

## Summary of proposed updates to the Lifetime Care and Support Guidelines

This document outlines the proposed updates to each Lifetime Care and Support Guideline and should be read alongside the corresponding draft Part.

The update aims to simplify language, clarify understanding and amend any outdated terms.

These updates do not intend to change a participant's entitlements under the Lifetime Care and Support Scheme.

### Part 4: Disputes about participants' treatment and care needs

#### General updates

- Changed wording to an active voice where possible (*eg Lifetime Care considers*)
- Reworded the commencement provision for clarity. The intended meaning remains unchanged.

Heading	Section	Updates
2. Definitions	2.1	<ul style="list-style-type: none"><li>• Removed the following definitions as they are repeated in the relevant section of the legislation:<ul style="list-style-type: none"><li>○ Assessment</li><li>○ Panel</li></ul></li><li>• Added the following definitions as they are referenced in this part of the Guidelines and Act:<ul style="list-style-type: none"><li>○ Days</li><li>○ Determination</li></ul></li><li>• Added “with relevant authority” to injured person’s legal guardian</li></ul>
	2.2	<ul style="list-style-type: none"><li>• Removed this clause</li></ul>
3. Legal Representation	3.1	<ul style="list-style-type: none"><li>• Has been split to simplify process around legal representation now 3.1 and 3.2</li></ul>
	3.2	<ul style="list-style-type: none"><li>• Previous 3.2 removed</li></ul>
5. Documentation and other supporting material	5.2	<ul style="list-style-type: none"><li>• Clause moved to 10.5</li></ul>

Heading	Section	Updates
6. Medical documentation	6.2	<ul style="list-style-type: none"> <li>Reworded to confirm requirements of medical documentation, we only require the resulting report unless specifically requested.</li> </ul>
	6.3	<ul style="list-style-type: none"> <li>Reworded to simplify clause relating to original medical documentation</li> </ul>
8. Disputes about an assessment or any aspect of an assessment of treatment and care needs: jurisdiction	8.4	<ul style="list-style-type: none"> <li>Replaced “if there is a full and satisfactory explanation” with “if there are exceptional circumstances” to enhance clarity around when the time limit may be extended.</li> </ul>
	8.5 c)	<ul style="list-style-type: none"> <li>Added the timeframe rather than reference to clause.</li> </ul>
9. Dispute application: procedure	Title	<ul style="list-style-type: none"> <li>Reworded for clarity.</li> </ul>
10. Requesting further information or documentation	10.1 a)	<ul style="list-style-type: none"> <li>Removed ‘and’ to clarify the two steps Lifetime Care may follow relating to further information.</li> </ul>
	10.2	<ul style="list-style-type: none"> <li>Sentence added to clarify how additional information is to be provided to Lifetime Care.</li> </ul>
	10.4 c)	<ul style="list-style-type: none"> <li>Reworded to simplify requirements of contacting participant</li> </ul>
	10.5	<ul style="list-style-type: none"> <li>Clause was moved under contact with participant from 5.2</li> </ul>
11. Optional new assessment of needs by Lifetime Care	11.2	<ul style="list-style-type: none"> <li>Reworded to simplify process around new assessments</li> </ul>
	Title, 11.6, 11.7, 11.8, 11.9	<ul style="list-style-type: none"> <li>Removed ‘Alternative dispute resolution: contact with participant’ as it was repetitive of contact with participant under 10.4</li> </ul>
12. Referral for assessment by a dispute assessor	Title	<ul style="list-style-type: none"> <li>Reworded for clarity</li> </ul>
	12.3	<ul style="list-style-type: none"> <li>Previous 12.3 has been moved to 12.4</li> </ul>
	12.3 f	<ul style="list-style-type: none"> <li>Removed as not a criterion to appoint a dispute assessor to resolve a dispute</li> </ul>
13. Grounds for objection to the dispute assessor	13.3	<ul style="list-style-type: none"> <li>Removed to clarify grounds for objection of the dispute assessor.</li> </ul>
	13.4	<ul style="list-style-type: none"> <li>New 13.4 - added timeframe about reallocation of the dispute assessor.</li> </ul>
15. Clinical examination procedures	15	Combined Clinical examination procedures to one section. Was section 15 and 16, now section 15 only.
	15.1 b	<ul style="list-style-type: none"> <li>15.2 has been reworded and is now at 15.1b</li> </ul>
	15.3	<ul style="list-style-type: none"> <li>Removed example from clause as this can be included in our information sheets for participants about the dispute process.</li> </ul> <p>Note: Combining 15 and 16 has affected the numbering of sections for the remainder of the document.</p>

