



Office of Hon Pete Hodgson

MP for Dunedin North

Minister of Health

Minister for Land Information

11 MAY 2006

Meredith Osmond
Facilitator – Health of Older People Forum
Director
Tall Poppies
P O Box 9750
WELLINGTON

Dear Ms Osmond

**RELEASE OF MINISTRY OF HEALTH ADVICE ON STAFFING REGULATIONS
FOR AGED RESIDENTIAL CARE**

As discussed at the Health of Older People Forum on 30 March 2006, please find enclosed a copy of the Ministry's advice to me on whether or not we should regulate for minimum staffing levels in aged residential care. I would appreciate it if you would forward a copy to Forum members.

As I said to the Forum, I would like to hear their views before I make a final decision. Public consultation has already taken place and the Ministry's advice takes this into account. For my own benefit, however, I would like to discuss the issues with the Forum. I would like to reiterate that I am not expecting a consensus view point from Forum members. However, each member knows the sector in a way that I do not, and they each have different and valid perspectives that will assist me to come to a final decision.

I would also like to say that I was heartened to see the refocusing of the Forum and I look forward to us working together in a proactive and constructive way.

Yours sincerely

Hon Pete Hodgson
Minister of Health

MINISTRY OF
HEALTH

MANATU HAUORA

HEALTH REPORT

Subject: STAFFING REGULATIONS FOR AGED RESIDENTIAL CARE UNDER THE HEALTH & DISABILITY SERVICES (SAFETY) ACT 2001

Date: 6 December 2005 **File Ref:** HC01-18-9-7

Attention: Hon Pete Hodgson (Minister of Health)

PURPOSE OF HEALTH REPORT

1. To advise on the outcome of public consultation on possible regulations to set minimum staffing levels in aged residential care and seek your decision on whether or not the drafting and enactment of Staffing Regulations should proceed.

TIMING IMPLICATIONS

Priority:	Routine	Semi-Urgent (5 Days)	Urgent (3 Days)	24 Hour
		<input checked="" type="checkbox"/>		

EXECUTIVE SUMMARY

2. Currently aged residential care providers must comply with the Health and Disability Sector Standards and other standards mandated under the Health and Disability Services (Safety) Act 2001 ("HDSS Act"). These standards are outcome focussed, based on meeting the needs of residents and do not specify minimum staffing numbers. Providers that have a contract with a District Health Board must comply with the staffing requirements set out in the contract.
3. In 2002 the Associate Minister of Health Hon Ruth Dyson directed that Regulations relating to staffing in aged residential care be made under section 53 of the HDSS Act. The transition from the Licensing regime in 2002 to Certification regime in 2004 and competing work and resource priorities contributed to delays in this work.
4. In November 2004 the Ministry of Health consulted key stakeholders on two options for possible staffing regulations. Submissions closed in December 2004. A total of 27 submissions were received. You agreed that advice on the Regulations could be delayed until the workload of income and asset testing changes eased.

5. The submissions are polarised on Staffing Regulations and indicate that within the aged residential care sector there is both support for, and strong opposition to, Staffing Regulations.
6. The Ministry is of the view that the most appropriate mechanism for ensuring safe staffing levels in the sector is through the outcome focussed certification and contractual regimes, and that it is not appropriate to enact Regulations under section 53 of the HDSS Act 2001 in the current environment.
7. Work is underway to strengthen the outcome-based standards framework, improve training for staff and to tighten the Aged Related Residential Care Contract.
8. The Ministry advises that further work to address staffing and associated quality and safety issues in aged residential care be undertaken in the context of ensuring sustainability of the sector.

FINANCIAL IMPLICATIONS

9. None if Staffing Regulations do not proceed.
10. The Ministry's view is that in general, Staffing Regulations for aged residential care would not entail additional costs, as the Regulations would be consistent with current contractual and previous regulatory staffing requirements. However some providers may dispute this.

