

DEPARTMENT OF HEALTH AND AGEING'S COMMENTS ON RECOMMENDATIONS IN THE PRODUCTIVITY COMMISSION REGULATORY BURDEN REPORT

DRAFT RECOMMENDATION 2.1

To enable the Australian Government to reduce the burden associated with regulation and price controls, and to improve the quality and diversity of aged care services, it should explore:

- *Options for introducing more competition in the provision of aged care services*
- *Removing the regulatory restriction on bonds as a source of funding for high care facilities.*

RESPONSE

As this is a policy issue, it is not appropriate for the Department to comment.

Similar recommendations have been raised in the final report of the National Health and Hospitals Reform Commission *A healthier future for all Australians* and the Government will formally respond in due course. To underpin its response, a comprehensive community consultation process will be managed by the Department's Health Reform Taskforce. There is also a dedicated interactive website which is publicly available at:

<http://www.yourhealth.gov.au>.

DRAFT RECOMMENDATION 2.2

Contingent upon the introduction of more competition in the provision of aged care services outlined in Recommendation 2.1, the Australian Government should abolish the 'extra service' residential care category. In the interim, where there appears to be unmet demand for such 'extra service' places in a particular region, the Department should consider freeing up the regional cap subject to the requirement that there is not an unreasonable reduction of access for supported, concessional or assisted care recipients.

RESPONSE:

Similar to recommendation 2.1, this is a policy issue and it is not appropriate for the Department to comment.

This recommendation is also related to the recommendations made in the final report of the National Health and Hospitals Reform Commission *A healthier future for all Australians* and the Government will formally respond in due course. To underpin its response, a comprehensive community consultation process will be managed by the Department's Health Reform Taskforce. There is also a dedicated interactive website which is publicly available at: <http://www.yourhealth.gov.au>.

DRAFT RECOMMENDATION 2.3

The Department of Health and Ageing should conduct a publicly available evaluation of the current police check requirements to explore whether the benefits of the existing regime could be achieved in a less costly manner.

RESPONSE

Police check requirements were introduced in 2007 and strengthened in January 2009. They are one part of a framework to ensure protection for vulnerable elderly people receiving care.

The Department of Health and Ageing is working with other agencies, such as FAHCSIA to harmonise police check processes to minimise duplication of administrative processes while maintaining standards of care.

DRAFT RECOMMENDATION 2.4

The Aged Care Standards and Accreditation Agency should redesign the unannounced visit program using a risk management approach that focuses on under-performing aged care homes. The current performance target of at least one unannounced visit per home per year should be abolished and the overall number of visits (including announced and unannounced visits) should be reduced.

RESPONSE

The Government's approach to quality in residential aged care ensures minimum standards and continuous improvement in the quality of care, services and accommodation. The approach also protects and promotes consumer rights, and facilitates a resident-centred approach to aged care. This approach aims to:

- promote quality of care and quality of life for residents in residential aged care;
- protect the health, safety and well-being of residents in residential aged care;
- promote open and transparent systems in residential aged care; and
- promote continuous improvement in residential aged care.

An integral aspect of this approach is the accreditation of residential aged care homes. Assessment of homes against the Accreditation Standards aims to:

- measure performance against the Accreditation Standards;
- minimise the prospects of non-compliance, through timely assessment activity;
- ensure non-compliance is identified early and remedied in a reasonable timeframe;
- provide assurance and maintain public confidence in residential aged care through an
- open and transparent system;
- ensure that the accreditation body has an accurate view of the status of individual residential aged care homes and of the aged care industry relative to the Accreditation Standards; and
- promote continuing improvement in quality of care and quality of life for residents.

In evidence to the 2005 Senate Community Affairs Committee inquiry into Quality and Equity in Aged Care, a range of stakeholders, including consumers, raised concerns that announced accreditation visits encouraged some homes to employ additional staff and 'tidy up' prior to the arrival of the assessment team, giving a false impression of the facility and the services it provided. The Senate Committee subsequently recommended that the Aged Care Standards and Accreditation Agency ensure that all services be subject to a minimum of one annual random or targeted spot check (unannounced visit) and at least one site visit with notification over its accredited period.

