



Australian Government  
Department of Health

# Red Tape Reduction in Aged Care Places Management Guide

Guidance Material for Approved Providers

May 2016



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## Contents

Foreword .....	2
Introduction .....	3
How the guidelines will be updated .....	3
Further Information .....	3
Chapter 1 - Provisionally Allocated Places .....	4
Introduction .....	4
Progress Reports .....	4
Application for Extension .....	5
Application for Extension Due to Exceptional Circumstances .....	6
Cessation of Provisional Allocations of Places .....	7
Revoking and Surrendering Provisional Allocations .....	7
Chapter 2 – Transfer of Aged Care Places .....	8
Introduction .....	8
Transfer of Operational Aged Care Places .....	8
Transfer Notice .....	8
Notice to Resolve .....	8
Vetoing the Transfer Notice .....	8
Allowing the Transfer to Proceed .....	9
Change of Circumstances .....	9
Transfer of Provisionally Allocated Places .....	9
Transfers Involving Extra Service Status Places .....	9
Chapter 3 – Reviewable Decisions .....	11
Additional Information .....	12

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## Foreword

The *Aged Care Amendment (Red Tape Reduction in Places Management) Act 2016* became law on 10 February 2016. This Act amended the *Aged Care Act 1997* (the Act) to streamline the transfer of aged care places between approved providers, and the management of provisionally allocated aged care places.

### ***Transfer of Places***

The process for transferring places between approved providers has been streamlined by deeming proposed transfers as approved. This approval is subject to the Secretary's power to veto any proposed transfer which makes sure that only transfers that uphold standards of appropriate care and meet other requirements outlined in the Act and the *Allocation Principles 2014* (Allocation Principles), will progress.

Red tape has been minimised for approved providers by reducing the number of questions contained in the Transfer Notice by approximately 50%. The more streamlined Transfer Notice Form will be considered in conjunction with information held by the Department, its agencies and statutory authorities, where appropriate, to determine if a Veto Notice or a Notice to Resolve will be issued or if the transfer will be allowed to proceed.

### ***Provisionally Allocated Places***

Red tape has been reduced for approved providers by extending the initial provisional allocation period from two years to four and thereby reducing the need for approved providers to apply for extensions. The amendments will also ensure that care is provided to older Australians in a reasonable timeframe by limiting the number of extensions available.

This Guide explains the operational requirements for places management and includes clarification of the responsibilities of approved providers under the Act and the various aged care principles which govern the management of places.

We trust you will find this guide a valuable tool that will assist in you in managing your residential aged care places.

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## Introduction

This guide is intended to provide general information about aged care places management. The guide should be read in conjunction with the *Aged Care Act 1997* and the various Aged Care Principles. Assistance should be sought from the Department of Health should you have any questions or would like further information.

### How the guidelines will be updated

The Department of Health will update the guide as required to ensure its information is accurate.

Please refer to the online version of the guide located on the Department's website to ensure that you have the most recent version.

### Further Information

For further information, click on the relevant link below:

[\*Aged Care Act 1997\*](#)

[\*Administrative Appeals Tribunal Act 1975\*](#)

[\*Accountability Principles 2014\*](#)

[\*Allocation Principles 2014\*](#)

[\*Approval of Care Recipients Principles 2014\*](#)

[\*Approved Provider Principles 2014\*](#)

[\*Certification Principles 1997\*](#)

[\*Classification Principles 2014\*](#)

[\*Committee Principles 2014\*](#)

[\*Complaints Principles 2015\*](#)

[\*Extra Service Principles 2014\*](#)

[\*Fees and Payments Principles 2014 \(No.2\)\*](#)

[\*Grant Principles 2014\*](#)

[\*Information Principles 2014\*](#)

[\*Quality of Care Principles 2014\*](#)

[\*Records Principles 2014\*](#)

[\*Sanctions Principles 2014\*](#)

[\*Subsidy Principles 2014\*](#)

[\*User Rights Principles 2014\*](#)

[\*Guide to Aged Care Law\*](#)

# Chapter 1 - Provisionally Allocated Places

## Introduction

Approved providers who receive a provisional allocation of residential aged care places are given an initial provisional allocation period of four years with potentially two 12 month extensions available on application. Extensions beyond six years are only available where the approved provider can demonstrate it is warranted due to exceptional circumstances.

