The New Zealand Aged Care Association's submission to TAS on the 2021/2022 ARRC and ARHSS agreements

27 November 2020

Introduction

1. This submission is from the New Zealand Aged Care Association (NZACA), the peak body for the aged residential care (ARC) industry in New Zealand. We represent over 90% of the nearly 40,000 beds in the country's ARC sector. Our members range from the very small stand-alone care homes to the large co-located sites that include care services and retirement villages. Our members' services include rest home, hospital, dementia and psychogeriatric care, as well as short-term respite care and around 600 Young Persons with Disabilities (YPD) residents.

2. Advocating and lobbying to government to shape policies and create an environment that helps our members provide outstanding quality care is at the heart of what we do. We provide leadership on issues that impact on the success of our members. We also produce valuable research, professional development opportunities, information and publications to help our members make informed business decisions, improve capability and keep them up to date with industry developments. We also encourage and recognise industry excellence and innovation through our annual awards programme.

3. This submission on the 2021/2022 Age-Related Residential Care (ARRC) Services Agreement and the Age-Related Hospital Specialised Services (ARHSS) Agreement has been prepared following input from our members. This paper highlights the key issues the NZACA would like to see addressed as we enter the upcoming negotiation process with District Health Boards (DHBs) and the Ministry of Health (MOH) on the ARRC Services Agreement and the ARHSS Agreement for 2021/2022. Some issues have been carried over from last year as they have not been resolved or they have been raised as concerns again by our members.

4. We have a small team based in Wellington and led by Chief Executive, Simon Wallace, a representative Board of 11 directors chaired by Simon O'Dowd and a network of 16 branches around New Zealand. Any enquiries relating to this paper should in the first instance be referred to Simon Wallace, Chief Executive at simon@nzaca.org.nz or by phone to 04 473 3159.

Comment

Annual price

5. The NZACA supports the process that has been used in the past two years (2019/20 and 2020/21 negotiations) in determining the annual price increase. This process involved the Association, the DHBs and the MOH convening a technical panel to model and agree on cost pressures affecting the industry across a range of measures. In all our advocacy and policy work we bring an evidence-based approach that is supported with NZACA's growing data and insight repository. We would like this process to be used again for the 2021/22 negotiation.

Pay Parity

6. Pay parity for ARC nurses with their counterparts working in public hospital settings remains a top priority for the Association and our members. The Health and Disability System Review Final Report led by Heather Simpson and released in June this year, identified the need to address pay parity issues for professions working in different parts of the system and that includes ARC (refer p.195 of the report).

7. Heather Simpson's report has been the catalyst for the work the NZACA, along with MOH and DHB officials, have been doing in the past two months on pay parity. The paper that we have been working on defines and quantifies pay parity, but also describes the scope of practice for a nurse employed in an ARC facility. This paper is close to being finalised and is expected to be with interested Ministers before the year is out.

8. It should be noted that in 2019 and 2020, small contributions were made by DHBs toward addressing the relativities between public hospital nurses and ARC nurses. While the NZACA has been appreciative of these contributions, when penal rates and shift allowances are included, ARC nurses are paid on average $10,000 or more less than a nurse working in a DHB setting.

9. The attractive salary packages offered by the DHBs have over time been at the heart of the retention and recruitment challenges for ARC providers. But they have not been the only challenge. In 2020, COVID-19 has led to a significant drop in the number of Internationally Qualified Nurses (IQNs) entering New Zealand. The pipeline has virtually dried up because, despite IQNs being given a policy exemption to enter through the border, space in Managed Isolation and Quarantine (MIQ) is severely limited and prioritised for returning New Zealand citizens and residents.

10. During June, more than 15,000 members of the public signed a petition led by the NZACA calling for the Government to pay aged care nurses at parity with their counterparts in public hospitals. That petition was received at the end of the last Parliament by a group of cross-party MPs and so the Association now awaits the new Government's response.

Sick leave and Matariki

11. The Labour Government has flagged its intention to introduce an extra statutory holiday for Matariki (June or July) as well as an extra five (5) days sick leave. By the time the NZACA, the MOH and DHBs have started work on the substantive costing analysis for the annual price negotiation, the Government's timeframes for introduction of Matariki and the extra sick leave provision should be known.

12. To illustrate the impact on the NZACA membership and using an example from our membership, a 30-bed hospital level facility would incur costs of approximately $5,000 for the extra statutory holiday (Matariki) and around $19,000 annually for the additional sick leave provision. There needs to be recognition in the 2021/2022 funding round that costs of

this nature cannot be absorbed by ARC providers and so they must be factored into the annual price increase.

COVID-19

13. While a welcome cash injection of $26 million was made by the Government in April to help meet a range of costs associated with COVID-19 preparedness, it has not been enough to offset ongoing expenses for our member facilities. Our April proposal for COVID-19 relief costs was evidenced from data across our membership and was three times the amount the sector was paid. In other words, there was no objective basis for receiving the amount that we did.