In the 2006 Budget, the Government introduced a policy whereby every home would receive at least one unannounced support contact per annum. This policy remains an important feature of the accreditation program and ensures that homes are monitored on an ongoing basis, thus maximising the opportunity to detect emerging non-compliance early and ensure that the approved provider takes remedial action.

In respect of other visits to aged care homes, these are based on a risk management approach. In determining the period of accreditation and the number of support contacts that a home is to receive the Aged Care Standards and Accreditation Agency takes into account factors such as the homes previous accreditation and compliance history and complaints history. Similarly, in determining whether a home should be subject to a review audit, the Accreditation Agency takes into consideration a range of factors as specified in the Accreditation Grant Principles.

The Department of Health and Ageing is currently undertaking a review of the accreditation process and Standards. A public consultation process on the review of the accreditation process closed on 17 July 2009 and provided an opportunity for a range of key stakeholders to comment on aspects of the process, including unannounced and announced visits. The Government will give consideration to what changes, if any, are required to the accreditation process following consideration of the outcomes of that review.

DRAFT RECOMMENDATION 2.5

The Accommodation Bond Guarantee Scheme ensures the refund of accommodation bonds to aged care residents in the event that a provider becomes insolvent. Given this Government guarantee to residents, the Australian Government should amend the prudential standards to remove the requirement on aged care providers to disclose to care recipients or prospective care recipients:

- *a statement about whether the provider complied with the prudential standards in the financial year*
- *an audit opinion on whether the provider has complied with the prudential standards in the relevant financial year*
- *the most recent statement of the aged care service's audited accounts.*

RESPONSE

The Department considers that the information provided to residents that have paid accommodation bonds by their approved provider about the approved provider's compliance with the prudential requirements promotes transparency and provides incentives for compliance. The primary objective of the prudential standards is to encourage approved providers to adopt sound financial management practices and reduce the risk of default on the

refund of bond balances. The Disclosure Standard ensures that residents and prospective residents have access to information about the financial status of any approved provider holding accommodation bonds and their performance in meeting their prudential obligations.

The Accommodation Bond Guarantee Scheme (Guarantee Scheme) is intended as a safety net and does not replace the need for approved providers to manage residents' accommodation bonds in a responsible manner. In this respect, the requirement for disclosure to prospective residents and existing care recipients works to reduce the moral hazard created by the Guarantee Scheme through assisting people to make informed decisions about the security of their bonds. Given the average size of new accommodation bonds in 2007-08 was \$188,798 the disclosure requirements are considered reasonable.

The assessment of the need for sound prudential regulation, including mandatory disclosure, needs to be considered in the context that:

- accommodation bond holdings have grown at just over 20% per annum over the past two years from \$5.3 billion at 30 June 2006 to \$7.7 billion at 30 June 2008 and growth is expected to continue;
- at 30 June 2008 the average bond holdings for an approved provider was approximately \$7.9 million; and
- the Accommodation Bond Guarantee Scheme has now been activated three times for a total value approaching \$20 million.

There is scope to update some information provided in the draft report:

- Amendments made to the prudential requirements in 2006 require approved providers to submit an Annual Prudential Compliance Statement (APCS) attesting to their compliance with three prudential standards: the Liquidity Standard, Records Standard and Disclosure Standard. The requirement for approved providers to maintain insurance ceased from 30 June 2006 which needs to be reflected in the assessment on page 41 of the draft Report.
- The data contained in the second paragraph on page 42 regarding compliance notices was for the 2006-07 financial year. The Department issued 17 "warning letters" and one notice of non compliance in 2007-08.
- It should be noted that approved providers are only required to supply the most recent statement of the aged care service's audited accounts on request.

DRAFT RECOMMENDATION 2.6

The Australian Government should amend the Residential Care Subsidy Principles 1997 to remove requirements on aged care providers to lodge separate written notices with the Secretary of the Department of Health and Ageing demonstrating compliance with Conditional Adjustment Payment reporting where such information is accessible from documentation already provided to the Department.