Provisional Allocation Period				Potential Period of Extension		Period of Exceptional Circumstances
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	

## Progress Reports

It is a condition of allocation that approved providers are required to provide to the Department annual reports on their progress towards bringing their provisionally allocated places into effect during the first three years of the provisional allocation period. Each report must be submitted by the anniversary date of the provisional allocation. (see more [information here](#))

The report must be provided in a format approved by the Department. The approved progress report form can be accessed by [clicking here](#).

The Department may request in writing additional reports where necessary during the provisional allocation period. Where such a request is made, it is a condition of allocation that the report must be submitted using the above mentioned form within 14 days of receiving the request or such longer period as specified in the request.

At the end of the initial provisional allocation period (year four), the places will lapse unless the approved provider lodges and the Department approves either:

1. an application for an extension of the provisional allocation period; **OR**
2. an Application to Provide Care form.

Years	Document to be Submitted
1 – 3	Annual Progress Reports (due on the anniversary date of allocation*)
4	Application to Provide Care Form for the allocation to take effect (should be submitted at least 28 days before the places are expected to take effect) <b>OR</b> Application for an Extension of the Provisional Allocation Period (due 60 days before the end of the provisional allocation period**)
<b>If an extension to the provisional allocation period is granted</b>	
5	Application to Provide Care Form for the allocation to take effect (should be submitted at least 28 days before the places are expected to take effect) <b>OR</b> Application for an Extension of the Provisional Allocation Period (due 60 days before the end of the provisional allocation period**)

If an extension to the provisional allocation period is granted	
6+	<p>Application to Provide Care Form for the allocation to take effect (should be submitted at least 28 days before the places are expected to take effect)</p> <p><b>OR</b></p> <p>Application for an Extension of the Provisional Allocation Period <b>Due to Exceptional Circumstances</b> (due 60 days before the end of the provisional allocation period<sup>**</sup>)</p> <p>(Please note this form is different from the extension forms used in years four and five).</p>

The transferring of provisionally allocated places does not create a new date of allocation. This means that the date of allocation (and in turn the date which places would lapse) remains the same date from when the places were first allocated, regardless of whether they have been transferred since.

**Notes:**

Previously granted extensions to the provisional allocation period, which have not had the effect of extending the period beyond four years, are not considered to be extensions, under the current arrangements. Beyond four years approved providers are permitted two 12 month extensions before exceptional circumstances must be demonstrated.

All forms related to provisionally allocated places are to be submitted to your State or Territory Office, the emails for which are listed on page 12, at the end of this Guide.

(\*)It is possible to submit a single report covering multiple allocations made to the same service. Where doing so, the report must list each allocation being covered and be submitted by the earliest anniversary date of the allocations.

(\*\*)You may ask the delegate to allow an application to be made closer to the end of the provisional allocation period. To do so, please contact your relevant State/ Territory office of the Department, using the contact details at the end of this document.

The Application for an Extension of the Provisional Allocation Period form and the Application for an Extension of the Provisional Allocation Period **Due to Exceptional Circumstances** form are both available by [clicking here](#).

**Application for Extension**

In the event that provisionally allocated places are not operational by the end of year four, the approved provider may lodge an application to extend the provisional allocation period for 12 months. If a first extension is granted and the provisionally allocated places are still not operational at the end of the fifth year, approved providers can apply for a second 12 month extension.

Extensions into year five and six will only be granted where the Secretary is satisfied that granting the extensions is justified in the circumstances, and that granting the extensions meets any requirements specified in the Act.

Any further extensions after the second 12 month extension will only be granted if the approved provider can demonstrate that exceptional circumstances justify the granting of the further extension.

The Department will notify applicants within 28 days of receiving an application for extension and at least 14 days before the end of the provisional allocation period.

As stated above, the Department may on request accept applications for extension submitted less than 60 days from the end of the provisional allocation period. However, please be aware that the

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requirement to notify applicants at least 14 days prior to the end of the provisional allocation period may prevent the Department from accepting an application made too close to the end of the provisional allocation period.

The decision to reject an approved provider's application for extension is a reviewable decision (See Chapter 3 – Reviewable Decisions).