Heading	Section	Updates
20. Alternative to review	20	<p>Was section 21 now section 20</p> <ul style="list-style-type: none"> <li>This section has been rewritten to reflect Optional new assessment of needs by Lifetime Care.</li> </ul>
21. Referral to a Review Panel	21.2 f)  21.3  21.5	<p>Was section 22 now section 21</p> <ul style="list-style-type: none"> <li>Removed as not a criterion to appoint a dispute assessor to a Review Panel</li> <li>Removed - to clarify if Lifetime Care is the applicant for review, it will follow the normal process with appointing a Review Panel.</li> <li>Removed as the needs of the injured person would be considered.</li> </ul>
22. Grounds for objection to the Review Panel	22.1  22.2	<p>Was section 23 now section 22</p> <ul style="list-style-type: none"> <li>Clarified that Lifetime Care would allocate and not the Review Panel</li> <li>Removing 22.2 for clarity about process</li> </ul>
23. Review Panel is to hold initial meeting	23.1  23.3	<p>Was section 24 now section 23</p> <ul style="list-style-type: none"> <li>Amended to Lifetime Care will appoint a chairperson.</li> <li>Reworded to clarify the Review Panel hold meetings without the presence of the injured person.</li> </ul>
24. Procedures for Review Panel assessment	24  24.2	<p>Was section 25 now section 24</p> <ul style="list-style-type: none"> <li>This section has had a re-write for clarity around the procedures for the Review Panel Assessment.</li> <li>Included the review grounds for clarity.</li> </ul>
26. Corrections of obvious errors in certificates	26.1  26.4  26.5	<p>Was section 27 now section 26</p> <ul style="list-style-type: none"> <li>Changed correction days from 30 to 20 days.</li> <li>Reworded clause for clarity.</li> <li>Reworded clause for clarity and simplify process.</li> </ul>

To view the current Lifetime Care and Support Guidelines, and the Guideline Parts that are currently open for consultation, visit the [Guidelines and Policies](#) page on our website.

## Feedback

Feedback on draft Parts of the Lifetime Care and Support Guidelines can be sent via email to icare's Scheme Integration and Resolution team at [sir@icare.nsw.gov.au](mailto:sir@icare.nsw.gov.au).

### Lifetime Care

GPO Box 4052, Sydney NSW 2001

**General Phone Enquiries: 1300 738 586**

Email: [care-requests@icare.nsw.gov.au](mailto:care-requests@icare.nsw.gov.au)

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## Part 4: Disputes about participants' treatment and care needs

This Part of the Lifetime Care and Support Guidelines is made under sections 28 and 58 of the Motor Accidents (Lifetime Care and Support) Act 2006 (the Act).

This Part applies to disputes about an assessment or any aspect of an assessment by the Lifetime Care and Support Authority (Lifetime Care) of the treatment and care needs of a participant under Part 4 of the Act.

This version of Part 4 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and applies to any dispute about treatment and care needs referred on and from that date in respect of any participant in the Lifetime Care and Support Scheme (the Scheme), whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any part or parts of this Guideline. Waiving observance of any part or parts of this Guideline in particular circumstances is not an indication that Lifetime Care will waive observance of this part or any other parts of the Guidelines in other circumstances.

### Relevant section of the legislation

*Motor Accidents (Lifetime Care and Support) Act 2006*

#### **24 Dispute about Authority's assessment—determination by assessor**

- (1) If a participant in the Scheme disputes an assessment or any aspect of an assessment by the Authority of the treatment and care needs of the participant, the Authority must, at the request of the participant, refer the dispute to an assessor for determination.
- (2) A participant cannot make such a request more than 28 days after the Authority gives the participant a copy of the Authority's certificate of assessment of the treatment and care needs of the participant.
- (3) The Authority is to appoint health professionals and other suitably qualified persons to be assessors for the purposes of this Part.
- (4) The assessor who determines a dispute about the treatment and care needs of a participant is to give a certificate to the Authority and the participant certifying as to the assessor's determination and setting out the assessor's reasons for any finding on which the determination is based.

## **1 Time periods and extension of time**

### **1.1** Any period of time referred to in these Guidelines:

- a) excludes the day that the act is done. *For example, a reference to 5 working days means 5 working days from the following day;* and
- b) excludes days that are not working days when Lifetime Care is closed (such as weekends and public holidays).

### **1.2** Lifetime Care reserves the right to extend or abridge any time limit in these Guidelines that affects Lifetime Care, a participant, a party to the dispute or a dispute assessor. Lifetime Care may extend any of the time periods in these Guidelines, whether or not a request is made to extend any time limit.

