



Submission to the Senate Community Affairs Legislation Committee

on the

Inquiry into the provisions of the Aged Care Amendment (Implementing Care Reform) Bill 2022

Prepared by

COTA Australia

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Council on the Ageing (COTA) Australia

COTA Australia is the national consumer peak body for older Australians, which through policy development, advocacy and representation seeks to achieve an equitable, just and inclusive society for Australia's more than eight million older Australians. COTAs have been identifying the needs of, and issues affecting, the welfare of older Australians since the first COTA was formed in 1951.

COTA Australia's members include the eight State and Territory COTAs (Councils on the Ageing). Through over 45,000 individual members and supporters of the COTAs, and the COTAs' wide range of ageing sector and seniors' organisation members COTA Australia directly represents over 500,000 older Australians.

COTA Australia is the leading voice for the rights and interests of older Australians. Its focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve, and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes. COTA's non-partisan advocacy, on issues identified in collaboration with older people, has advanced the national agenda for older people's wellbeing for over seven decades.

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Introduction

COTA Australia welcomes the commitments made in this legislation and supports its intentions. We warmly welcome the priority which the Albanese government and the Minister for Aged Care have given this Bill in the legislative program. This is unprecedented.

We note that the primary legislation is fairly minimalist in its provisions and that the “guts” (technical term) of the provisions will be in the subordinate legislation which will be tabled later and will be a disallowable instrument, accountable to the Parliament. This causes concern to some in the sector. However, COTA supports the Government position in regard to this legislation but will play an active role in working with all MPs and Senators to review the subordinate legislation when it is tabled.

It would be a gesture of good faith by the new government to schedule a presentation and explanation of the subordinate legislation in both the House and Senate with time for questions and debate.

Schedule 1 – Registered Nurses

Proposed legislation

This establishes a new responsibility in the Aged Care Act for approved providers of residential care and certain kinds of flexible care (as specified in the *Quality-of-Care Principles 2014* (Quality of Care Principles)) to ensure that a registered nurse (within the meaning of the *Health Insurance Act 1973*) is on site and on duty at all times (that is, 24 hours every day, 7 days a week) at each residential facility operated by them.

The inclusion of the possibility of an exemption from the registered nurse requirement is consistent with Recommendation 86 of the Royal Commission. The Royal Commission recommended that approved providers should be able to apply for an exemption in certain circumstances, including for residential care facilities that are co-located with a health service where registered and enrolled nurses are present, and for facilities in regional, rural, and remote areas where the provider has been unable to recruit enough staff with the requisite skills.

COTA comment

COTA Australia supports this measure but believes it could be improved with clearer provisions on the timing of exemptions and guidelines on what constitutes an acceptable exemption. There may also need to be greater clarity on the distinction between on site and on duty. We discuss these issues later in this section.

This measure strengthens national minimum staffing standards in residential aged care and brings Australia into line with similar regulations in other countries.

Nurses play a vital role in aged care in partnership with allied health professionals, lifestyle coordinators and well-trained personal care workers.

COTA Australia has long supported the principle of ensuring the right skills are available in the right setting and at the right time, within each staff member's professional scope of practice.

The requirement to have 24/7 registered nurses should be included in the Quality Standards as well as in legislation. Adherence to the requirement should be part of provider compliance monitoring and reporting. Performance should be reflected in star ratings and other published performance information.

The implications of the measure will need to be carefully monitored and assessed as it is likely to have differential effects across facilities within the sector. Considerations include:

- A potential increase in the number of providers operating below minimum standards due to the actual and/or perceived additional staffing, administrative and compliance costs of meeting the requirements
- A reduction in non-nursing staff time, or diversion of resources, in substitute for nursing time, potentially resulting in negative impacts on the quality of care of residents, and potentially consequentially adding to the workload of registered nurses
- The capacity of local labour markets to fulfil provider staffing requirements to meet this new standard.

Quality of care to aged care consumers should never be compromised but in some circumstances, staffing requirements may need to be adjusted to ensure quality services can continue to be accessible and even available.

In some rural and remote regions, providers may initially be unable to meet the requirements of this measure. These providers should demonstrate that genuine efforts have been made to meet the requirement, that appropriate alternative approaches are being implemented, and that efforts are continuing to establish 24/7 nursing capacity.

Registered nurse requirements should be supported by effective care planning that can respond to urgent health needs or clinical decline at any time including overnight.

To deliver essential quality care, it is important that the time registered nurses spend undertaking direct care is maximised and time spent on administration is minimised. The use of real time care planning, management and monitoring software is essential for efficiency and effectiveness, reducing administrative time and cost and should be incentivised. Measurements of nursing time resulting from legislation should be related to active clinical time not administrative time.

It is also important that registered nurses receive ongoing training and professional development given their experience, knowledge and expertise is utilised in a leadership capacity. We note that new governance requirements as part of the reforms already legislated will require providers to have and implement staff training and development programs.

