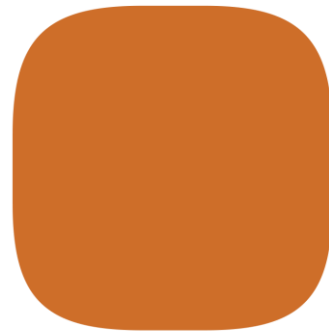


ACCPA Submission
Exposure draft – Aged Care
Legislation Amendment
(Registered Nurses) Principles
2023



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About ACCPA

The Aged and Community Care Providers Association (ACCPA) is a national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA exists to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector. We support our members to provide high quality care and services while amplifying their views and opinions through an authoritative and comprehensive voice to the government, community and media.

Our sector serves to make better lives for older Australians, and so do we.

Executive Summary

The Aged Care Legislation Amendment (Registered Nurses) Principles 2023 (Amending Principles) amends aged care subordinate legislation following the introduction of Schedule 1 to the Aged Care Amendment (Implementing Care Reform) Act 2022 (Implementing Care Reform Act), which commences on 1 April 2023.

The proposed Amending Principles give effect to matters relating to the responsibility for approved providers who provide residential care to care recipients in a residential facility to ensure at least one registered nurse (RN) is on site, and on duty, at all times (that is, 24 hours a day, 7 days a week) at the residential facility (24/7 RN responsibility).¹

ACCPA contends that consideration of consultation feedback for Exposure draft – Aged Care Legislation Amendment (Registered Nurses) Principles 2023 (Exposure Draft) must include an assessment of the context in which aged care providers are operating at the present time, and particularly over the coming twelve months. With the impact of a significant reform agenda in aged care, combined with challenges in financial sustainability and a workforce crisis, such a legislative measure will need careful design to ensure it achieves the desired outcomes in these circumstances.

ACCPA has made a series of recommendations to support improvement to design of the Amending Principles to ensure that the issues regarding workforce shortages and red tape are accounted for in the design of the provisions. Recommendations include:

- seeking clarity around compliance;
- equity across Australia in the design of exemptions criteria (particularly based on a more nuanced approach to workforce supply issues);
- clarity regarding definitions and other provisions in the subordinate legislation;
- a more balanced approach to the reporting threshold; and
- efficient reporting mechanisms to ensure a disproportionate reporting burden does not fall on those least able to manage it.

ACCPA understands that Australians want to be assured of robust arrangements for clinical care of older Australians, but they also don't want to see older Australians adversely impacted by the unintended consequences of legislative design (such as the closure of otherwise available beds or even the potential closure of facilities).

ACCPA believes our proposed recommendations which if accepted, will expand the eligibility criteria for an exemption, strike this necessary balance and fairly account for the current challenges facing aged care providers in Australia.

ACCPA is pleased to submit our response to this consultation.

¹ Department of Health and Aged Care, *Explanatory Statement – Exposure Draft of Aged Care Legislation Amendment (Registered Nurses) Principles 2023*, p.1 https://www.health.gov.au/sites/default/files/2023-02/exposure_draft_-_explanatory_statement_aged_care_legislation_amendment_registered_nurses_principles_2023.pdf

Summary of recommendations

R1: Amendments to the principles for registered nurses on site at all times (24 hours a day, 7 days a week) must take into account persistent and ongoing workforce shortages.

R2: That legislative provisions be drafted to account for unplanned leave at short notice; emergency situations; the ability to provide alternative arrangements at times of low clinical need (eg overnight) or off-site supervision of enrolled nurses.

R3: Additional measures to improve workforce supply of registered nurses should be implemented, including:

- creation of a specific visa for skilled migrants willing to work in aged care (such as the UK-style health and care worker visa);
- pay parity commensurate with the health sector across all States and Territories;
- incentives to upskill existing aged care workers to undertake a degree in nursing;
- use of the taxation system (including consideration of partial or full HECS waivers) to incentivise aged care workers to undertake training; and
- removal of barriers associated with placement requirements and costs.