## **2 Definitions**

### **2.1** In this Part of the Guidelines, these words and phrases have the following meanings:

**Act** means Motor Accidents (Lifetime Care and Support) Act 2006.

**Assessor** has the meaning given to it in section 22 of the Act. A reference to an assessor can also include a group of assessors as a Review Panel.

**Certificate** means a certificate issued under sections 23(4) or 25(4) of the Act including the reasons for any finding.

**Days** is a reference to the number of working days unless otherwise specified.

**Dispute** means a dispute about an assessment or any aspect of an assessment by Lifetime Care of the treatment and care needs of the participant, which has the meaning given to it under section 24 of the Act.

**Determination** means a decision made by a dispute assessor, assessment panel or review panel in relation to the issue in dispute.

**Lifetime Care** means the Lifetime Care and Support Authority of New South Wales.

**Legal guardian** means a legal guardian with relevant authority.

**Participant** means an injured person who is a participant in the Lifetime Care and Support Scheme (the Scheme). Any reference to a participant in the Guidelines is a reference to the participant's legal guardian (with relevant authority) in cases where this applies.

**Review** means a review of an assessor's determination referred to in section 25 of the Act.

### **3 Legal representation**

- 3.1 If the participant has legal representation in respect of the dispute, Lifetime Care will send any document required to be sent to the participant to their legal representative.
- 3.2 Despite the presence of a legal representative, the assessor or Lifetime Care may contact the participant directly in relation to any aspect of a dispute or assessment if required. Lifetime Care will inform the injured person's legal representative if this is required.

### **4 Sending documents to Lifetime Care**

- 4.1 Lifetime Care's postal address is:  
Lifetime Care and Support Authority  
GPO Box 4052  
Sydney NSW 2000
- 4.2 Documents sent electronically to or from Lifetime Care on a working day before 5.00pm will be assumed to be received on the same day as they were sent.
- 4.3 Any documents sent at or after 5.00pm on a working day, or on a day that is not a working day, will be taken to be received on the next working day.
- 4.4 Any documents sent by mail to or from Lifetime Care shall be assumed to be received 5 working days after posting.

### **5 Documentation and other supporting material**

- 5.1 The participant should only submit copies of documents to Lifetime Care, not original documents.

### **6 Medical documentation**

- 6.1 All medical documentation must be listed in the application or otherwise listed in writing (e.g. sent with a cover letter) when sent to Lifetime Care.
- 6.2 In the case of X-rays, Computerised Tomography (CT or CAT scans), Magnetic Resonance Imaging (MRI) or other radiological or similar investigations, unless specifically requested by the dispute assessor, the participant should send only the resulting report.
- 6.3 Lifetime Care will advise of any other arrangements for the viewing of such scans by a dispute assessor or Review Panel, that does not involve clinical examination of the participant,
- 6.4 Irrespective of whether they have been provided to the participant, a dispute assessor or Review Panel may take into consideration any such radiological scans or similar investigations and their accompanying reports that are present at a clinical examination.

## **7 Privacy**

- 7.1 All matters pertaining to a dispute about treatment and care needs, including clinical assessment, are conducted in private and are not open to the public. Any part of a dispute assessor or Review Panel's assessment process and certificate is not open to, or available to, the public.

## **8 Disputes about an assessment or any aspect of an assessment of treatment and care needs: jurisdiction**

- 8.1 As per section 24(1) of the Act, a participant may make a dispute application when they dispute an assessment or any aspect of an assessment by Lifetime Care of their treatment and care needs. A dispute application is regarded as a request for Lifetime Care to refer a dispute for determination to a dispute assessor.
- 8.2 A dispute application can only be made after Lifetime Care has notified the participant in writing, in a certificate, as to Lifetime Care's assessment of their treatment and care needs under section 23(4) of the Act.
- 8.3 A dispute application must be made by or on behalf of the participant within 28 calendar days of the date that Lifetime Care gives the participant its certificate of assessment of the participant's treatment and care needs under section 23(4) of the Act.
- 8.4 Lifetime Care may extend the 28-calendar day time limit if there are exceptional circumstances for why the application was not made within 28 calendar days of receipt of Lifetime Care's certificate of assessment.
- 8.5 Lifetime Care may reject an application if Lifetime Care is satisfied that one or more of the following apply:
- a) does not establish that it relates to a dispute about an assessment, or any aspect of an assessment, of the participant's treatment and care needs;
  - b) has not been made by the participant or someone on their behalf; or
  - c) has not been made within 28 calendar days of the date that Lifetime Care gives the participant its certificate of assessment.