RECOMMENDATIONS

11. The recommendations are that you:

- | | |
|---|--------|
| (a) Agree not to proceed with setting minimum staffing levels for aged residential care in Regulations at this stage; | Yes/No |
| (b) Should you decide to proceed to set minimum staffing requirements in Regulations: | |
| i) Agree that the Regulations be consistent with staffing requirements under the Age Related Residential Care Contract and contain applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987; and | Yes/No |
| ii) Agree that the Ministry will prepare a paper for consideration by Cabinet Policy Committee accordingly; | Yes/No |
| (c) Agree that you announce your decision at the Health of Older People Forum on 15 December; | Yes/No |

- | | |
|---|--------|
| (d) Agree to release the summary of submissions to key stakeholders attached as Appendix 1 | Yes/No |
| (e) Note that the Ministry will work with your office on a communications strategy. | Yes/No |
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Kathy Spencer
Deputy Director-General
Sector Policy Directorate

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MINISTER'S SIGNATURE:

DATE:

REPORT

BACKGROUND INFORMATION

Introduction

1. In 2002 the Associate Minister of Health Hon Ruth Dyson directed that Regulations be made under section 53 of the Health and Disability Services (Safety) Act 2001 ("HDSS Act") (refer HR 20022313). The transition from the Licensing regime in 2002 to the Certification regime in 2004, competing work and resource priorities mean that work on Regulations did not progress as quickly as anticipated.
2. The Regulations were intended to be a short term measure to ensure existing staffing requirements were retained between the time the Old People's Homes Regulations 1987 and the Hospitals Regulations 1993 were revoked on 1 October 2004 and a staffing effectiveness standard for aged residential care was developed under the HDSS Act. It was also intended that the Regulations would replicate the staffing requirements of the Old People's Homes Regulations 1987 and the Hospitals Regulations 1993 to ensure that there would be no cost for providers.
3. Although the Ministry contracted with Standards New Zealand for the development of a staffing effectiveness standard, the Expert Committee set up to develop it decided not to proceed. Instead a voluntary handbook was developed. The decision not to proceed with the staffing effectiveness standard was informed by an emphasis on providers determining the required staffing levels to produce the best outcomes for residents as consistent with requirements under the Health and Disability Sector Standards. It also reflected wider opposition to the potential introduction of new standards under the HDSS Act without any guarantee of additional funding for compliance.
4. As a result of the decision not to proceed with a staffing effectiveness standard, consultation on the Regulations proceeded on the basis that they would no longer be interim, but instead would be a permanent part of the regulatory regime.

Statutory basis for enacting Staffing Regulations

5. Section 53 of the HDSS Act 2001 states that Regulations may be made for:
 - Prescribing in respect of services that provide rest home or hospital care, minimum numbers of nursing and other care staff who must be on duty (at any time, or at different times) in premises in which the care is being provided; and
 - any minimum qualification any of them must have.

Staffing Requirements under the revoked Licensing Regime

6. The Old People's Homes Regulations 1987 and the Hospitals Regulations 1993 were revoked on 1 October 2004 when section 59 and Schedule 5 of the HDSS Act came into effect. Prior to this date licensed aged residential care providers had to comply with the minimum staffing requirements set by the Hospitals Regulations 1993 (in relation to hospital care) and the Old People's Homes Regulations 1987 (in relation to rest home care).

Certification

7. For providers to be certified under the HDSS Act they must undergo an audit that demonstrates that they comply with the Health and Disability Sector Standards (NZS 8134:2001) and other standards mandated under the HDSS Act. These standards are outcome focussed, based on meeting the needs of residents and do not specify minimum staffing numbers.

The National Age Related Residential Care (ARRC) Contract

8. The majority of aged residential care providers have a contract with a DHB that is reviewed annually on a national basis. The ARRC Contract sets out staffing requirements in relation to the provision of rest home care and hospital care, including additional requirements where facilities provide multiple types of care. The ARRC Contract includes specific requirements with respect to dementia care. The ARRC Contract requires providers to comply with all relevant legislation and standards.
9. Attached in Appendix 2 is a table outlining the differences between the requirements of the revoked Hospitals Regulations 1993, the revoked Old People's Homes Regulations 1987, the Health and Disability Sector Standards (HDSS) and the ARRC Contract.