R4: That there be clarity and harmonisation between the legislative development responsibilities of the Department of Health and Aged Care and the compliance approach of the Aged Care Quality and Safety Commission. This should recognise the impact of workforce supply issues on providers in specific compliance steps the Commission will take for particular scenarios. (This recommendation should also be read in conjunction with R6-R8).

R5: That the Amending Principles be adjusted to allow for discretion by the Secretary to grant exemptions, such as in the case of emergency circumstances.

R6: That there be changes to the exemptions criteria, aimed at recognising persistent and ongoing workforce shortages across Australia, including:

- (a) expansion of eligibility to include MM2-MM4; and
- (b) inclusion of exceptional circumstances criteria where a provider from MM1 is able to demonstrate prolonged difficulty with workforce supply.

R7: That the exemptions eligibility in Section 15S be amended from (1) (a) and (b) and (c) to be (1) (a) or (b) and (c) – to provide eligibility for providers who meet our proposed criteria in R5, to apply for an exemption (without also needing to meet the proposed '30 operational places' criteria).

R8: The removal of an operational places threshold as a component of the eligibility criteria for exemption as articulated in Section 15S(1)(b) [notwithstanding R6 should this recommendation not be adopted].

R9: The introduction of a clear definition of 'reasonable steps', as well as accompanying guidance materials for the sector, to ensure transparency of the exemption process.

R10: That there be inclusion in the provisions for a time period of a reasonable and an appropriate length for the decision of the Secretary, as well as confirmation that while the decision is under consideration, the approved provider is not in default provided it can show

that 'reasonable steps to ensure clinical care needs' will be met in the absence of an registered nurse.

R11: That Government involves providers in a co-design process for determining future provisions that may encompass alternative models of care, in circumstances where it is not possible to secure a registered nurse 24/7 onsite.

R12: That Section 44 B (3) (b) (i) be amended to extend the threshold for a report to be 2 hours or more that a registered nurse was not on site and on duty'. Further clarifications might also be considered for this provision, that on site, and on duty includes any time the registered nurse is working such as if being on duty requires part of the time off-site attending to matters related to the site etc and / or the presence of enrolled nurses with the registered nurse exercising off-site supervision with some reasonable time limit.

R13: That the data collection design and methods allow for providers with a long-term or ongoing issue to use a standardised reporting template each month, with updates to reasons required only by exception (ie. the ability to duplicate reasons each month and update if required).

R14: That the Department of Health and Aged Care involve providers in the design of the data collection system to ensure it is as efficient as possible.

R15: The inclusion of a provision that sets a specified time limit within which information might be requested by the Secretary regarding matters under Section 44C, to be set following consultation with providers.

R16: That the relationship between monthly reporting of information about registered nurses and the RN supplement provision be amended to ensure that minor gaps in RN requirements do not result in unreasonable gaps in RN supplementary funding.

Background

The Aged Care Legislation Amendment (Registered Nurses) Principles 2023 (Amending Principles) amends aged care subordinate legislation following the introduction of Schedule 1 to the Aged Care Amendment (Implementing Care Reform) Act 2022 (Implementing Care Reform Act), which commences on 1 April 2023.

The proposed Amending Principles give effect to matters relating to the responsibility for approved providers who provide residential care to care recipients in a residential facility to ensure at least one registered nurse (RN) is on site, and on duty, at all times (that is, 24 hours a day, 7 days a week) at the residential facility (24/7 RN responsibility).²

The aged care sector is experiencing the impact of a substantial reform agenda following the release of the final report of the Royal Commission into Aged Care Quality and Safety in March 2021 (the Royal Commission), with providers currently implementing two substantial pieces of legislation – the *Royal Commission Response Act 2022* and *Implementing Care Reform Act 2022*.

This is against a backdrop of significant financial sustainability challenges and a workforce crisis in aged care, which is exacerbated in regional Australia.

