\$2738 – Platinum - hospital, medical, ambulance, repatriation, no excess, choice of dr, heaps of extras
<b>Average</b>	<b>\$1144 per annum</b>	<b>\$2496 per annum</b>

Australian private health insurers that offer OVHC cap the amount claimable for pharmaceuticals. For example, some insurers impose benefit limits of between \$500 to \$600 per calendar year. It is noted that benefit caps and conditions vary between insurers and products. For example, some insurers offer products with no limit on in-hospital prescriptions.

In the 2011-12 financial year, most Australians with private health insurance received a 30 per cent rebate, non-means-tested, from the Australian Government to help cover the cost of their premiums.

However, from 1 July 2012 the private health insurance rebate is income tested. The rebate is payable under chapter 2 of the PHI Act, and is payable in relation to ‘complying health insurance policies’, including policies held by persons from RHCA countries with access to Medicare benefits. A CHIP must be a policy that meets the conditions outlined in the PHI Act, and consequently persons who take out non-complying health insurance policies, such as OVHC policies, are not eligible for the rebate.

While PHI and OVHC policies are structured to cater for two different client groups, both PHI and OVHC offer health insurance policies that differ only in a few of the benefit areas. Like PHI products for Medicare eligible Australian residents, policy premiums for OVHC policies vary considerably. It is difficult to compare the overall exposure to out of pocket medical expenses for 410 visa holders who hold OVHC insurance to Australian residents (who may or may not purchase private health insurance) because of the variability in coverage and cost of health insurance; the impact of Medicare, the Medicare levy and the 30 per cent government rebate and the impact of Medicare and PBS safety nets. Taking all of this into account there is no

compelling evidence that Medicare ineligible 410 visa holders who hold OVHC insurance are exposed to substantially higher out of pocket expenses for health care than Medicare eligible Australian residents.

### Trends in 410 visa holder numbers

Excluding visa applications from new partners of existing 410 visa holders and former 410 visa holders who have not held another substantive visa since their last 410 visa was granted, no new applications for a 410 visa have been granted since the visa subclass was closed to new applicants on 1 July 2005. At the same time as the closure of the 410 visa subclass, a new subclass, the Investor Retirement Visa (Subclass 405), was introduced for people aged 55 years or older.

The numbers at 30 June 2011 of onshore (in Australia) and offshore (outside Australia) 410 and 405 visa holders, together with the number of people actually onshore were as follows:

	410 visa holders	405 visa holders
Pre-1 December 1998 applicants (422 persons were from a RHCA country and eligible for Medicare)	930 <sup>1</sup>	
Post-1 December 1998 (NOT eligible for Medicare)	5,597 <sup>1</sup>	
Since 1 July 2005 ( NOT eligible for Medicare)		408 <sup>1</sup>
<b>Total</b>	<b>6,527<sup>1</sup></b>	<b>408<sup>1</sup></b>
<b>Number of people onshore as at 30 June 2011</b>	<b>4,014<sup>2</sup></b>	<b>240<sup>2</sup></b>

<sup>1</sup>DIAC supplied data in September 2011 <sup>2</sup>DIAC stock data

As at 30 June 2011 there were 422 ‘pre-1 December 1998’ 410 visa holders from RHCA countries eligible for Medicare. Approximately 250 of these—59% of the total—have elected to receive Medicare since February 1999.

Numbers of 410 and 405 visa holders by RHCA/non-RHCA country as at 30 June 2011 were:

410 and 405 holders as at 30 June 2011	Non-RHCA	RHCA Countries										Total
		Belgium	Finland	Ireland	Italy	Ireland	Norway	Sweden	UK	Slovenia	Total RHCA	
Pre-1/12/98 410 holders	508	2	0	1	7	34	2	6	370	0	422	930
Post-1/12/98 410 holders	1,874	9	2	54	14	100	7	9	3,526	2	3,723	5,597
<b>Total 410 holders</b>	<b>2,382</b>	<b>11</b>	<b>2</b>	<b>55</b>	<b>21</b>	<b>134</b>	<b>9</b>	<b>15</b>	<b>3,896</b>	<b>2</b>	<b>4,145</b>	<b>6,527</b>
<b>Total 405 holders</b>	<b>175</b>	<b>1</b>	<b>0</b>	<b>4</b>	<b>5</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>214</b>	<b>0</b>	<b>233</b>	<b>408</b>