Consultation on the development of new Staffing Regulations

10. In October 2004 the Associate Minister of Health, Hon Ruth Dyson, agreed to the Ministry proceeding with consultation (as outlined in the Act) on the possible Staffing Regulations for aged residential care (refer HR 20046925). Two options were put forward:
- 1) Consistency with the staffing requirements under the ARRC Contract and applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987; OR
 - 2) Replication of the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987, but with amendments to clarify that staffing refers only to nursing and caregiver staff.
11. In November 2004 the Ministry invited key stakeholders to state their preference for the content of possible staffing regulations and also provide comment on the proposed phase in period for staffing regulations and the likely compliance costs.

12. Submissions closed in December 2004. A total of 27 submissions were received. A summary analysis of the submissions is contained in Appendix 1.
13. You agreed that the Ministry could delay providing advice on the Regulations until the workload of the income and asset testing changes had eased.

14. The submissions are polarised on Staffing Regulations and indicate that within the aged residential care sector there is both support for, and strong opposition to, new Staffing Regulations.
15. 15 of the 27 submissions directly or indirectly expressed support for Staffing Regulations so long as:
 - those Regulations were consistent with current staffing requirements (or the revoked Regulations);
 - are consistently applied for monitoring and auditing processes across the sector; and
 - are able to ensure a level of care that meets the high acuity and complex needs of residents.
16. 5 of the submissions specifically opposed the introduction of Staffing Regulations on the basis that compliance with standards under the HDSS Act and the ARRC Contract ensures adequate quality and safety of care; and that mandatory staffing levels are in contrast to the outcome focus of current staffing requirements.
17. Comments were also made on the possible content of the possible Staffing Regulations, particularly in relation to staffing ratios/levels and the types of care and staff that might be covered.
18. The submissions indicate that costs of compliance associated with Staffing Regulations are an issue for providers and DHBs. Comments received on compliance costs express mixed views, from indicating that there will be no additional costs if included in the audit process for Certification, to claiming that mandating staffing levels has major human resource (staffing) implications and costs.

COMMENT

Ministry advice on Staffing Regulations

19. A decision is required on whether or not to proceed with making Staffing Regulations under the HDSS Act, taking into consideration the views of the submissions, the likely gain for the public in ensuring safer provision of services, and the likely cost of compliance for providers.

20. The Ministry is of the view that Regulations under section 53 of the HDSS Act are not the most appropriate mechanism in the current environment to ensure appropriate levels and mixes of staff, and safe and quality outcomes for residents, in aged residential care. The rationale for recommending that Regulations not be made under section 53 of the HDSS Act is outlined as follows:

- Prescribing minimum staffing levels is inconsistent with the outcome-based approach of the HDSS Act. Current staffing requirements under the HDSS Act (the HDSS Standard) and the ARRC Contract are sufficient and appropriate mechanisms for improving safety and quality of services in the sector. Most providers are able to provide a safe and quality service that meets the assessed needs of residents and have in place quality improvement and safety systems.
- Staffing levels are only one input into the provision of safe and quality care and are of limited use as an indicator of quality and safety (as staff competence, motivation etc may be lacking). There are other indicators in addition to staffing, as detailed in the Handbook SNZ HB 8163: 2005 "Indicators for Safe Aged-care and Dementia-care for Consumers" that can be used to assess quality and safety of care, eg the level of pressure sores, rate of falls and nutritional screening.
- Minimum staffing levels cannot ensure safe and quality care is provided and would not allow providers flexibility to vary staffing levels based on the needs of residents. The minimum staffing levels set out in Regulations would not be sufficient where residents have acute and complex needs.
- Setting minimum staffing levels is not consistent with international quality systems in operation and there is no evidence that staffing ratios directly improve the quality and safety of care. Research suggests that quality not quantity of staffing determines the level/quality of care provided. Research has identified that the use of patient outcome indicators is a more effective measure of quality outcomes.