The recently released inaugural *Quarterly Financial Snapshot* showed that residential care providers are experiencing a net loss before tax of \$27.90 per resident per day.³

A Department brief recently released under FOI, shows the Department's own estimations of workforce shortage to be 11,800 RNs in 2023-24⁴ and as they note the new requirements for 24/7 RNs and care minutes, 'may place additional pressure on an area's existing workforce shortages – particularly on regional and rural areas.'⁵

It is critical that the Australian Government support the aged care sector with well-planned and developed policy that takes into account the imperative to both achieve reform outcomes recommended by the Royal Commission as well as navigate the obstacles that will play a significant part in the achievement of those outcomes.

In July 2022, upon the introduction of legislation to the Australian Parliament, ACCPA noted "We also support in-principle the delivery of the Government's election commitments through the Aged Care Amendment (Implementing Care Reform) Bill 2022 and look forward to the opportunity to scrutinise the implementation of these measures. For example, ACCPA is keen that we take account of staff shortages in how we introduce 24/7 RNs right across Australia."⁶

² Ibid.

³ Department of Health and Aged Care, *Quarterly Financial Snapshot of the Aged Care Sector Quarter 1 2022-23 July to September 2022*, p.7 https://www.health.gov.au/sites/default/files/2023-02/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-1-2022-23-july-to-september-2022_0.pdf

⁴ Department of Health and Aged Care, *Senate Committee: Community Affairs Budget Estimates 2022-2023 [Hot Issues Brief]*, Document 15 of FOI 4178 p.1, <https://www.health.gov.au/sites/default/files/2023-02/foi-4178-release-of-documents-hot-issues-briefs.pdf>

⁵ Ibid., p.2

⁶ Aged and Community Care Providers Association, *Media Release: ACCPA welcomes prioritisation of aged care reform*, 27 July 2022, <https://www.accpa.asn.au/media-releases/accpa-welcomes-prioritisation-of-aged-care-reform/>

In our *Federal Pre-Budget Submission 2023-24*⁷, ACCPA noted that:

*‘Solving the workforce crisis is critical for the care of older Australians. Shifts are currently going unfilled, older Australians are being turned away in both home and residential care, and demand for staff is growing strongly. In residential care, registered nurse (RN) levels need to increase by more than 40% by October 2023.’*⁸

Providers are currently contending with how they will achieve both the 24/7 Registered Nurse onsite requirement and average care minute levels during widespread, and often persistent, labour shortages – particularly in regional Australia.

With regard to funding and the introduction of a pricing approach by the recently expanded Independent Health and Aged Care Pricing Authority, the sector awaits their initial price recommendation for addressing the costs of delivering residential care. There are also options for the Australian Government to address specific funding initiatives as part of the budget process.

With regard to workforce, ACCPA calls for a collaborative approach between government and the sector as well as the use of various levers to influence workforce supply of aged care workers.

To address funding and workforce issues that are impacting providers’ ability to meet the requirements of 24/7 Registered Nurses onsite, ACCPA has recently made the following recommendations⁹ to the Australian Government:

- Fund a national project to work with State and Territory governments to partner on accommodation to house aged care workers in the regions;
- Develop specific migration solutions to boost the workforce supply in aged care, such as the introduction of a UK-style health and care worker visa; an Australian Government-sponsored recruitment campaign; industry labour agreements and extending the working hours of Student Visa holders beyond 30 June 2023 until such time as the immigration of new aged care workers increases sufficiently to reduce the staffing shortage in our sector;
- Fund the 215 minutes daily requirement of care to commence 12 months early, from October 2023, to better support providers to meet the target on time;
- Address the loss of aged care workers from the sector by supporting competitive pay approaches such as funding future pay increases and ensuring aged care nurses receive salaries commensurate with their counterparts in public hospitals; and
- Fund the full 15% decision of the Fair Work Commission Value Care, commencing on 30 June 2023, as well as the funding needed to cover all on-costs.

