



# Regulatory Bulletin

## Change in service ownership

RB 2021-14

This Regulatory Bulletin outlines the Commission's regulatory approach where there is a transfer. It includes the approach to accreditation arrangements, management of any non-compliance and enforcement actions or unresolved complaints, as well as publication of performance and compliance information.

### Key Points

- Where there is a transfer of a service, the service's accreditation status and period of accreditation remain the same as before the transfer.
- As non-compliance relates to an approved provider's aged care responsibilities in relation to a service, the non-compliance of a previous approved provider is not attributed to a new approved provider of a service following transfer.
- In situations where the previous approved provider had been found non-compliant with their aged care responsibilities, the non-compliance does not continue to apply to the new approved provider. This means:
  - any enforceable regulatory action taken by the Commission in response to non-compliance by the previous approved provider does not continue to be applied to the new approved provider
  - where the Commission has made a finding of non-compliance with the Quality Standards prior to transfer, the non-compliance does not continue to be applied to the new approved provider.
- In these circumstances, the Commission determines its regulatory response to mitigate and manage any risks to the delivery of quality and safe care to consumers at the service. This includes monitoring activities and performance assessments following transfer.
- The Commission seeks engagement with the new approved provider prior to, during and after transfer of the service.
- The Commission publishes information on the Commission website where there is a transfer of a service.



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**Bulletin number:** RB 2021-14

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**Version number:** 1.0

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**Document number:** FRM-ACC-0753

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**Publication date:** 25 August 2021

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**Replaces:** N/A

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**Information in this bulletin applies to:** Approved providers of residential aged care services and flexible care services through which short-term restorative care (STRC services) is provided in a residential care setting.

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**Attachment:** N/A

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**Notes:** This Regulatory Bulletin is a new bulletin

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**To be reviewed:** 25 August 2022

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# Change in service ownership

**The ownership of a residential aged care service may be changed from one approved provider to another for various reasons. For the purposes of this bulletin, this is referred to as a transfer.**

The Aged Care Quality and Safety Commission (Commission) engages with a new approved provider prior to, during and after the transfer of a service to ensure that the new approved provider complies with their aged care responsibilities including the Aged Care Quality Standards (Quality Standards). The Commission also works with new approved providers to mitigate and manage risks to the delivery of quality and safe care to consumers at a service following transfer.

## In this Bulletin:

- **New approved provider** means the approved provider of a service following transfer.
- **Previous approved provider** means the approved provider of a service prior to transfer.
- **Transfer** means the ownership of a service moving from one approved provider to another approved provider.
- **Transferred service** means a service whose ownership has transferred from one approved provider to another approved provider.

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

## Legislative Authority

The Commission's regulatory functions include the accreditation of residential aged care services in accordance with the Aged Care Quality and Safety Commission Rules 2018 (Commission Rules). This includes the accreditation of a transferred service.

The Commission undertakes monitoring, compliance and enforcement actions as part of its regulatory functions. This includes ensuring that approved providers, including new approved providers of transferred services, comply with responsibilities in delivering aged care services, and holding approved providers to account when they fail or refuse to comply with their responsibilities.

Responsibilities of approved providers are outlined in Part 4 of the *Aged Care Act 1997* (Aged Care Act); the breach of which effectively triggers the Commission's compliance functions under Part 7B of the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) and specified enforcement powers from the *Regulatory Powers (Standard Provisions) Act 2014* under Part 8A of the Commission Act.



## Regulatory approach to change of ownership of a residential aged care service

### Accreditation of residential aged care services

Residential aged care services are required to be accredited to receive Australian Government subsidies. The Commission accredits services with regards to the quality of care and services delivered by the approved provider assessed against the Quality Standards. The Commission's decision to accredit a service is also based on the extent to which the approved provider demonstrates a commitment to undertake continuous improvement of the service in relation to the Quality Standards.

Where there is a transfer of a service, the **accreditation status of that service and the period of accreditation remains the same.** That is, accreditation of a service continues until it expires.

When accreditation expires after transfer of the service or where accreditation has expired prior to transfer, for example where accreditation has been revoked, the new approved provider can apply for re-accreditation of the service. In this circumstance, the new approved provider will not be eligible for Australian Government subsidies until the service meets its accreditation requirement. Decisions relating to accreditation of aged care services are published on the Commission's website.

### Existing compliance and enforcement action

The Commission's regulatory powers to respond to non-compliance are detailed in the [Compliance and Enforcement Policy](#).