21. Should you decide however, to proceed with developing Regulations the Ministry recommends that the Regulations be consistent with the ARRC Contract and contain applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987.

22. A short phase in period for any new Staffing Regulations would be appropriate because the options under consideration reflect existing staffing requirements that providers should be complying with.

23. While some submissions indicated that there would be additional costs, the Ministry's view is that generally, there should be no additional compliance costs for providers. The new Regulations would be consistent with the staffing requirements under the ARRC Contract and applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987. The implications for individual providers would, however, depend on their actual staffing levels and patient management systems.

24. If a decision is made to proceed with new Staffing Regulations the Ministry will:
- prepare a paper for consideration by Cabinet Policy Committee;
 - issue drafting instructions to Parliamentary Counsel Office;
 - ~~consult with the sector on the drafted Staffing Regulations; and~~
 - prepare a paper for consideration by Cabinet Legislation Committee, Cabinet and the Executive Council.

Consultation with the sector on the Staffing Regulations, once drafted, will be consistent with the Act.

25. The Ministry also seeks your agreement that a summary of the submissions, as contained in Appendix 1, be made available to key stakeholders (including individual submitters), along with an announcement on whether the Staffing Regulations will proceed or not. The Health of Older People Forum on 15 December could provide the vehicle for such an announcement to the sector. The Ministry would separately brief District Health Boards.

Initiatives to address issues associated with staffing and quality and safety in the sector

26. The current work to address staffing and associated quality and safety issues in aged residential care focuses on progressively improving the outcome-based standards framework, promoting training for staff and tightening contractual mechanisms in the ARRC Contract. Any new work beyond these approaches would be considered within the context of ensuring the sustainability of services. This includes for example, piloting the use of the Handbook SNZ HB 8163: 2005 "Indicators for Safe Aged-care and Dementia-care for Consumers".

IMPLICATIONS FOR REDUCING INEQUALITIES

27. There are no implications for reducing inequalities.

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested First Contact
		Direct Line	After Hours	
	Manager, Health of Older People			1
	Analyst			2
	Senior Advisor Aged Residential Care			3

APPENDIX ONE

Introduction

1. In November 2004 the Ministry invited key stakeholders to state their preference for the content of possible staffing regulations for aged residential care and also provide comment on the proposed phase in period for staffing regulations and the likely compliance costs.
2. Two options were put forward as the possible content of Staffing Regulations:
 - 1) Consistency with the staffing requirements under the ARRC Contract and applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987; OR
 - 2) Replication of the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987, but with amendments to clarify that staffing refers only to nursing and caregiver staff.
3. Submissions closed in December 2004.

Analysis of the submissions received from consultation on the proposed Staffing Regulations

4. A total of 27 submissions were received. Eleven submissions were received from District Health Boards. Three submissions were received from the major provider representative organisations (New Zealand Private Hospitals Association/Residential Care New Zealand, New Zealand Council for Christian Social Services and the Association of Residential Care Homes). Nine aged care providers made submissions as well as the two major unions; the New Zealand Nurses Organisation, and the Service and Food Workers Union. Submissions were also received from Age Concern and an individual involved in nurse training.

Content of the proposed Staffing Regulations

5. Thirteen submissions mainly by the DHBs, the unions and a few providers, specifically stated support for option 1 of the content of the new Staffing Regulations - consistency with the staffing requirements under the ARRC Contract and applicable content from the revoked Hospitals Regulations 1993 and Old People's Homes Regulations 1987.
6. The main rationales expressed for supporting option one include:
 - consistency with the Aged Related Residential Care Contract in regards to appropriate staffing levels (reducing the risk of misinterpretation);
 - a consistent tool for monitoring and auditing processes is applied across the aged residential care sector;
 - the increasing acuity and complexity of need of older people entering residential care;

