



Regulatory Bulletin

Additional fees in residential aged care

RB 2023-20

‘Additional care or services’ are care and services that are offered to residents of a residential aged care service (resident) by their provider, in addition to those that their provider is required to provide by law. By agreement with the resident, an approved provider can charge fees for additional care and services. A range of requirements, including those set out in section 56-1(e) of the [Aged Care Act 1997](#) (Aged Care Act), will apply where additional fees are charged.

This Regulatory Bulletin outlines the expectations of the Aged Care Quality and Safety Commission (Commission) relating to provider responsibilities around the charging of fees for additional care and services, including where a provider charges for those additional care and services by way of a bundle of care and services for a single charge. The Regulatory Bulletin also outlines the Commission’s response where a provider does not meet their responsibilities.

This Regulatory Bulletin should be read in conjunction with the Commission’s [Compliance and Enforcement Policy](#).

Refer to the [Commission’s glossary](#) for definitions of key terms.



Key points

- The Aged Care Act sets out arrangements for the charging of various types of fees for Commonwealth-funded aged care, and outlines the type and amount of fees that can be charged.
- Providers are responsible for providing a range of specified care and service items to any resident who needs them, and for delivering those items in accordance with the Aged Care Quality Standards.
- Additional care and services are distinct from the specified care and services which providers are required to provide by law.
- Where additional care and services are made available to residents for an additional fee, providers must:
 - charge no more than an amount agreed beforehand with the resident, and provide the resident an itemised account
 - inform residents of and help them to understand the terms of the resident agreement being entered into
 - enable the resident to identify each additional care or service item (or the individual components of a package or bundle) and its related fee, either in the resident agreement and/or regular invoices, and to identify distinctly in invoices the fee for additional services alongside other fees
 - ensure the resident is able to access the additional care and services, and can derive benefit from, and take up or make use of, each additional care or service item (or each component of a bundle or package of additional care and services)
 - provide a mechanism to review a resident's ability to derive a benefit from the additional care or services at regular and reasonable intervals and/or when there is a change to the care recipient's status.
- Providers may not charge residents additional fees to cover the normal operation of a site, such as capital refurbishment fees or asset replacement charges.
- Additional care and services, and additional fees, are distinct from 'extra services' and 'extra service fees'.
- The Commission has powers to undertake various regulatory actions where a provider does not meet their responsibilities with regard to additional care and services, and additional fees.



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Bulletin number: RB 2023-20

Version number: 1.0

Document number: FRM-ACC-0877

Publication date: 9 June 2023

Replaces: Initial release

Information in this bulletin applies to:

- Residential aged care providers

Attachment: N/A

Notes: This Regulatory Bulletin includes information on provider responsibilities with regard to charging additional fees to residential aged care consumers.

To be reviewed: 10 June 2024



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Approved provider responsibilities

Aged Care Act 1997

Responsibilities of approved providers are set out in Chapter 4 of the Aged Care Act.

Section 54-1(1(a)) of the Aged Care Act requires providers of residential aged care to provide such care and services as are specified in the [Quality of Care Principles 2014](#) (Quality of Care Principles). Section 7 of the Quality of Care Principles outlines the care and services that must be provided.

Schedule 1 of the Quality of Care Principles specifies the care and services that providers must provide to residential aged care residents who need them.

Providers must provide specified care and services in a way that complies with Aged Care Quality Standards (Quality Standards) set out in Schedule 2 of the Quality of Care Principles.

Providers and residents may agree to additional fees for the provision of additional care and services that providers are **not** otherwise required to provide or for services that are substantially better than the standard that must be provided under Schedule 1 of the Quality of Care Principles and in adherence with Quality Standards.

Section 56-1(e) of the Aged Care Act sets out that charges for ‘any other care and services’ can be no more than agreed beforehand and must be itemised in accounts given to the resident.

Additional service fees

Providers can only charge fees for additional care and services where:

- the resident **agrees to the fee** beforehand
- the care and services are distinct from – and substantially better than – the specified services a provider must already provide by law to residents who need them
- the care and services are not covered by payment elsewhere in the Aged Care Act or Quality of Care Principles (for instance, an extra services fee or an accommodation payment)
- the costs are not those expected to be paid by the provider, such as capital refurbishment or asset replacement costs
- the resident is able to access the care or service and to derive a benefit from the care or service.