## **9 Dispute application: procedure**

- 9.1 The dispute application must:
- a) be in writing or verbally communicated to Lifetime Care;
  - b) include a clear statement that there is disagreement with the assessment or aspects of the assessment; and
  - c) include reasons why there is disagreement with Lifetime Care's decision. If a treatment or service has not been approved by Lifetime Care and is the subject of the dispute, the participant must clearly outline the reasons as to why they consider the request is reasonable and necessary with reference to any other relevant information.
- 9.2 If the participant does not provide the above information, then Lifetime Care may request that the participant provide the information to Lifetime Care before the request is referred for assessment.
- 9.3 Lifetime Care is to send a written acknowledgement of the application to the participant within 5 working days of receiving the dispute application.
- 9.4 A dispute application does not change or affect the existing assessment of the participant's treatment and care needs, as documented in the certificate, until or unless a further certificate is issued, whether following determination of the dispute or otherwise. A dispute application does not operate to delay or prevent Lifetime Care, or a service provider, implementing the certificate as to Lifetime Care's assessment of the participant's treatment and care needs that is the subject of the dispute application.

## **10 Requesting further information or documentation**

- 10.1 If Lifetime Care is satisfied that further information or documentation is required in relation to the application or is likely to assist in the resolution the dispute, Lifetime Care may:
- a) request that the participant or a service provider provide this information within a period of up to 20 working days; or
  - b) proceed with processing the application without the information, but only after the stated time has passed for the submission of the information.
- 10.2 Lifetime Care may contact any of the participant's treating health practitioners or service providers in order to assist with obtaining information relevant to the dispute. Information provided by the participant's treating health practitioners or service providers must be all the relevant information requested by Lifetime Care and listed in writing. Any additional information is to be sent to Lifetime Care within 20 working days of receipt of a request, unless otherwise specified.
- 10.3 At any stage during the dispute, Lifetime Care may contact any of the participant's treating health practitioners about health or physical safety issues noted by an assessor as being urgent or serious.

### ***Contact with the participant***

- 10.4 Lifetime Care may contact the participant prior to any assessment by a dispute assessor. This contact may be in order to:
- a) discuss or clarify the issues in dispute.
  - b) explore other avenues for early resolution of the dispute, prior to referral to a dispute assessor, if the participant wishes to do so;
  - c) explain that it may be appropriate for Lifetime Care to consider the dispute application to be a request for Lifetime Care to make a new assessment of the participant's treatment and care needs; or
  - d) make arrangements for the assessment by the dispute assessor, including to ascertain the participant's needs.
- 10.5 The participant must not contact a dispute assessor or Review Panel directly in relation to the dispute unless Lifetime Care gives permission to do so. This applies whether the assessment is current or has finished.

## **11 Optional new assessment of needs by Lifetime Care**

- 11.1 On receipt of a dispute application, Lifetime Care may ask the participant if the participant would prefer Lifetime Care to consider the dispute application as a request to make a new assessment of the participant's treatment and care needs.
- 11.2 The factors that Lifetime Care will consider include:
- a) whether a new assessment would lead to a different outcome, compared with the previous assessment;
  - b) the information provided in the dispute application was not previously requested or received by Lifetime Care in its earlier assessment of needs; and/or
  - c) new information is provided that is likely to change Lifetime Care's assessment of the participant's treatment and care needs.
- 11.3 A new assessment by Lifetime Care may consider additional information not available to the previous decision maker.
- 11.4 Any new assessment is to be conducted in accordance with Part 5 of the Guidelines, as applicable.
- 11.5 If the participant does not achieve the outcome sought from the new assessment, the participant can request that the original dispute application be treated as a dispute application in relation to the new assessment.

## **12 Referral for assessment by a dispute assessor**

- 12.1 The dispute is to be referred to a dispute assessor within 5 working days of the later of:
- a) receipt of the dispute application;
  - b) receipt of additional information requested; or
  - c) a request from the participant that an original dispute application be treated as a dispute application in relation to a new assessment.
- 12.2 Lifetime Care will choose a dispute assessor from Lifetime Care's list of dispute assessors.
- 12.3 When choosing a dispute assessor, Lifetime Care will consider:
- a) the needs of the participant. *For example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);*
  - b) the issue in dispute or the aspect of Lifetime Care's assessment of treatment and care needs that is in dispute;
  - c) the location of the participant and the assessor;
  - d) the specialty and expertise of the assessor; and
  - e) the availability of the assessor.
- 12.4 Lifetime Care will advise the participant of the arrangements for the assessment in writing, which will include the name and specialty of the assessor.

