

THOMSON GEER

LAWYERS

ADVICE | TRANSACTIONS | DISPUTES

Domestic & Cross Border

AGED CARE ALERT

HOW DO YOU SET A PRICE ON AGED CARE? ANSWERS TO THIS AND OTHER CHANGES COMING SOON FOR AGED CARE SERVICES

1 APRIL 2014

As mentioned in previous Alerts, changes to the *Aged Care Act 1997* (Cth) are set to commence on 1 July 2014. These changes will significantly affect the administration of residential aged care facilities in Australia. Consequently, approved providers should now be in the final stages of preparation for incorporating the new regime into their operations. The following is a summary of the main changes and how approved providers should be preparing to accommodate them.

NEW RESIDENTS TO CHOOSE THEIR PAYMENT METHOD

From 1 July 2014, all new residents will be given a choice as to how to pay for their accommodation on entry into a residential aged care facility. This can be as a refundable deposit (a lump sum, also known as a 'refundable accommodation deposit' or RAD), an equivalent daily payment (a periodic payment, also known as a 'daily accommodation payment' or DAP) or a combination of both. Applicable residents will have up to 28 days from entering care to elect the way in which they will pay accommodation charges.

This regime will apply to low-care, high-care and extra service residential aged care facilities. The restrictions on charging lump sum payments for high care and capping of daily accommodation charges will be removed. Approved providers will no longer be able to withhold retention amounts from lump sum payments and must allow residents the option to draw down DAPs from RADs which the approved provider holds in the resident's name. If residents do draw down DAPs from RADs, the approved provider may charge interest on the amounts withdrawn.

Other changes include:

- introducing caps on care fees payable by residents (\$25,000 in a year and \$60,000 in a lifetime); and
- making changes to the means test, with the new test aiming to provide a more equitable assessment of a resident's ability to pay for his or her care.

The changes to payment structures will only apply to new residents from 1 July 2014 and to residents who were in care on that date but leave the facility for a period of greater than 28 days before returning. Residents in care as at 1 July 2014 will have the choice of being included in the new regime if they so desire.

CONSENT REQUIRED TO OPERATE MORE EXPENSIVE FACILITIES

From 1 July 2014, approved providers that seek to charge residents more than \$550,000 as a RAD or more than \$99.30 per day as a DAP must have prior consent from the Aged Care Pricing Commissioner. Applications to the Commissioner have been open since 31 January 2014 and more information including the application form can be found on the Aged Care Pricing Commissioner's website.

MANDATORY PRICE ADVERTISEMENT

From 19 May 2014, approved providers have been directed to make pricing and service information available for publication on the Department of Social Services MyAgedCare website, their own websites and in documentation provided to prospective residents prior to executing any contracts for residential care.

At the end of March 2014, approved providers will be sent a form to assist them to complete an online entry for their services and their pricing details. During April 2014, approved providers that have not yet responded and lodged the form will be followed up by phone by the Department of Social Services which will also be reviewing and checking the data. By the end of April 2014, the data will be loaded on to the MyAgedCare website and then tested and the pricing sections of the site will go live on 19 May 2014.

The criteria on which pricing decisions and calculations should be based include room type, quality, size and services, as well as calculations of possible combinations of RADs and DAPs that residents can choose to pay.

The deadline for publication of prices is rapidly approaching. As some approved providers are still awaiting consent to charge RADs greater than \$550,000 and DAPs greater than \$99.30 per day, confirmation is being sought from the Department of Social Services that those approved providers will not be penalised if the consents are not granted in time.

CALCULATING DAPs AND RADs

A DAP may be calculated using the following formula:

$$(\text{RAD} \times \text{MPIR}) / 365 = \text{DAP}$$

where MPIR represents the Maximum Permissible Interest Rate, a rate published quarterly by the Department of Social Services reflecting general retail investment rates.

There is no equivalent formula for calculating RADs. Prices can be set by approved providers (up to the cap of \$550,000 over which consent is required). Approved providers will be expected to have evidence in relation to services and room types as the basis on which it has set its RADs.

The Assessor Manual is available on the MyAgedCare website which is the guide assessors will use in making a recommendation to the Commissioner in respect of applications for approval of accommodation payments above the threshold amounts.

OTHER ISSUES

Even if approved providers have already implemented the changes set out above regarding accommodation prices, there will be some ongoing issues approved providers need to consider, including:

- how changes in room prices will be managed – including how far in

advance of price changes promotional material should be updated;

- how often to review documentation to ensure any changes relevant to accommodation pricing, such as changes in common facilities, are captured; and
- who will review new promotional material to ensure compliance with the legislation.

COMMENCEMENT OF THE AUSTRALIAN AGED CARE QUALITY AGENCY

The Australian Aged Care Quality Agency (Quality Agency) will soon replace the Aged Care Standards and Accreditation Agency Ltd as the sole responsible body for maintaining standards of service within the aged care industry. The Quality Agency commenced control of service standards in residential aged care facilities on 1 January 1 2014, and will assume responsibility for quality standards within home care services from 1 July 2014.

WRITTEN BY:

Lucinda Smith | Partner | +61 2 9020 5748 | lsmith@tglaw.com.au
Ruth Hood | Senior Associate | +61 2 8248 3459 | rhood@tglaw.com.au
Alexandra Adams | Lawyer | +61 2 8248 3466 | aadams@tglaw.com.au
Ben Cosentino | Lawyer | +61 2 8248 3457 | bcosentino@tglaw.com.au

For further information, please [click here](#) to contact our national Health, Aged Care & Retirement Villages team or contact our office directly:

SYDNEY

Level 25
1 O'Connell Street
Sydney NSW 2000
+61 2 8248 5800

MELBOURNE

Level 39
Rialto South Tower
525 Collins Street
Melbourne VIC 3000
+61 3 8080 3500

MELBOURNE

Level 20
385 Bourke Street
Melbourne VIC 3000
+61 3 9670 6123

BRISBANE

Level 16
Waterfront Place,
1 Eagle Street
Brisbane QLD 4000
+61 7 3338 7500

ADELAIDE

Level 7
19 Gouger Street
Adelaide SA 5000
+61 8 8236 1300

www.tglaw.com.au