

Visual description: A green Disability Support Services logo sits to the left of the New Zealand Government crest in black.

## **MSD Disability Support Services Operational Policy**

### **Exceptional Circumstances when a Community Residential Support Service Provider requests the Service Exit of a Disabled Person**

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# Purpose

This operational policy defines the process to be followed by all parties<sup>1</sup> when exceptional circumstances arise that require the Community Residential Support Service Provider (**service provider**) to consider exiting a disabled person from its residential service

This policy should be read alongside the following:

- DSS Tier One Service Specification.
- DSS Tier Two Service Specification for Community Residential Support Services.
- DSS Tier Two Service Specification for Community Residential Support. Services within Aged Care Facilities for Younger People with Lifelong Disabilities.
- Any other applicable policies or contractual obligations.

## Scope of this policy

This policy describes a process that must be followed when a service provider considers exiting a disabled person from its residential service. It is primarily focused on health and safety concerns and how to appropriately mitigate or manage any risks.

The policy applies to the following services:

- DSS1031 - Community Residential Support services for people with Intellectual Disability, and
- DSS1030 - Community Residential Support services for people with Physical Disabilities (which includes sensory disabilities).

The policy is intended for use by all parties involved in the potential service exit of a disabled person.

This policy does **not** apply to the following situations:

- where a disabled person voluntarily requests to relocate from their residential service.
- in an emergency where a disabled person temporarily requires alternative accommodation at short notice, such as fire or a natural disaster (e.g., earthquake, flood).
- people with an intellectual disability who are receiving services from the Forensic Coordination Service, Intellectual Disability (FCS[ID]). This includes:

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<sup>1</sup> Parties may include the Community Residential Support Service Provider, Needs Assessment and Service Coordination organisation, Ministry of Social Development Disability Support Services, disabled people, whānau, and support people.

- those covered by the provisions of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, or related legislation including the Criminal Procedure (Mentally Impaired Persons) Act 2003, Mental Health (Compulsory Assessment and Treatment) Act 1992, and Criminal Procedure Act 2011, and
- people who are no longer subject to a compulsory care order but are continuing to receive services through the FCS(ID).

## Principles

Community residential care is home for many disabled people. Any proposal to exit a disabled person from a residential service should therefore be managed in a way that acknowledges the effects of exiting a person from their home.

As a general principle, DSS does not support the involuntary exit of a disabled person from a residential service and views this as contrary to the terms and conditions of the service provider's contract.

Service exit against the wishes of a person is a last resort and should only be considered when other options have been exhausted. In such circumstances the following principles underpin the actions of all parties:

- The welfare and rights of the person (and their family / whānau, if appropriate) and others who live with them must be upheld. This is in accordance with the Human Rights Act 1993 and the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**).
- Parties will act in accordance with the best interests of the disabled person, and decision-making should be person-centred.
- To the extent that upholding the best interests of the disabled person conflicts with the ability and obligations of the service provider to manage the health and safety and / or wellbeing of others, or they are not able to be met as a result of acts or omissions of others, the parties will coordinate in good faith to identify a workable solution in accordance with this policy.
- A workable solution is one that considers the views of all parties, meets the parties' respective responsibilities and needs, and is a proportionate response to the issue.
- Where a decision has been made to exit a disabled person from a residential service, it is essential that the disabled person's transition to alternative accommodation is well-planned to reduce stress for the disabled person. The planning must account for the health and safety of the disabled person and others.
- All efforts must be made to resolve disputes about service exit as soon as practicable and in a timely manner.

- There must be documented evidence that supports the efforts to resolve matters before an exit process is carried out.

Disabled people may not want their family / whānau to be involved in deciding where they live. While this policy has been written to include family / whānau in the exit process, it is important to respect a disabled person's right not to involve others where they wish to exercise this right.

Unless an appropriate order is in place, DSS will assume a disabled person has the capacity to make their own decisions. All disabled people should be supported to express their will and preferences.

## Compliance requirements

All parties must act in accordance with the law. This includes service providers, who must ensure for the health and safety of their staff and other people in the residential facility.

There are codes, standards, contract requirements, service specifications and legislation that must be followed when any service exit is being considered. These include<sup>2</sup>:

- Code of Health and Disability Services Consumers' Rights<sup>3</sup> (the HDC Code). Under the HDC Code, a disabled person has the right to:
  - dignity and respect.
  - be fully informed and to make informed decisions about things that affect them.
  - have a support person of their choice.
  - complain about things they are unhappy about.
  - a fair process and hearing in the management of any complaint including the availability of an advocate<sup>4</sup> without fear of recrimination.
- Ngā paerewa Health and disability services standard.<sup>5</sup>
- Requirements and obligations contained in the relevant provider's service contract.

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<sup>2</sup> This list is not exhaustive.

<sup>3</sup> [Code of Health and Disability Services Consumers' Rights — Health & Disability Commissioner \(hdc.org.nz\)](https://www.hdc.org.nz/)

<sup>4</sup> A disabled person is able to choose an independent advocate, or an advocate from the Nationwide Health and Disability Advocacy Service: [Advocacy - Health and Disability Advocacy Service](#).