## **13 Grounds for objection to the dispute assessor**

- 13.1 The participant may request Lifetime Care reallocate the dispute to a different assessor or assessors on the basis that the participant considers that the assessor is not appropriate. To do this, the participant must:
- a) apply within 10 working days of receiving the notification of the name of the assessor; and
  - b) provide detailed reasons as to why they think the assessor is not appropriate.
- 13.2 Lifetime Care will make a decision on the request for reallocation within 10 working days of receipt. Lifetime Care will reallocate the dispute to a different assessor if satisfied that there are reasonable grounds for believing that the assessor is not appropriate.
- 13.3 Lifetime Care may reallocate a dispute assessor in the event of illness, on request of the dispute assessor, or if the assessor is otherwise unable to assess the dispute in a reasonable timeframe.
- 13.4 Lifetime Care will notify the participant of its decision in writing within 5 working days.

## **14 Assessment by the dispute assessor**

- 14.1 When referring a dispute to the assessor, Lifetime Care will provide the assessor and participant with a copy of:
- a) a letter referring the assessment of the dispute;
  - b) the participant's application in relation to the dispute, and any supporting documents;
  - c) Lifetime Care's certificate of assessment of the treatment and care needs of the participant and a copy of all other documentation by Lifetime Care in relation to this certificate, including all documents considered by Lifetime Care when making its assessment;
  - d) all documents Lifetime Care considers relevant to Lifetime Care's assessment of the participant's treatment and care needs. For example, certificates of previous assessments of treatment and care needs for the requested item or service, the most recent treating specialist report or neuropsychological report;
  - e) a copy of any additional documentation or information received relating to the certificate since the request was made; and
  - f) a copy of any information that the participant requests be provided to the assessor.



- 14.2 The dispute assessor is not bound by the rules of evidence in conducting an assessment. The dispute assessor may determine their own procedure and may inquire into any such issue as they see fit. The dispute assessor must follow the Guidelines at the time of their assessment and must also follow any practice notes that are in force at the time of their assessment.
- 14.3 Once the dispute is referred to a dispute assessor, the dispute assessor is to determine how the assessment will proceed and may do any or all of the following:
- contact the participant to clarify issues in dispute;
  - contact any treating health professional or service provider, where appropriate, to clarify any issues in dispute or request further information;
  - request the participant attend an assessment (clinical examination) with the dispute assessor;
  - request that the participant attend an assessment (clinical examination) with another health professional (who is not the dispute assessor) in accordance with section 27 of the Act and a report be provided to the dispute assessor to make their decision; and/or
  - assess the dispute on the documentary material provided.
- 14.4 The dispute assessor may decide that a matter be assessed without a clinical examination of the participant if the dispute assessor is satisfied that:
- a decision can be made based on the information provided;
  - a clinical examination is unnecessary in that it would not provide new information besides that already provided in the documentation; and/or
  - the individual needs of the participant preclude an examination, or an examination would cause the participant distress.
- 14.5 In all cases, the dispute assessor must attempt to resolve the dispute fairly and as quickly as possible and must take all steps as are reasonably practicable to ensure the participant is aware of the role of the dispute assessor as an independent decision-maker, making a legally binding decision that will be documented in their certificate.
- 14.6 Administrative support will be provided to the dispute assessor during the assessment process where required.

## 15 Clinical examination procedures

### Relevant section of the legislation

*Motor Accidents (Lifetime Care and Support) Act 2006*

### 27 Co-operation of participant

A participant in the Scheme must comply with any reasonable request made by the Authority or an assessor in connection with an assessment of or dispute about the treatment and care needs of the participant, including a request to undergo a medical examination or other examination by a health professional.

- 15.1 When a clinical examination is required:
- Lifetime Care will notify the participant in writing of the time, date and location of the clinical examination, and the name and specialty of the health professional; and
  - Lifetime Care will notify the participant how to prepare for the examination, who may attend and what to expect.
- 15.2 The dispute assessor, or the health professional conducting the examination, will determine who may be present at a clinical examination and how the examination proceeds. A parent, legal guardian, carer or support person may be present during an examination involving the participant in order to assist in any way required. Legal or medical representatives of the participant cannot be present during a clinical examination unless Lifetime Care gives prior approval and is satisfied that the circumstances warrant it.