14. Meantime, providers are now faced with increasing cost of consumables due to supply shortages. Gloves are a case in point and one major supplier to the New Zealand market has increased the price on a box of disposable gloves from $15.11 in April to $38.20 in October, an increase of more than 100%. These prices could remain high due to international demand during the pandemic, meaning ARC facilities bearing these additional costs for some time.

15. Aside from consumables, the sector is facing other costs associated with the implementation of enhanced infection and prevention control (IPC) plans that involve not just stringent cleaning and hygiene requirements, but extra staff time to prepare and compile (especially by nurses) pandemic plans for facilities.

16. IPC measures will become business-as-usual (BAU) and so there needs to be recognition of extra costs for ARC facilities (there were 530 fewer deaths of ARC residents in the September 2020 quarter, a 16% drop compared to the same quarter in 2019). In terms of extra compliance, an example is the COVID-19 surveillance testing programme, which while advocated for and supported by the NZACA, will require surveillance plans to be put in place and that will incur costs. As we did in April, the sector would be happy to provide another costing analysis to evidence further funding support for COVID-19.

17. Looking ahead to the possibility of a COVID-19 vaccine being introduced in 2021, the NZACA would be keen to understand whether there has been any thinking by the MOH or DHBs as to how this vaccine will be rolled out and funded. As a vulnerable cohort, the Association would like to see ARC residents and staff prioritised for the vaccine as soon as it is made available in New Zealand.

End of Life Choice Act

18. The End of Life Choice Act was passed at the General Election and will be implemented on 6 November 2021. Our members are concerned that ARC facilities will by law be required to facilitate and/or administer assisted suicide when asked to do so. In its 2018 submission to the Select Committee considering the End of Life Choice Bill, the NZACA articulated these concerns to MPs and at the time indicated we would be seeking an exemption to the practice of assisted suicide in ARC facilities. Now the Bill is law and has been mandated by

the public, we would like an exemption in our contract so individual ARC facilities can excuse themselves from having to provide assisted suicide on site.

Palliative care

19. Reputable data and insight tell us that more people are dying each year and at older ages with increased presence of frailty and comorbidities, including dementia. Projections estimate that in the next 20 years the number of deaths in New Zealand will increase by almost 50% from the current rate of just over 30,000 per annum to 45,000 per annum in 2038. In 20 years, over half of these deaths will be in the age group 85 years and over.

20. ARC is already a primary provider of end-of-life care and comparatively New Zealand has one of the highest proportion of deaths in residential care settings at 38% of all deaths. The accumulation of multiple co-morbidities as people age often results in an extended period of physical and functional decline requiring 24-hour care in ARC. Based on historic patterns of place of death, the need for palliative care is projected to increase between 2016 and 2038 by 37% in public hospitals, 84% in aged residential care and 52% under hospice care.

21. Palliative care in old age is frequently complicated by an extended period of physical and cognitive decline associated with advanced frailty requiring a different approach than traditional models of palliative care which grew primarily from cancer care and the hospice movement. A palliative care model developed for cancer should not be imposed onto frail older people dying in ARC facilities due to the significant differences highlighted by research.

22. For several years now, this issue has been pushed back to the Funding Model Review (FMR), but the ongoing delays in the progress of the FMR have meant the matter has not been resolved. A rate higher than hospital-level care needs to be swiftly put in place to compensate providers for what is clearly the more intensive support required for palliating residents.

Additional Services

23. While the matters concerning publication of Accommodation Premiums and the resident opt-out clause have been satisfactorily addressed this year, there is still ambiguity concerning so-called Additional Services which are required to be published on-line. A provider's obligations with respect to Additional Services are broad and cover not only services provided by an ARC facility itself, but those offered by third parties, for example, a newspaper or Sky TV, and these prices can change. Requiring publication of third party charges every time they occur is onerous. The NZACA would like clarity as to what its members' obligations are with respect to the publication of charges for Additional Services.

Accommodation premiums on respite care

24. The Association understands that some DHBs are prohibiting accommodation premiums being charged on respite stays when policy does not preclude such charging. The NZACA seeks a clear directive to be issued to DHBs to remind them accommodation premiums can

be applied on respite rooms just as they can be on other rooms, provided charges are published.

Winter Energy Payment

25. The Association continues to receive submissions from members about the Winter Energy Payment (available 1 May to 1 October) that is available to those in ARC over 65 years of age but who do not receive a Residential Care Subsidy (RCS). Our members believe that in these cases the Winter Energy Payment should be sacrificed by the individual and passed on to providers to help meet energy costs associated with the running of facilities and the comfort of residents.

Subsidy processing

26. There has been feedback from members around delays in the subsidy approval process. Even if all the correct information has been supplied to Government agencies, we understand that delays of 40 working days (eight weeks) are common. When more information is sought, these delays can stretch out to as much as 80 working days. While providers do what they can to pay fees, many residents do not have the financial wherewithal to settle fee payments and so the providers bear the costs until the subsidies are processed. The NZACA would like to see measurable improvement in subsidy processing times or failing that a compensatory increase in the bed day price.