Some general trends in the age distribution of 410 and 405 visa holders were:

- Pre-1 December 1998 410 visa holders: the majority of these are in their 70s and 80s. 410 visa holders from RHCA countries who are eligible for Medicare tend to be older than their counterparts from non-RHCA countries who are not eligible for Medicare.
- Post-1 December 1998 410 visa holders: while there are twice as many 410 visa holders from RHCA countries than from non-RHCA countries, there are slightly more holders from RHCA countries around 64 to 65 years of age.
- 405 visa holders: there are about 25% more 405 visa holders from RHCA countries than from non-RHCA countries; the 405 holders from non-RHCA countries seem to have younger partners (i.e. well below 55 years of age) and an even spread of numbers through the 60s, with the 405 cohort from RHCA countries tending to have include people at age 60 and 65.

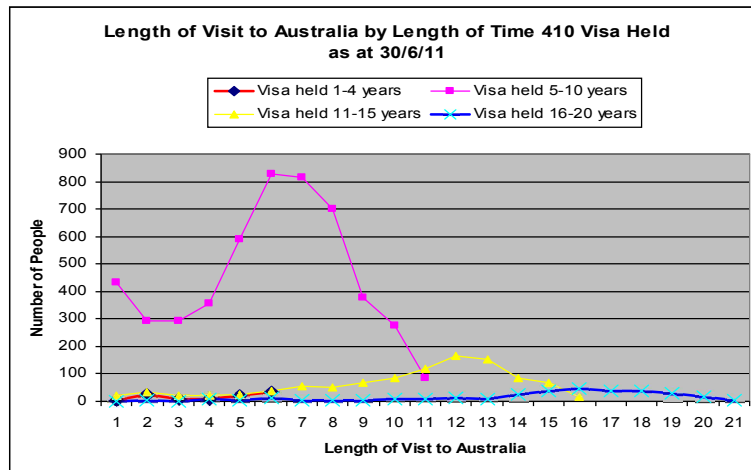
The following groups of 410 visa holders from RHCA and non-RHCA countries have spent more than half their time in Australia as at 30 June 2011:

- 86.3%<sup>1</sup> of those who have held a 410 visa for up to 4 years <sup>2</sup>:

<sup>1</sup> 72 people in total

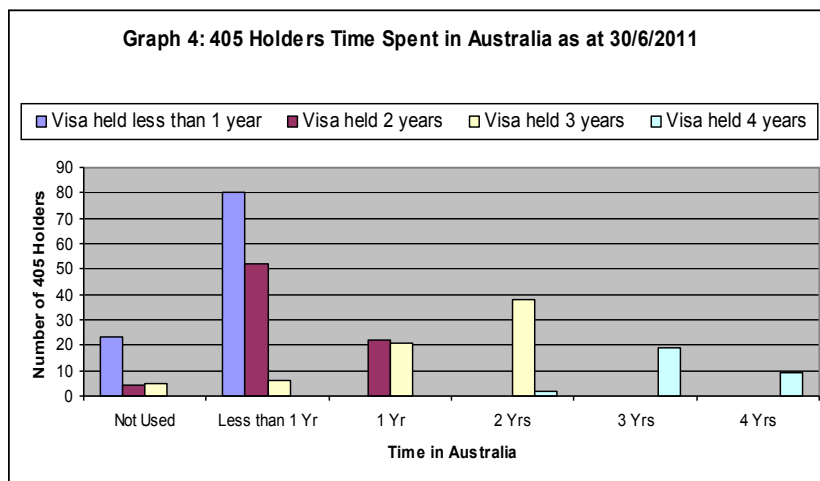
- 60.8%<sup>3</sup> of those who have held a 410 visa for between 5 and 10 years<sup>4</sup>;
- 73.8%<sup>5</sup> of those who have held a 410 visa for between 11 and 15 years;
- 84.4%<sup>6</sup> of those who have held a 410 visa for between 16 and 20 years.

The following graph shows the patterns of length of visits to Australia:



Data is limited for the 405 visa holders, however there is a trend that the longer the visa is held, the more time is spent in Australia, as the chart below shows.

The following graph shows that 405 visa holders who have held their visas for 4 years as at 30 June 2011, have spent more than 2 years in Australia.



