

IZARDWESTON

L A W Y E R S

New Zealand Aged Care Association Conference 2010

**Issues Based Audits – Your legal rights
and obligations**

AUDIT TYPES

- Ministry of Health Audits
- DHB Routine Audits – Cl. A15 – A17 ARC
- Issues Based Audits – Cl. A15 – A17 ARC
- Financial Audits – cl. A18 ARC

ISSUES BASED AUDITS – NOT TAKEN LIGHTLY

- The NZDHB recently commented that:

“... issues based audits were not undertaken lightly, were generally in response to complaints, incidents or concerns that have developed over time and that are of sufficient weight to warrant closer inspection by way of an issues based audit.

In many cases the first response was informal and might involve a discussion or meeting with the provider concerned.”

AVOIDING AN AUDIT

- Deal with matters internally as they arise;
- Do not allow repeats;
- Co-operate with DHB at outset where issues raised;
- Ensure resident care at appropriate level for needs.

PRE-AUDIT CHECKLIST

- Before an audit:
 - Check your supplier/sub-contractor agreements contain access clause
 - Check Resident Admission Agreement contains information provision clause
 - Keep and preserve good records
 - Ensure policies and procedures are up-to-date

NOTICE OF AUDIT

- **10 working days** notice of audit UNLESS delay would prejudice the interest of any person – **no notice** required
- Pre-2010 A21 Review – DHBs only obligation was to give notice of impending audit.
- During A21 Review NZACA negotiated improved notice provisions – issues and scope detail to be provided

APPOINTMENT OF AUDITOR

- Auditor either:
 - DHB employee; or
 - Appropriately qualified third party
- DHB obliged to provide written notice of auditor
- Can object to auditor within **5 working days** of receiving notice of audit:
 - Must show “demonstrable conflict of interest”

AUDIT SITE VISIT

- Site Visits include:
 - Photographs
 - Physical inspection of premises;
 - Inspection of all records;
 - Observation of provision of services;
 - Interviewing or surveying residents; staff; sub-contractors; facility managers etc



YOUR OBLIGATIONS DURING AUDIT

- **3 working days** prior to audit (or immediately) provide list of names and addresses of all subsidised residents representatives;
- You must:
 - cooperate fully with auditors;
 - Allow access to records; subsidised residents and families; staff; sub-contractors; agents

AUDITOR'S OBLIGATIONS

- Site visit between 9 – 5 on working days only unless emergency audit
- Ensure access does not unreasonably disrupt provision of services
- Discuss preliminary findings of audit with provider at completion of site visit

AUDIT REPORTING

- **15 working days** after site visit – Draft Audit Report
- DAR must show:
 - Non-compliance with ARRC contract;
 - Actions expected to be taken
 - DHB’s actions to verify compliance.
 - Timeframes for completion of remedial actions.
- At least **10 working days** to respond

FINAL AUDIT REPORT

- FAR to be provided within 20 working days of comments.
- Three options on receipt of FAR:
 1. Take remedial actions required;
 2. Do Nothing;
 3. Apply to review FAR.
- If option 1, audit completed.

NON-COMPLIANCE

- DHB has three options:
 1. Notice of non-compliance; OR
 2. Provide **20 working day** period to comply and then terminate ARRC contract; OR
 3. Use alternative measures.
- Non-compliance with further notice could result in withholding of payment or termination of ARRC contract.

AUDIT REVIEW

- Apply for review of audit within **10 working days** of FAR being sent.
- Audit review does not relieve compliance obligations BUT DHB will not terminate during review.
- Audit review involves:
 - Appointment of reviewer;
 - Discussion of issues;
 - Best endeavours to reach agreement;
 - Mediation if necessary;
 - Amendment of FAR;
 - Reimbursement of compliance costs

ALTERNATIVE AUDIT OUTCOMES

- Termination of ARRC contract under cl. A24
- Appointment of Temporary Manager under cl. A22
- Removal of Residents – cl. A22

TERMINATION – CL. A24

- DHB can terminate without notice for ‘material failure’:
 - Material failure includes, but is not limited to, a breach of your obligations to:
 - Notify of changes to subsidised resident payments;
 - Provide access for an audit;
 - Cooperate with auditors during an audit.
- Rose A Lea situation

TEMPORARY MANAGERS

- DHB can appoint a temporary manager at any time to remedy breaches
- If a temporary manager is appointed you must:
 - Allow access to the facility;
 - Ensure the temporary manager can carry out his or her duties without disturbance or disruption;
 - Comply with any directions or instructions given by the temporary manager.
- Provider liable for costs of TM

SCOPE OF AUDIT

- In theory – specified in notice of audit.
- In reality, everything covered:
 - Business plans and financials;
 - HR
 - Physical environment
 - Food Services
 - Clinical Care

TIPS FOR OBTAINING POSITIVE OUTCOME

- TIDY OFFICE
- WELL ORGANISED RECORDS
- GENERALLY TIDY FACILITY
- KITCHEN AND LAUNDRY FOCUS
- HAZARDS
- UP-TO-DATE POLICIES AND PROCEDURES
- EMPLOYMENT AGREEMENTS UP-TO-DATE & SIGNED
- BACKGROUND CHECKS
- NO RUBBISH, MOULD, ROTTING FOOD
- TEMPERATURES
- GENERAL MAINTENANCE
- BUILDING WOF