Most providers already have in place, or aspire to, 24/7 Registered Nurse coverage onsite. Many, particularly in regional Australia, also have long-standing and proven alternative

⁷ Aged and Community Care Providers Association, *Federal Pre-Budget Submission 2023-24*, February 2023, p.14, https://www.accpa.asn.au/wp-content/uploads/2023/02/100223_ACCPA-Federal-Pre-Budget-Submission-2023-24.pdf

⁸ Providers currently average about 34 minutes, this will need to increase to 40 minutes (43%) by October 2023 and 44 minutes (64%) by October 2024 under proposed staffing targets. Department of Health and Aged Care, *Quarterly Financial Snapshot of the Aged Care Sector Quarter 1 2022-23 July to September 2022*, p.7 https://www.health.gov.au/sites/default/files/2023-02/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-1-2022-23-july-to-september-2022_0.pdf

⁹ Aged and Community Care Providers Association, *Federal Pre-Budget Submission 2023-24*, February 2023, p.13-15, https://www.accpa.asn.au/wp-content/uploads/2023/02/100223_ACCPA-Federal-Pre-Budget-Submission-2023-24.pdf

models of care to address the inability to access registered nurses on-site, but still ensure delivery of quality care for older Australians.

ACCPA members report that more is needed to address workforce supply of registered nurses in Australia. For example, many personal care workers and enrolled nurses in aged care would be willing to remain in the aged care sector and undertake training as registered nurses but are prevented by affordability barriers – such as the requirement for an unpaid 16-week placement during the qualification and the burden of a HECS debt.

Furthermore, the legislative provisions do not take into account regular and common scenarios for registered nurses such as unplanned leave at short notice; emergency situations; the ability to provide alternative arrangements at times of low clinical need (eg overnight) or off-site supervision of enrolled nurses.

R1 ACCPA recommends that amendments to the principles for registered nurses on site at all times (24 hours a day, 7 days a week) must take into account persistent and ongoing workforce shortages.

R2 ACCPA recommends that legislative provisions be drafted to account for unplanned leave at short notice; emergency situations; the ability to provide alternative arrangements at times of low clinical need (eg overnight) or off-site supervision of enrolled nurses.

R3 ACCPA recommends additional measures to improve workforce supply of registered nurses should be implemented, including:

- **creation of a specific visa for skilled migrants willing to work in aged care (such as the UK-style health and care worker visa);**
- **pay parity commensurate with the health sector across all States and Territories;**
- **incentives to upskill existing aged care workers to undertake a degree in nursing;**
- **use of the taxation system (including consideration of partial or full HECS waivers) to incentivise aged care workers to undertake training; and**
- **removal of barriers associated with placement requirements and costs.**

Proposed Amending Principles

ACCPA understands that the proposed amending principles, as currently drafted, are so limited that they will likely only impact approximately 5% of residential aged care providers.

Furthermore, there appears to be limited benefit to providers in undertaking an application for the exemption process, as those who are granted an exemption are still required to undertake a monthly reporting process.

ACCPA is concerned that the proposed exemption criteria are arbitrary and blunt. A more nuanced approach that seeks to address the reality of workforce supply issues, particularly in regional Australia, will be of benefit. Currently, the principles will impede providers' ability to comply with 24/7 Registered Nurse onsite legislative requirements.

Further, the arbitrary nature of the proposed thresholds, and the continued requirement to report despite any exemption, effectively renders the exemption of no effect.

As ACCPA identified in its submission to the Senate Standing Committee on Community Affairs¹⁰ *Inquiry into the Aged Care Amendment (Implementing Care Reform) Bill 2022 [Provisions]* the Aged Care Quality and Safety Commission noted in the Bill's Explanatory Memorandum that a 'reasonable proportion of services will be non-compliant' and will 'require some form of regulatory treatment'. It goes on to say that the ability of services to meet the requirements 'will be highly variable' due to a range of factors (presumably including workforce) and in thin markets 'may be compromised' and that initial focus of implementation will be to support providers to understand the requirement of the new provisions.¹¹

As ACCPA stated at that time, 'we would argue providers will have no problems understanding the requirement, what many will have a problem with is meeting the 24/7 registered nurse requirement due to factors beyond their control i.e., the acute workforce crisis'.¹²

R4 ACCPA recommends clarity and harmonisation between the legislative development responsibilities of the Department of Health and Aged Care and the compliance approach of the Aged Care Quality and Safety Commission. This should recognise the impact of workforce supply issues on providers in specific compliance steps the Commission will take for particular scenarios. (This recommendation should also be read in conjunction with R6-R8).