- 15.3 A legal guardian, carer or support person may provide information to the dispute assessor, or health professional conducting the examination, during a clinical examination, but only when asked by the dispute assessor or health professional conducting the examination. At their discretion, the dispute assessor, or health professional, may ask any legal guardian, carer or support person to leave the clinical examination if this request is reasonable and the circumstances warrant it.
- 15.4 Lifetime Care will pay the reasonable costs associated with attendance of the participant, and if required, the reasonable expenses of one accompanying person such as the participant's guardian, carer or support person to attend any clinical examination. Payment of any such costs requires prior approval from Lifetime Care.
- 15.5 When the clinical examination occurs, the dispute assessor, or health professional conducting the examination, will take such measures as are reasonably practicable to ensure that the participant and anyone accompanying them:
- a) understands the reason for the examination and the issues the dispute assessor will consider in assessing the dispute, or which the health professional conducting the examination has been asked to address;
  - b) is aware of what the examination will involve;
  - c) is aware of the role of the health professional in providing an independent opinion; and
  - d) is aware of the role of the dispute assessor.

## **16 Use of interpreters in clinical examinations**

- 16.1 Arrangements will be made for an interpreter accredited by NAATI (National Accreditation Authority for Translators and Interpreters) if an interpreter is required or is requested. If a NAATI interpreter is not available, a non-NAATI interpreter may be used at the discretion of the Assessment or Review Panel.
- 16.2 Any person accompanying the participant to an examination or assessment, such as a carer or support person, cannot act as an interpreter.

## **17 Certificate issued by assessor**

- 17.1 The dispute assessor will issue a certificate as to its determination under section 24(4) of the Act. The certificate will include written reasons for the decision and will be in the form approved by Lifetime Care.
- 17.2 The dispute assessor will send the certificate to the participant and Lifetime Care within 15 working days of the assessment conducted by the dispute assessor.

## **18 Determination is legally binding**

### **Relevant section of the legislation**

*Motor Accidents (Lifetime Care and Support) Act 2006*

### **26 Effect of assessment**

- (1) The Authority's assessment of the treatment and care needs of a participant is final and binding for the purposes of this Act and any proceedings under this Act.
- (2) The Authority is to revise its assessment to make any changes that may be necessary to give effect to any determination by an assessor or Review Panel of a dispute about those treatment and care needs.
- (3) The Authority's assessment of the treatment and care needs of a participant supersedes any earlier assessment by the Authority of those needs.

- 18.1 If required, Lifetime Care will revise its assessment to give effect to the dispute assessor's determination within 5 working days of receipt.

## 19 Review of the assessor's determination

### Relevant section of the legislation

*Motor Accidents (Lifetime Care and Support) Act 2006*

#### 25 Review of assessor's determination

- (1) The Authority or a participant can refer an assessor's determination of a dispute about the treatment and care needs of the participant for review by a Review Panel, but only on one or more of the following grounds:
  - a) the availability of additional relevant information about the treatment and care needs of the participant, being information that was not available, or could not reasonably have been obtained, at the time of the assessor's determination and that is capable of having a material effect on the determination,
  - b) the assessor's determination was not made in accordance with the LTCS Guidelines,
  - c) the assessor's determination is demonstrably incorrect in a material respect.
- (2) An assessor's determination can be referred for review not later than 28 days after the assessor's certificate of determination is given to the Authority and the participant.
- (3) The Authority is to convene a panel of 3 assessors to constitute the Review Panel for the review of an assessor's determination.
- (4) On its review, the Review Panel can confirm the assessor's determination or can revoke the assessor's determination and substitute its own determination, giving the Authority and the participant a certificate of the determination and setting out the Review Panel's reasons for any finding on which its determination is based.
- (5) In conducting its review, a Review Panel must take into account any written submissions prepared by or on behalf of the participant that are submitted to the Panel.

19.1 The participant or Lifetime Care may apply for review of the determination of the dispute assessor under section 25(1) of the Act.

19.2 Applications for review made by a participant are to be sent to Lifetime Care. Lifetime Care's postal address is:

Lifetime Care and Support Authority  
GPO Box 4052  
Sydney NSW 2000

19.3 Any documents sent on or after 5.00pm on a working day, or on a day that is not a working day, will be taken to be received on the next working day.

19.4 An application for review must be made within 28 calendar days of the date that the dispute assessor's certificate is given to the participant and Lifetime Care.

19.5 A participant or Lifetime Care cannot apply for a review of a determination made by a Review Panel about a participant's treatment and care needs.

19.6 An application for review must:

- a) be in writing (letter or email);
- b) include the participant's name, address and contact details;
- c) include a clear statement as to why a review is requested in relation to the grounds for review listed in section 25 of the Act, together with reasons; and
- d) attach any information or medical reports that are relevant to the application.