Resident agreement

The Commission expects providers to be able to demonstrate that, prior to charging additional fees, they have met relevant responsibilities under the Aged Care Act, including by:

- ensuring that there is an agreement in place which includes the terms relating to additional fees for additional care and services (demonstrating the resident has agreed to receive the additional care or services and to pay the associated fees)
- informing the resident of and helping the resident to understand terms of the resident agreement, including terms relating to the additional fees for additional care and services on offer and any limitations which may affect the resident and their ability to receive the additional care and services
- where the agreement is achieved by variation to terms of an existing resident agreement, demonstrating that the variation is done consistently with the requirements of section 15(3)(a)(ii) of the User Rights Principles – that is, there is mutual consent to the variation following adequate consultation between the care recipient and the provider.

Relevant evidence of a resident's agreement to additional fees for additional care and services may be demonstrated by inclusion of the charges in a resident agreement, or variation of that agreement.

Where the above requirements are met, additional care or services, and the associated fees, may be presented to a resident as a bundled or packaged offering.

Access and ability to derive a benefit

Providers may only charge fees for additional care and services where the resident is able to access the care or service and to derive a benefit from the care or service.

Access means that the care or service is available to be used. Any conditions or limitations on availability of an additional care or service must be made clear prior to agreement being made.

The **ability to derive a benefit** means that the resident can, at a time when that care or service is offered, take up the benefit of that care or service.

The Commission expects providers to develop and implement a system for assessing the ability of residents to derive a benefit from the additional care or services that they are being charged for. This assessment must be conducted in the following circumstances:

- when the resident is considering entering an agreement to pay for additional care and services
- at the reasonable request of the resident
- at regular intervals which the resident is made aware of
- when it is identified that the functional capacity of the resident has changed or they no longer have functional capacity to benefit from the care or service
- when it is identified that for reasons other than functional capacity, the resident cannot derive a benefit from the care or service.



Where additional care or services are reduced or removed as a result of an initial or ongoing assessment of the resident's ability to derive a benefit from them, providers must develop and implement a process to reduce the additional fees to be paid or to replace the care or service with another of commensurate value.

A provider, if requested, must be able to demonstrate to the Commission that they have considered whether every resident in receipt of additional care or services is able to derive a benefit from that care or those services (including each component of a package or bundle), and that a suitable review mechanism exists and is being applied.

Substantially better care and services

[Schedule 1](#) (Parts 1, 2 and 3) of the Quality of Care Principles lists a range of care and services which residential aged care providers must provide to all residents who need them. Quality Standards set out the standard to which care or services must be provided.

Providers may only charge residents an additional fee for an enhanced version of a specified care or service where they can clearly demonstrate that it is substantially better than what must already be provided under Schedule 1, to the standards required under Schedule 2. They may only charge the additional fee with the resident's agreement.

When dealing with circumstances regarding additional fees charged to a resident, the Commission will review a range of evidence to determine whether a provider is meeting its responsibilities relating to the additional care and services. This may include the full description of the item and comparisons of what is offered against the specified care or services required under Schedule 1 of the Quality of Care Principles and in reference to Quality Standards.

On 1 October 2022, under the Australian National Aged Care Classification (AN-ACC) funding model, the ability to charge for items in Part 3 of Schedule 1 was removed. From this date providers must not charge a resident a fee for any item specified in Schedule 1. For information from the Department of Health and Aged Care on this change, see: [Your Aged Care Update issue 21, 2022](#).



Providing information to residents when charging additional fees

Providers have the following requirements where agreement on additional fees for additional care and services has occurred.

Providers must give residents who receive additional care or services an **itemised account of each additional care or service being provided**. The itemised account must contain a breakdown or list of the individual care and service being provided and a corresponding itemised cost for each individual care and service.

The itemised account can be provided to residents in their resident agreement or in the invoices issued to the resident each payment period.

