

**Submission
No 152**

**INQUIRY INTO REGISTERED NURSES IN NEW SOUTH
WALES NURSING HOMES**

Organisation: Combined Pensioners & Superannuants Association of NSW
Date received: 23/07/2015

Submission to the NSW Legislative Council
General Purpose Standing Committee No. 3
Inquiry into registered nurses in NSW nursing homes

July 2015

© Combined Pensioners & Superannuants Association 2015

CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 130 branches and affiliated organisations with a combined membership of over 31,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents.

CPSA welcomes the General Purpose Standing Committee No. 3 inquiry into registered nurses in NSW nursing homes.

Living Longer Living Better reforms

The 2014 federal *Living Longer Living Better* reforms to the *Aged Care Act 1997* removed the distinction between ‘high’ and ‘low’ care in residential aged care. As a consequence, the NSW *Public Health Act 2010* requirement for ‘high care’ residential aged care facilities to have a registered nurse on duty at all times was rendered inoperable.

The NSW Government has extended the registered nurse requirement in NSW nursing homes until December 2015.

If there is no requirement to have a registered nurse on duty at all times in residential aged care facilities which have residents who require high-level care, many nursing homes will reduce registered nurse staffing. Many nursing homes will undoubtedly remove registered nurses from night and weekend shifts, leaving residents at risk.

The Federal Government’s regulatory framework for nursing homes does not prescribe staffing levels or skill mix. The Federal Government does not require nursing homes to have a registered nurse on duty at all times. Instead, it leaves staffing decisions up to each individual facility operator in accordance with the accreditation standards (which do not specify staffing requirements) and “the residential care service’s philosophy and objectives”.¹

In 2012, NSW Health expressed serious concerns over the removal of the distinction between high and low care under the *Living Longer Living Better (LLLLB)* reforms because of the impact on staffing. In its submission to the Department of Health and Ageing, it stated:

“Under the *Aged Care Act 1997* and the *NSW Public Health Act 2000* [sic], high level care residents currently require care to be provided by a registered nurse. NSW Health believes it will be critical to continue these existing regulatory requirements to ensure care quality... It should be a priority that legislation to establish the Quality Agency includes requirements which specify that a registered nurse must be appointed as the Director of Nursing (or similar title) at a residential care facility and a registered nurse must be on duty in residential aged care facilities. A strong focus on safety and quality of care is critical if the distinction between high and low level residential care is removed.”²

¹ Aged Care Quality Agency (2014) ‘Accreditation Standards’ Australian Government, p. 1

² Roach, J. (2012) ‘Proposed amendments to Commonwealth Aged Care Act 1997 and Related Legislation’ *NSW Health Submission*, December, p. 3

The submission also called for the Quality Agency to ensure that enrolled nurses and assistants in nursing work within their scopes of practice “under the supervision of a registered nurse”³.

No amendment was made to the *Aged Care Act 1997* or accompanying principles to specify staffing requirements under the *LLL* reforms. The Quality Agency does not require facilities to ensure that enrolled nurses and assistants in nursing work under the supervision of a registered nurse. *LLL* reformed the financing of aged care, not the regulation of aged care and as such, facilities continue to be poorly regulated in the area of staffing.

Case studies

The lack of robust staffing regulation by the Federal Government exposes residents to unsafe staffing practices by nursing home operators. For example, in 2012 a Queensland nursing home in was found to have no staff rostered on for 10.5 hours at night, presumably because it did not think that residents needed to have a carer present overnight. Residents were found absconding, falling, and wandering.⁴ It is unclear how long this home had been run without staff at night. It remains fully accredited.

In 2010, 91-year-old Martha McKee died after being strangled by a bed pole in the middle of the night at BCS Mid Richmond Centre-Coraki nursing home. On the night of Ms McKee’s death, only two staff members were rostered on to look after 45 residents: an enrolled nurse whose registration had lapsed, and a care worker on her first night shift who was assigned to cleaning duties.

The Coroner investigating Ms McKee’s death, Magistrate Robyn Denes, criticised the staffing of the facility, stating:

“One carer to 45 residents at Mid Richmond, as it was in July 2010, is unsatisfactory even if it meets the legislative requirements”.⁵

Half of the residents at the facility had high care needs, but the facility was classified as low care, and therefore not required to have a registered nurse on duty. The enrolled nurse who was present did not check for signs of life when she discovered Ms McKee at 5am. Only when a registered nurse came on duty at 6am was Ms McKee’s pulse checked.

Following the release of the Coroner’s report, BCS stated that its staffing of the facility on the night of Ms McKee’s death “was appropriate”⁶. The facility was fully accredited at the time, meeting the same standards which govern facilities now.