¹⁰ Aged and Community Care Providers Association, *Senate Standing Committees on Community Affairs Inquiry: Aged Care Amendment (Implementing Care reform) Bill 2022*, August 2022, p.6, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedcareReform/Submissions

¹¹ *Aged Care Amendment (Implementing Care Reform) Bill 2022, Explanatory Memorandum*, House of Representatives The Parliament of the Commonwealth of Australia, 2022, pp. 22-25, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2F6874%22#ems>

¹² Aged and Community Care Providers Association, *Senate Standing Committees on Community Affairs Inquiry: Aged Care Amendment (Implementing Care reform) Bill 2022*, August 2022, p.6, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedcareReform/Submissions

Exemptions process

ACCPA notes that the exposure draft proposes as criteria for the granting of an exemption being under Section 15S that:

‘(1) If the Secretary receives an application under section 15Q from an approved provider for an exemption from section 54-1A of the Act in relation to a residential facility, the Secretary may grant the exemption only if:

(a) the facility is located in an MM 5 area, MM 6 area or MM7 area; and

(b) there are no more than 30 operational places in the facility on the day of the Secretary’s decision; and

(c) the Secretary is satisfied that the provider has taken reasonable steps to ensure that the clinical care needs of the care recipients in the facility will be met during the period for which the exemption is in force.’¹³

Currently, the proposed criteria is mandatory and there is nothing to provide for emergency circumstances that may arise and may provide genuine grounds for an exemption.

The exemption criteria should allow for discretion by the Secretary.

R5 ACCPA recommends the Amending Principles be adjusted to allow for discretion by the Secretary to grant exemptions, such as in the case of emergency circumstances.

Use of the Modified Monash Model to define exemptions

ACCPA members report incongruences with the use of the Modified Monash Model (MMM) as a mechanism for defining exemption criteria.

The Draft Legislation only captures small rural towns and remote areas in the exemption criteria (MM5-7).

Using the Modified Monash Model in this manner, leads to a situation where many regional areas that are in lower MMM classifications but still experience the same issues with workforce supply such as Mildura as MM3, Toowoomba as MM2 are prevented from applying for an exemption. Yet places like Kyneton in Victoria, which is approximately 1 hr from the Melbourne CBD, are categorised as MM5 and therefore eligible.

In line with the Royal Commission *Recommendation 86 – Minimum staff time standard for residential care*, this should also include regional areas, and large and medium rural towns (MM2-MM4). As the recommendation noted in Section 7 (c) ‘regional, rural and remote residential aged care facilities, where the approved provider can demonstrate it has been

¹³ Department of Health and Aged Care, *Exposure draft – Aged Care Legislation Amendment (Registered Nurses) Principles 2023*, p.8, <https://www.health.gov.au/sites/default/files/2023-02/exposure-draft-and-explanatory-statement-aged-care-legislation-amendment-registered-nurses-principles-2023.pdf>

unable to recruit sufficient numbers of staff with the requisite skills' should be able to apply for an exemption.¹⁴

ACCPA notes there are existing government workforce programs that account for challenges in regional areas by allowing for the inclusion of more MMM categories including the Rural Locum Assistance Program (RLAP) Aged Care which covers MM4-MM7¹⁵, and the Aged Care Registered Nurses' Payment which covers MM3-7.¹⁶

Further, there are providers in metropolitan locations who also find filling some shifts challenging, such as night shifts, or when agency staff cannot be found. This is especially the case in a competitive environment for registered nurses, and the impact of issues such as a lack of pay parity with the health sector.