Where **itemised accounts are provided in resident agreements**, invoices issued each payment period must contain reference to the additional care or services provided. The additional care and services may be grouped or bundled together as one cost.

However, where a provider **does not provide the itemised account in their resident agreement**, each invoice issued must contain an itemised account of any additional care or services provided during that period. In this case, the additional care and services cannot be grouped or bundled together as one cost.

Bundled or packaged items

Providers may offer combined additional care and service items in a bundle or package ('bundle') to residents. Each item and its specific cost must be itemised so that a resident is clear on what the bundle includes. The total cost of the bundle, the expected payment schedule (e.g. monthly) and any conditions or limits should be clear. 'One-off' items should not be included.

A resident may agree to receive the bundle of items for the total bundle cost. The items in the bundle must be clear at the time of agreement and remain clear either through the agreement and/or in a monthly invoice.

If the resident does not have functional capacity to use an item in a bundle at the time of – or any time after – the agreement is made, the provider is expected to offer a substitution or a discount for that item.

It is not permissible to charge a resident for an item they cannot access or from which they cannot derive a benefit.

If a resident wishes to stop receiving or using an item in a bundle they have agreed to, they may seek to negotiate an end to the additional fees agreement with the provider, subject to any terms in the agreement.

Providers must also continue to meet any other provider responsibilities relating to residential agreements and monthly invoices under the Aged Care Act and relevant Principles.



Extra service fees

Additional care and services, and additional service fees, are distinct from 'extra' service fees.

Extra service fees are charged for residential aged care places within residential aged care services that have been granted extra service status by the Department of Health and Aged Care. When a service has extra service status, they can provide a higher standard of hotel-type services to:

- residents in individual rooms with extra service status
- the whole service which has extra service status.

Residential aged care services with extra service status can charge a regular extra service fee which, like additional service fees, is on top of their other financial contributions.

Unlike additional services fees however, extra service fees can only be charged by a provider if it operates residential aged care places that have been granted extra service status by the Department of Health and Aged Care, and if the provider has obtained approval from the Independent Health and Aged Care Pricing Authority (IHACPA). Information on this process is available at the [IHACPA website](#).

Enforcement

Where providers charge additional service fees to residents, they must comply with the requirements in the Aged Care Act, the Quality of Care Principles (which include the Quality Standards) and the User Rights Principles.

The Commission receives a range of information about provider practice or user experience regarding additional fees and additional care and services. Most often this information is provided as part of concerns raised through the [Commission's complaints process](#). Where the Commissioner becomes satisfied that a provider is not meeting their responsibilities in relation to additional care and services, the Commission may respond in a range of ways, from ensuring a provider makes improvements to address the concern, to taking one or more regulatory actions where necessary. These actions are outlined below.

Direction

Where information about a matter involving additional fees and additional care and services is received as part of a complaint, the Commission will evaluate the information and determine an appropriate approach. A direction may be given to a provider where the Commission is satisfied that the provider is not meeting their responsibilities. The direction will describe the specified remedial actions to be taken by the provider, and the timeframes within which those actions must be taken, in order to comply with the Aged Care Act and the Aged Care Quality and Safety Commission Rules 2018. If the provider fails to comply with this direction, enforceable regulatory action may be taken against the provider. These are matters for the Commissioner or delegate to evaluate and determine.



Specified remedial actions may relate to all services operated by the provider and may include retrospective refunds of fees where the Commission considers that there was no legal basis for the provider to charge those fees.

Non-Compliance Notice

A Non-Compliance Notice may be issued to the provider if the Commission is satisfied that the provider is or has been non-compliant with one or more of their responsibilities under the Aged Care Act, but that the non-compliance does not pose an immediate and severe risk to the safety, health and wellbeing of aged care recipients. This notifies the provider that the Commission intends to impose sanctions with respect to the non-compliance, sets out actions the provider is required to take to remedy the non-compliance, and gives the provider the opportunity to make submissions prior to the decision-maker deciding to impose one or more sanctions.

For more information on the Commission's approach to compliance and enforcement, including use of its regulatory powers, refer to the [Compliance and Enforcement Policy](#).



