

Aged Care Amendment Bill 2022 (Implementing Care Reform)

Submission to the Senate Community Affairs Legislation Committee Inquiry

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Contact

Nicole Hornsby

T 1300 068 184

1/1193 Toorak Rd
Camberwell VIC 3124

PO Box 230
Hawthorn VIC 3122

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Contents

Summary	1
Introduction	2
About us	2
Current operational context	2
Provisions regarding 24/7 nursing	3
Key questions for the Committee - 24/7 nurses	3
General response from Members	3
Barriers to implementation: Obtaining nurses	4
Barriers to implementation: Funding	6
Concerns regarding compliance	6
Possible enabling mechanisms	8
Provisions regarding Home Care	9
Key questions for the Committee - Home care	9
Eliminating exit amounts	9
Capping fees	9
Transparency measures	10
Introducing greater transparency measures	10
Conclusion	11

Summary

Baptist Care Australia members welcome most components of the proposed legislation. However, we note our concern that there are substantial barriers to implementation of the 24/7 RN requirements if not accompanied by additional enabling measures.

This submission will assist the Senate Committee in understanding how the proposed legislation would be enacted on the ground by our members, who are a network of not-for-profit faith-based aged care providers. It summarises their general views of the proposed legislation and outlines barriers that may prevent them from implementing the new provisions in full.

While our members broadly welcome the proposals contained within the legislation, there are specific concerns about their ability to implement the proposed changes regarding 24/7 nursing. In addition, members are concerned at the lack of detail regarding what actions the government will take to enable providers to fulfil the requirements and what type of transition arrangements will be in place to enable both government and providers to prepare for the change. There are also concerns about the possible approach to oversight and compliance and whether this will account for underlying sector structural issues.

With regards to home care, Baptist Care Australia organisations are not concerned about the proposal to remove exit fees but are unsure that the proposal to cap fees will have the desired impacts, given the need to ensure providers achieve adequate cost recovery.

We welcome the proposed measure to increase the transparency of aged care service delivery.

Introduction

About us

Baptist Care Australia welcomes the opportunity to provide a submission to the Senate Community Affairs Legislation Committee regarding the Aged Care Amendment (Implementing Care Reform) Bill 2022 ('the Bill').

Baptist Care Australia is the national representative body for Baptist community service organisations and their clients in the national policy debate. Together, our members employ more than 11,500 staff, work with 3,000 volunteers and have an annual turnover of almost \$1 billion across a range of social service areas.

We work to bring social justice to Australian communities, advocating nationally on issues important to our members and the consumers that access their services. 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.

Together, the network of organisations that make up Baptist Care Australia care for more than 20,000 older Australians including more than:

- 5,500 residents in over 60 residential aged care facilities
- 1,500 residents in over 30 retirement living communities
- 14,000 older Australians in their own home

Current operational context

The aged care sector is facing a 'fiscal cliff' due to multiple, compounding factors including the extra costs associated with covid response measures, a substantial drop in occupancy rates, and a rapid increase in operational costs. The most recent [Aged Care Financial Performance Survey report](#) by StewartBrown concluded that:

- 64% of aged care providers are operating at a loss
- Aged care providers are averaging losses of \$12.85 per resident per day
- This will drop further to \$15.59 per resident per day by end of June 2022

Our members have not been immune to these financial pressures and are concerned about the impact that this has on quality and consumer outcomes. Any proposal that introduces new requirements without adequate funding attached has the potential to negatively impact the future outcomes of older Australians.

Providers are also operating with serious workforce challenges due to the high staff turnover rate at all levels of the business, unattractive pay rates for many staff roles compared to similar roles in other sectors and a general shortage of trained workers.

Such serious financial and workforce issues are contributing to a rise in compliance issues across the sector. Providers are frustrated at being held accountable for problems that arise from broader structural issues over which they have no control.

Provisions regarding 24/7 nursing

The Bill requires residential aged care providers to have a registered nurse on site and on duty at all times at each residential facility starting from 1 July 2023 (which we will refer to as '24/7 nurses') and has a provision to allow for exceptions to that requirement.