Where there is a transfer of a service, **any regulatory action taken by the Commission in response to the previous approved provider's non-compliance with aged care responsibilities does not continue to be applied to the new approved provider.** This includes but is not limited to where the Commission has issued to the previous approved provider a direction to revise a plan for continuous improvement, a Non-Compliance Notice, a Notice of Requirement to Agree to Certain Matters or a sanction.

### Compliance with the Aged Care Quality Standards

The responsibilities of an approved provider in relation to the quality of the aged care and services that they provide include compliance with the Quality Standards.

Where the Commission has made a **finding of non-compliance with the Quality Standards, although this is in relation to a service, the non-compliance does not continue to be applied to the new approved provider on transfer of that service.**



Where the previous approved provider has been found to be non-compliant with the Quality Standards, **the Commission would seek to assess the new approved provider's performance against the Quality Standards following transfer.** This may occur through a site audit where the new approved provider has applied for re accreditation, through an assessment contact (performance assessment), or a review audit where there are new concerns regarding the quality of care and services.

Where the Commission is not satisfied that an accredited residential aged care service is meeting the Quality Standards and has low confidence in the new approved provider's commitment to sustained continuous improvement with respect to that service, the Commission may decide to vary or reduce the period of accreditation for the aged care service following a site audit or review audit. This may occur where the service is found to have significant non-compliance with the Quality Standards.

Where there is no finding of non-compliance in relation to the service operated by the previous approved provider at the point of transfer, the Commission considers the risk profile of the service and new approved provider to determine its regulatory monitoring response.

## Monitoring

Intelligence and risk profiling on the new approved provider, including advice from the provider on its plans to manage the quality and safety risks to consumers at the service post transfer, is critical in determining the Commission's regulatory response post transfer.

While a non-compliance finding for a service relating to the previous approved provider does not transfer to the new approved provider, the Commission continues to monitor the quality of care and services at the service, and this includes consideration of any known areas of risk.

## Complaints management

Complaints about aged care services delivered by the previous approved provider may be unresolved at the time of transfer to a new approved provider. For complaints that are unresolved upon transfer of a service, the Commission will confirm with the complainant whether the issue raised in the complaint is ongoing under the new approved provider.

If a complaint relating to the previous approved provider is raised and remains unresolved after a transfer, then the Commission will engage with the new approved provider to obtain new information about the issue raised in the complaint. The new approved provider will be required to cooperate with the Commission to resolve any ongoing complaints.

**Any evidence available to the Commission which may indicate that the previous approved provider was not complying with its aged care responsibilities in relation to the service, cannot be attributed to the new approved provider.**

The Commission will manage all new complaints received after a transfer with the new approved provider.



## Publication of information and performance history

The Commission publishes information on its website about a provider's performance in relation to their responsibilities as an aged care provider.

Where there is a transfer of a service to a new approved provider, this is reflected on the Commission website. All performance reports published prior to the transfer remain published to provide transparency for consumers about previous performance assessments at the service.

Information is also published on the service's compliance rating and Quality tabs on the **My Aged Care Website**. Currently on **My Aged Care** when a service transfers to a new approved provider, the following occurs:

- **Service Compliance Rating** – the performance of each aged care service has a dot rating out of 4 to show if it is meeting the compliance requirements for quality and safety. A 4-dot status means that there were no areas for improvement identified in the most recent quality assessment. Where there is non-compliance with the transferring service, the Commission archives any current sanctions (removing the 1 dot status) but retains information relating to the non-compliance against the Quality Standards arising from previous performance assessments. The expected Service Compliance Rating is 3 dots meaning 'some improvements required'. The first opportunity for this to be adjusted will be following a performance assessment or re-accreditation site audit of the service under the new approved provider (whichever comes first).

- **Compliance Tab** – the compliance history of the service including that pertaining to any previous approved providers is retained under the Compliance Tab.
- **Quality Tab** – the record of assessment of the performance against the Quality Standards in relation to the service remains in the Quality Tab. This is from the most recent performance assessment at the service (even if this was with the previous approved provider).

This means that on My Aged Care, the compliance history of a service continues to be available when ownership has transferred to a new approved provider. The Commission is working with the Department of Health to ensure that the information on My Aged Care accurately reflects the Commission's regulatory decisions and actions at the service while providing transparency to consumers on previous performance assessments.

For more information about the types of information the Commission publishes about provider performance, refer to the [Commission's Regulatory Bulletin on publication of provider performance information](#).



## Frequently asked questions

### 1. What is the accreditation process when a service has transferred to a new approved provider?

When accreditation expires or where accreditation has expired prior to transfer, the new approved provider can apply for re-accreditation of the service.

Application for re-accreditation of the service requires the new approved provider to first complete a self-assessment of their performance against the Quality Standards in relation to the service. In doing so, the new approved provider should consider if there has been an improvement since the last performance assessment, even if the assessment was under the previous approved provider.