The number of 410 visa holders decreased by 30.2% between 30 June 2007 and 30 June 2011. There is very little difference in decline between pre-1 December 1998 and post-1 December 1998 410 visa holders. It is likely that the global financial crisis affected, and continues to affect, the number of retirees leaving Australia, through factors such as:

- reduced income—incomes from overseas being adversely impacted by strong Australian dollar;
- increased cost of health care—the rapidly increasing cost of health insurance and health care being a concern for the longer term; and
- lucrative house prices overseas—the comparative decrease in house prices overseas enabling people to buy back into markets that were previously out of reach.

Of the total of 410 visa holders from RHCA countries as at 30 June 2011, the UK has 94.0% (94.3% as at 30 June 2007), and has 59.7% of all 410 visa holders (59.2% as 30 June 2007).

<sup>2</sup> includes 102 new visas granted between 1 July 2007 and 30 June 2011

<sup>3</sup> 5064 people in total

<sup>4</sup> includes 1053 new visas for applicants who applied before 1 July 2005 and were granted between 1 July 2005 and until 30 June 2007

<sup>5</sup> 1036 people in total

<sup>6</sup> 320 people in total

The breakup of 410 holders by RHCA and non-RHCA country is as follows:

410 Visa Holders	Not RHCA	RHCA											Grand Total	rate of decline each year	
		Belgium	Finland	Ireland	Italy	Malta	Netherlands Antilles	Netherlands	Norway	Sweden	United Kingdom	Yugoslavia / Slovenia			Sub total
2007	3480	19	2	67	35	1	5	169	13	22	5532	2	5867	9347	
2008	3207	17	2	64	32	1	3	166	12	22	5047	2	5368	8575	8.3%
2009	2922	14	2	57	24	0	1	159	10	21	4621	3	4912	7834	8.6%
2010	2774	13	2	54	22	0	0	148	9	20	4171	2	4441	7215	7.9%
2011	2382	11	2	55	21	0	0	134	9	15	3896	2	4145	6527	9.5%
rate of decline since 2007	31.6%	42.1%	0.0%	17.9%	40.0%	100.0%	100.0%	20.7%	30.8%	31.8%	29.6%	0.0%	29.4%	30.2%	

The number of 405 visa holders is comparatively small (408 in total as at 30 June 2011), and show that the UK's percentage of total 405 visa holders is slowing decreasing as the overall 405 numbers increase and visa applications from other RHCA and non-RHCA countries are granted:

405 Visa Holders	Not RHCA	RHCA											Grand Total	rate of increase each year	
		Belgium	Finland	Ireland	Italy	Malta	Netherlands Antilles	Netherlands	Norway	Sweden	United Kingdom	Yugoslavia / Slovenia			Sub total
2007	23			2							49		51	74	
2008	64			4	2			4			144		154	218	194.6%
2009	94			6	2			4			174		186	280	28.4%
2010	136			6	2			7			196		211	347	23.9%
2011	175	1	0	4	5	0	0	9	0	0	214	0	233	408	17.6%
rate of increase since 2007	660.9%			100.0%	150.0%			125.0%			336.7%		356.9%	451.4%	

## Comment

This Review was undertaken because the policy position not to allow Medicare access to 410 visa holders adopted by the Department since 1998 has been challenged by both the BERIA lobby group on behalf of their membership, and by Mr Stuart Moles who represents members of BERIA in Western Australia. They submit that 410 visa holders whose country of origin is the UK should be eligible to access Medicare based on the RHCA between Australia and the UK. In addition they submit that private health insurance premiums are unaffordable and that there are coverage gaps particularly in relation to the cost of pharmaceuticals.

Retirement Visa (Subclass 410) holders are temporary long-term visa holders who are able to remain indefinitely in Australia subject to meeting the requirements of renewal of their visas. The visa subclass has been closed since 1 July 2005, and as at 30 June 2011 there were 6,527 visa holders, with 4,145 visa holders from RHCA countries.

Unlike other temporary visa holders, due to their skill levels, age and family composition, under current migration legislation and policy settings, a significant proportion of 410 visa holders have no prospect of obtaining permanent residence, despite being able to live here indefinitely. For all intents and purposes, whilst many of these visa holders have become part of the Australian community, they are not able to receive some of the benefits of being a permanent resident of Australia, by virtue of the conditions applied to their visa.

