



Regulatory Bulletin

Responding to non-compliance with the Aged Care Quality Standards

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This Regulatory Bulletin outlines how the Commission will respond to identified areas for improvement and non-compliance with the Aged Care Quality Standards from 1 July 2019.

Key points

- When the Commission identifies one or more areas for improvement from an assessment of a service's performance against the Aged Care Quality Standards (Quality Standards), the Commission will consider a finding of non-compliance.
- The Commission's response to non-compliance is proportionate to the level of assessed risk and the potential consequences of that risk for consumers.
- The Commission sets a timetable for improvement and will determine both the form and frequency of contact with the provider during the improvement period. Under the Rules, these regulatory decisions are not subject to review.
- The Provider must revise its plan for continuous improvement in relation to the service and use the improvement period to make the necessary improvements in order to comply with the Quality Standards.
- If at the end of the improvement period the Commission is not satisfied that the necessary improvements have been made to meet the Standards, then the Department of Health is notified and may consider further regulatory action.



The Aged Care Quality and Safety Commission (Commission) seeks to protect and enhance the safety, health, well-being and quality of life of aged care consumers; and promote consumers' confidence and trust in the quality and safety of Commonwealth-funded aged care services.

When the Commission identifies one or more areas for improvement when assessing an aged care service against the Aged Care Quality Standards (Quality Standards), the Commission will consider a finding of non-compliance. The Commission's response to such a finding will be risk-based and proportionate to ensure the service returns to compliance and addresses any risks to the safety, health and wellbeing of consumers.

The Commission will notify the Department of Health of the non-compliance, set a timetable for improvement and determine the arrangements for assessment contact/s to monitor those improvements. If at the end of the timetable for improvement the Commission is not satisfied that the necessary improvements have been made, then the Commission will notify the Department of Health. The Department of Health may consider further regulatory action to encourage the provider's timely return to compliance and to improve outcomes for consumers.

In this Bulletin:

- Aged care provider(s) or providers means both approved providers of accredited residential aged care services and home service providers.
- Quality Standards refers to the Aged Care Quality Standards.
- Commissioner includes the Commissioner or a delegate of the Commissioner.
- The Rules refers to the Aged Care Quality and Safety Commission Rules 2018.
- Performance assessment includes:
 - accreditation of commencing services (Part 3, Division 3, Subdivision C)
 - re-accreditation of residential services (Part 3, Division 3, Subdivision D)
 - quality reviews of home services (Part 4, Division 3)
 - assessment contacts (Part 5, Division 5, Subdivision C)
 - review audits of accredited services (Part 5, Division 6).



Aged Care Quality and Safety Commission Rules 2018

Under the *Aged Care Quality and Safety Commission Act 2018*, the Aged Care Quality and Safety Commissioner (Commissioner) has responsibility for assessing the performance of aged care providers against the Aged Care Quality Standards. The Aged Care Quality and Safety Commission Rules 2018 (Rules) detail the procedure to be followed by the Commissioner in assessing performance.

The following requirements in the Rules for each type of performance assessment are similar.

- The assessment team or regulatory official must evaluate the performance of the service against the Quality Standards.
- The Commissioner is empowered to give the provider of the service written notice, or make a decision in relation to the service that identifies:
 - any areas in which improvements in relation to the service must be made to ensure the Quality Standards are complied with
 - the timetable for making the improvements.

The Rules also outline the powers for the Commissioner in finding that an aged care provider has failed to comply with the Quality Standards in relation to a service, and to direct the provider to revise its plan for continuous improvement for the service. In making a finding that the provider has failed to comply with the Quality Standards, the Commissioner may also make a decision regarding serious risk. (Refer to the *Regulatory Bulletin Issue No. 2019–1.1* on serious risk for more information.)

If at the end of a timetable for improvement, the Commissioner is not satisfied that the level of care and services complies with the Quality Standards, the Rules require the Commissioner to give the approved provider of an accredited service, or the home service provider of a home service, written notice of the reasons why they are not satisfied (Division 7, Subdivision A).