³ Ibid., p. 7

⁴ Aged Care Quality Agency (2012) ‘Southport Lodge’ *Audit report* October 2012, p. 8

⁵ Magistrate Robyn Denes (2011) ‘Inquest into the death of Martha McKee’ REF 0054/10

In 2009, Ms Jean Boyd died after contracting a urinary tract infection that was inadequately treated at the Illawarra Retirement Trust's William Beach Gardens (WBG) facility.⁷ At the time, WBG was home to 160 residents, 83 of whom were high care. The Coroner reviewing her death, Magistrate Geraldine Beattie, was critical of the staffing of the facility during Ms Boyd's decline over a period of about four days because her deteriorating condition was not adequately assessed by care staff. Only one member of care staff was rostered on weekends and at night in the cottage where Ms Boyd resided and there was only one registered nurse overseeing the entire facility at those times. As a consequence, Ms Boyd was not seen by a registered nurse or doctor for some 26 hours between Friday 2 and Saturday 3 October because the sole registered nurse was busy attending to other residents.

Magistrate Beattie criticised the policy of only one registered nurse on at nights and weekends, stating that it was "insufficient to deal with residents' needs"⁸. She recommended that the Aged Care Standards and Accreditation Agency⁹ conduct a review of the ratio of nursing staff to high care residents at WBG.¹⁰ Some staffing changes were made in response to Ms Boyd's death, but there were no additional registered nurses rostered on, and there continued to only be one registered nurse on duty from 4.30 pm on Saturday to Monday morning. The Accreditation Agency gave WBG full accreditation in 2011.¹¹

There is nothing to stop a facility from imposing dangerous staffing levels, particularly at nights and on weekends. The Aged Care Quality Agency by law only visits facilities during business hours (unless directed otherwise by the Minister)¹², so it does not directly observe staffing outside these times. Even where a facility has one registered nurse on duty at all times, the WBG case study shows that this may be insufficient to meet care needs. Not only does this reiterate the importance of the 24/7 registered nurse requirement in NSW, it highlights the futility of Commonwealth staffing regulation because it clearly fails to ensure that nursing homes are safely staffed.

Registered nurses versus other care staff

Registered nurses provide a higher level of skill and expertise than enrolled nurses and assistants in nursing. This is important in nursing homes, where, unlike hospitals, there is

⁶ Sara, S. (2012) 'Aged care death questions staffing policies' 7.30 ABC, 8 August, available at: <http://www.abc.net.au/7.30/content/2012/s3563615.htm>

⁷ Magistrate Geraldine Beattie (2013) Inquest into the death of Jean Boyd' Wollongong Local Court, Coronial Jurisdiction, 15 October.

⁸ Ibid. p. 8

⁹ Now the Aged Care Quality Agency.

¹⁰ Beattie (2013) p. 26

¹¹ Aged Care Quality Agency (2011) 'IRT William Beach Gardens Residential Care Facility', 12 September.

¹² The Commonwealth of Australia (2014) 'What powers can be exercised with an occupier's consent?' Section 91-1, (1) (a) (ii) *Aged Care Act 1997*

generally no immediate access to a doctor. As shown by Ms Boyd's death, residents' health can deteriorate at any time and a registered nurse should be at hand to make a clinical assessment about the health of the resident. Even the NSW Government's guidelines on managing patients who are clinically deteriorating recommend that a registered nurse undertake clinical reviews.¹³ In addition, NSW Health mandates that assistants in nursing working in acute care settings must only do so under the supervision and direction of a registered nurse when providing nursing care.¹⁴

NSW has the lowest rate of sanctions against residential aged care providers compared with other states.¹⁵ Although it is not possible to attribute this to the requirement for registered nurses to be on duty at all times, there is evidence to suggest that the registered nurse staffing level is a predictor of nursing home quality. A study of 1,099 nursing homes in California showed that nursing homes with higher registered nurse staffing levels received fewer penalty notices compared with homes with fewer registered nurses¹⁶. There is also evidence to suggest that registered nurses reduce unnecessary transfers to hospitals. A Victorian study on transfers of residential aged care residents to emergency departments found that as many as a third of transfers was unnecessary. The study suggested that limitations in staff skill mix in nursing homes in part influence decisions to transfer residents to hospital.¹⁷

A 2009 study examining the role of registered nurses on patient outcomes in Canberra hospitals found that a 10% increase in registered nurse hours reduced adverse events which are potentially sensitive to nursing by between 11% and 45%.¹⁸ American studies of hospital settings support this finding, showing that maximising the proportion of registered nurses in care staff reduces the rate of patient mortality.¹⁹ There is also evidence to suggest that higher levels of nurse experience in clinical care may lead to lower patient mortality.²⁰

¹³ NSW Health (2013) 'Recognition and management of patients who are clinically deteriorating' *Procedures*, p. 11