<sup>5</sup> NZS 8134:2021 Ngā paerewa Health and Disability Services Standard ([NZS-81342021.pdf](#)).

- Any other contract or document (including internal policies) that sets out the service provider's expectations / requirements of the residents and others.
- Relevant 'Exit' clauses included in the DSS Tier One Service Specification, DSS Tier Two Service Specification for Community Residential Support Services, and other relevant service specifications.
- Health and Safety at Work Act 2015.<sup>6</sup>
- New Zealand Bill of Rights Act 1990.
- Human Rights Act 1993.

The service provider must give notice to the Needs Assessment and Service Coordination organisation (**NASC**) and Disability Support Services (**DSS**) where there is an issue that may require a service exit. DSS may require details of a service provider's concerns and the steps it has taken prior to, and after, invoking this policy.

## Exceptional circumstances

'Exceptional circumstances' means a situation in which a service provider, acting reasonably, considers:

- there is a health and safety risk to the disabled person and / or others (e.g. flatmates, staff members, or whānau), and
- the acts or omissions of the disabled person and / or others are compromising the service provider's ability to meet their duty of care under the Health and Safety at Work Act 2015, and
- the service provider has been unable to resolve the situation despite taking all reasonable and practicable steps in line with its contract and applicable policies.

Exceptional circumstances may arise where:

- there has not been a request or acceptance by the disabled person or their family / whānau to relocate.
- there has been a prior NASC and / or other specialist assessment which did not support the move.
- an agreement has not been reached between the parties concerned.
- other options to resolve the dispute between parties have been exhausted.

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<sup>6</sup> This Act provides a framework to protect workers and other persons against harm to their health, safety, and welfare in the workplace.

- the service provider has notified DSS that they intend to exit the disabled person.

Where these exceptional circumstances exist, and where DSS has agreed to allow for the exit of a disabled person from a residential service, the procedures set out in this policy must be followed (see 'Implementing exit of a disabled person from a community residential service').

## **Parties' roles and responsibilities**

All parties involved in a disabled person's residential care have an ongoing role and responsibility to support the disabled person to enjoy a good quality of life.

The exceptional circumstances that potentially allow for exit of a disabled person require DSS to promptly initiate appropriate processes to fulfil obligations to the disabled person and the service provider. This includes ensuring that the circumstances prompting the provider to pursue a service exit are investigated and all options to resolve the situation are considered.

It is essential that there is commitment from all parties to work collaboratively to resolve the issues and that the disabled person remains at the centre of decision making.

### **Disabled person and family / whānau**

Disabled people have rights under the HDC Code, Bill of Rights Act 1990, Human Rights Act 1993, and several other formal instruments (see also 'Compliance requirements'). These include rights to personal dignity, independence, and privacy.

Where a disabled person lives in a residential service, the person and their family / whānau also have responsibilities, including regular engagement with the service provider and respecting the rights and health and safety of other people living and working in the residential service.

An external or independent advocate, or organisation<sup>7</sup> may also help a disabled person to choose the best person to support them and ensure their interests are at the centre of any decision-making. The disabled person may have an existing advocate or request one for this process.

### **Service Provider**

The service provider is responsible for supporting people, including those with challenging behaviours, and exploring all options to resolve complaints and disputes between parties in its care. The service provider must uphold its contractual obligations and provisions of the Health and Safety at Work Act 2015 on managing and mitigating risk, e.g. by providing training for staff.

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<sup>7</sup> See footnote 4.

The service provider must promptly notify the DSS Portfolio Manager of any circumstances that, in the service provider's opinion, constitutes exceptional circumstances as described in this policy. The relevant NASC should also be notified.

## **NASC**

The NASC is responsible for ensuring a fair and transparent process is followed when it has been approached by a service provider with circumstances that may lead to a request for the service exit of a disabled person.

The NASC will work with the service provider to ensure the disabled person is receiving all available and appropriate support services before any decisions can be made about a potential service exit. For example, where the disabled person is exhibiting challenging behaviours, they may be eligible for specialist Behaviour Support Services. These services may also include support for the disabled person after an exit has been implemented.

## **DSS**

DSS requires assurance that all parties will work together to reach an agreed resolution and the rights and interests of the disabled person have been respected and maintained throughout an exit process. The DSS Portfolio Manager will ensure all appropriate steps are followed.

The procedures required of all parties where a service exit is being considered, or implemented, are set out later in this policy.

# **Considerations when seeking exit of a disabled person from a community residential service**

All parties must consider the following when deciding on the relocation of a disabled person from a residential service:

- Any decision to move a person from their existing service to another residential service must be based on the best interests of the disabled person, and not the needs of the current service provider.
- Decisions must be approved by the NASC.
- The disabled person and, where appropriate, their family / whānau, must be centrally involved in the decision-making process.
- An alternative service provider has been identified that is able to support the disabled person in its service.
- There is a clear plan developed with involvement of all parties, including any new service provider. This plan should identify risks and outline how

the transition of the disabled person to their new residential service will be facilitated.