Key questions for the Committee - 24/7 nurses

- Where are these extra nurses?
- How are we going to pay for them?
- Why should nurses be paid less to work in aged care?
- Would it be fair for providers be held responsible for systemic issues that are outside of their control?

General response from Members

As noted above, Baptist Care Australia members operate over 60 residential aged care facilities with over 5,500 residents.

Members are in favour of 24/7 nursing

Our members are very dedicated to ensuring high-quality care for their residents and in line with this approach would be very pleased to provide 24/7 RNs on site as part of the support services they provide. All of our members already roster to provide for 24/7 nursing staff on site. For some providers, this rostering is of Registered Nurses and for some this rostering is of a wider mix of nurse registrations. However, all providers experience significant difficulties in filling these rosters and find themselves having to either fill vacant shifts with lesser qualified staff or operate with gaps in the roster (described in more detail below).

Clarifying what is meant by 'registered nurse'

The legislation remains unclear for some providers regarding the exact type of nurse who must be on-site 24/7. The law refers to the definition of 'registered nurses' as found in the *Health Insurance Act 1973*. In that Act, "registered nurse means a person who is registered under the National Law in the nursing profession as a registered nurse."

We understand this to mean that those nurses who are registered with the *protected title of registered nurse*, as determined by the Nursing and Midwifery Board of Australia (NMBA).

We note there has been some confusion amongst some providers as to whether all 'nurses who are registered' are eligible. This confusion arises because nurses who are registered with the NMBA also include those working under the protected title of 'Enrolled Nurse'. Additional clarifying language would be valuable.

Within our submission, we will use 'RN' to indicate nurses working under the protected title of Registered Nurse.

Clinical care and the particular skill set of RNs

We appreciate that legislators have decided to focus on the role of RNs being on-site in line with Recommendation 86.5 of the Royal Commission into Aged Care Quality and Safety.

Aged Care Amendment Bill 2022 (Implementing Care Reform)

However, given the barriers providers will face in fulfilling this requirement within the timeframe put forward (as outlined below), it would be valuable to clarify the specific capacities of RNs legislators want to ensure are on-site at residential aged care facilities. Clarifying the knowledge or skill sets needed would help the sector understand what alternative measures would best meet the desired clinical outcomes while facing a national nursing shortage.

Unintended impacts on Enrolled Nurses working in aged care

We anticipate providers will need to exit some Enrolled Nurses (ENs) in favour of RNs in order to fund the required minimum RN workforce. While the change may encourage more Enrolled Nurses to undertake the additional training to become accredited as a Registered Nurse, there are some who are not in a position to undertake this training. This may have the unintended loss of Enrolled Nurses from the sector and limit the careers of those Enrolled Nurses who would prefer to remain working in aged care. In addition, it may affect the career pathway opportunities for Personal Care Attendants and other personal care workers whose natural career progression is likely to be to Enrolled Nurse.

Barriers to implementation: Obtaining nurses

Our members have noted several barriers to implementation that they would like to bring to the attention of the Committee.

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 to care for their residents. The Australian Nursing and Midwifery Federation (ANMF) has reported a severe shortage of nurses, with the figure of 8,000 nursing vacancies as of July 2022 considered an underestimate.¹ With no foreseeable conclusion to the COVID pandemic, it is reasonable to expect that nurses will remain in high demand in other health care settings for some time and therefore remain unavailable to aged care providers. Without adequate national measures to address this national shortage, aged care providers will not be able to fulfil the 24/7 requirement.

We also believe that the estimates regarding nursing shortages in aged care do not adequately account for the high turnover rates (see below) or the additional nurses that will be required to fulfil other aspects of the aged care reform agenda.

The experience of our members across the national network is variable: some providers report problems with single shift vacancies regularly each week, while others face an ongoing inability to secure RNs and so opt to employ Enrolled Nurses to fill the gaps. Access to nurses is increasingly difficult the further you travel from urban centres, although fierce competition in urban centres continues to make recruitment difficult in cities as well.