## Application for Extension Due to Exceptional Circumstances

If provisionally allocated places are not operational after two extensions (i.e., after a provisional allocation period of up to six years), the approved provider may apply for a further 12 month extension under the exceptional circumstances provision.

The Secretary must have regard to all legally relevant matters when considering whether exceptional circumstances justify the granting of an extension due to exceptional circumstances. Under the Act/Allocation Principles, the Secretary must have regard to:

- a. whether there are any unusual or unforeseen matters outside the control of the approved provider, including but not limited to the occurrence of a natural disaster or emergency situation, preventing the approved provider from applying under section 15-1 of the Act for a determination that the approved provider is in a position to provide care; and
- b. whether the approved provider will be in a position to provide care within the period of the extension; and
- c. whether granting the extension is necessary because no other provider is able to satisfy the care needs in the region.

The Department will notify applicants within 28 days of receiving an application for extension and at least 14 days before the end of the provisional allocation period.

As stated above, the Department may on request accept applications for extension submitted less than 60 days from the end of the provisional allocation period. However, please be aware that the requirement to notify applicants at least 14 days prior to the end of the provisional allocation period may prevent the Department from accepting an application made too close to the end of the provisional allocation period.

The decision to reject an approved provider's application for extension is a reviewable decision (See Chapter 3 – Reviewable Decisions).

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## Cessation of Provisional Allocations of Places

Provisionally allocated places will cease to be provisionally allocated to the approved provider when one of the following events occurs:

1. the provisionally allocated places become operational and the allocation takes effect; or
2. the provisional allocation period expires;
3. an application to extend the provisional allocation period is rejected;
4. the provisional allocation is revoked;
5. the provisional allocation is surrendered.

Where an application to extend the provisional allocation period is rejected, the provisional allocation period ends on the later of:

1. the end of the day 28 days after the approved provider is notified of the rejection;  
or
2. the time when there is no further reconsideration or review of the decision pending.

## Revoking and Surrendering Provisional Allocations

The Secretary may revoke a provisional allocation of places only if the Secretary is satisfied that a condition of the provisional allocation has not been met (Section 15-4 of the Act).

An approved provider may surrender provisionally allocated places at any time before the end of the provisional allocation period (Section 15-6 of the Act). An approved provider must notify the Secretary in writing of its intention to surrender provisionally allocated places.



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## Chapter 2 – Transfer of Aged Care Places

### Introduction

Aged care places can only be transferred to another approved provider through the submission of a Notice to Transfer Aged Care Places form (Transfer Notice) to the Department. The Transfer Notice must be complete and signed by both the transferee (the approved provider) and the transferor (the transferring approved provider).

### Transfer of Operational Aged Care Places

#### Transfer Notice

The Transfer Notice must be submitted to the Department no later than:

60 days before the transfer day *	If the transferee is an approved provider
90 days before the transfer day *	If the transferee is not an approved provider, or has its approval limited to a particular type of care which does not include the care type of the places being transferred

**Note:** (\*) a shorter period may be approved if requested and approved as justified in the circumstances by the Secretary.

The approved Transfer Notice form can be downloaded from the Department's website ([click here](#))

On receipt of the Transfer Notice, the Secretary will consider whether or not the transfer should be vetoed. The matters the Secretary must consider are listed in Section 16-3 (16-14 for transfers of provisionally allocated places) of the Act and Section 48 of the Allocation Principles.

#### Notice to Resolve

Where the Transfer Notice raises concerns for the Secretary, the Secretary may issue a Notice to Resolve to the transferor and transferee. The Notice to Resolve will specify:

- the issues that are of concern;
- the actions to be taken to resolve the issues;
- who is to resolve the issue; and
- that if the issue remains of concern to the Secretary, the Secretary may issue a veto notice after receipt of submissions.

A Notice to Resolve can only be issued in the 28 days after the Secretary receives the Notice to Transfer. Both the transferor and the transferee have 28 days to make written submissions to the Secretary addressing the issues. If the issues identified in the Notice to Resolve are not resolved, or the Department is not notified of their resolution, the Secretary may also issue a Veto Notice.