R6 ACCPA recommends changes to the exemptions criteria, aimed at recognising persistent and ongoing workforce shortages across Australia, including:

- (a) expansion of eligibility to include MM2-MM4; and**
- (b) inclusion of exceptional circumstances criteria where a provider from MM1 is able demonstrate prolonged difficulty with workforce supply.**

ACCPA is concerned that the scale of workforce supply issues for registered nurses in Australia is such that the expansion of eligibility criteria for an exemption should be considered. ACCPA considers that providers who can demonstrate against our proposal in R5 *and* also against Section 15S (1) (c) regarding reasonable steps to ensure clinical care needs will be met while an exemption is in force, should be able to apply for an exemption - irrespective of the number of operational places they have.

In its April 2022 report of *Providers, services and places in aged care*, the Australian Institute of Health and Welfare reported that 37.4% of residential aged care services are delivered in MM2-7 categories.¹⁷

R7 ACCPA recommends that the exemptions eligibility in Section 15S be amended from (1) (a) *and* (b) and (c) to be (1) (a) *or* (b) and (c) – to provide eligibility for providers who meet our proposed criteria in R5, to apply for an exemption (without also needing to meet the proposed '30 operational places' criteria).

ACCPA encourages this recommendation as a critical consideration for the proposed Amending Principles to introduce the necessary flexibility to account for workforce supply issues for registered nurses which occur irrespective of the number of operational places offered.

ACCPA believes that R6 and R7 together support the creation of an exemption process that has capacity to recognise where the chronic shortage affects recruitment and where the approved provider can show ongoing genuine and reasonable attempts to recruit RNs, in

¹⁴ Royal Commission into Aged Care Quality and Safety, *List of Final Recommendations*, Recommendation 86 – Minimum staff time standard for residential care,

<https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-recommendations.pdf>

¹⁵ Department of Health and Aged Care, Aged Care Alert – Rural Locum Assistance Program (LAP) Aged Care <https://www.health.gov.au/news/announcements/aged-care-alert-rural-locum-assistance-program-lap-aged-care>

¹⁶ Department of Health and Aged Care, Aged Care Registered Nurses' Payment Fact Sheet, <https://www.health.gov.au/sites/default/files/documents/2021/12/aged-care-registered-nurses-payment-fact-sheet-for-nurses-aged-care-registered-nurses-payment-fact-sheet-for-nurses.pdf>

¹⁷ Australian Institute of Health and Welfare, *Providers, services and places in aged care*, 29 April 2022, <https://www.gen-agedcaredata.gov.au/Topics/Providers,-services-and-places-in-aged-care#Remoteness>

tandem with alternative care arrangements (eg. enrolled nurse on-site and / or registered nurse off-site but on duty).

Quantum and use of ‘operational places’

ACCPA is concerned that the setting of ‘operational places’ at the figure of ‘30’ is arbitrary and has the potential to exclude a number of small providers around Australia who do not have the financial capacity to offer attractive remuneration packages for registered nurses and would struggle to compete in an environment of RN shortage or have the pool of registered nurse reserves to draw on in the event of absences, as compared to larger providers.

Further, the Australian Institute of Health of Welfare in its reports on *Providers, services and places in aged care* classifies ‘small’ providers at 60 operational places, noting in its April 2022 release that 18.4% of operational places in 2021 were provided by ‘small providers’.¹⁸

By proposing the use of a blunt instrument, such as the proposed ‘30 operational places’, or even another figure, for determining eligibility for an exemption, there may be unintended consequences. Providers who are just above this, or another determined figure, may consider their operational circumstances and ability to continue to offer aged care services, particularly where there is no realistic possibility of them achieving the requirement on a consistent basis due to remoteness or other local circumstances.

An alternative is to instead remove the operational places threshold as a component of the exemptions criteria. As the exemption must still be considered prudent by the Secretary, the risk of such a change is extremely limited and, we would argue, simply reflect the reality of workforce shortage.