- it is one mechanism to ensure minimum staffing levels are provided and safe quality care is delivered to residents.
7. Two submissions (by a DHB and a provider) expressed support for option 2 as the proposed content of the Regulations, based on the rationale that no change is required to current staffing levels.
 8. Five submissions from providers specifically expressed that they do not support the introduction of Staffing Regulations.
 9. The rationales for not supporting Staffing Regulations include:
 - compliance with standards under the Health and Disability (Safety) Services Act 2001 and the ARRC ensures adequate safe staffing levels and sufficient safety of residents;
 - the Ministry of Health has powers under the HDSS Act to close a facility if there are concerns for the safety of residents. Adequate monitoring of compliance with the standards and contract, not the introduction of compulsory staffing will improve the quality of care;
 - there is no substantial evidence that there is a safety issue within the aged residential care sector;
 - mandatory staffing levels are in direct contrast to the outcome focussed approach of the sector and suggests that the Government does not have confidence in the HDSS Act and the Certification process;
 - regulations do not cover family expectations, acute changes in the status of residents or provide incentives to improve a resident's status.
 10. Seven submissions by DHBs, providers and individuals did not state a specific preference for either option 1 or 2, but made comments on the possible Regulations.
 11. Fourteen submissions made comments on the proposed content of the Regulations. Of these six were from DHBs, six were from providers, one represented a union view and one was from a nurse training organisation. The main points expressed by submissions in relation to the content of the Regulations:

Staffing Ratios

- staffing ratios and levels of competency required should be linked to the dependency/acuity level of residents and the complexity of care required by residents;
- staffing ratios should be tied to actual beds occupied and not contracted beds;
- staffing ratios for registered nurses should be based on the number of patients being cared for;
- staffing ratios should be consistent with ARRC and with the Staffing Effectiveness Indicators (NZS Standard INT 8163:2004);

- current staffing levels in the ARRC contract are outdated and do not reflect the high level of care needed by current residents;
- suggestions made in regards to appropriate staffing ratios for qualified/unqualified staff for particular circumstances such as over night, for acute incidents or when there is a risk of falls.

Clarity sought about the types of care to be covered by Regulations

- clarity is required about the types of care covered by the Regulations (and the relevance of types of care such as specialist psychogeriatric services day care, sleepovers, respite care and rehabilitation) and consistency in approach/formula for different types of aged care;

Clarity sought about what staff are to be covered by Regulations, and the competencies and support required

- clarity is required about what staff are covered by the Regulations. Suggestions include that Regulations apply only to nurses and staff who provide personal care, or that the Regulations also refer to other health professionals who provide care such as physiotherapists;
- clarity is necessary about competencies required of staff and scopes of practice that are consistent with the Health Practitioner's Competency Assurance Act 2003;
- clarity is required about the orientation of new staff and support provided for staff.

Other comments about the new Staffing Regulations

- Regulations must be flexible enough to allow for staffing patterns that accommodate multi-tasking across areas;
- A suggestion is that providers should be required to develop a risk assessment process when bringing in extra staff.

Compliance costs

12. Nine submissions provided comment on compliance costs that they consider will arise from the Regulations. The main points about compliance costs are:

- there should be no additional compliance costs imposed on providers and DHBs;
- it is erroneous that there is meant to be no increase in staffing levels or extra compliance costs with the new Staffing Regulations;
- it is not believed that the Ministry will fund any costs of compliance;
- there will be no additional compliance costs if providers are audited for compliance with the Staffing Regulations at the same time as the Certification process. Costs would be incurred if information is required outside the process of Certification;
- option 1 may have some compliance costs for a few facilities;
- historic compliance costs need to be funded by the Ministry of Health;

- it is not clear who would facilitate and monitor the Regulations;
- compulsory staffing has huge human resource implications (increased costs, loss of continuity of care and patient safety, retention and quality of personnel) amounting to an increase of 20% in overall caregiver costs (16.4% increase in registered nursing core hours);
- the Ministry should look closely at the experience of the Victorian Government (Australia).

