

## Nursing home “no returns” policy, when residents are discharged to the emergency department at 4 am: what does the law say?

TO THE EDITOR: Behavioural and psychological symptoms of dementia can manifest as aggression directed towards staff or other residents,<sup>1</sup> often culminating in recourse to the local emergency department as a “permanent solution”. What does the law say?

Under Division 2, User Rights Principles 2014 (section 96-1, *Aged Care Act 1997*), the only circumstances in which a provider may ask a care recipient to leave a residential care service are if (i) the service is closing; or (ii) the service no longer provides suitable accommodation and care (as assessed by an aged care assessment team or at least two medical or other health practitioners chosen by the recipient who are competent to assess their care needs) and the provider has not agreed to provide the care that the recipient presently needs; or (iii) the recipient no longer needs the care provided, as assessed by an aged care assessment team; or (iv) the recipient has not paid any agreed fees for a reason within their control; or (v) or the recipient has intentionally caused serious damage to the service or serious injury to staff or another care recipient; or (vi) the recipient is away continuously for 7 days or more from the service for reasons not permitted by the Aged Care Act or an emergency.

The approved provider must neither imply nor take action to make the care recipient leave, unless suitable alternative accommodation is available that is affordable and meets the care recipient’s needs. Written notice must be given of the decision and reasons for it.

A person cannot be asked precipitously to leave a nursing home or, in practical terms, hospital staff or family cannot be told that a bed is no longer available without adhering to the guidelines above. Intention regarding injury and behavioural and psychological symptoms of dementia is complex and cannot be used as grounds for discharge without proper assessment. An alternative is to use the Dementia Behaviour Management Advisory Service and Severe Behaviour Response Teams (24-hour helpline: 1800 699 799), which provide clinical support for carers of people with behavioural and psychological symptoms of dementia.

facilities should be resourced sufficiently to fulfil their commitments under the Aged Care Act to care for residents with behavioural and psychological symptoms of dementia.

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**Acknowledgements:** This work is part of the Empowered Project (<https://empoweredproject.org.au/>) funded by the Australian Government through the Dementia and Aged Care Services Fund.

**Competing interests:** No relevant disclosures. ■

doi: [10.5694/mja17.01196](https://doi.org/10.5694/mja17.01196)

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