R8 ACCPA recommends the removal of an operational places threshold as a component of the eligibility criteria for exemption as articulated in Section 15S(1)(b) [notwithstanding R6 should this recommendation not be adopted].

Consideration of ‘reasonable steps’ to ensure clinical needs are met

ACCPA understands that the Department will be undertaking a process of review and seeking information from the Aged Care Quality and Safety Commission as part of its assessment of the provider’s care credentials and performance following application for an exemption.

ACCPA recommends that ‘reasonable steps’ be defined in the subordinate legislation to give providers confidence in this process, and also recommends the development of guidance materials for the sector to support their application. Without this definition, what constitutes a ‘reasonable step’ will remain subjective leading to the potential for over-reach and inconsistent action by the regulator.

The threshold requirement of ‘on site, and on duty, at all times’ and exemptions could be dealt with in the Principles to ensure that:

¹⁸ Australian Institute of Health and Welfare, *Providers, services and places in aged care*, 29 April 2022, <https://www.gen-agedcaredata.gov.au/Topics/Providers,-services-and-places-in-aged-care#Size%20of%20residential%20aged%20care%20services%20over%20time>

- 'on duty' includes any break times if the RN is available to respond to any clinical needs;
- reasonable steps to ensure clinical care needs will be met in the absence of an registered nurse include:
 - enrolled nurse onsite;
 - registered nurse on-call; and
 - registered nurse on-call and available to attend on site within a reasonable time.

R9 ACCPA recommends the introduction of a clear definition of 'reasonable steps', as well as accompanying guidance materials for the sector, to ensure transparency of the exemption process.

The proposed Amending Principles do not contain a time period for the Secretary to make a decision on receipt of an application. Given the time critical nature, ACCPA considers that this be strengthened to provide a time period for consideration and clarify the circumstances regarding 'reasonable steps' for providers during the window between application for exemption and a decision by the Secretary.

R10 ACCPA recommends inclusion in the provisions for a time period of a reasonable and an appropriate length for the decision of the Secretary, as well as confirmation that while the decision is under consideration, the approved provider is not in default provided it can show that 'reasonable steps to ensure clinical care needs' will be met in the absence of an registered nurse.

ACCPA notes that there many examples around Australia, including in regional Australia, of effective alternative models of care to ensure clinical needs of older Australians are met when there is an absence of registered nurses on site in a facility.

Further, the Nursing and Midwifery Board notes in its standards of practice for enrolled nurses that there may be circumstances of indirect supervision of enrolled nurses by registered nurses. They also recommend approaches such as describing 'how the registered nurse will be available for reasonable access to ensure effective timely direction and supervision so that the delegated practice is safe and correct and public safety is ensured.'¹⁹

ACCPA understands that the Government will be further exploring the provision of alternative models of care in circumstances where it is not possible to secure a registered nurse 24/7 onsite and considering this in the design of future exemption provisions. ACCPA welcomes this consideration.

R11 ACCPA recommends that Government involves providers in a co-design process for determining future provisions that may encompass alternative models of care, in circumstances where it is not possible to secure a registered nurse 24/7 onsite.

¹⁹ Nursing and Midwifery Board, *Fact Sheet: Enrolled nurse standards for practice, Section: What does direct and indirect supervision mean?*, <https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/FAQ/Enrolled-nurse-standards-for-practice.aspx>

Information about registered nurses

ACCPA notes that this section of the Exposure Draft specifies the responsibility of certain approved providers to give a report to the Secretary about registered nurses at residential facilities.

ACCPA is keen to ensure that the provisions are commensurate with the day-to-day circumstances of registered nurse activity in residential aged care facilities and do not introduce unnecessary red-tape and excessive reporting burdens on providers.

