BAPTIST CARE AUSTRALIA A voice for hope

Exposure draft of the Aged Care Legislation Amendment (Registered Nurses) Principles 2023

Comments for the Department of Health and Aged Care

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Contact
Nicole Hornsby

T 1300 068 184
E nicole.hornsby@baptistcareaustralia.org.au

1/1193 Toorak Rd
Camberwell VIC 3124

PO Box 230
Hawthorn VIC 3122

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About Baptist Care Australia

Baptist Care Australia is the national representative body for Baptist community service organisations and their clients in the national policy debate. Our members employ more than 11,500 staff, work with 3,000 volunteers and have an annual turnover of almost $1 billion. Together, the network of organisations that make up Baptist Care Australia care for over:

- 5,000 residents in over 60 residential aged care facilities
- 1,300 residents in 30 retirement living communities
- 12,000 older Australians in their own home

We work to bring social justice to Australian communities, advocating nationally on issues important to our members. A core principle in our work is to make sure that the interests and voices of marginalised people are heard when decisions are made that affect them. Our vision is a nation of hope-filled, purposeful people, building communities where every voice is heard. Our advocacy work seeks to help realise this aspiration.

Baptist Care Australia is a company limited by guarantee, a registered charity and a public benevolent institution.

Structural barriers to 24/7 RNs

Our members are dedicated to ensuring high-quality care for their residents and to providing 24/7 RNs on site as part of this care. However, they face several barriers to implementing the 24/7 RN requirement which are outside of their control which should be considered in terms of compliance.

Shortage of nurses

Australia is currently facing a nursing shortage and this systemic issue is affecting the ability of aged care providers to secure nursing staff. The Australian Nursing and Midwifery Federation has reported a severe shortage of nurses, with the figure of 8,000 nursing vacancies as of July 2022 considered an underestimate.[1] Without adequate national measures to address this shortage, aged care providers will not be able to fulfil the 24/7 requirement. Providers are concerned they will face negative consequences for an underlying structural issue over which they have very little control.

Pay parity

Pay parity remains a major concern for providers trying to retain or recruit RNs. While the Fair Work Commission's Work Value Case will go some way to addressing this issue, other industries continue to increase pay and conditions to remain competitive. For instance:

- The Western Australia Government is offering a $3,000 cost of living bonus for public sector nurses
- Queensland Health gave its nurses a 9.1% pay rise in 2022
- Some hospitals are offering $6,000-$7,000 sign-on bonuses for RNs

[1] McDonald, L and G Stayner (2022) "Australia facing nursing shortage as more than two years of COVID takes its toll" ABC News Online. 22 July 2022.

Without pay parity with other health service sectors, aged care providers will continue to struggle to employ the number of RNs required to provide 24/7 nursing.

Staff turnover (or 'churn')

As reported extensively in the media, aged care providers are experiencing an unprecedented rate of staff turnover, which includes high RN turnover. This is due to many reasons, including the pressures on aged care staff arising from the COVID pandemic and an ageing workforce. Staff turnover not only increases the gaps in the roster but also places additional pressure on remaining nursing staff to take extra shifts. This pressure will only increase with the 24/7 RN requirement and we anticipate the associated burnout will further impact RN retention rates. The concerning trend with this issue is that the increased reliance on agency RNs dramatically impacts labour costs and this will affect the financial viability of some services.

Delays in visa processing

Members are looking to recruit nurses from overseas as, for some, extensive advertising over long periods in the domestic market has failed to recruit the necessary staff. Migration recruitment processes are time-consuming and costly. Visa processing times are currently expected to take at least 8 months, with one member being told the earliest time they could expect to have an RN available via a migration pathway would be August 2023.

Waves of COVID

All providers have experienced particular staffing challenges during severe waves of COVID. Public health authorities are anticipating another two waves of COVID in 2023. Depending on severity of the variants we face, this will increase RN absences and reduce availability of RN agency staff. With up to 1 in 10 people developing 'long-COVID' after infection,[2] these impacts continue to multiply.

