



Australian Government
Department of Health and Aged Care

Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
CANBERRA ACT 2600
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Dear Secretary

I am writing in relation to the Joint Committee of Public Accounts and Audit, Inquiry into the administration of Commonwealth regulations, on 22 November 2024.

I wish to correct evidence provided to the Committee during its examination of the Department of Health and Aged Care (pages 11 and 12 of the Proof Hansard refer).

In answering a question from Senator Darmanin, I said:

‘There is one minor difference in the supplement rates. The supplement rates are slightly higher for facilities in the Modified Monash Model, or MMM, 5, 6 and 7. That is effectively for regional through to very remote Australia. That recognises the fact that there are thin markets and limited supply. For facilities that are in MMM1—metropolitan areas—through to MMM4, it cuts out at the provision of eight hours for an overnight shift. That’s in recognition, once again, of the fact that there are more facilities available in those locations.’

It has been brought to my attention that the MMM groupings for the supplement rates are not correct. The response should have stated:

‘There is one minor difference in the supplement rates. The supplement rates are slightly higher for facilities in the Modified Monash Model, or MMM4, 5, 6 and 7. That is effectively for regional through to very remote Australia. That recognises the fact that there are thin markets and limited supply. For facilities that are in MMM1—metropolitan areas—through to MMM3, it cuts out at the provision of eight hours for an overnight shift. That’s in recognition, once again, of the fact that there are more facilities available in those locations.’

Additionally, in answering a question from the Chair (Ms Burney), Ms Thea Connolly said:

‘In relation to the obligations that we’re talking about today—24/7 and care minutes—they do apply to all providers and that’s a very conscious decision, but we do recognise the consequences of that may be borne more heavily by the markets that we’re talking about. That’s why we do have the supports that Mr Richardson has outlined in relation to the supplement, in particular for having a registered nurse 24/7. We do also have an exemption process for 24/7, which is not given lightly, because obviously it is a very important initiative, but I do understand that NATSIFAC providers—Aboriginal and Torres Strait Islander providers—in particular have applied for and received an exemption. But, in doing that, they have had to outline in a very great level of detail the alternative arrangements to our satisfaction and to deliver the care that is being required.’

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Ms Connolly has asked me to advise that it has been brought to her attention that the reference to 'NATSIFAC providers —Aboriginal and Torres Strait Islander providers' should have been a reference to 'AN-ACC funded specialised Aboriginal and Torres Strait Islander providers'.

Yours sincerely

A solid black rectangular box used to redact the signature of Mark Richardson.

Mark Richardson
A/g First Assistant Secretary
Residential Care Division

10 December 2024

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into Administration of Commonwealth Regulations

22 November 2024

PDR Number: IQ24-000214

Use of certifications to seek exemptions from the Regulatory Impact Analysis process

Written

Chair: Linda Burney

Question:

1. Health used a certification to seek an exemption from the requirement to undertake a Regulatory Impact Statement (RIS), which is the key mechanism for identifying costs and net benefits of a policy option. Health did not complete a Risk Potential Assessment Tool (RPAT), which is a structured risk assessment for new policy proposals.
 - a. What is Health's current position on the use of certifications to seek exemptions from the Regulatory Impact Analysis process?
 - b. What is Health's view on the value of formalised processes to evaluate regulatory responses and risks?

Answer:

1a. The Department of Health and Aged Care adheres to the processes to evaluate regulatory responses and risks as outlined in the Cabinet Handbook and Budget Process Operational Rules.

Exemptions from the requirement to undertake a Regulation Impact Statements (RIS), known as an Impact Analysis (IA) document, can be granted by the Prime Minister for urgent and unforeseen events, or, where there is a Budget or other sensitivity and compromise to confidentiality or unintended market effects could result. An exemption was last sought by the Department for the proposal Eligibility for Medicare Funding for Diagnostic Radiology Services. The exemption was published on the Office of Impact Analysis (OIA) website with a date of 22 May 2012.

During COVID-19, agencies were not required to prepare an Impact Analysis for a broad range of policy or regulatory change proposals, reflecting the need for urgent items to be considered by Government quickly. Agencies did not need to apply for this, and is therefore not reported on the OIA website.

