

Can an aged care service refuse to take a resident back into care after a stay in hospital?

Answer

If the service receives an Australian Government subsidy then they must comply with the law as stated in the Aged Care Act 1997. In particular, The User Rights Principles, Security of Tenure clearly state the circumstances in which an approved provider can ask a resident to leave an Aged Care Service. These include:

- closing of the service;
- unpaid, agreed fees;
- causing intentional damage or injury;
- a resident being away from the service for a continuous period for a reason not permitted by the act; or
- the service is unable to provide suitable accommodation and care with regard to the long term assessed needs of the care recipient.

In the latter case, the long term care needs must be assessed by:

- an Aged Care Assessment Team; or
- at least two medical or other health practitioners who meet the following criteria:
 - one must be independent of the approved provider and the residential care service, and must be chosen by the care recipient or the care recipient's appropriate representative;
 - both must be competent to assess the aged care needs of the care recipient.

If the approved provider decides to ask the resident to leave the residential care service then the provider must give the resident written notice that includes:

- the decision;
- the reasons for the decision and when the resident is to leave;
- the resident's rights about leaving.

At least 14 days notice must be given before the resident is to leave and the provider must not imply or take action to make the resident leave until suitable, affordable accommodation has been found.

See our Fact Sheet *When You Are Asked To Leave An Aged Care Facility* for more detail.

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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 document is general information about the law in Victoria— it is not legal advice.

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