GP costs

27. There is still inconsistency amongst DHBs and Primary Health Organisations (PHOs) with respect to GPs passing on savings to ARC providers of lower cost consultations introduced by the Government in December 2018. We know the DHB Lead Chief Executive for ARC, Chris Fleming, did write to DHBs and PHOs asking that reductions be passed on to providers, but the response has been piecemeal. There should be a greater level of consistency with respect to this matter.

Home based support services

28. During COVID-19, the value of ARC providing home support to residents in independent retirement village (RV) units became apparent since contracted external providers were not able to access some sites that had a combined ARC/RV offering. The cost for providing these home-based support services fell on the ARC facility or the resident themselves. Going forward, an opportunity exists for ARC facilities to provide home-based support services far more efficiently than externally contracted providers. We would like to use this year's negotiation as an opportunity to discuss and progress this matter.

Health and Disability sector standards

29. Public consultation has begun on the Health and Disability Sector Standards and will run until 13 January 2021, with final standards scheduled for publication by June 2021. The NZACA clinical team has been involved in the review of these standards throughout the course of this year and dating back to 2019. While we do not envisage major changes for

the sector, it is possible that some changes could have a financial impact on our membership. The ARC Steering Group is asked to keep a close eye on the final shape of the standards in the event there are financial implications for providers.

Young People with disabilities (YPD)

30. It is pleasing that through NZACA advocacy and with DHB support, YPD bed day rates for ARC were lifted 3% this year by MOH to match ARC funding. However, a permanent solution is required to address historical inequities in YPD funding beyond the increase that has been applied this year. The Association has been advised the matter is being examined by the Disability Support Services (DSS) directorate and again we seek DHB support in our lobby to get this matter resolved in a way that is equitable for the 600 or so YPD residents and the providers who care for them.

Rural pricing

31. The financial sustainability of our members in rural and remote areas of the country has again been raised in representations to the Association this year with our members in these areas paid bed day rates at substantially less than their counterparts in urban areas. Like palliative care, addressing the rural inequity was pushed out to the FMR, but the delay in that process because of COVID-19 means it has still not been addressed. Each year the funding gap between rural and urban ARC sites increases and puts rural areas at a further disadvantage. The matter was included as a primary recommendation in the FMR but given how critical this is for our rural members we would like to see this matter prioritised and resolved for the 2021/2022 contract year.

Health and Safety at Work Act 2015

32. The issue of DHBs' being a principal under the Health and Safety at Work Act 2015 (HSWA) was raised last year. As such they are a Person Conducting a Business (PCBU) at law and have obligations as such. However, the HSWA obligations are missing from the ARC. The DHBs provided advice from Buddle Finlay dated 10 February 2015 and 19 May 2016. It is helpful that Buddle Finlay acknowledge that DHBs' are a PCBU. It is the NZACA's view that Buddle Finlay's advice glossed over the relationship between ARC providers and DHBs and that some of their assumptions are not reflected in the ARC. In particular, Buddle Finlay considered the ARC agreement to be a funding agreement and that the DHBs ability to direct or influence the work is limited to its funding obligations. However, Buddle Finlay did note the ARC will need to clearly define the DHBs' and the providers' respective responsibilities. As noted below, the ARC is devoid of any express DHB responsibilities.

33. The ARC agreement should be viewed as a contract that records an integrated funding and service delivery around the needs and aspirations of older people to improve their health outcomes. In the ARC setting, the MOH's priority actions for the health of older people includes the better integration of services for people living in ARC. This is supported by right 4(5) of the Code of Health and Disability Services Consumers' Rights. This provides that:

Every consumer has the right to co-operation among providers to ensure quality and continuity of services.

34. COVID-19 highlighted the extent to which ARC providers are reliant on DHBs and the MOH for PPE yet there is no obligation on DHBs to provide any PPE or other equipment necessary for Health and Safety. This has highlighted the gap in the ARC agreement regarding HSWA obligations.

35. This gap needs to be addressed as knowledge at various DHBs of their obligations at law are varied, with some denying they have any obligations and DHBs generally appear unwilling to engage on HSWA issues. This is despite a recent WorkSafe consultation on draft good practice guidelines: Violence in the healthcare industry. The ARC agreement should clearly set out the HSWA obligations of the DHBs and providers to ensure consistent application across DHBs.

Conclusion

36. In this submission, the NZACA has aimed to include the most important matters that have been submitted to us for consideration in the coming year's negotiation. However, our list is by no means exhaustive and officials accepting feedback should also consider separate submissions that will have been made by individual providers, whether NZACA members or not. We look forward to working through this and other submissions with you beginning with the ARC Steering Group meeting on 9 December.

End.