¹⁴ NSW Health (2010) 'Employment of Assistants in Nursing (AIN) in NSW Health Acute Care' *Policy Directive* p.2

¹⁵ Baldwin, R., Chenoweth, L., dela Rama, M., Zhixin, L (2014) 'Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions', *Australasian Journal on Ageing*

¹⁶ Hongsoo, K., Kovner, C., Harrington, C., Greene, W., Mezey, M. (2009) 'A Panel Data Analysis of the Relationships of Nursing Home Staffing Levels and Standards to Regulatory Deficiencies' *Journal of Gerontology Series B: Psychological Sciences and Social Sciences*, March 69B, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2655170/>

¹⁷ Morphet, J., Innes, K., Griffiths, D L., Crawford, K., & Williams, A. (2015) 'Resident transfers from aged care facilities to emergency departments: Can they be avoided?' *Emergency Medicine Australasia*, p.5.

¹⁸ Prof Duffield, C., Roche, M., Prof O'Brien-Pallas, L., Prof Diers, D., Aisbett, C., Aisbett, K., Prof Homer, C. (2009) 'Nursing workload and staffing: impact on patients and staff' Centre for Health Services Management, University of Technology, Sydney, p. 14

¹⁹ Tourangeau, A. E., Cranley, L. A., & Jeffs, L (2006) 'Impact of nursing on hospital patient mortality: a focused review and related policy implications' *Quality and safety in health care* 15 (1), available at:

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563988/>

²⁰ Ibid.

There is no minimum qualification requirement for personal care workers to work in a nursing home. Around two thirds of personal care workers have a Certificate III in Aged Care qualification.²¹ However, a 2013 audit of registered training organisations (RTOs) offering vocational aged and community care qualifications found that 87.7% did not comply with at least one of the national training standards required of programs to meet to attain qualifications under the Australian Qualifications Framework.²² Some of these RTOs were offering Certificate III in Aged Care course qualifications in just 11 weeks.²³ Of a randomly selected sample, only 20% of RTOs provided the required minimum 1,200 hours of training.²⁴

In short, residential aged care facilities are primarily staffed by low-skilled workers and assistants in nursing who should not be providing care to high needs residents without the direct supervision of a registered nurse. Not only is this unsafe for residents, it places totally unreasonable expectations and responsibilities on these workers.

High-needs residents

Seventy-five per cent of residential aged care beds in NSW are used for high care residents.²⁵ In 2004/05, this figure was 64%.²⁶ The trend towards high care reflects the increasing acuity of residents (older people are entering residential care later and in a more frail state) and ageing in place policies which allow residents to remain in the same facility as they decline.

To be classified as 'high care' a resident must be assessed as having:

- a high score for either Assisted Daily Living, Complex Health Care, or,
- a medium or high score in at least two of the three domains, or,
- a high score in Behaviour as well as a score above 'nil' in either Assisted Daily Living or Complex Health Care.

Eighty per cent of residents are classified as 'high' across Australia, with the most common appraisal being a 'high' across all three domains (18% of residents).²⁷

The only Federal requirement regarding staffing for 'high care' residents is that "initial assessment and care planning [be] carried out by a nurse practitioner or registered

²¹ King, D., Mavromaras, K., He, B., Healy, J., Macaitis, K., Moskos, M., Smith, L., Wei, Z. (2013) 'The Aged Care workforce final report 2012' Department of Health and Ageing, p. 33

²² Australian Skills Quality Authority (2013) 'Training for aged care community care in Australia: A national strategic review of registered training organisations offering aged care community care sector training'

²³ Ibid. p. 40

²⁴ Ibid. p. 41

²⁵ Department of Social Services (2014) 'Report on the Operation of the Aged Care Act 1997' p. 31

²⁶ Ibid (2005) p. 13

²⁷ Australian Institute of Health & Welfare (2012) 'Care needs of permanent aged care residents', available at: <http://www.aihw.gov.au/aged-care/residential-and-community-2011-12/permanent-residents/>

nurse, and ongoing management and evaluation [be] carried out by a nurse practitioner, registered nurse or enrolled nurse acting within their scope of practice. Nursing services [be] carried out by a nurse practitioner, registered nurse or enrolled nurse, or other professional appropriate to the service (for example, medical practitioner, stoma therapist, speech pathologist, physiotherapist or qualified practitioner from a palliative care team), acting within their scope of practice”²⁸. There is no requirement for a registered nurse to be on duty, or available at all times.

Guidelines developed for nursing homes in New Zealand specify that nursing homes with residents with high needs in the areas of complex health care or behaviour should have a registered nurse on duty at all times.²⁹ These guidelines were developed by an expert advisory group to help facilities improve quality and care safety. They suggest that even if a resident does not have complex health care needs but has moderate or high behavioural needs, they require care by, or under the direct supervision of, a registered nurse.