Natural disasters

Almost 70% of Australians lived in an area covered by a natural disaster declaration in 2022.[3] In the past 2 years, several of our members have met the challenge of providing residential aged care services during major flooding and bushfire events. RNs and the wider local healthcare systems face extreme pressures in these circumstances.

Rural, regional and remote providers

There are greater challenges for providers operating in remote, rural and regional locations in recruiting nurses. One member has been flying in nurses to one such facility in order to maintain appropriate care and compliance, but this is not a financially sustainable response to the problem.

Provider efforts to overcome these barriers

Our members have been working hard to overcome these barriers ahead of the 24/7 implementation timeframe. Notwithstanding these efforts, some have continued to face challenges in ensuring an RN on-site 24/7. This occurs

[2] McMillan, A., 2023, "'We're all vulnerable': One in 10 people will end up with long COVID, new study says" The Sydney Morning Herald, 16 January 2023.

[3] Hitch, G., 2023, "East coast flooding saw majority of Australians covered by natural disaster declaration in 2022." ABC News Online, 13 January 2023

in a range of circumstances ranging from a rostered RN calling in sick through to difficulties recruiting RNs despite extensive recruitment campaigns. Providers have been working to navigate these barriers including by:

- Paying above award wages
- Offering sign-on bonuses
- Providing accommodation
- Flying in staff from urban centres for short periods
- Providing pathways including scholarships and study leave for ENs to upskill as RNs
- Seeking support to recruit from overseas
- Work to set up a multi-provider shared bank of nurses in local area to decrease reliance on agencies
- [COVID] Providing higher payments (retention payments) when a site is in lock-down due to COVID
- [COVID] Avoiding new admissions, particularly direct hospital admissions, during peak COVID waves

Exemptions

The narrow scope for exemptions fails to acknowledge the range of providers that will struggle to maintain 24/7 RNs on-duty and on-site due to structural factors outside their control.

Narrow scope for exemptions

We note the grounds on which an exemption may be given target a very narrow set of circumstances. Many providers that do not meet those criteria will struggle to meet the 24/7 RN requirements for structural reasons that are outside their control (as outlined above).

Need for another category of exemption

We believe the Government should create an exemption category for providers that have demonstrated they have taken all reasonable steps to recruit or retain RNs but remain without 24/7 RN on-duty and on-site.

No scope for discretion in exemptions

Members are concerned there is no scope for the Secretary to use their discretion to approve an exemption for providers that are facing substantive barriers to implementation for any other reason than those outlined. We expect there will be valid reasons other providers will struggle to fulfil these requirements. The inability to secure an exemption will lead to negative consequences for non-compliance when audited by the Aged Care Quality and Safety Commission (the 'Commission').

MMM classifications do not align with operational challenges

The MMM classification system is not a strong enough mechanism to accurately identify all groups of providers that deserve exemption consideration. It is a blunt tool that does not assess workforce challenges. Members find their workforce challenges do not necessarily correspond to MMM categorisation.

It's important the Department of Health and Aged Care (the 'Department') have already identified a wider range of MM categories as experiencing RN workforce issues. The Aged Care Registered Nurses' Payment – Additional Payment is available to RNs who work in a rural or remote area classified as MMM 3-7. Meanwhile, the Rural

Locum Assistance Program (RLAP) Aged Care covers MM4-MM7. This shows the Department has previously accepted that aged care providers in MM3 and MM4 locations experience RN workforce issues.

We recommend the expand the exemption criteria to include additional MMM categories.

Aggregation of beds across facilities

The legislation limits those who can apply for an exemption as those who receive Residential Care funding in MMM 5, 6 or 7 classifications that have less than 30 beds in a location. It has complex wording around how the 'less than 30 beds' is determined. We are aware of a provider that has been determined to be ineligible for an exemption because they operate two facilities within a short distance of each other that together are taken to have more than 30 beds in one location. This is not consistent with other regulation relating to those facilities.

