Estia Health

Aged Care Act 2024 Rules 2025 – Stage 2 B Consultation

Prepared by
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Department of Health and Aged Care

Higher Everyday Living Fee (HELF) Release 2B Consultation
Subdivision G

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Higher Everyday Living Fee (HELF) Release 2B Consultation – Subdivision G

Estia Health welcomes the opportunity to provide feedback on the proposed Higher Everyday Living Fee (HELF) framework under Release 2B of the Aged Care Act 2024 Rules.

Estia Health operates 78 residential aged care homes across Queensland, New South Wales, Victoria and South Australia. More than 4,700 of our residents access some form of Additional Services (AS) through an additional services agreement. These agreements typically cover the time the resident lives within an Estia Health home, ~3 years on average. Resident feedback regarding these arrangements is positive and the opt-out rate is low.

We support the Government's intention to continue regulations that promote the provision of services beyond those subsidised by the Commonwealth and which require transparency regarding the scope of services and price under the HELF agreement.

In considering the draft rules, we have identified some operational, legal, and financial challenges that need to be reviewed to ensure HELF offerings meet resident needs, can be a viable offering by providers, and promote innovation.

Our key concerns and recommendations are outlined in the following pages. We also make several higher-level observations in the closing paragraphs.

Resident Rights

The requirements set out in the proposed Rules go well beyond the requirements in the Act. Parliament has provided no support nor guidance in this area and overall, many of the proposals place restrictions on the individual's right to contract under the guise of protecting them from providers. This is incongruous in an Act that the Government has promoted as an act that both creates and protects the rights of individuals. That would include the right to contract.

Specifically, while we accept that the Act has made high level provisions regarding the timing of contracting, it seems odd to us that while the Act is promoted as supporting the rights of older Australians, the Rules seek to restrict certain aspects of contracting (and thereby the rights of the resident) that would not be a feature of the residents' life before admission. We also note that the proposed Rules go beyond what was announced prior to the passage of the legislation.

We remain unsure why a prospective resident, typically with supporters, representatives or consultants assisting them through the process, is able to select an aged care home and enter into contracts for care and accommodation, including out of pocket costs, a Refundable Accommodation Deposit of up to $750,000 (without IHACPA approval) with a 2% retention, yet their rights are infringed by preventing them from entering into a contract for HELF as part of the admission process.

In fact, not being able to contract HELF prior to admission creates uncertainty for the resident in so far as they have no certainty or overall view regarding the price and range of services that the provider will offer. There can be no offer from the provider on which they can rely because the provider is prohibited from doing so.

Innovation and Supply

A viable HELF regime will be a key factor in assisting and incentivising providers to innovate their product and service in a system that is highly regulated, particularly regarding inputs such as labour. This innovation is critical to ensure ongoing improvements in resident outcomes and the experience of those utilising residential aged care services.

A balanced HELF regime will also be a critical factor in driving the necessary supply of new places into the system to match the growth in demand and replacement of obsolete stock. Providers are less likely to risk capital investment in physical amenities such as rehabilitation gyms, cafes, beauty/hair salons, smart TV and Wi-Fi infrastructure if the certainty of utilisation is reduced. Typically, new homes, such as our newest homes in St. Ives and Aberglasslyn (both NSW), are designed to deliver a model above the base service list in areas of the home, which are a key factor in supporting the large capital investments required to build a new home or wing. These physical amenities, listed above, are all services highly attractive to our residents.

Any material undermining of the current Additional Services and Extra Service (ES) regime is highly likely to slow the provision of new places into the market.

Implementation & Transition

With four months before the proposed implementation of HELF, and with consultation still underway, additional time is required for providers to ensure there is necessary time to design a product and service model compatible with any changes, ensure systems, processes and contracts are in place, service models are established and necessary training for employees is undertaken.

We note the DHAC advice that the target date for Rules publication is late May. That timing provides approximately five weeks to design and implement a HELF product. Given a consultation is being undertaken, it is fraught with risk to design a product based on draft Rules.

In addition, third-party software providers will not start developing software changes until the rules are set, which means providers are unlikely to have the systems needed in place by 1 July 2025.

We propose that providers be permitted to contract new residents under a HELF or an existing Additional/Extra Service arrangement until 30 June 2026, rather than a hard commencement date of 1 July 2025.

Further, it is necessary to consider the proposed transition arrangements whereby all AS/ES residents must elect to transfer to a HELF product by 1 July 2026 or cease receiving services.