Threshold of reporting

Section 44B (3) (b) (i) states:

(3) The report must:

(a) be in a form approved, in writing, by the Secretary; and

(b) include the following information in relation to the residential facility:

*(i) each period, on a day during the calendar month on which residential care was being provided to care recipients in the residential facility, of **30 minutes or more that a registered nurse was not on site and on duty at the residential facility;***

ACCPA considers that the '30 minutes or more' does not reflect the day-to-day practices of registered nurses on site and does not cater for situations that might arise which are outside a provider's control.

Members report a wide variety of legitimate circumstances that might breach a '30 minutes or more' threshold, and that would be easily managed from a clinical perspective but under the currently proposed threshold would require a burdensome process of reporting for no clear benefit. These circumstances might include a 30-minute break by a registered nurse that is staggered due to interruptions, attending a matter with a local pharmacist off site, or in the event of an unexpected absence, the need to arrange roster replacement and the time taken for a replacement staff member to travel to the site (likely to be particularly problematic in regional Australia).

ACCPA encourages consideration of greater flexibility in the threshold for reporting and believes there can be an improved balance between the hours identified for the reporting threshold and a provider's ability to manage the risk of such a gap in registered nurse provision (if any).

R12 ACCPA recommends that Section 44 B (3) (b) (i) be amended to extend the threshold for a report to be 2 hours or more that a registered nurse was not on site and on duty'. Further clarifications might also be considered for this provision, that on site, and on duty includes any time the registered nurse is working such as if being on duty requires part of the time off-site attending to matters related to the site etc and / or the presence of enrolled nurses with the registered nurse exercising off-site supervision with some reasonable time limit.

Approach to, and mechanisms for, reporting

ACCPA is concerned about the potential administrative impost on providers, particularly those who use manual systems of recording of registered nurse activity, of the proposed reporting requirements.

While ACCPA understands the potential benefit of monthly reporting, we believe that reporting requirements (including data collection design and methods) should be as administratively efficient as possible. As part of this, it is important to account for smaller providers in regional areas, with chronic workforce shortages, who are likely to carry a disproportionate reporting burden.

R13 ACCPA recommends that the data collection design and methods allow for providers with a long-term or ongoing issue to use a standardised reporting template each month, with updates to reasons required only by exception (ie. the ability to duplicate reasons each month and update if required).

R14 ACCPA recommends that the Department of Health and Aged Care involve providers in the design of the data collection system to ensure it is as efficient as possible.

ACCPA notes under Section 44C, a range of provisions regarding requests for provision of further information and documents to Secretary. In particular Section 44C (4) is not time limited and may create challenges and increased costs for data collection and storage by providers on the matter of information relating to the reporting of registered nurse matters.

R15 ACCPA recommends the inclusion of a provision that sets a specified time limit within which information might be requested by the Secretary regarding matters under Section 44C, to be set following consultation with providers.

Relationship between monthly reporting and the RN supplement

The Government will provide an RN supplement to facilities with less than 60 residents to assist with the costs of providing an RN in smaller facilities.

According to details found in a recently released Department document, this supplement is at risk for those facilities without an exemption that do not meet the requirement. It states:

"Where a facility reports that they have not met the requirement (and have not received an exemption) the supplement payment will stop until the requirement is being met."²⁰

At it stands, this could result in a provider losing the supplement payment in response to a single 30-minute gap in RN over the course of a calendar month. Worse, it will mean that providers struggling to achieve 24/7 coverage will lose supplements designed to support 24/7 coverage – undermining the very intent of the supplement.

²⁰ Department of Health and Aged Care, *Senate Committee: Community Affairs Budget Estimates 2022-2023 [Hot Issues Brief]*, Document 16 of FOI 4178 p.2, <https://www.health.gov.au/sites/default/files/2023-02/foi-4178-release-of-documents-hot-issues-briefs.pdf>

We also note that there is no clarity as to how a provider will show that the requirement has subsequently been met and who will have the authority to reinstall the supplement payment.

R16 ACCPA recommends that the relationship between monthly reporting of information about registered nurses and the RN supplement provision be amended to ensure that minor gaps in RN requirements do not result in unreasonable gaps in RN supplementary funding.