

**Submission
No 18**

**INQUIRY INTO PROVISIONS OF THE PUBLIC HEALTH
AMENDMENT (REGISTERED NURSES IN NURSING
HOMES) BILL 2020**

Organisation: Combined Pensioners & Superannuants Association of NSW Inc
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Submission to the NSW Select Committee on the
provisions of the Public Health Amendment (Registered
Nurses in Nursing Homes) Bill 2020

Inquiry into registered nurses in NSW nursing homes

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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's aim is to improve the standard of living and well-being of its members and constituents. CPSA receives funding support from the NSW Government Departments of Communities & Justice and Health and the Australian Government Department of Health.

CPSA welcomes the NSW Select Committee on the provisions of the Public Health Amendment (Registered Nurses in Nursing Homes) Bill 2020.

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 extended the registered nurse requirement in NSW nursing homes, and this requirement is still active today.

CPSA’s ongoing concern has been that when 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 Australian Government’s regulatory framework for nursing homes does not prescribe staffing levels or skill mix. The Australian 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 aged care standards, which have never specified staffing requirements.

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 federal 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.¹”

¹ 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, since replaced with the Aged Care Quality and Safety Commission, to ensure that enrolled nurses and assistants in nursing work within their scopes of practice “under the supervision of a registered nurse”².

No amendment was made to the *Aged Care Act 1997* or accompanying principles to specify staffing requirements under the *LLLB* reforms. The regulator does not require facilities to ensure that enrolled nurses and assistants in nursing work under the supervision of a registered nurse. *LLLB* 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.

There is nothing to stop a facility from imposing dangerous staffing levels, particularly at nights and on weekends. The regulator typically only visits facilities during business hours (unless directed otherwise by the Minister), so it does not typically 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 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.³ 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.⁴

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%.⁵ American studies of hospital settings support this finding, showing that maximising the proportion of

² *Ibid.*, p. 7

³ NSW Health (2013) ‘Recognition and management of patients who are clinically deteriorating’ *Procedures*, p. 11

⁴ NSW Health (2010) ‘Employment of Assistants in Nursing (AIN) in NSW Health Acute Care’ *Policy Directive* p.2

⁵ 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

registered nurses in care staff reduces the rate of patient mortality.⁶ There is also evidence to suggest that higher levels of nurse experience in clinical care may lead to lower patient mortality.⁷

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.⁸ 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.⁹ Some of these RTOs were offering Certificate III in Aged Care course qualifications in just 11 weeks.¹⁰ Of a randomly selected sample, only 20% of RTOs provided the required minimum 1,200 hours of training.¹¹

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

The trend towards high care as a proportion of residential aged care provided 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.

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

⁶ 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/>

⁷ Ibid.

⁸ 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

⁹ 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'

¹⁰ Ibid. p. 40

¹¹ Ibid. p. 41

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”¹². 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.¹³ 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.¹⁴ 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.¹⁵

The final report of the Royal Commission into the Quality and Safety of Aged Care has recommended that by 1 July 2024 every nursing home should have a Registered Nurse on site around the clock.

Medication management

Each State and Territory has different legislation and regulations governing the use of scheduled medicines. Medicines that are prescribed by a doctor and cannot be purchased over the counter at a pharmacy are referred to as schedule 4 medications (s4) and dangerous drugs of addiction, schedule 8 (s8) medications.

The NSW Poisons and Therapeutic Goods Regulations 2008 (The Regulation) relies upon the definitions described in the NSW Public Health Act (2010). Therefore RACF

¹² Commonwealth of Australia (2014) ‘Quality of Care Principles: Part 3, ‘Care and Services’ available at: <https://www.comlaw.gov.au/Details/F2015C00075>

¹³ NZ Ministry of Health (2005) ‘New Zealand Handbook: Indicators for Safe Aged-care and Dementia-care for Consumers *Standards New Zealand* pp.21-22

¹⁴ 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

¹⁵ *Ibid.* p. 66

that included one or more high level of residential care allocated places approved under the Aged Care Act 1997 on 30 June 2014 are required to procure, store, record and administer medications that have been prescribed and dispensed for residents (s4 and s8) in accordance with the requirements for a 'nursing home' as a 'hospital' under the Regulation.

The fact the Regulation only applies to selected RACF falling within the NSW Public Health Act (2010) means many residents in NSW RACF are not assured their medications will be managed and administered by RNs and ENs working under their direction. Poor management of medications can lead to avoidable hospitalisation and even death, so medication safety is vitally important.

Medications are scheduled because they pose a risk to public safety. It appears to be a nonsense that the law allows unlicensed care workers with minimal training to administer medications to residents in some NSW RACFs yet safeguards others by only allowing RNs, or ENs working under supervision of an RN to administer.

Whilst the Final Report Recommendations of the Royal Commission into Aged Care Quality and Safety highlight the importance of tightening standards around medication safety, years of ineffectual regulation offer no assurance that this will enhance safeguards for older people. Indeed, medication management has remained a top area of non-compliance over a period of at least five years without any meaningful regulatory action to both enhance safeguards or pursue systemic improvement across the sector.

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.