We recommend existing AS/ES agreements are grandparented under a ‘no worse off’ notion. With grandparenting arrangements for existing residents applying in almost every other circumstance under the new Act, there is no need for residents to be forced into transitioning to the new HELF if those originally contracted services are still being provided and the resident can enjoy and utilise them.

The risk in not adopting this ‘no worse of approach’ is that the HELF product may be different to the current AS or ES program in terms of content and price. Our view is that residents contracted for AS or ES should not have those contracts terminated.

Service Delivery

Currently, the provision of Additional Services and Extra Services are typically offered and delivered in some homes or areas within a home, which is designed into the service model of the home and explained and understood by incoming residents upon admission. Those residents make a choice to enter that home or area, with certain knowledge of that service model.

There are circumstances where a resident chooses to opt-out (as they are able under our contracts) or is unable to benefit from the service, however, typically, there is no discernible distinction between the services provided to different residents in a particular home or area of that home.

Under the changes proposed in the Rules, there will be an unintended consequence created whereby a two tier system will prevail, meaning a resident will enter a home or area of a home with a physical and/or service model that was designed in a certain manner, particularly for newer homes whose design and development feasibility was created around that model. Despite being aware upon entry that the home or area of a home is designed in that way, the resident elects not to participate in that model and revert to the 'base' services under the statutory services list. This then creates a situation whereby there is a dual service model in place within the same areas of the home, with a distinction in items like meal choice, alcohol with meals and opportunity to attend certain functions or entertainment.

This places both the employees of the provider and the residents themselves in a difficult position whereby a differential service is provided to residents in the same area of a home.

Providers should be entitled to design and designate certain homes or areas, with a service model aligned to HELF and ensure transparency for incoming residents as to the cost and scope of those services. The current consumer protections, such as the ability to use and benefit from the service, should continue to apply.

We have provided more detailed comments and recommendations to the specific provisions of the proposed Rules (and the published Fact Sheet) in the following pages.

As always, we welcome the opportunity to engage in more direct and detailed engagement on the issues outlined in our submission.

Yours sincerely,

[redacted]

Sean Bilton
Chief Executive Officer
Estia Health

Considerations and response

284-10 (4) (a)

Termination within 28 days

The proposed rule provides that 'The resident may vary or terminate the ***[new]*** *agreement within 28 days after the agreement is entered into without giving notice to the provider.....'*

Recommendation

We support the proposition that the resident may terminate the agreement but argue that the right of the resident to unilaterally vary the agreement should be deleted. That clause is inconsistent with the laws relating to contracting and creates unmanageable contracts. Any variations should be by mutual consent.

284-10 (4) (b)

Termination after 28 days

The proposed rule provides that 'the individual or the provider may vary or terminate the agreement with 28 days' notice to the other party......at any time after the end of 28 days after the agreement is entered into'.

As above, we contend that the unilateral right of the resident to vary the agreement should be deleted.

In relation to termination, it is extremely unusual for a service contract to be a 28 day contract that rolls over each day.

There are real and significant costs to the provider in setting up services in relation to Additional Services (AS) and these costs would also apply to future HELF programs. Some items are structural and require significant capital expenditure, while the provision of other services require a certain utilisation to make their provision tenable. For example, in room items like telephone services, Wi-Fi, Foxtel access or buses for resident outings. In this scenario, all residents at some homes may miss out on the services that they enjoy today due to low take-up or high opt-out rates.

The proposed rules around termination differ significantly from the existing AS arrangements whereby the resident and provider agree the term of the agreement. Estia Health agreements provide the resident can opt-out of services after a fixed period, unless they can no longer derive a benefit from a service within the package. In this instance, we either discount or cease the AS charge.

Furthermore, the administrative burden to home employees of constantly opting residents in and out of the HELF regime and the delivery of mixed service models, has the potential to impact resident care outcomes due to significant time and cost impost. In consideration of this, providers may increase the costs of HELF packages to ensure continued service delivery in the case of higher than expected volume of residents opting out, to mitigate financial and operational risk.

It is also noted that if a resident changes their mind after terminating their agreement and wants to opt back in to a HELF program, the provider may decide not to agree to this, due to financial and administrative burdens associated with delivering the programs as outlined above. It is important to note that HELF requires agreement from both parties and a resident will not automatically have the ability to recommence a HELF package.