Phase in period

13. Five submissions provided comment on the phase in period for the Regulations. Four submissions believe a 3-6 month phase in period for the Regulations would be appropriate. One submission suggested that the Regulations come into force at the time of the implementation of the next review of the ARRC Contract.

Consultation

14. 8 submissions expressed the following comments in relation to the process of consultation:
- recommend that the DHBNZ Service Improvement Group have an opportunity to discuss any proposed changes with the Ministry of Health before they are implemented;
 - request that the final draft is circulated to DHBs prior to finalisation;
 - believe that the Regulations need to be postponed until the HDSS has been reviewed and revised, and compliance with the HDSS produces solid evidence and data.

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APPENDIX TWO

1. Specific differences between current staffing requirements and the revoked licensing regime are illustrated in the following table:

	ARRC Contract	HDSS	Old People's Homes Regulations 1987	Hospitals Regulations 1993	Handbook SNZ HB 8163:2005
Type of aged residential care covered	Rest home care, continuing hospital care, dementia, & specialised hospital care	Rest home care, continuing hospital care, dementia care, & specialised hospital care	Rest Home	All forms of hospital care (continuing care, dementia, & specialist hospital care)	Rest home care, continuing hospital care, dementia, & specialised hospital care
Staff included	Registered nurse, manager & "Care staff" (nurse or caregiver)	"Suitably qualified/skilled and/or experienced service providers"	Generic term 'staff' includes all manager, care & others	Registered & enrolled nurses	Registered nurses and enrolled nurses (nurse assistants) & caregivers
Variables used to determine staffing requirements	<p>Sufficient staff to meet health & personal care needs of subsidised residents – minimum care staff numbers for rest home, hospital & dementia care based on:</p> <ul style="list-style-type: none"> • number of residents • layout of facility • ease of supervision of residents • employment of a qualified /experienced Manager, & at least one registered nurse 	<p>Standard 2.7.1 Clearly documented rationale for staffing levels and skill mixes achieved by consultation with health & / or disability professionals and evaluation of resource provision and consumer needs as listed in C2.7.1 and C2.7.3</p>	Number of hours staff are required to work each per week based on the number of residents	Number of registered & enrolled nurses required for hospitals based on the number of beds	<p>Indicator 1 - Registered nurse & caregiver hours per resident per week based on:</p> <ul style="list-style-type: none"> • the assessed dependency & complexity of each resident's needs • current staffing levels & skill mix • education & competency of staff • equipment environment & lay out • current trends in relation to other handbook indicators & the relationship between staffing hours & these trends

Scope of the staffing requirements	ARRC Contract	HDSS	Old People's Homes Regulations 1987	Hospitals Regulations 1993	Handbook SNZ HB 8163:2005
	<p>On duty and on call roles and responsibilities of managers & registered nurses, documentation of hours worked by care staff, orientation & competency of newly engaged staff, competency of any registered nurse or health professional</p>	<p>Standard 2.7 The organisation ensures the appropriate allocation of suitably qualified/skilled/experienced staff to meet the needs of consumers in a competent, safe and timely manner. Standard 2.6 Organisations conduct Human Resource Management processes.</p>	<p>The minimum aggregate number of hours to be worked per week</p>	<p>Staffing inputs as stated in the second schedule of the Hospitals Regulations 1993</p>	<p>Direct registered nurse & caregiver care hours per resident per week. Relationship between inputs (including staffing), processes & outcomes is outlined for each indicator</p>

2. Standard 2.7 of the HDSS and the ARRC Contract are focussed on the provision of safe quality care for older people, based on their identified needs. Providers determine the appropriate staffing level needed to achieve safe and quality outcomes.
3. The revoked Hospitals Regulations 1993 and the Old People's Homes Regulations 1987 are focussed on providers meeting minimum staffing requirements (inputs only).
4. The Handbook SNZ HB 8163: 2005 "Indicators for Safe Aged-care and Dementia-care for Consumers" focuses on ten indicators (including staffing) that can be used to assess quality and safety of care. The handbook outlines the relationship between inputs, processes and quality and safe outcomes for consumers (residents).