1b. The Department of Health and Aged Care adheres to the processes to evaluate regulatory responses and risks as outlined in the Cabinet Handbook and Budget Process Operational Rules. It is appropriate that questions on the value of these processes be directed to the Department of the Prime Minister and Cabinet.

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into Administration of Commonwealth Regulations

22 November 2024

PDR Number: IQ24-000215

Aged Care Act establishment of a regulatory function for Health

Written

Senator: Linda Burney

Question:

2. Prior to obtaining legal authority, Health commenced plans to develop an audit function. Health was of the view the Aged Care Quality Safety Commission (ACQSC), which has monitoring and enforcement powers, was focussed on monitoring the governance of services and financial viability; Health had responsibility to obtain assurance over data used to monitor whether public funding was being used correctly.
 - a. Why was Health of the view that even with the existence of an independent regulator, it required expanded regulatory functions? Why could these functions not have been performed by the ACQSC?
 - b. How would the new Aged Care Act establish a regulatory function for Health?
 - c. How do Health and ACQSC distinguish their regulatory functions?

Answer:

- 2a. The legal powers underpinning the reporting assessment assurance activity were introduced in March 2023, ahead of reporting assessments commencing in September 2023. These powers are not regulatory in nature, and support the Department of Health and Aged Care (the department) in its program assurance role. This includes reviewing the accuracy of data supplied by providers to ensure that:
 - information it publishes through the aged care Star Rating system is fit for use by consumers;
 - data that is used by the department for policy making is sufficiently accurate; and
 - information provided to the Independent Health and Aged Care Pricing Authority is accurate.

Assessing the accuracy of data to support consumers and policy makers is not aligned with the functions of the Aged Care Quality and Safety Commissioner, as set out in the *Aged Care Quality and Safety Commission Act 2018*.

This delineation between program assurance and health provider regulation is consistent with the arrangements over Medicare and the Pharmaceutical Benefits Scheme, where the Department retains an assurance function over effective program delivery, and the quality and safety of services delivered is independently regulated.

2b. Chapter 6 of the Aged Care Act 2024 establishes regulatory mechanisms, including with respect to the System Governor (that is, the Secretary of the department) and the Aged Care Quality and Safety Commissioner.

2c. The department and the Aged Care Quality and Safety Commission distinguish their regulatory functions in line with the roles set out for the System Governor and the Aged Care Quality and Safety Commissioner in Chapter 5 of the Aged Care Act 2024. This sets out the role of the System Governor as the steward of the Commonwealth's aged care system and gives them responsibility for its operation and oversight.

The System Governor's program integrity role includes ensuring:

- the collection, maintenance and provision of accurate information regarding the delivery of funded aged care services, including accurate acquittal of expenditure on care by registered providers, and
- payments are made to registered providers delivering funded services in accordance with the legislative framework and program requirements.

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into Administration of Commonwealth Regulations

22 November 2024

PDR Number: IQ24-000216

Evaluation plan to examine the impact of the policy on residential aged care quality

Written

Chair: Linda Burney

Question:

3. The basic premise of recommendation 86, which was accepted by Health, was that increased staffing levels would improve the quality of residential aged care. In Health's Supplementary RIS, it stated it was planning a 'multi-level evaluation strategy'. As at October 2023, there was no defined evaluation plan to examine the impact of the policy on residential aged care quality.

- a. Has Health developed an evaluation plan?
- b. How is Health determining benchmarks or obtaining baseline data to undertake an evaluation?
- c. How has the Department been able to determine whether the quality of care has improved?

Answer:

Recommendation 86 from the Royal Commission into Aged Care Quality and Safety was accepted by the Australian Government in May 2021 as part of the Australian Government response to the final report of the Royal Commission into Aged Care Quality and Safety.

The Department of Health and Aged Care (department) has developed a monitoring and evaluation framework in relation to the care minutes and 24/7 registered nurse (RN) staffing responsibilities. This was finalised in July 2024, although it will be regularly reviewed and updated as appropriate.

This plan includes undertaking an initial evaluation of care minutes and 24/7 RN measures in 2025-26 to provide insights into the continuing implementation and observable outcomes and impacts of the measures.

This will be the first formal opportunity to examine whether the care minutes and 24/7 RN responsibilities have contributed to improvements in the quality-of-care residents receive.