Lack of insight regarding reasonable steps to ensure clinical care

The Department and Commission have not provided any insight into what they might consider to be 'reasonable steps' to ensure clinical care when an RN is not on site for 30 minutes or more. Our providers are concerned by the lack of insight into the Department's thinking on this matter, and what kinds of interventions would be deemed as adequate by the Department and/or the Commission.

While we appreciate a set list of alternative options is not in itself an appropriate way to assess clinical care, additional guidance or 'safe harbour' options would be useful.

Reporting requirements for those with an exemption

Providers that are granted an exemption must continue to report on every 30 minute period without an RN on site. It is not clear why such reporting is required given the exemption that has been put in place requires the provider to report to the Secretary with any material change in circumstances. This creates an unnecessary reporting burden on providers for prolonged periods.

If these reporting requirements do not change for providers with an exemption, the Department should create a pre-filled report option that allows the provider to submit monthly with minimal review.

Information about registered nurses (reporting)

The proposed monthly reporting on any 30 minute period without an RN on-duty and on-site is excessive.

The 30 minute on-site and on-duty threshold is excessive

The requirement for providers to report on any 30 minute period without an RN on-duty and on-site is excessive. For instance, there may be times when an RN is on-site but off-duty for longer than 30 minutes. As it stands, the legislation would require providers to complete a report whenever their RN sits in the staff room for a 30 minute meal break. It does not seem reasonable that RNs should have to limit their lunch breaks to 29 minutes.

To avoid excessive reporting, this requirement should be extended to 60 minutes or more.

Burden of monthly reporting requirement

The new monthly reporting requirement is an onerous addition to the existing quarterly reporting requirements. It is not clear the reasons for requiring more frequent reporting on this item and why the Department has not streamlined this process by embedding into existing reporting arrangements.

Lack of insight into alternative arrangements to meet clinical needs

The Department has not yet provided adequate insight into the types of alternative arrangements for maintaining clinical care in those situations when an RN is not on site for 30 minutes or more. In the majority, our Members already roster RNs on site 24/7. Notwithstanding this approach, all providers have times when there is no RN on site and rely on alternative clinical care arrangements. They are concerned to know if their existing alternative arrangements would be considered adequate by the Department and/or the Commission.

We are concerned by the lack of insight into the Department's thinking on this matter. While we appreciate a set list of alternative options is not in itself an appropriate way to assess clinical care, additional guidance or 'safe harbour' options would be useful. Such guidance would further assist providers in ensuring relevant documentation or evidence as may be required by the Commission at a later date.

Consequences of non-compliance

> *Providers are concerned that, once the subordinate legislation is passed, the Commission will have no choice but to penalise providers that don't meet the requirement despite the fact there is broad agreement that there are systemic issues undermining the ability of providers to fulfil these requirements.*

Aged care providers are concerned that: compliance expectations are not clear; that compliance assessments will fail to take into account broader structural issues impacting their capacity to fulfil the requirements; and that they will face unfair consequences despite making all reasonable efforts to implement the reforms as legislated.

Lack of clarity regarding consequences for non-compliance

Members want to know if the Government will provide a 'grace period' to allow for the structural adjustments required. Providers discussed the value of establishing an implementation period in which they were expected to fulfil the new measures but would not face negative consequences for being unable to meet the requirements. During this period, the oversight role of the Commission could be limited to offering providers guidance on ways to move closer to compliance. The Amending Principles do not provide this clarity.

General concerns regarding the approach to compliance

Providers would value an indication from the Government regarding how they want the Commission to respond to instances of non-compliance, particularly during the first 6 months of operation. Many providers are keen to work in a collaborative manner with the Commission to identify and resolve any compliance issues to ensure residents have the care they need. We appreciate statements directing the Commission to take an educative role on this matter in the first instance, but there are no limitations on their mandated responsibilities to ensure compliance with legislated requirements.