Recommendation

The provision to opt out within the first 28 days as set out in 284-10 (4) (a) remains and that subsequent to that initial 28 day period, the parties may agree a period of up to 12 months during which the resident may terminate the contract with 28 days' notice for reasonable cause, such as if they cannot derive a benefit from the services due to conditions outside their control.

284-10 (8)

Annual Review

Clause 284-10(8) of the Aged Care Act 2024 mandates the annual reviews of HELF agreements.

This requirement may lead to administrative redundancy and increased operational burdens for providers, considering the existing comprehensive assessment and planning processes already in place.

Under the current Aged Care Quality Standards, particularly Standard 2 (Ongoing assessment and planning with consumers), providers are already obligated to:

(1) conduct initial and continuous assessments in partnership with consumers, focusing on optimising health and well-being in accordance with their needs, goals, and preferences

(2) document outcomes of assessments and discussions in a care and services plan, setting agreed review dates and

(3) update care and services plans as the consumer's needs, goals, or preferences change, and after any transition between services.

Clause 284-20 (b) (i) provides that providers must not charge a HELF in the circumstances where the individual is not able to use the service. This requirement, together with the proposed right of the individual to terminate the contract with 28 days notice at any time, and requirements under the Quality Standards for the ongoing assessment of care and services, provides a real and ongoing process of review. There is no need for an additional annual review to be specified.

Recommendation

Support a needs-based review schedule. Instead of enforcing a fixed annual review, reiterate a needs-based approach where HELF agreements are reviewed (a) when significant changes occur in a resident's health status, preferences, or care requirements, (b) at the resident's request, ensuring their autonomy and satisfaction with the services provided. Estia Health completes this process quarterly under the existing AS program. Elements of AS that the resident is no longer able to enjoy are removed.

This approach aligns with the principles of person-centred care, ensuring that services remain relevant and responsive without imposing arbitrary timeframes. By integrating HELF service evaluations into existing assessment and planning processes, adopting a needs-based review schedule, and enhancing flexibility in conducting reviews, providers can maintain compliance while focusing resources on delivering high-quality, person-centred care.

Considerations and response

284-15

Indexation of agreed amounts

Clause 284-15 provides that the provider applies an indexation factor to the HELF price amounts utilising the 'All Groups Consumer Price Index' (CPI).

The CPI is not always an appropriate proxy for growth in the underlying costs of providing services under the proposed HELF.

Providers should have a mechanism via the Independent Health and Aged Care Pricing Authority (IHACPA) to seek an increase in the agreed amount, more than CPI, in the circumstance described above, supported by clear evidence.

Considerations and response

284-20 (b) (i)

Clause 284-20 (b) (i) states that providers must not charge a HELF in the circumstances where the individual is not able to use the service.

Recommendation

The Rule should be reworded to make it clear that 'not able to use the service' means unable to use for reasons outside the person's control. The effect of this is that a person cannot voluntary absent themselves from the home and in doing so opt out of the agreement. This proposition is akin to normal service contracts into which a resident would have entered throughout their life.

Considerations and response

285-15 & 285-20

Transition Timeframes – Extra Service and Additional Service

These Clauses require that all residents transition from Additional Services (AS) and Extra Services (ES) to HELF by 30 June 2026 or lose access to services on 1 July 2026.

The circumstance whereby a resident may lose access to a service for which they have contracted, imposes significant administrative, contractual, and operational burdens on providers and has potential implications for resident experience and enjoyment. There is simply no need to force a transition away from their current services in the case where the resident is satisfied with the existing package of services and the provider is willing and able to continue to deliver it.

In a reform process where almost all arrangements for existing residents are grandparented under the 'no worse off' principle, it is unclear why AS and ES would follow a different path.

There are four primary risks with the current transition timeframe:

- *Contractual risk - Many residents have legally binding contracts with providers for Extra Services (ES) or Additional Services (AS). These typically include long-term service expectations. The HELF framework effectively voids these contracts on 1 July 2026 if they have not been terminated by mutual consent. Looked at from another perspective, the (new) Act does not prohibit AS/ES. It simply sets a framework for HELF.*

  Providers are likely to face backlash from residents whose contractually agreed services cease.