To illustrate more fully, one of our providers has reported they will need to increase the number of RNs by 50% to meet this requirement. Another that already rosters RNs 24/7 needs a 30-40% increase in RNs to fully cover turnover and shifts, and a third that rosters RNs 24/7 estimates they need to increase their rostered nursing hours by 30% in order to ensure they meet minimum requirements in the face of extensive shortages. Given these figures, we are not confident that the modelling underpinning the proposed legislation – which reportedly calculates the sector would require 869 additional RNs² - is accurate.

Finally, suggestions that nurses are under-employed fail to account for the fact many RNs choose to work part time for personal reasons, rather than due to a lack of opportunities for full time employment.

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.

² Wells, Annika (2022) [Press conference with Minister Annika Wells](#). Tuesday 2 August 2022.

Aged Care Amendment Bill 2022 (Implementing Care Reform)

Pay parity

Nurses working in aged care are paid less than if they work in other health care settings.

This means that, in a context of a national nursing shortage, aged care providers are competing from a position of disadvantage.

Members report that the lack of pay parity is an ongoing barrier to recruiting and retaining RNs, particularly mature professionals with relevant experience. Members reported that, from a clinical perspective, they are concerned when they are only able to attract recent graduates and other junior RNs. Despite this concern, some have hired ENs who are working to upgrade their qualifications in the hope they will stay once they become an RN, but often find upon attaining RN status they quickly move on to more highly paid sectors.

Several members have reported that this issue has recently intensified in regional and remote locations. It is also a serious concern for providers in states that struggle to attract nursing professionals more broadly.

As other industries increase their pay rates, aged care providers are being left further behind. For example, Queensland Health recently introduced a 9.1% pay rise for nurses. It is not possible for aged care providers to match such an uplift in wages.

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 care on site. Without pay parity, the community will continue to accept that caring for the elderly is of lesser value than caring for younger adults.

Staff turnover (or 'churn')

As reported extensively in the media, aged care providers are experiencing an unprecedented rate of staff turnover, which includes high turnover of their nursing staff.

Our members have experienced a 33% staff turnover rate in their aged care staff, compared with a historical trend of 5%.³ As one of our larger aged care services has reported to us, they lost 600 staff in the past year. Given approximately 1/3 of their staff are nurses, this means they have lost approximately 200 nurses in the previous 12 months. Anecdotal evidence suggests that this has been the result of the enormous strain on aged care staff, including nurses, through the COVID pandemic, with many of these nurses choosing to leave the sector altogether or move to the acute sector where pay rates and working conditions are more favourable. This unprecedented scale of turnover is having enormous impacts.

This impacts nursing care in various ways. Not only does it increase the likelihood of unfilled gaps in the nursing roster. It creates additional pressures on remaining nursing staff who may be asked to work extra shifts to cover gaps while adequate replacements can be found.

This turnover doesn't just impact clinical care. When staff leave, additional work is generated for the provider. Recruitment processes add to operational costs via advertising, interviewing and on-boarding of new staff. Providers are constantly recruiting in order to fill the backlog of staffing gaps and to anticipate future staffing losses.

Regional and remote facilities

Members who operate residential aged care services in regional and remote parts of Australia reported that the issues outlined above are exacerbated for these sites. The lack of nurses in regional and remote areas will require particular attention and a wider range of enabling mechanisms to ensure providers in those areas can meet the proposed obligations. The exemption system may have to allow for more flexible arrangements (such as the utilisation of off-site RNs) to facilitate the RN oversight desired.

³ This is the median turnover rate. The average turnover rate was 31%. The range was 10% to 40%.

Aged Care Amendment Bill 2022 (Implementing Care Reform)

Barriers to implementation: Funding

Our members have noted several barriers to implementing this requirement that they would like to bring to the attention of the Senate Committee.

Extra funding required

Our members are concerned that it is not clear whether the government will ensure adequate funding to pay for the additional staffing requirements that would arise from the proposed legislation. As outlined above, the average aged care provider is currently operating their services at a loss, and most have done so for some years now. While many have been able to draw upon reserves to cover these costs, these reserves are now critically low. Without additional funding, more and more providers will face a crisis in which they may be required to close part or all of their residential aged care services. For many of our providers, AN-ACC will not sustain all services unless there are pricing changes.

Notably, at least one of our members has recently closed a portion of their residential aged care business that they were unable to continue operating in the face of ongoing financial pressures.