The 24/7 registered nursing requirement will need to be complemented by a dedicated government strategy to attract more registered nurses into aged care. This should include targeted training, scholarships, financial support, improved remuneration, public promotion campaigns, targeted immigration and working visa schemes, career pathway development and support with childcare and in some locations housing.

Exemptions and Exceptions

We consider that the legislation should provide that an exemption may only be granted for a specified period of time, which we suggest be 3 months, with the ability to apply for subsequent extensions. This will provide an incentive for providers to meet the staffing arrangements in an appropriate time frame and will help ensure that exemptions are only provided when they continue to be justified.

There should be strong guidance in the Quality-of-Care Principles about what constitutes acceptable grounds for an exemption and the types of conditions that should accompany such exemptions. This should not be left entirely to the regulator's discretionary judgement, although obviously some degree of such discretion is also necessary within guidelines.

The size of facilities and certain specific required attributes of nursing staff can be important factors in assessing possible exemptions.

Small facilities or facilities in locations with small populations may be unable to recruit sufficient numbers of registered nurses to meet the 24/7 requirement and therefore be granted an exemption while expanded recruitment strategies are undertaken, or alternate pathways explored and developed.

Arrangements in which larger facilities or providers support smaller providers and/or facilities in a region in a partnership approach should be given sympathetic consideration and encouraged when likely to support quality outcomes.

As a different example, facilities specifically targeting Culturally, and Linguistically Diverse (CALD) residents may find difficulty in recruiting sufficient numbers of registered nurses with appropriate language skill and cultural experience, knowledge or training. Access to clinicians with relevant language skills is essential for CALD facilities but when difficult or not possible then trained interpreters become an essential additional requirement for which extra funding may be required.

The legislation requires that *Registered Nurses* are both *onsite* and *on duty*. Compliance with

both on site and on duty may be difficult in rural areas, for example, with small and dispersed populations or where there are significant labour shortages.

Exceptions could be facilitated for either on-site or on-duty or both where a facility can demonstrate it can reach minimum quality standards by allowing registered nurses to be on call rather than on site during the night, or onsite but sleeping and not actively on duty.

The use of technology, extending telehealth, strengthening links between aged care and rural hospitals and use of the Royal Flying Doctor Services should be explored and developed to improve care outcomes for older people in residential care in rural areas.

In these situations, use of an Enrolled Nurse onsite and on duty may provide a time limited exception where a registered nurse is available to actively supervise via telehealth.

Schedule 2—Capping home care charges

Proposed legislation

Introduces a new power into the Aged Care Act that will enable the Government to cap charges that approved providers of home care (home care providers) may charge care recipients. It also removes the home care providers' ability to charge exit amounts.

We understand the purpose of this measure is to enable the Government to take action to reduce package funding directed to administration and management and ensure more home care funds are available to meet the direct care needs of care recipients

COTA comment

COTA Australia supports the intention of this measure to reduce or limit home care provider administrative and management charges. However, this does not address all the issues that consumers have related to pricing transparency, comparability, and fairness. Also, achieving the desired outcome of more hours of care will be a complex exercise.

COTA Australia strongly supports the removal of exit fees, a position we have held for a long time.

The implementation of a new Support at Home Program has been deferred for a further 12 months to 1 July 2024, which was the date recommended by the Royal Commission. To ensure effective program design and implementation, COTA Australia supports this deferment. However, the capping of home care charges cannot be seen in isolation from service design components currently being developed by Government in consultation with the sector.

Currently, many home care consumers are confused and angry about fees and charges including payments that they are not aware of, do not relate to the services they are receiving and/or are changed without communication. Confusion and anger particularly relate to 'administrative' or 'brokerage' type fees for care management and package management.

Some examples of consumer comments are:

"I am a pensioner with poor health on a Level 2 Package waiting for a Level 4 that I have been assessed as needing. Once the provider has taken out the daily fee and other various charges, there is about half the package left for me to get in services. Luckily, my children are ready to help me. If not for them, I would in an aged care home. I would hate leaving my home."

"It is imperative that government carefully watch the avarice of providers. Once they have stripped my wife's package (their bounty of fees and charges), There is so little left. My wife needs nursing care and on a level 2 package it's more like an occasional treat. We don't receive any personal domestic care as I need to keep the package dollars to buy the occasional hour with a nurse."

Care management and package management are not clearly defined. COTA Australia recommends that subordinate legislation should include a list of permissible items that can be attributed to care management and a list of permissible items that can be attributed to care management. All other costs would then fall into overheads built into the hourly rate of the service.

We have seen over recent years that some providers identified and published as having higher than average administration costs have subsequently reduced those nominal fees but transferred the balance to a markup on their hourly direct care fees. So capping administration and care management fees needs to look across to the implications for direct care fee charges. Otherwise, consumer complaints will justifiably continue and indeed probably increase.

It is not clear how the capping of charges will work for people who are self-managing their home care package. Whilst self-management involves a partnership between consumers and providers, there are normally low and fixed administration costs. A cap on such fees would be easier than in provider managed packages because in self-managed packages the consumer gets to choose who is providing the service at what cost.