The written notice of any finding of non-compliance by the Commission must also be provided to the Secretary of the Department of Health.



Frequently asked questions

1. How does the Commission identify areas for improvement against the Aged Care Quality Standards?

Registered Quality Assessors undertake performance assessments through site audits, quality reviews and assessment contacts under the Aged Care Quality and Safety Commission Rules, 2018. A performance assessment consists of obtaining and evaluating evidence to demonstrate performance against the Quality Standards. Quality assessors make a performance assessment including through observations, interviews, and documented evidence collection of the quality of care and services at a service.

Quality Assessors prepare a written report of the performance assessment which makes a recommendation of whether the requirements of the Quality Standards are met. The Commission then provides the assessment report to the approved provider of the service so that they have the opportunity to (a) understand the reasons, evidence and facts that the decision-maker is to rely on in identifying areas for improvement and making findings of non-compliance; and (b) provide a response to matters identified in the assessment report that may be relied on by the decision maker.

The performance assessment report and any response provided by the provider with respect to the service is considered by a decision maker who has delegated powers to make a finding as to whether there are areas for improvement in order for the Quality Standards to be met, and in making a finding of non-compliance.

2. How will the Commission respond to non-compliance when areas for improvement are identified?

When the Commission identifies areas in which improvements must be made to ensure compliance with the Quality Standards, the Commission will make a finding of non-compliance and notify the service. The notification will identify the areas for improvement and the timetable for making the improvements (called a “timetable for improvement”). The Department of Health is also notified.

For each finding of non-compliance, the Commission must also consider and determine whether the non-compliance has placed or may place the safety, health or wellbeing of aged care consumers at serious risk. Where this is the case (that is, where the Commission makes a decision of serious risk), this too is communicated to the Department of Health.

3. When can a finding of non-compliance be made?

When the Commission identifies that a provider is not meeting one or more requirements of the Standards with respect to a service, a finding of non-compliance is made. A finding of non-compliance may be made at any time where there is sufficient evidence that the provider of a service has failed to comply with one or more requirements of the Quality Standards.



4. What is the Commission's approach to setting a timetable for improvement?

Where a service is given a timetable for improvement, the Commission will apply a risk-based and proportionate approach to determine the form and frequency of compliance monitoring during the improvement period.

Risk-based means the primary focus of the Commission's activities is on the areas of actual or potential harm to the safety, health and wellbeing of aged care consumers.

Proportionate means that the Commission's response depends on the:

- extent of non-compliance
- nature of risks arising from non-compliance to the safety, health, wellbeing and quality of life of aged care consumers, including the likelihood and severity of impact
- circumstances and behaviour of the aged care provider such as:
 - the provider's demonstrated understanding of their areas of non-compliance and associated risks
 - the capacity of the provider to implement improvements or address the non-compliance at the service
 - the history of the provider in terms of past quality and safety performance, complaints resolution
 - confidence from available evidence that the provider will undertake continuous improvement
 - actions already taken or underway to address the areas of non compliance.

The Commission takes a risk-based and

proportionate response when dealing with non-compliance to ensure that the aged care provider understands what is necessary to comply with the Quality Standards and is focusing on continuous improvement.

This may include:

- tailoring the scope and nature of the timetable for improvement and any extension to such a timetable
- seeking further information from the provider with respect to the performance of the service(s)
- differentiating the way in which the Commission will monitor a return to compliance
- determining the form and frequency of further contact with the service.

5. What does it mean for a provider to be given a timetable for improvement?

Aged care providers are responsible for meeting the Quality Standards. A provider subject to a timetable for improvement is expected to implement the necessary improvements. The provider is required to revise their plan for continuous improvement so that they can give priority to the identified areas within the timeframe set by the Commission. This is also an opportunity for the service's staff to have conversations with consumers of the service about how the service can improve these outcomes.

