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What you need to know about security of tenure

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Outline

Overview

- Provider obligations
- Right to terminate
- Procedural steps to be followed

Residential care

- Steps in the security of tenure process
- High risk issues
- Moving rooms

Home care

- Steps in the security of tenure process
- High risk issues

Overview

Provider obligations

Provider has an obligation:

- to provide security of tenure as specified in the User Rights Principles
- to specify in the resident / home care agreement the circumstances in which care can be terminated (and, for home care, the circumstances in which care may be suspended)

Right to terminate

Specified under the User Rights Principles

Different for residential and home care

Interpreted narrowly by the Commission

Procedural steps to be followed

- Legal requirements specified under the User Rights Principles
- Different requirements for residential and home care
- Notice requirements
- What's not in the legislation?
 - Concept of step taken as 'last resort'
 - Warning notices
 - Consumer notice for terminating the agreement
- Documentation

Residential care

Step 1: is there a right to terminate?

The approved provider may ask the care recipient to leave the residential care service only if:

- (a) the residential care service is **closing**; or
- (b) the residential care service **no longer provides accommodation and care suitable for the care recipient**, having regard to the care recipient's long-term needs and the approved provider has not agreed to provide care of the kind that the care recipient presently needs; or
- (c) the care recipient **no longer needs the care** provided through the residential care service, as assessed by an aged care assessment team; or
- (ca) the care recipient has been receiving care under **a specialist dementia care** agreement and a clinical advisory committee constituted in accordance with the agreement has determined that **the care recipient is not suitable to continue receiving that care**; or

Step 1: is there a right to terminate?

The approved provider may ask the care recipient to leave the residential care service only if:

- (d) **the care recipient has not paid** any agreed fee to the approved provider within **42 days** after the day when it is payable, for a reason **within the care recipient's control**; or
- (e) the care recipient has intentionally caused:
 - (i) **serious damage** to the residential care service; or
 - (ii) **serious injury** to staff of the approved provider, or to another care recipient; or
- (f) the care recipient **is away** from the residential care service for a continuous period of at least **7 days** for a reason other than:
 - (i) a reason permitted by the Act; or
 - (ii) an emergency.

Step 2: assessment

- Before asking a care recipient to leave for any reason, the provider must have the resident's long-term care and accommodation needs assessed by:
 - an aged care assessment team; or
 - at least 2 medical or other health practitioners who meet the following criteria:
 - one must be independent of the approved provider, and must be chosen by the care recipient and/or their legal representative (where relevant); and
 - both must be competent to assess the aged care needs of the care recipient.

Step 3: suitable alternative accommodation

- The provider must not take any action to make a care recipient leave the service, or imply that they must leave the service, before suitable alternative accommodation is available that:
 - meets the care recipient's long-term needs as assessed; **and**
 - is affordable by the care recipient.

Step 4: notice

- If the provider is asking a care recipient to leave the aged care service, the provider must give the resident at least 14 days' notice before they are to leave the service
- The notice must be in writing and include information about:
 - the decision and the reasons for the decision;
 - when the care recipient is required to leave; and
 - the care recipient's rights in relation to the decision, including their right to access complaint resolution mechanisms, any other mechanisms available to address complaints, and advocacy services.

High risk issues

Suitable alternative accommodation

You must not ask the resident to leave **or imply that the resident must leave** before suitable alternative accommodation is available

Emergency situations

Transfer to hospital for temporary assessment/discharge?

Getting two medical opinions (resident choice and nominations)

NDIS residents

Resident lacks capacity - decision maker/no decision maker

Respite

Moving rooms

- Legislation delineates voluntary and involuntary moves
- Different rules apply eg:
 - Change to accommodation payment
 - Variation of contract
 - Whether assessment required
 - Whether there is a right to return

Home care

Step 1: is there a right to terminate?

The approved provider may cease to provide home care to the care recipient only if:

- care recipient **cannot be cared for in the community with the resources available** to provider;
- care recipient **moves** to a location where home care is not provided by the provider;
- care recipient no **longer wishes to receive** the home care;
- the care recipient's **condition changes to the extent that the care recipient no longer needs** home care or the care recipient's needs, as assessed by an aged care assessment team, can be more appropriately met by other types of services or care;
- the care recipient has not paid **for a reason within the care recipient's control**, any home care fee and has not negotiated an alternative arrangement;
- the care recipient has intentionally caused serious injury to a staff member or intentionally infringed the right of a staff member to work in a safe environment.

Step 2: notice

- Requirements not specified in User Rights Principles
- Recommend:
 - Notice in writing
 - Reasonable period of notice
 - Information about:
 - When care will end
 - Access to other care services
 - Consumer rights including complaints mechanism
 - Any support that will be provided to transition to another provider.

High risk issues

Overspend

What is a 'home care fee'

Underutilisation

Refusal to participate in assessment processes

Isolation of consumer

Ability to access services upon termination ie continuity of care

Isolation of workforce

Contact



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