This is supported by a NSW Health report on Specialist Mental Health Services for Older People which recommends that Acute Inpatient Units have at least one registered nurse on duty at all times.³⁰ Other research recommends that there be a ratio of two nurses to six patients, with more nursing staff for patients with severe behavioural and psychological symptoms of dementia (BPSD) because insufficient staffing increases the incidence of violence.³¹

A high care needs score under the Aged Care Funding Instrument (ACFI)³² generates a higher subsidy from the Federal Government. In 2013/14, the average government subsidy for a nursing home resident was \$56,100, with the average high care resident subsidy sitting at \$62,750.³³ This recognises the higher cost associated with providing care to high needs residents, largely because of staffing. Nursing homes also receive resident fees, supplements and earn interest from residents’ bonds.

In contrast to the increasing frailty of residents and subsidies for providers, the number of registered nurses in residential aged care has dropped and the number of personal care workers has increased Australia wide. In 2003, 21% of the residential aged care workforce was registered nurses. In 2012, the proportion of registered nurses had fallen

²⁸ Commonwealth of Australia (2014) ‘Quality of Care Principles: Part 3, ‘Care and Services’ available at: <https://www.comlaw.gov.au/Details/F2015C00075>

²⁹ NZ Ministry of Health (2005) ‘New Zealand Handbook: Indicators for Safe Aged-care and Dementia-care for Consumers *Standards New Zealand* pp.21-22

³⁰ NSW Health (2012) ‘Specialist Mental Health Services for Older People (SMHSOP): Acute Inpatient Unity Model of Care Project Report’ *NSW Ministry of Health* p. 73

³¹ *Ibid.* p. 66

³² The tool used to determine government subsidies for residential aged care residents.

³³ Department of Social Services, *ibid.*, p. 39

to 14.9%. Enrolled nurse numbers have also decreased, falling from 13.1% of the residential aged care workforce in 2003 to 11.5% in 2012. Personal care workers, on the other hand, have increased from 58.5% of the workforce in 2003 to 68.2% in 2012.³⁴

Medication management

In NSW, the *Poisons and Therapeutic Goods Act 1966* determines how medications are managed according to the care setting. Care settings are defined as either “hospital” or “non-hospital”. A ‘nursing home’ is classified as a “hospital” under the *Poisons and Therapeutic Goods Act*.

This means nursing homes must abide by strict rules regarding the storage, handling and administration of medications, specifically Schedule 4 and 8 (S4 and S8s) medications.

Some rules that apply are:

- Medications are under the control of the authorised person in charge; the chief pharmacist or the director of nursing, and the registered nurse or midwife in charge of the ward has responsibility for storage.
- There are detailed requirements for the storage of S4 and S8 medications, which includes the type of storage cupboard and the requirement for the keys to be held by a registered nurse or midwife at all times.
- It is permissible to hold stock supplies of S4 and S8 medication and for this to be administered to a resident who has a valid order.
- There are detailed checking mechanisms outlined, which includes who can count and check and what type of record must be kept.³⁵

In a “non-hospital” (for example, a low-care residential aged care facility) setting:

- Medications are more or less treated as though the resident was in their own home.
- Staff, including assistants in nursing, may assist the resident take their medications, including S4s and S8s (normally in dose administration aids).
- No shared stock of S4s and S8s is to be held, and S4 and S8s must be labelled in the resident’s name.
- Medication must be stored safely, but there is no requirement that it be under the control of a registered nurse.

The rapid increase in the low-skilled workforce in residential aged care and the drop in registered nurses was partly why the Federal Government developed a set of medication

³⁴ King, D. et al., *ibid*, p. 9

³⁵ NSW Health (2003) ‘Guide to the handling of medication in nursing homes in NSW’ *Information bulletin* 2003/10

management principles for residential aged care facilities. The Guidelines state that part of the evidence for developing the guidelines was because 'medication-related tasks are increasingly delegated to ... unlicensed workers'.³⁶

There is no requirement for nursing homes to follow these guidelines. Furthermore, direction as to the administration of medications is referred to state and territory requirements.

Recommendation

All NSW residential aged care facilities which look after high care or high needs residents should have, as a minimum, at least one registered nurse on duty at all times. The number of registered nurses should be increased to reflect the number and acuity of the residents.

The *Public Health Act 2010* should be amended accordingly until such time as the *Federal Aged Care Act 1997* is amended to require residential aged care facilities with high care residents to be staffed at all times by at least one registered nurse.

The definition of "high care" could be the same as that currently defined in *The Quality of Care Principles 2014* Part 2, Division 1 subsection 7(6).

³⁶Department of Health (2012) 'Guiding principles for medication management in residential aged care facilities' available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/guide-med-mgmt-aged-care>