19.7 If Lifetime Care identifies a potential ground or grounds for review and the participant does not apply for a review, Lifetime Care is obliged to apply for review if it forms the view that the review, on the ground or grounds identified, is likely to have an outcome which will make a material practical difference to the participant or to Lifetime Care.

- 19.8 If Lifetime Care is the applicant for review, it is required to advise the participant in writing prior to the submission of any application for review, including the information set out in 19.6 above, and seek submissions from the participant as to whether the dispute application should be referred to the Review Panel or dismissed. The participant must provide any such submissions within 20 working days of receiving the advice from Lifetime Care described in this clause.
- 19.9 Lifetime Care will acknowledge a review application within 10 working days of receipt.
- 19.10 Lifetime Care may dismiss an application for review if:
- a) it is not received within 28 calendar days of receipt of the dispute assessor's certificate;
  - b) it relates to a review panel certificate;
  - c) it does not identify, on its face, one or more of the grounds set out in section 25(1) of the Act.
- 19.11 Lifetime Care will advise the participant as to whether the application is to be accepted and referred to a Review Panel or is dismissed, supported by a brief statement of reasons:
- a) if the participant is the applicant for review: within 20 working days of receiving the application for review;
  - b) if Lifetime Care is the applicant for review: within 5 working days of receiving submissions from the participant or, if the participant does not provide submissions, within 5 working days of the last date for the provision of submissions.
- 19.12 A participant or Lifetime Care cannot apply for a review of a determination made by a Review Panel about a participant's treatment and care needs.

## **20 Alternative to review**

- 20.1 If Lifetime Care forms the view that one or both of the following applies:
- a) the review application contains information that may allow Lifetime Care to make an assessment decision; or
  - b) circumstances revealed by the review application are such that Lifetime Care considers it preferable that the review applicant lodge another application for Lifetime Care's assessment of the participants treatment and care needs instead of a review application.
- Lifetime Care may invite the review applicant to withdraw the review application, and, in that case, the review applicant may:
- i. request the review application be treated as a new application for assessment of treatment and care needs; or
  - ii. lodge a new request
- 20.2 If a review applicant requests that the review application be treated as a new application, this Part of the Guidelines will cease to apply.

## **21 Referral to a Review Panel**

- 21.1 Once the review application has been accepted, Lifetime Care will convene a Review Panel within 10 working days of the decision to refer the application to a Review Panel.
- 21.2 If Lifetime Care is not the applicant for review, it will select three assessors from its list of dispute assessors, having regard to:
- a) the needs of the injured person. For example, the nature of their injury (e.g. traumatic brain injury, spinal cord injury);
  - b) the issues in dispute and the applicant's grounds for review;
  - c) the location of the injured person and the assessors;
  - d) the specialty and expertise of the assessors; and
  - e) the availability of the assessors.

- 21.3 The Review Panel must not include the dispute assessors whose decision is the subject of the application for review.
- 21.4 Lifetime Care will advise the participant of the arrangements for the Review Panel, in writing, within 5 working days of the Review Panel being convened. This will include the names and specialties of the assessors on the Review Panel.

## **22 Grounds for objection to the Review Panel**

- 22.1 The participant may request Lifetime Care reallocate the Review Panel to new assessors on the basis that they consider any one of the assessors is not appropriate to assess the review. This request may apply to any or all of the assessors on the Review Panel. To do this, the participant must:
- a) apply within 10 working days of receiving the notification of the names of the assessors on the Review Panel; and
  - b) provide detailed reasons as to why the assessor/s is not appropriate.
- 22.2 Lifetime Care will communicate a decision in writing, supported by a brief statement of reasons, on the request for reallocation within 5 days of receipt of the request. Lifetime Care will reconvene the Review Panel in whole or part if satisfied that there are reasonable grounds for believing that any of the assessor/s appointed to form the Review Panel are not appropriate.
- 22.3 It is generally appropriate for an assessor who has previously completed a dispute assessment for an injured person to assess another dispute relating to that injured person. *For example, a dispute assessment for another type of dispute under another part of the Guidelines.*

## **23 Review Panel is to hold initial meeting**

- 23.1 When the Review Panel is convened, Lifetime Care will appoint a chairperson and Lifetime Care will send the Review Panel copies of:
- a) all material that was before the dispute assessor, including the decision by Lifetime Care about the participant's treatment and care needs and reasons;
  - b) the original certificate issued by the dispute assessor issued under section 24(4) of the Act;
  - c) the review application and all accompanying documents; and
  - d) any additional documentation or information received since the review application was made.
- 23.2 The Review Panel's initial meeting will occur as soon as possible and within 20 working days of the date the Review Panel was convened.
- 23.3 The Review Panel's meetings will occur in the absence of the participant.

