

ACCESS TO RECORDS

What records must be kept?

All aged care homes must keep records about a resident's medical conditions, the treatment they are receiving and the type of care that is being provided under a resident's care plan.

Records must be kept for "3 years after the 30th June of the year in which the record was made"
– *Aged Care Act 1997 88-1(1)(b)*.

These records include:

- letters, investigation reports, x-ray reports, in fact any documents or written materials that relate to a resident's health and are made by a doctor or staff member;
- progress notes, which record a resident's day-to-day condition and treatment; and
- a nursing care plan, which is based on a resident's original assessments, test results, doctors' reports etc.

(See – *The Aged Care Act 1997, section 88-2(2)* and the *Aged Care Principles, section 19.5*)

Who owns these records?

A resident or their representative may want to look at the medical records for a number of reasons:

- to make an informed decision about their health care;
- to make sure that the records are accurate; or
- simply for information about the treatment that they are receiving.

Even though these records contain information about the resident, the general rule is they belong to the person who made them, i.e. the doctor or the aged care home.

Right of access to care notes

The Charter of Residents' Rights and Responsibilities states:

Each resident of a residential care service has the right:

to have access to information about his or her rights, care, accommodation and any other information that relates to the resident personally.

The Charter also imposes obligations on a resident:

Each resident of a residential care service has the responsibility:

to care for his or her own health and well being, as far as he or she is capable and to inform his or her medical practitioner, as far as he or she is able, about his or her relevant medical history and current state of health.

The Accreditation Standards also require aged care homes to consult with residents or their representatives to meet the care needs of those residents.

These care needs will be met, partly through the development of the care plan which the resident is asked to sign.

Effective consultation and the development of the care plan cannot occur unless the resident and/or their representative has access to relevant health records.

Privacy laws

The *Privacy Act 1988 (Clth)* imposes certain obligations and responsibilities in relation to the privacy of records held by aged care homes. However the aim of these Principles is not to restrict or deny representatives access to health information if the representative is acting in the best interests of the resident.

The National Privacy Principles (NPPs) allow a health service provider to disclose health information to a person who is “responsible” for the individual if:

- (a) The individual:
 - i. Is physically or legally incapable of giving consent to the disclosure; or
 - ii. Physically cannot communicate consent to the disclosure; and
- (b) A natural person (the carer) providing the health service for the organisation is satisfied that either:
 - i. The disclosure is necessary to provide appropriate care or treatment of the individual; or
 - ii. The disclosure is made for compassionate reasons; and
- (c) The disclosure is not contrary to any wish:
 - i. Expressed by the individual before the individual became unable to give or communicate consent; and
 - ii. Of which the carer is aware, or of which the carer would reasonably be expected to be aware;

(See para 2.4 Schedule 3 Privacy Act)

This Act states that a person is “responsible” if they are:

- a) Parent of an individual; or
- b) Child or sibling of an individual; or
- c) Spouse or de facto; or
- d) Relative of the individual; or
- e) Guardian of the individual; or
- f) Exercising an enduring power of attorney granted by the individual that is exercisable in relation to decisions about the individual’s health; or
- g) A person who has an intimate personal relationship with the individual; or
- h) A person nominated by the individual to be contacted in case of emergency.

(See para 2.5 Schedule 3 Privacy Act)

Charging fees to access records

The *Aged Care Act* regulates the fees that can be charged by aged care homes for the provision of care and services. This Act also requires aged care homes to meet Residential Care Standards which include the requirement to comply with all relevant laws. This includes a resident’s or their representative’s right to access information about their care and services.

Providing access to information contained in an aged care home’s records is therefore part of an aged care home’s responsibilities in providing services.

Charging a resident or their representative to access this information, would therefore not seem to be a legitimate charge.

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Empowering older Victorians

Elder Rights Advocacy is the registered business name of Residential Care Rights Inc. (ABN 63 367 539 827) which is part of the National Aged Care Advocacy Program - an Australian Government Initiative.

Note: The information in this fact sheet is general information about the law in Victoria—it is not legal advice.

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