In making an accreditation decision, the Commission will need to be satisfied that if the service is re-accredited, the new approved provider will undertake continuous improvement of the service in relation to the Quality Standards.

Information on applying for re-accreditation can be found on the [Re-accreditation of residential services](#) page of the Commission website.

### 2. Can the new approved provider of a transferred service apply for re-accreditation if the previous accreditation (prior to transfer) has been revoked?

Yes. When accreditation has been revoked prior to transfer, the new approved provider can apply for re-accreditation of the service.

The process to apply for re-accreditation of the service where accreditation has been revoked prior to transfer is the same as the process where the accreditation has expired prior to transfer. See response to Question 1 for information.

### 3. Are Performance Reports relating to a previous approved provider removed from the Commission's website?

The Commission produces a performance report following every site audit, review audit and assessment contact (performance assessment) undertaken with residential services.

The performance report is prepared by a Commission delegate and details the assessment of the approved provider's performance against the Quality Standards (compliance or non-compliance with the Quality Standards) in relation to a service. It may also specify areas in which improvements must be made by the approved provider of the service to ensure the Quality Standards are complied with.



Performance reports are not removed from the Commission website where there is a transfer of a service. This ensures transparency about the outcomes of the Commission's performance assessment processes. All performance reports are published on the Commission website and clearly identify the approved provider related to that performance assessment.

Performance reports can be accessed by searching for the service's dedicated performance information page via the [Find a report](#) function on the Commission website.

#### **4. Will regulatory action relating to the previous approved provider be attributed to the new approved provider of a transferred service?**

No. Any regulatory or enforceable regulatory action taken by the Commission in response to a previous approved provider's non-compliance with aged care responsibilities or non-compliance with the Quality Standards does not continue to be applied to the new approved provider.

Examples of regulatory or enforceable regulatory actions include but are not limited to a direction to revise a plan for continuous improvement, an Incident Management Compliance Notice, a Non-Compliance Notice, a Notice of Requirement to Agree to Certain Matters or a sanction on the previous approved provider.

The Commission will communicate with the new approved provider about any recent areas of non compliance at the service under the previous approved provider, including advice that these areas will be closely monitored by the Commission following the transfer.

The specific regulatory action taken by the Commission in relation to the previous approved provider will remain published on the Commission website.

#### **5. What are the implications for the new approved provider where the previous approved provider was found to be non-compliant?**

Where the previous approved provider had been found to be non-compliant with the Quality Standards, the Commission would seek to assess the new approved provider's performance against the Quality Standards to mitigate and manage any risks to the delivery of quality and safe care to consumers at the service.

This may include a focus on areas of non-compliance identified under the previous approved provider to ensure that the new approved provider is addressing known risks to the quality and safety of care being delivered at the service.

This may occur through a site audit where the provider has applied for re-accreditation, through an assessment contact (performance assessment), or a review audit where there are new concerns regarding the quality of care and services. The new approved provider will be required to cooperate through this process.





## **6. What are the circumstances in which the Commission will take compliance action in relation to the new approved provider of a transferred service?**

The Commission will take compliance action if it is satisfied that the new approved provider has failed or is failing to comply with one or more of its aged care responsibilities.

Following a transfer of a service, evidence of non-compliance relating to the previous approved provider cannot be attributed to the new approved provider of the service.

The Commission will gather new evidence to determine whether the new approved provider of a service has complied or is complying with their aged care responsibilities. This new evidence can include how the new approved provider has addressed the areas of concern identified through the prior non-compliance that occurred under the previous approved provider.

## **7. What regulatory monitoring response will the Commission take if there was no non-compliance with the previous approved provider at the point of transfer?**

Where there was no non-compliance finding for a service under its previous approved provider at the point of transfer, the Commission would consider the risk profile of the service and new approved provider to determine the regulatory monitoring response.

The Commission will undertake a site audit if the new approved provider has applied for re-accreditation (that is, where the accreditation of the service under the previous approved provider is expiring or has expired).

The Commission may undertake an assessment contact or review audit if it considers that the service under the new approved provider may not be meeting the Quality Standards, or if there are other risks to the quality of care and services.

The Commission uses a risk-based and proportionate approach to determining the arrangements for an assessment contact, including when the assessment contact will be conducted and for what purposes. For more information about assessment contacts, refer to the [Commission's Regulatory Bulletin on assessment contacts in residential and home services](#).



## Need to know more?

If you have any questions or feedback on this Bulletin, please send an email to: [info@agedcarequality.gov.au](mailto:info@agedcarequality.gov.au)

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