## **24 Procedures for Review Panel assessment**

- 24.1 Prior to commencing the assessment process, the Review Panel will confirm the grounds upon which the review application has been made.
- 24.2 The Review Panel will consider all materials, including the application and will decide whether one or more of the following review grounds are met.
- a) the availability of additional relevant information about the treatment and care needs of the participant, being information that was not available, or could not reasonably have been obtained, at the time of the assessor's determination and is capable of having a material effect on the determination,
  - b) the assessor's determination was not made in accordance with the LTCS Guidelines,
  - c) the assessor's determination is demonstrably incorrect in a material respect.
- 24.3 If the Review Panel finds that one or more of the grounds have not been met, it will provide written reasons and the review will not proceed to further assessment.

- 24.4 If the Review Panel finds that one or more of the grounds have been met, the Review Panel will consider all aspects of the dispute afresh which will include:
- a) Deciding whether another clinical examination of the participant is required;
  - b) Deciding whether any additional information is required in order to make a decision, whether from the applicant, any party to the review or any third party;
  - c) Deciding whether and how to contact the applicant, any other party to the review or any third party;
  - d) Considering any new information that was not before the dispute assessor; and
  - e) Deciding whether the Review Panel will confirm the decision of the dispute assessor or revoke that decision.
- 24.5 The Review Panel may determine its own procedure and enquire into any issue it considers relevant. The Review Panel is not bound by the rules of evidence in conducting an assessment.
- 24.6 The Review Panel must follow the Guidelines at the time of their assessment and must follow any practice notes that are in force at the time of their assessment.
- 24.7 If the Review Panel decides another clinical examination or additional information is required, clause 9, clause 14 and clause 15 of these Guidelines apply in relation to requesting further information or documentation, arrangement of the clinical examination, clinical examination procedures and use of interpreters.
- 24.8 If a clinical examination occurs, the Review Panel may hold as many meetings as required after the examination in order to finalise their determination. However, in all cases, the Review Panel must attempt to resolve the dispute as quickly as possible.
- 24.9 Administrative support will be provided to the Review Panel during the review process where required by a person that has not been involved in the decision that is the subject of the dispute.

## **25 Review Panel determination and certificate**

- 25.1 The Review Panel can confirm the determination of the dispute assessor or revoke the determination and substitute its own determination.
- 25.2 The Review Panel will issue a certificate that certifies their determination of the dispute. The certificate will include written reasons for the determination and will be in the form approved by Lifetime Care.
- 25.3 The Review Panel will issue their certificate to the participant and Lifetime Care within 15 working days of their final contact, clinical examination or final meeting, whichever is latest.
- 25.4 Where required, Lifetime Care will implement the determination within 5 working days of receipt.

## **26 Corrections of obvious errors in a certificate**

- 26.1 If a participant considers that a dispute assessor or Review Panel has made an obvious error in a certificate, the participant may make an application to Lifetime Care to have the error corrected within 20 working days of the date of the certificate. An obvious error may also be identified and corrected by the relevant dispute assessor or Review Panel or by Lifetime Care.
- 26.2 An obvious error in the certificate may only include an obvious clerical or typographical error in the certificate, or an error arising from an obvious omission or inconsistency.
- 26.3 An application to have an obvious error corrected must be made in writing, including the details of the obvious error and the suggested correction.
- 26.4 Within 10 working days of an obvious error being identified by any of the parties, Lifetime Care will notify the participant of the identification of the obvious error. The participant has 10 working days from receipt of that notification in which to advise if they agree with the suggested correction.

26.5 The dispute assessor or Review Panel may issue a replacement certificate that corrects any obvious error within 20 working days of receipt of the application to correct the obvious error and that will replace the previous certificate. Any replacement certificate must be issued to Lifetime Care and the participant.

## 27 Legal costs

<b>Relevant section of the legislation</b>
<i>Motor Accidents (Lifetime Care and Support) Act 2006</i>
<b>29 No legal costs payable for assessment or review</b>
(1) No legal costs are payable by the Authority for or in respect of legal services provided to a participant in the Scheme in connection with an assessment under this Part of the treatment and care needs of the participant or the determination or review of a determination under this Part of a dispute about such an assessment.
(2) In this section, legal services and legal costs have the same meanings as in the Legal Profession Uniform Law (NSW).