Award rates versus actual pay rates

As suggested in the section above, aged care providers struggle to secure the staff they need because they are competing with higher paid sectors. This means many providers are paying above-award rates to secure staff with one member saying, *“you can’t expect people to be paid less just because they are caring for older Australians”*.

Any funding that is provided to fulfil the proposed 24/7 nursing requirement must draw on a realistic model that recognises aged care providers are required to pay above award wages for nursing staff. Any funding that does not take this reality into account will undermine the ability of aged care providers to remain solvent.

Concerns regarding compliance

There are considerable concerns amongst our providers 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; that they will face unfair consequences despite making all reasonable efforts to implement the reforms; and that potential compliance requirements to demonstrate ‘reasonable efforts’ will further stress an overburdened workforce.

Lack of clarity regarding compliance during a transition period

Members wanted to know whether the government would provide a transition period or so-called ‘grace period’ to allow for structural issues such as workforce shortages to be worked through and resolved. Providers discussed the value of establishing an implementation period in which providers were expected to fulfil the new measures but would not face negative consequences for being unable to meet the requirements if all the appropriate steps had been taken. During this period, the oversight role of the Aged Care Quality and Safety Commission (‘the Commission’) could be limited to offering providers guidance on ways to move closer to compliance and provide advice back to government regarding structural issues yet to be fully resolved.

Lack of clarity regarding what will count as compliance

Members are concerned about the lack of detail and clarity regarding the issue of compliance. This concern is heightened given the range of factors (outlined above) that will undermine their capacity to fulfil the new requirements.

Aged Care Amendment Bill 2022 (Implementing Care Reform)

For example, the types of questions our members raised included:

- *Will compliance allow for any gaps in RN staffing at all?*

Providers talked about having occasional gaps in their rosters due to a range of reasons including unexpected staff member illness, staff needing to leave unexpectedly during a shift, RNs undertaking training, etc. In the current environment, these are managed at the facility level to ensure adequate clinical care is in place. Will these one-off or occasional gaps be assessed as compliance breaches?

- *In those times when an RN shift cannot be filled, what other arrangements would be considered a reasonable and adequate response?*

If a provider is unable to find an RN, how will they be deemed to have fulfilled their responsibilities? What if they have advertised for weeks without finding an RN? What if they are still providing provide adequate clinical care through alternative measures? Could they resort to rostering ENs who are supervised by a RN who is off-site but able to come to the site if needed (as is the model currently in place in Europe)? As an example, one provider explained they usually have 4 RNs in their facility during the day. At the moment, if one is away they have the flexibility of having an EN step up for that shift. Would this be considered adequate when interpreting the legislation's requirements?

Lack of clarity regarding the concept of an exception and compliance burden

The legislation allows for exceptions but provides no detail on what would be considered an adequate reason to obtain an exception and how long it would remain in-force. The points of concern regarding compliance above are relevant here.

We note in addition the concerns about the lack of information regarding the likely processes associated with exceptions. Providers want to know whether an exception will require additional administrative work (such as applying for exceptions), in what circumstances they might be able to seek an exception, whether exceptions will be granted for a period of time or under a particular set of conditions, and whether a permanent issue outside the provider's control would be recognised with some kind of permanent exception. Further to this last point, providers were uncertain as to whether there will be a single process that assesses exceptions of all providers against a set of criteria or whether exceptions for providers in certain situations will be developed in a separate process. Providers are broadly open to a different plan for markets where we know there will be ongoing problems. However, we also note multiple processes may create an added burden for providers who operate across a variety of contexts. Instead, it may be the type of exception that might be different (such as e.g., an exemption that applies for 12 months rather than say 3 months) rather than the process of assessment. Overall, as much as possible, we want consistency across the country, but we note there may be particular markets that may never be able to meet this requirement. We also recognise that it is unfair to implement a universal model in regions such as remote areas where there is strong recognition that they will not work.

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. 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. This approach is particularly valued when compliance issues are due to factors outside the scope of influence or control of the provider themselves. It would be valuable if the government were to make it clear whether they want the Commission to take on an educative or enforcement role in those instances.