Scenario 1: Itemising and invoicing additional care and services offering

Provider A offered existing and prospective residents the opportunity to add a Star Package to their existing suite of care and services. Residents who joined the Star Package paid an additional \$20 per day in fees for the package, and in return received a variety of permissible additional care and services.

The resident agreement contained an annexure which listed a description of each item contained in the Star Package, and the total cost of the package. No further information regarding the package was contained in the annexure, or the resident agreement.

Residents were able to select the package by ticking the relevant box in their resident agreement.

At the end of each payment period, a detailed invoice was sent to residents containing a list of all their income and expenditure. One line on the invoice showed 'Star Package' and the associated \$20 daily fee.

A resident raised a complaint with the Commission as they were concerned that they had signed up to the Star Package some years ago. However, they were unable to remember all of the services they were meant to be receiving through the package and were also unable to use some of the services, due to increasing frailty.

The Commission engaged with the provider in resolving the complaint. In order to ensure compliance with the aged care legislation, the provider decided to restructure the Star Package offering by:

- including itemised costs for each additional care and service as outlined in the annexure to the resident agreement
- amending the annexure to include reference to a review process specifically concerning the Star Package offerings to ensure that residents were able to derive benefit from all of the care and services offered. This included 6-monthly provider-led reviews, with the additional option for ad-hoc resident-requested reviews. Where the review found that a resident no longer had functional capacity to derive a benefit from an additional care or service, the provider, by discussion with the resident and with their agreement, either substituted an item of like value or ceased providing that service and reduced the cost of the package by the commensurate amount, as listed in the annexure to the resident agreement
- initiating an immediate review of derived benefits for all affected residents
- engaging with residents to ensure that they understood the Star Package offering and their review rights going forward.



Scenario 2: Accessing and deriving a benefit from additional care and services offering

Provider B was a multi-service provider offering additional care and services on top of the care and services they were required to provide by law. They did so through the Moon Bundle. Residents paid an additional \$10 fee per day for the Moon Bundle, and in return received a variety of permissible additional care and services.

The resident agreement offered by the provider contained reference to the Moon Bundle and the fee, but no further information regarding the bundle or the list of the services was offered.

At the end of each payment period, the provider sent a detailed invoice to residents containing a list of all their income and expenditure. This list did not include specific reference to the Moon Bundle, but the associated fee was added to a listed charge for 'All care and/or services delivered'.

A resident raised a complaint with the Commission as they were concerned that they had not been told what care or services made up the Moon Bundle, and could not monitor to ensure that they were receiving what they were entitled to.

The Commission engaged with the provider in resolving this complaint. The provider was reluctant to instigate any change to their existing policies/procedures relating to the Moon Bundle. Following a complaint resolution process, the Commission issued the provider with a Non-Compliance Notice, setting out the following actions the provider was required to take to remedy the non-compliance:

- Include a detailed list of each care and service item offered through the bundle on invoices rendered to residents each payment period. This included a description of the care or service item offered, and the associated fee charged for that payment period. This was to be listed separately to other care and services provided which the provider is required to provide by law.
- Change the service's policies/practices to ensure that, in addition to regular clinical reviews, residents were assessed monthly on their ability to benefit from the care and services offered as part of the bundle. Where the review found that a resident no longer had functional capacity to derive a benefit from an additional care or service, the provider was to cease providing that service and reduce the cost of the bundle by the commensurate amount, as listed in the resident agreement.
- Instigate a full review of all affected residents as detailed above.
- Provide residents (prospective and current) with a letter explaining the Moon Bundle fee on invoices and offering a point of contact for any concerns.

The Non-Compliance Notice gave the provider the opportunity to make submissions. Through this process, the provider gave an Undertaking to Remedy the non-compliance, setting out the action it proposed to take, and the Commission monitored those actions.



Need to know more?

Additional information on fees for people who first entered residential aged care after 1 July 2014 is available on the [Department of Health and Aged Care's website](#).

If you have any questions or feedback on this Bulletin, send an email to: info@agedcarequality.gov.au.

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