- *Operational and compliance risk - The forced recontracting of thousands of residents (most of which are satisfied with their current arrangements and do not want to change) within 12 months will create a significant administrative burden, requiring:*
  - *New agreements to be drafted and negotiated.*
  - *Resident education and engagement to ensure informed decision-making.*
  - *Systems changes to reflect the new HELF framework, including billing, reporting, and compliance tracking.*
  - *Consumers experience disruption - Many residents (and their families) may not fully understand the transition requirements, leading to delays and resistance to signing new agreements. There will be a number of residents, who may be unable to engage in the process about their HELF transition. If a resident does not sign a new HELF agreement by 1 July 2026, their current services will automatically cease, potentially resulting in service disruption and resident dissatisfaction.*

Extra Service

A place that is designated as an 'Extra Service' place has a different background and operation than a place where the resident occupies a place and has entered an 'Additional Service' program.

An ES place operates to a home specific Department approved 'Benchmark List', which includes a range of physical characteristics (such as superior furnishings) and services (choice of meal etc). The ES designation also shields the home from the regional supported ratio, practically meaning that there is a higher proportion of financial residents, which is linked to the original feasibility of the home that was developed.

If the ES status of a home is lost and it must revert to meeting the regional supported ratio, as the resident mix changes, it will create a material financial outflow of Refundable Accommodation Deposits, potentially threatening the solvency of the home.

For this reason, ES should be grandfathered to avoid unintended solvency implications for ES approved providers.

Recommendation

To ensure a smooth transition that protects residents and providers, we propose the following:

- *For 12 months from 1 July 2025, new residents could contract for HELF or AS/ES. From 1 July 2026, new residents would be restricted to a HELF contract, ensuring a gradual transition over time.*
- *'Grandparenting' of existing AS/ES arrangements by allowing existing AS/ES residents to continue under their current agreements for as long as they remain in the aged care home, the provider is prepared to deliver the contracted services and the resident continues to use the services. This approach avoids unnecessary disruption and ensures contractual obligations are upheld. This is aligned with the 'no worse off' principle the Parliament has introduced in relation to resident contributions.*

If the Minister does not agree with 'grandparenting', extend the transition period from 12 months to 24 months. A one-year transition period is insufficient given the contractual and administrative workload involved. Extending the transition period to two years (until 1 July 2027) would:

- *Allow time for system changes, staff training, and resident engagement.*
- *Reduce compliance risk by ensuring that all residents and families are adequately consulted.*
- *Provide greater certainty for providers, avoiding last-minute legal and operational disputes.*

We also note that an extension to two years would reduce the number of contracts that will be forcibly voided because of the number of exits from the home during that period.

Due to concerns about the solvency impact of removing ES outlined above, ES should be 'grandparented', even if a different view is taken about AS.

Considerations and response

Practical Considerations

Service Delivery

The introduction of the HELF aims to enhance consumer choice by allowing residents to access additional or higher-quality services for an optional fee. However, implementing HELF presents several operational challenges for aged care providers, particularly in managing service differentiation within homes or areas where there may be some residents who have taken up a HELF program and others who have not. We have identified the following examples which demonstrate these challenges.

Service differentiation in dining services *- Offering premium meal options (above the base service list) or alcohol with meals to HELF-paying residents, alongside standard services for others, necessitates distinct preparation and service protocols. This dual approach can lead to increased complexity in operations and dining room management.*

Furthermore, visible differences in meal choice or additions may foster feelings of inequality or dissatisfaction among residents not participating in HELF, potentially impacting the communal atmosphere of a residential 'home'.

Common area amenities *- Services such as high-speed internet, subscription-based entertainment, or exclusive recreational activities require mechanisms to restrict access solely to HELF participants. Implementing and monitoring these controls can be resource-intensive and may inadvertently create divisions among residents.*

Infrastructure investments *- Upgrading facilities to accommodate premium services (e.g. installing advanced entertainment systems or infrastructure for services in a particular area) involves significant capital expenditure, which becomes unviable if there can't be some management of the location of residents utilising these services with reasonable resident uptake.*

Staffing and service delivery *- employees must be trained to recognise and deliver differentiated services to HELF participants in the same area (such as dining rooms), which can complicate scheduling and workload distribution.*

Ensuring consistent service quality across both HELF and non-HELF residents adds to the operational burden. In addition, maintaining accurate records of service entitlements and monitoring usage requires robust administrative systems.

Recommendation

Designate HELF-specific areas *- Allocating specific wings or sections of the home exclusively for HELF participants which can streamline service delivery, allowing for tailored staffing, amenities, and activities without disrupting the broader resident population.*