- **Note:** Under the DSS Tier Two Service Specification for Community Residential Support Services a service provider cannot (under the contract) relocate a disabled person unless:
  - requested by the disabled person, their family / whānau / guardian and / or advocate (if appropriate), or
  - prior to being relocated, the disabled person has been assessed by the NASC as confirming that the move is appropriate, with the involvement of any applicable specialist support services, and the NASC approves the re-location, or
  - as agreed by DSS.

## Procedures required for service exit

Several steps are required before a decision can be made to exit a disabled person from a residential service under exceptional circumstances. All steps should be undertaken in a manner that reduces the impact on the disabled person and other parties.

The service provider should be informed that they cannot exit a person until DSS has investigated any dispute. To exit the disabled person at this stage is a breach of contract.

DSS should request all documentation of meetings and a report from the NASC and service provider on relevant processes and any outcomes that have been reached.

**Note:** The NASC is responsible for:

- reviewing current service provision for the disabled person, and
- agreeing on any extra resources to mitigate current risk, and
- urgently reassessing the disabled person's support needs within the timeframes set out in the NASC contract and NASC Managers' Operational Manual, and
- coordinating the process for agreeing a new service plan and residential location.

The disabled person and their whānau / support people should be made aware of the situation and be able to access an advocate of their choice.

All parties should work together to identify a resolution which meets the disabled person's needs and wishes, and which is supported by all parties. Where possible a joint meeting of parties should be arranged by the DSS Portfolio Manager.

## Exploring options

If a resolution cannot be reached, DSS will initiate a facilitation or mediation process to ensure all options have been explored and all parties are heard.

Facilitation or mediation will be led by a senior DSS staff member, or other contracted party<sup>8</sup>. The appointed negotiator should have experience of the disability support services environment, while also remaining independent of the specific circumstances of the dispute.

The facilitation or mediation leader will:

- undertake the process with urgency and transparency.
- review all information and documentation.
- determine whether the process has been fair, transparent and managed in an appropriate manner, and
- make recommendations to the appropriate DSS Regional Manager.

Recommendations to the DSS Regional Manager may be one of the following:

- The service provider has reasonable need to exit the disabled person from the residential service, pending an agreed transition plan, or
- The exit of the disabled person should be declined, and a workable solution for future service delivery to the disabled person developed with the provider and the NASC, and / or
- The service provider should be issued with a breach of contract notice and a contractual dispute resolution process should be commenced.

The DSS Regional Manager will consider the recommendations and make a final decision on actions as soon as practicable. This decision will then be communicated to all relevant parties.

**Note:** The facilitator or mediator may make interim decisions and final decisions should depend on the outcome of the interim plan and / or compliance by all parties. The final decision should be made following a further meeting of all parties involved in the initial facilitation or mediation process.

## Review of Decision

If any involved person does not agree with the decision made by the DSS Regional Manager to exit or to decline the exit of the disabled person, they may apply for a review of decision.

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<sup>8</sup> The mediator will be selected and/or contracted by DSS senior management.

# Implementing exit of a disabled person from a community residential service

Where DSS has agreed to the exit of a disabled person, DSS will inform the disabled person and their family / whānau in writing of that decision and the reasons for it.

DSS will also inform the service provider in a letter outlining the principles to be followed<sup>9</sup> and the steps to be taken to arrange the exit.

The following principles must be adhered to:

- The disabled person and their support network are consulted and kept informed about the process at all stages.
- The safety and well-being of the disabled person and service provider staff are considered throughout the exit process.
- The exit process must be culturally appropriate, ensuring that the disabled person's cultural needs are acknowledged and respected.
- The NASC, the disabled person, their family / whānau and, where possible, the person's support staff will be actively involved in the process of selecting a new support arrangement.
- The disabled person cannot be exited until a suitable support arrangement has been found for the disabled person.
- The exit process should occur in a timely manner and must include an agreed transition plan developed with the disabled person, their advocate and the NASC. If any party is concerned about the timeliness of the exit process, this should be escalated to DSS.
- The current service provider retains duty of care responsibilities for the disabled person until the relocation has been completed.

The following steps must be taken:

- The service provider is responsible for any appropriate transitional accommodation and one-on-one supports, if required, until the exit can be arranged. The NASC will work with the service provider to identify associated costs and agree extra funding for transitional supports if needed.
- The NASC is responsible for identifying appropriate residential support service options.

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<sup>9</sup> These principles are in addition to the overarching principles set out in the 'Principles' section in the policy.

- All parties will work together to agree on the exit date.
- The current and new service providers and the NASC will work with DSS to ensure that:
  - the above principles and steps have been followed
  - the disabled person is closely supported to make the transition to their new residential service.

## Glossary – Terms and Definitions

Term	Description
<b>DSS</b>	Disability Support Services (MSD business unit)
<b>MSD</b>	Ministry of Social Development
<b>NASC</b>	Needs Assessment and Service Coordination organisation
<b>Service Provider</b>	Community Residential Support Service provider
<b>UNCRPD</b>	United Nations Convention on the Rights of Persons with Disabilities