This group of visa holders is an ageing cohort and as they age, inevitably their use of health services increases. Understandably access to affordable health care becomes a prominent concern. Health problems also mean that some may not be well enough to return to their home country and re-establish their lives and social networks. This Review has found that for many the cost of health insurance is problematic and coverage may be less than is provided under Medicare.

However, private health insurance premiums for those who are Medicare eligible are also high and many Australians also have exposure to increasing out of pocket expenses for health services.

This Review has demonstrated that since inception of the 410 visa, eligibility for Medicare for this group has evolved over time. Those policy and legislative settings reflect a range of immigration, health and social policy considerations that include, but are broader than, the concerns of 410 visa holders

It is clear that at least since 1998, 410 visa holders have been consistently advised that they will not be eligible for Medicare under an RHCA as they are ‘ordinarily resident’ in Australia. They have adopted Australian abode voluntarily and for settled purposes as part of the regular order of their life. Along with other temporary visa holders they have been consistently advised to purchase adequate private health insurance.

The Department believes that its post 1998 policy position has been reasonable, transparent and fair. Nevertheless, with DHS’ assistance, it plans to modify administrative processes to ensure that all 410 and 405 visa holders have an opportunity to engage in an assessment process that will enable consideration of the “ordinary resident” test on an individual basis. The new process is outlined below.

A draft of this Review was provided to BERIA and Mr Moles in November 2011 and comments received by the two groups have been considered in finalising this report. Subsequently, Mr Stuart Moles made a complaint to the Commonwealth Ombudsman under s.12 of the *Ombudsman Act 1976* about the post 1998 policy. On 14 May 2012 the Ombudsman concluded his investigation making no criticism of the Department.

### **Proposed changes to policy regarding Medicare access for subclass 410 and 405 visa holders**

The Department notes that the issues raised by concerned Subclass 410 visa holders are principally around the conditions of the visa being a temporary visa carrying none of the entitlements of permanent residency. Visa conditions, which are a matter for the Department of Immigration and Citizenship to address, should be raised with that portfolio. This Department’s involvement arises from its responsibility for policy in relation to RHCA’s and Medicare eligibility more broadly.

However, taking into account the full range of issues addressed by this Review, the Department proposes to implement policy and administrative changes which, by allowing the assessment of the residency status of individual 410 and 405 visa holders, will clarify their Medicare eligibility.

The Department believes that the default position that holders of subclass 410 and 405 visas will be ‘ordinarily resident’ in Australia ought to remain. The Department has, however, worked with Department of Human Services (DHS)-Medicare to devise an administrative process which will determine, in as objective a way as possible, and based upon individual circumstances, those persons holding 410 and 405 visas who can reasonably be said to be **not** ordinarily resident in Australia and therefore entitled to access to the relevant RHCA. That system will, necessarily, rely on those persons asserting that claim before it can be determined.

The range of factors that are relevant to assessing whether a person is, or is not, ordinarily resident in Australia, will include whether a person holds assets such as a house in Australia or elsewhere; the ties the person has formed within Australia and the ties that the person maintains elsewhere; and time spent in Australia.

The following (draft) assessment guide has been developed which will enable UK holders of 410 and 405 visas to self-determine whether they are eligible for RHCA cover. Similar guides will be developed for 410 and 405 visa holders from other RHCA countries.

Given the range of factors that are relevant to the assessment of a person’s residency status, design of an administratively efficient and fair process that nevertheless has sufficient rigor has

been challenging. Determining whether an individual is ‘ordinarily resident’ involves an assessment of a number of qualitative factors and the interplay of those factors.

It is anticipated that review processes will also be made available should the 410 visa and 405 visa holder dispute the outcome of the assessment process. 410 and 405 visa holders from RHCA countries will be advised of the change and given opportunity to be assessed for RHCA eligibility if they believe that their circumstances mean that they are eligible for RHCA health cover.

As an individual’s circumstances may change over time eligibility may need to be reviewed periodically. This new policy will be implemented as soon as is administratively possible, given the complexities involved. The Department anticipates that for most 410 and 405 visa holders from RHCA countries the status quo will continue.

Alternatively, for those 410 (and 405) visa holders who have returned to their home country and intend to visit Australia only for holidays, the option remains for them to relinquish their existing 410 or 405 visa and apply for a tourist visa which would allow them access to Medicare under relevant RHCA provisions.

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