The shift in the proposed Support at Home program design from a home care package dollar amount to a Support at Home care plan of hours may decrease confusion about costs especially once those hours are but should not reduce the need for transparent information about how much a provider is being paid to permit the consumer to assess the quality of service being provided.

The future independent price setting arrangements must include transparency on all fees and charges including administration fees. Consumers should be aware of staff wages and on-costs being paid for their workers, separate from overheads and other administrative costs. Consistent approaches to travel costs must be applied as part of any independent pricing system. Acceptable costing of changes to planned arrangements should also be clear to consumers upfront (e.g., cancellation costs).

COTA Australia has regularly stated that client contributions and unit pricing should be equitable and adequate to meet consumer needs and provide measurable high-quality care.

To enable pricing transparency, comparability and fairness, a single unit pricing model should be implemented where administrative and management costs are transparent and incorporated into a single unit price for services or a bundle of services.

Other considerations include:

- A comprehensive costing study of actual home care delivery costs
- Implementing a schedule fee by capping hourly rates for all cost elements of a home care package and ensure compliance with publicly available figures

Change definition of care management

COTA Australia believes government should change the definition of care management in the Quality-of-Care Principles Care and Services for home care services.

Care management should be a valued service and not an administration charge. The inclusion of such items as 'scheduling care and services' in the definition transforms this service into an administrative overhead, resulting in consumers receiving unfair, excessive, or unexplained administrative charges.

If the "scheduling of care and services" were removed from the permissible items included, this administrative rostering process would be incorporated into the cost of delivering services. It would begin to see valued hours of care management delivered to consumers, rather than today's situation of back-office functions being charged to consumer packages with limited contact with the older person.

Older people do not see these functions as transparently delivering services to them and rightly object to these charges for what to them appears to be charges without services. Care management should include reviewing the care recipient's home care agreement and care plan, ensuring care and services are aligned with other supports, liaising with the care recipient and the care recipient's representatives, ensuring that care and services are culturally appropriate, and identifying and addressing risks to the care recipient's safety.

The care management role should also include advocating for older people and linking them to services and supports outside the aged care system.

Schedule 3—Transparency of information

Proposed legislation

The Schedule introduces a mandatory requirement into the Aged Care Act for the Secretary of the Department of Health and Aged Care to publish information in relation to aged care services, including information about approved providers of those aged care services, in accordance with the *Information Principles 2014*.

It is intended that this information will be published in a format that is clear and able to be understood by the public, thus enabling increased transparency and accountability of the aged care sector and empowering older people and their families to make more informed care decisions based on this information.

This measure will enable the publication of information such as how much approved providers and aged care services spend on care, nursing, food, maintenance, cleaning, administration, and profits. This intends to help rebuild trust in the sector and ensure that residents' and taxpayers' funds are being spent on the care of older people. It will allow the Information Principles to specify what information the Secretary must publish, the way in which it must be published, and when it must be published.

It is understood that the information to be published includes:

- financial information, including expenditure on care, nursing, food, maintenance, cleaning, administration, and profits.
- levels of care time provided.
- details of key personnel; and/or
- information about staffing of an aged care service.

This new requirement responds to Recommendation 88 of the final report of the Royal Commission.

The Royal Commission found that there is a lack of transparency and accountability about approved providers and that good quality comparative information about aged care services is not publicly available. This lack of information and transparency has impacted the ability for older Australians and their families to make informed judgements about the quality of aged care in particular services, and the accountability of aged care providers to Australian taxpayers.

COTA comment

COTA Australia fully supports this measure and views this as a particularly high priority for consumers, for which we have been arguing for many years. Short term implementation will also provide a baseline for measuring government progress on reforms from the perspective of consumers.

Clear, consistent, timely and transparent information about the amount of money a provider is paid for and spends on a service should be available to inform consumer service choices and decisions.

It is also important for consumer and public confidence in aged care that clear information about the amount of money that a consumer must contribute towards the services they receive is provided.

This measure will support the introduction of a star ratings system incorporating aggregated information across staffing levels, quality outcomes and the lived experience of people currently accessing aged care services.

COTA Australia strongly support the implementation of graded assessment and performance ratings of aged care providers against the Aged Care Standards. We agree with the findings of the Royal Commission that current assessments do not provide meaningful information for older people and their families nor offer incentives for providers to strive for excellence. The pass or fail approach must be replaced by a more sophisticated approach to assessment against the Quality Standards. There needs to be a strong emphasis on best practice not just a focus on preventing harm.

COTA Australia strongly supports the development of quality-of-life indicators complementing public reporting of staffing hours and other service performance metrics.

COTA understands that the Star Ratings will include Consumer Experience information based on six monthly surveys. We appreciate the inclusion of consumer views in a significant way. However periodic surveys are of limited value in the residential aged care context. COTA welcomes and applauds the small number of providers which are now implementing real time continuous consumer feedback. This must, over a very limited time period, become the norm and be incorporated into the Star Ratings as a major component of the overall rating. Residents and families have told us for a long time that consumer views are critical to their decision making about which aged care facility they want to enter.