A further evaluation is planned for 2027-28 to provide a comprehensive assessment of the measures' overall effectiveness and efficiency, informing consideration of their ongoing rationale, design and delivery.

The department currently collects resident experience data through the Resident Experience Survey and a quality-of-life indicator through the National Aged Care Mandatory Quality Indicator Program. These will be used, alongside care minutes performance and 24/7 RN coverage information, as data sources in this evaluation to help determine improvements in the quality and safety of residential aged care as a result of the policy.

The department started collecting care minutes data through the Quarterly Financial Report 5 quarters in advance of care minutes becoming mandatory (from July-September 2022). This data from before the introduction of the measure, along with some historical data about staffing, consumer satisfaction and National Mandatory Quality Indicator Program data will be used to form the benchmark against which to measure improvements in the quality and safety of residential aged care as a result of care minutes. Reliable RN coverage data was not available prior to the commencement of the 24/7 RN responsibility on 1 July 2023, as such July 2023 RN coverage reporting will form the baseline for examination of the impacts of this measure.

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into Administration of Commonwealth Regulations

22 November 2024

PDR Number: IQ24-000225

Gaps identified by Health in risk profiling

Written

Chair: Linda Burney

Question:

4. The audit reported there are plans to increase analytic capability for risk profiling of providers in relation to mandatory care minute and 24/7 RN non-compliance.
 - a. What gaps has Health identified in risk profiling?
 - b. How has this work progressed?

Answer:

4a-b. When the Care Time Reporting Assessment program commenced, there was not sufficient available evidence to 'profile' types of providers with respect to the risk of misreporting care time. As a result, the Department of Health and Aged Care was only able to assess the risk of misreporting with respect to:

- the internal consistency of reported information (i.e. the alignment between reported hours and costs);
- whether changes in reported performance at a service is greater than expected, period to period; and
- whether a provider reports significantly different performance than their peers.

The results of reporting assessments to-date have not provided evidence that any profiling of providers would be appropriate. As a result, we have not prioritised assessments with respect to any provider profiles and have continued using the existing risk measures outlined above.

Beyond the selection of services for reporting assessments, the department has identified that providers that misreport with respect to one service are more likely to misreport for their other services. As a result, we have built this into our approach to responding to misreporting when it is identified, to help manage the risk of multi-service misreporting.

In addition to this, the department has incorporated a risk-based approach to selecting the assessment procedures included in a reporting assessment. This functions as a triage process, where reporting is subject to different checks depending on the concerns the department has with respect to its accuracy. For example, if a provider has reported low registered nurse care minutes in their overnight shifts, and 100% coverage for the 24/7 registered nurse responsibility, this will attract further review.

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into Administration of Commonwealth Regulations

22 November 2024

PDR Number: IQ24-000217

24/7 RN exemptions

Written

Chair: Linda Burney

Question:

5. The audit found that although Health had established an administrative process for 24/7 RN exemptions, the process resulted in delays in exemption decision-making. How has the process for awarding exemptions to the 24/7 RN requirement been adjusted to facilitate faster decision-making?

Answer:

5. The exemption application process was streamlined in 2024 for approved providers that already have an exemption in place. Providers that already have an exemption in place now only need to provide detailed information where there has been a change in circumstances since their previous exemption application.

The decision making process was also more efficient in 2024. The Aged Care Quality and Safety Commission (Commission) was able to provide far more comprehensive information to the delegate within the Department of Health and Aged Care (department) on the alternative arrangements in place in each facility. This information was available because following the commencement of the 24/7 registered nurse (RN) responsibility the Commission has been undertaking close monitoring, including through regular site visits, of facilities with an exemption to the 24/7 RN responsibility, and facilities that report significant gaps in RN coverage. This information supported the delegate within the department to make considered decisions around exemptions far more quickly than in the 2023 process (where site visits to monitor alternative arrangements had not yet commenced).

The refinements made to the process reduced the administrative burden on approved providers in relation to the amount of information required to be submitted with an application and reduced the time taken for an application to be processed and finalised once received by the department.

The 2024 exemption application process opened on 15 April 2024 to ensure new exemptions could be in place from 1 July 2024, and avoid a break between the existing application and the renewal. All exemptions applied for before 30 June 2024 were in place by 1 July 2024 in the 2024 process.