Aged Care Amendment Bill 2022 (Implementing Care Reform)

Possible enabling mechanisms

Baptist Care Australia and its members have been discussing what measures might assist in resolving the barriers to implementation outlined above. As outlined, the largest barriers are accessing the volume of nurses required, the upskilling of existing nurses and the capacity to compete with the health system around pay.

The measures required to address these kinds of barriers are wide ranging, as the issues are complex. We note some of the ideas discussed to date here to assist the Committee in exploring options, rather than arguing for any single solution.

- Invest in programs that more rapidly upskill ENs to become RNs, including more 'on the job' options
- Ensure pay parity across health and aged care settings
- Create incentives to get RNs to work in regional and remote locations
- Investigate options such as nursing telehealth
- Fully subsidise access to nursing training and upskilling
- Consider special endorsements for ENs to enable them to provide the level of clinical skill required (such as those permitted in the defence forces)
- Remove barriers and streamline permanent skilled migration schemes for those with nursing qualifications attained in other countries
- Increase access to accreditation exams for international migrants, including increasing the number of exams on offer throughout the year and providing more exam opportunities outside east coast metropolitan settings

Provisions regarding Home Care

As noted above, Baptist Care Australia members care for more than 14,000 older Australians who are living in their own home.

Key questions for the Committee - Home care

- Does it make sense to introduce caps that force providers to recoup the cost of providing care in less transparent ways?

Eliminating exit amounts

The proposed legislation removes the ability of home care providers to charge exit amounts.

Our members were not opposed to this aspect of the proposed legislation. Most of our providers do not charge exit fees and the one provider who recently introduced an exit fee is not concerned about the potential impact of the proposed change, as it was a modest amount relating to a small number of long tenure consumers with unspent funds.

Capping fees

The legislation proposes that the law be amended to require providers *“to comply with such requirements as are specified in the User Rights Principles in relation to the prices charged by the approved provider for, or in connection with, the provision of care or services to the care recipient.”* We understand this measure provides the Government an unlimited power to regulate all home care fees and is a response to broad concerns about administration fees.

As with the other issues above, providers are concerned at the lack of clarity regarding the nature and extent of the clauses contained in this legislation. Providers are fully supportive of consumers having clarity over the costs of the care being provided, as well as consistency in the capture and reporting of types of work in line items so that consumers can easily compare the pricing of different providers.

Notwithstanding this point, all providers must recoup the costs of providing care. In order to remain viable, they must recoup the real or full costs of providing this care. Any caps that do not account for the real cost of delivery will create a false inflation of other costs to ensure cost recovery. It will be absorbed elsewhere in the pricing structure and undermine transparency for consumers.

Transparency measures

Baptist Care Australia and its members welcome any measure that increases the transparency of aged care services.

Introducing greater transparency measures

Transparency promotes trust. As not-for-profit providers, we can offer members of the government and the Australian public with a wide range of insights into the costs and mechanisms involved in providing aged care. Opening up our records, in line with relevant privacy protections, will help to rebuild confidence in the sector.

We would encourage other sectors to do the same.

Conclusion

Baptist Care Australia and its members are committed to providing high-quality aged care services to older Australians.

In summary, our members:

- Would welcome the ability to have a registered nurse on site and on duty at all times at each residential facility starting from 1 July 2023 if accompanied by adequate enabling mechanisms.
- Are not concerned by the proposed elimination on exit fees in home care but are not convinced that the proposed mechanism to cap certain fees will result in the desired outcome.
- Welcome any measure to increase transparency.

However, as outlined above, there are barriers to the ability of many providers to fulfil the requirement for 24/7 RNs in aged care facilities in the currently context due to:

- The national shortage of Registered Nurses
- The disincentive for nurses to work in aged care due to the lower pay rates
- Unprecedented staff turnover rates, including amongst RNs
- The lack of RNs in regional and remote areas of Australia
- No clear funding source to pay for these extra nurses

These structural issues will undermine the ability of aged care providers to be able to implement the reform. This raises concerns that providers will be subject to compliance consequences despite a deep commitment to high quality clinical care and after all reasonable efforts have been made to secure the personnel needed to meet the mandated requirement.

We encourage the Committee to consider these concerns regarding implementation as they review the legislation.