



From the Office of Aged Care Quality and Compliance
(Aged Care Complaints Scheme)

29 January 2013

Who is this alert for? Australian Government subsidised residential aged care providers

What is an industry education alert? Industry alerts outline an issue we have identified through analysis of our complaints data and other sources. They provide suggestions of areas that you may wish to review within your service. **Alerts are not advice or directions.**

Issue Between March and October 2012, the Aged Care Complaints Scheme (the Scheme) responded to 127 complaints from consumers and industry regarding the responsibilities of service providers in relation to a care recipient's security of tenure.

Some of the issues we regularly respond to include situations where:

- a care recipient is moved within a service offering 'ageing in place'
- a care recipient's long-term assessed care needs have changed and the service provider can no longer provide suitable accommodation or care
- a care recipient has been refused re-entry into a residential facility following hospitalisation
- a care recipient has caused serious damage to the residential facility or caused harm to an employee or another resident.

Observations **The Scheme treats complaints relating to security of tenure issues as a priority. We do this to help complainants and service providers identify remedies quickly and, where possible, avoid the complaint leading to a service provider not meeting its obligations under the *Aged Care Act 1997* (the Act).**

'Ageing in place' arrangements

When reviewing security of tenure and 'ageing in place' procedures, service providers should:

- understand the concept of, and their responsibilities relating to, security of tenure and 'ageing in place' under the Act and the *User Rights Principles 1997*. If in doubt, it is strongly recommended you seek independent legal advice
 - understand care recipients' rights in relation to security of tenure and 'ageing in place', including in response to their return from leave
 - if providing 'ageing in place', establish and maintain an 'ageing in place' policy within your service which sets out the circumstances in which a care recipient can 'age in place' while having their care needs met.
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Creating realistic expectations around 'ageing in place'

Before offering 'ageing in place' arrangements you should:

- accurately assess:
 - the current, and likely short, medium and longer term care needs of the care recipient at point of entry, and
 - your ability to meet these needs
- assess your ability to meet your responsibilities under the *Accreditation Standards* contained in the *Quality of Care Principles 1997*, if an 'ageing in place' arrangement is agreed to
- create a shared understanding with the care recipient of any 'ageing in place' arrangements
- clearly set out 'ageing in place' arrangements in the residential agreement between your service and the care recipient.

Ongoing behavioural concerns and security of tenure

When dealing with care recipients with behavioural concerns you should:

- support care recipients who demonstrate behavioural challenges, particularly those care recipients with a cognitive impairment whose behavioural issues may arise from such a condition or impairment
- understand that you must be able to demonstrate that the care recipient has intentionally caused serious damage or injury before you can ask that care recipient to leave (unless you are unable to provide appropriate care – see below).

Continuity of care

In situations where your service is unable to, or is at risk of being unable to, continue providing appropriate care and accommodation for a care recipient, you should consider your obligation to:

- have suitable, temporary care arrangements in place to meet the assessed needs of the care recipient and ensure their safety and security at all times
- identify and secure alternate, appropriate, long-term care and accommodation for the care recipient before giving them notice that you wish them to leave or implying to the care recipient that they must leave
- not force a care recipient to leave before suitable, affordable, alternative accommodation is available that meets the care recipient's assessed long-term needs.

Suggestions for your consideration

While a care recipient's security of tenure and 'ageing in place' rights must be considered on a case-by-case basis, where difficulties arise, you should consider:

- your obligation to discuss the care recipient's assessed short-, medium- and long-term care needs with their representative/s and health professional/s to facilitate an outcome that is in the best interest of the care recipient
- your ability to justify and document any actions and processes you undertake to attempt to resolve the situation with the care recipient and their representative/s
- visiting agedcareaustralia.gov.au for more information on security of tenure and 'ageing in place' issues
- seeking independent legal advice
- making key personnel aware of this alert.