

Submission to Senate Committee
The Aged-care Rights Service Inc (TARS)
Consultation Draft- Home Care Packages Program Guidelines
(‘the Guidelines’)
May 2013

Preamble

TARS is an independent legal centre that specialises in providing aged care advocacy and legal services to older people throughout NSW. As such, we have specialist knowledge of the issues affecting older people who are the recipients of Commonwealth funded Aged Care services.

We request that the Committee carefully consider our submission. Please do not hesitate to contact us should you require further information or case studies.

Introduction- Call for standardised agreements across all aged care

Older people frequently sign aged care agreements at a very stressful time in their lives. If they are immobile, sick, losing capacity or have lost capacity then it is left to an informal or formal representative to sign the document. The older person may be asked to sign the document when they don't know or really understand what they are signing. This may be under duress. It is an emotional time. There is no legislation regulating timing for provision of and execution of these documents. Older people should not be asked to sign the document 'on the spot.' Further, there should be a regulated cooling-off period of 14 days and a settling-in period. There is no requirement that the operator advise the older person to obtain independent financial and legal advice.

Home Care and Residential Care Agreements are currently drafted heavily in favour of the approved provider. Additionally, not all approved providers are a member of an industry association, and therefore do not come under their influence. Such sole providers may add other anomalies to their agreements. There is an urgent need for a stronger, clearer, more transparent standard agreement because the recipient of the care is old, and invariably frail and vulnerable.

If the Guidelines come into effect simply as 'Guidelines' and without a standard contract, they will have no effect on the industry, in terms of fixing systemic and serious problems. Overall, it is unclear how this document will interact with the contract that the older person will sign.

Recommendation

The new Guidelines should provide for a mandatory standard contract to be regulated. TARS proposes that a working party consisting of TARS (as an independent advocacy service funded under NACAP), consumer advocates such as COTA, ACOSS, and peak industry bodies, and the Department

should be formed to draft a standard community care contract. The contract should be as simple and user friendly as possible

Further Recommendations

1.The Checklist:

Box 3- this should also state that the resident has the right to independent legal advice about security of tenure and their contract. Currently, we are aware that aged care providers often suggest to the older person and their family that they make use of the provider's solicitor. This is a conflict of interest for the solicitor and it is also not in the interests of the older person for the provider to suggest this. This suggestion should not be made by the provider. This Box needs to refer to the need for independent legal advice from the solicitor of their choice. If they don't have one, they should be referred to the state Law Society Solicitor Referral Line.

Box 4- again legal advice is required.

2. Page 29 'Purpose Statement'. This should also be a term of the contract.

3. Refer 3.1.5 point 5 "adjustment of the Home Care Agreement' should be amended to read 'variation of the Home Care Agreement'.

4. Refer 3.22- Planned Expenditure:

a) Administration costs

A number of the items on this list should be struck out as they are unreasonable. The amended Aged Care Act should include a "prohibited items list" of budget items that cannot be charged to the resident. The comments we have set out below also refer to the comments in 3.3 about 'Monitoring Review and Reassessment'.

The prohibited items should include:

- corporate overheads- this is covered by a number of other items including capital costs, government reporting, insurance, staff and IT.
- ongoing research and service improvements- what is this? An explanation is required. If it is marketing and PR, that should not be paid out of this budget.
- advocacy. This should be struck out. Any advocacy provided by the aged care provider is a conflict of interest. We refer you to our comments at point 6 below.
- consumer communication- what is this? If it is marketing it should not be paid for by the recipient.
- setting up and cancelling appointments- this is covered by case coordination below.

(b) Core advisory and care coordination services

- Case coordination, ongoing monitoring and informal reviews, and formal assessments all overlap. Ongoing monitoring cannot be budgeted for if it is not clear how often this happens. For instance there should be a budget line item for monthly or fortnightly monitoring, and one for 6 monthly or yearly reassessments.
- Provision of support to consumers who elect to manage their packages themselves. This appears to be support for people who are supporting themselves. The line item should specify what kind of support, how much it will cost and how often. For example, a six monthly or three monthly meeting with them could be budgeted. Again, this appears to overlap with Service and Support Provision.

Importantly, if the budget is made more transparent and if there are prohibited line items, government funding could be saved as well as put towards a free initial legal advice and advocacy service for care recipients, before they sign their contract. At present, there is no free legal advice service for people in Australia who enter into accommodation agreements and/or home care agreements.

5. Refer 3. Security of Tenure, at page 48. We note the Guidelines state ‘Security of Tenure provisions for the Home Care Packages Program are currently being considered.’

We suggest that a security of tenure clause should be written into the Aged Care Bill and further that the Bill should set out the limited means by which an accommodation and/or home care agreement can be terminated by the aged care provider.

6. Refer Part F- Rights and responsibilities at 2.2 Advocacy. We are aware that some providers are identifying particular staff members as an “advocate” and then funding that role out of residents’ care packages. As previously mentioned, this is a conflict of interest and is against the interests of the resident. When the provider acts as advocate for the resident, they are in effect acting for themselves and we can provide case studies in that regard. The residents already have access to independent advocates at TARS in NSW and equivalent organisations in other states as well as the National Aged Care Advocacy Line.

This issue is best resolved by means of our budget recommendation.

7. Refer 3.1.2 User Rights.

Residents’ Rights- The User Rights Principles

As the Committee would be aware, the User Rights Principles 1997 (URP) were made under the Aged Care Act 1997 (the Act) which included a Charter of Residents’ Rights and Responsibilities. At present, if an aged care provider acts in breach of the URP, then ultimately they may lose their accreditation. We agree that penalties should apply for any breach of the URP. We commend the decision to include of a copy of the Charter of Rights for residential and community care recipients in their agreements.

If a complaint is made about the aged care provider and/or the care they provide or their staff, the complaint will go to the Aged Care Complaints Scheme. In our experience, action may not be taken

to penalise the provider and more importantly to remedy the existing problem. We emphasise that the Committee should consider the safety and best interests of the older person in the facility as paramount over and above the commercial interests of the aged care provider. The aged care provider will still profit by providing safe and abuse-free services.

The Committee should consider the legal consequence of breaching the URP if an aged care provider is in breach of the URP there should be a range of penalties for specific legal offences for serious breaches. Penalties should be enforced. The Bill should include the categories of offences and impose mandatory penalties that are commensurate with the severity of the breaches.

.Additional box- Inform prospective aged care recipients that information about fees, charges and bonds is available from The Department of Health and Ageing, Centrelink Financial Information Service Officer, National Information Centre on Retirement Investment or, if they choose, to seek the advice of a financial advisor.

We refer you to our recommendations in relation to offences in breach of the URP. We believe these provisions need to be strengthened.

8. Refer 4.1 Key Personnel.

We are experiencing an increasing number of cases of client who are financially abused by staff. If this is exposed by the provider, often the staff member moves on to a different provider and can continue to commit offences on older people. As we are aware that this problem is increasing, we request that the Committee consider how the legislation can be tightened.

The Aged Care Rights Service Inc

May 2013

Contacts: Ms Patricia Joyce, Manager of Advocacy

Mr Thomas Cowen, Principal Solicitor.