When a Notice to Resolve is issued, the transfer day is extended by 28 days and becomes the 29<sup>th</sup> day after the day the transfer was to occur, prior to the Notice to Resolve being issued (which is usually the transfer day specified in the Transfer Notice).

#### Vetoing the Transfer Notice

The Secretary can veto a transfer of places up until seven days prior to the proposed transfer date. Circumstances in which the Secretary may veto the transfer include when:

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- a Notice to Resolve has been given in respect of the transfer and issues specified in that notice remain of concern to the Secretary; or
  - the Secretary is not satisfied of the matters in section 16-3 in relation to the transfer of operational places (16-13 for provisionally allocated places); or
  - for cases where the transfer would result in residential care in respect of the place being provided through a residential care service in a different location where that residential care service has, or a distinct part of the service has, extra service status – neither subsection 16-7(1) nor (2) applies in relation to the transfer (see under Allowing the transfer to proceed); or
  - the proposed transfer would result in the place being transferred to another aged care planning region, State or Territory; or
  - circumstances specified in the Allocation Principles.

After receiving the Veto Notice, the transferor and transferee can reapply to transfer the places or seek to have the decision reviewed (see Chapter 3 – Reviewable Decisions).

## Allowing the Transfer to Proceed

If the Secretary does not issue a Veto Notice, the transferring parties will be advised in writing that the transfer will proceed and the day on which the transfer will occur.

Note that the transfer cannot take effect if the transferee is not an approved provider on the transfer day.

## Change of Circumstances

If the information included in a Transfer Notice changes, the notice is taken not to have been given unless the transferor and the transferee give the Secretary written notice of the changes.

When written notice of a change to the Transfer Notice is given to the Secretary on or after the day 28 days prior to the transfer day, the transfer day is pushed back 28 days and becomes the 29<sup>th</sup> day after the day the transfer was to occur, prior to the notice being given to the Secretary.

## Transfer of Provisionally Allocated Places

The transfer of provisionally allocated places is treated similarly to the transfer of operational places. However, the Secretary may veto the transfer of provisionally allocated places where the location in respect of the places are provisionally allocated will change as a result of the transfer. For more information on what the Secretary must consider when a transfer of provisionally allocated places is proposed, please refer to section 16-13 of the *Aged Care Act 1997*.

## Transfers Involving Extra Service Status Places

Where a transfer is proposed that would result in residential care in respect of the place being provided through a different residential care service where that residential care service has, or a distinct part of that service has, extra service status, the transfer will likely be vetoed unless the Secretary is satisfied that:

- the places other than the places to be transferred could, after the transfer, form one or more distinct parts of the residential care service; or
- granting the transfer would be reasonable, having regard to the criteria set out in section 32-4 of the Act; and

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- granting the transfer would not result in the maximum proportion of extra service places under section 32-7 of the Act for the State, Territory or region concerned, being exceeded; and
  - any other requirements set out in the Allocation Principles are satisfied.

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## Chapter 3 – Reviewable Decisions

Reviewable decisions under section 85-1 of the Act include the decision to:

- reject an application to provide care;
- reject an application to extend the provisional allocation period;
- revoke a provisional allocation of places; and
- veto a Transfer Notice.

Any person whose interests are affected by these decisions may request the Secretary to reconsider the decision.

The request for reconsideration must be made by written notice within 28 days (or such longer period as the Secretary approves) after the day on which the person first received the notice of decision.

The Secretary has 90 days from the day the request for reconsideration was received to provide notice of a new decision. Where no new decision is made during this 90 day period, the original decision is considered to be affirmed.

If the affected person is not satisfied with the Secretary's reconsidered decision, they may then apply to the Administrative Appeals Tribunal for further review.

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## Additional Information

If you have any questions about aged care places management please phone 1300 653 227 and ask to speak with a Departmental Officer in aged care in your State or Territory or email:

New South Wales & ACT	NSWplaces@health.gov.au
Victoria	VICplaces@health.gov.au
Queensland	QLDplaces@health.gov.au
South Australia	SAPlaces@health.gov.au
Western Australia	WAPlaces@health.gov.au
Tasmania	TASplaces@health.gov.au
Northern Territory	NTplaces@health.gov.au

For more information please refer to the Guide to Aged Care Law ([click here](#))