At the end of the improvement period, the Commission will undertake a further assessment of performance to seek information in order to be satisfied that the necessary improvements have been made.



6. What happens if the service has not made the improvements by the end of the period for improvement?

If at the end of the timetable for improvement the Commissioner or delegate is not satisfied that the level of care and services provided by the service complies with the Quality Standards, the Commissioner or delegate is required to:

- (i) give notice to the provider and the Department of Health of the reasons why the Commissioner or delegate is not satisfied that the level of care and services provided by the service complies with the Quality Standards, and
- (ii) having informed the provider of the finding and reasons for the finding, direct the provider to revise its plan for continuous improvement within 14 days to ensure that the Quality Standards are complied with, and
- (iii) consider and determine whether the non-compliance has placed or may place the safety, health or wellbeing of aged care consumers at risk.

The Commission may take further actions that may include:

- further assessment contacts in the form of a site visit; this may be unannounced and for residential services conducted at any time
- specified requests for information about an identified risk
- for residential services, consideration of whether there are reasonable grounds to escalate to a review audit, which in turn could result in varying or revoking accreditation of the service

- for home services, consideration of whether there are reasonable grounds to escalate to a quality review
- increased compliance monitoring
- further monitoring of compliance with the standards at other services operated by the provider when risks of poor quality of care are evident in a number of that provider's services
- extension of a timetable for improvement or setting a new timetable for improvement.

As mentioned above, the Commission will notify the Department of Health of the finding of non-compliance, and the Department may then consider a range of further regulatory actions available under the *Aged Care Act 1997*.

7. Will a provider have an opportunity to respond to a performance assessment report prior to a finding of non-compliance?

The Aged Care Quality and Safety Commission Rules 2018 (Rules) detail the procedures to be followed by the Commissioner. Procedural fairness will be given to a provider who may be negatively affected by a finding by the Commissioner. Before making a finding of non-compliance, Commission decision-makers will ensure natural justice.

For example, the Commission will provide the assessment report to the provider to allow them to understand the reasons, evidence and facts that the decision-maker is to rely on when making a finding of non-compliance. Giving the assessment report to the provider also affords them an opportunity to provide a response to matters identified in the report in advance of a finding being made by the Commission.



8. What compliance information is made public?

A range of information on the performance of services is published on the Commission's website including:

- Accreditation and Review Audit reports for residential services
- Accreditation decisions for residential services
- Serious risk decisions in residential services
- Consumer experience reports for residential services.

Where applicable this information includes findings of non-compliance and notifications of the date set for a timetable for improvement.

In addition, where the Commission has made a finding of non-compliance and that finding has led to a serious risk decision, from 1 July 2019 the Commission will publish this information on the Commission's website in a central register with respect to all services. Published information will be for all findings of non-compliance that led to serious risk decisions made for that month. The publication will be updated monthly. Retired data will be available through an archived provision.

Under the Rules, the Commission may consider making other performance information public including if it is in the public interest to do so.

9. What further regulatory action may be taken where there is non-compliance with the Quality Standards?

The Commission notifies the Department of Health of any instance of non-compliance with the Quality Standards. Further, if in performing its regulatory functions the Commission becomes aware of information about a failure to comply with approved provider responsibilities under the *Aged Care Act*, this is also notified to the Department of Health for the purposes of exercising its functions or powers under the *Aged Care Act 1997*.

Where there is non-compliance with the Quality Standards, the Department of Health may take regulatory action with respect to an approved provider by issuing a notice of non-compliance or imposing sanctions.

When imposing sanctions or issuing notices of non-compliance, the Department of Health takes into account the procedures outlined in Part 4.4 of the *Aged Care Act 1997*. This may include reports by the Aged Care Quality and Safety Commission.

Need to know more?

If you have any questions contact our policy helpdesk by email on: regulatorypolicy@agedcarequality.gov.au.

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