RESPONSE

Participation in the periodic Departmental workforce surveys is the only CAP requirement about which the Department receives information from other sources. The Department does not receive separate information on training opportunities provided by approved providers or

the completion of audited General Purpose Financial Reports (unless the Department requests these to be lodged).

It should be noted that the comment by Aged and Community Services Australia about the Conditional Adjustment Payment (CAP) reporting requirements is inaccurate. Approved providers are not required to prepare CAP-specific expenditure statements and reports in addition to General Purpose Financial Reports.

Funding under CAP can be used for any purpose which assists aged care homes to continue to provide high quality care to residents. There is no requirement to include details on the expenditure of CAP funds or submit compliance reports.

DRAFT RECOMMENDATION 2.7

The Commonwealth, State and Territory Governments should resolve any outstanding issues with the proposed community standards and reporting processes; and implement the National Quality Reporting Framework as soon as possible, which is consistent with the methodology and principles supporting Standard Business Reporting.

RESPONSE:

The Department of Health and Ageing is actively working towards implementation of a National Quality Reporting process. In addition, the Department is working to standardise financial reporting requirements for community care providers. This is broadly in line with Standard Business Reporting.

The Commonwealth, State and Territory Governments have been collaborating on and developing draft Common Standards, which are an important step in streamlining reporting processes, for the diverse range of community programs, service types and settings.

A pilot of the draft Common Standards and associated reporting processes is currently underway to test their useability and suitability with service providers and quality assessors. A final report is expected in September 2009 and it is anticipated that the Common Standards and reporting processes will be progressively implemented from about March 2010.

A number of issues raised by Aged and Community Services Australia and Aged and Community Care Victoria, in their submissions to the Productivity Commission, will be evaluated in light of the pilot outcomes.

Continuous quality improvement is emphasised as an underlying principle supporting the draft Common Standards and Expected Outcomes and Performance Criteria are intended to assist the understanding of quality requirements in the provision of services to care recipients.

However, the Commonwealth Government has significantly invested in community care programs, and the increasingly high care needs of those being maintained in the community make it essential that appropriate levels of accountability are in place.

Commonwealth Government quality reviewers are working directly with State and Territory Government quality assessors to combine timing of reviews and visits to service providers in order to limit the demand on service providers' resources during quality reviews.

The Commonwealth Government is looking at financial reporting requirements for providers and the Department is progressing a project to collect data electronically using a standard framework. This project will involve a trial of whether the requirement for audited financial information can be reduced using a risk management approach.

DRAFT RECOMMENDATION 2.8

The Australian Government should introduce amendments to the Age Care Act 1997, and Aged Care Principles as necessary, to provide a clearer delineation of responsibilities between the Department of Health and Ageing and the Aged Care Standards and Accreditation Agency regarding monitoring of provider compliance with the accreditation standards.

RESPONSE

The Department of Health and Ageing (the Department) and the Aged Care Standards and Accreditation Agency Ltd (the Agency) share responsibility for monitoring approved provider compliance with the *Aged Care Act 1997* (the Act).

Aged Care Standards and Accreditation Agency Ltd

The Aged Care Standards and Accreditation Agency Ltd (the Agency) is an independent company established in October 1997 by the Australian Government under Section 80-1 of the Act for the accreditation of residential aged care homes. The Agency operates independently from the Department of Health and Ageing. Agency accreditation audits at aged care homes are conducted by registered Aged Care Quality Assessors who have undertaken specific training in the Accreditation Standards.

The Agency's regulatory role is focused on homes' compliance with the Accreditation Standards while the Department has responsibility for ensuring aged care homes meet their wider obligations under Parts 4.1, 4.2 and 4.3 of the Act.

Department of Health and Ageing

Much of the Department's monitoring occurs through the Department's Aged Care Complaints Investigation Scheme (CIS), which has the power to investigate concerns about anything that affects the service or quality of care provided to a recipient of Australian government subsidised aged care.

Broadly speaking, the CIS investigates cases which affect individual residents and takes action to remedy concerns for that individual. The CIS refers all issues, which appear systemic in nature, to the Agency for consideration and action.

If considered appropriate, the Agency may then assess the home to ascertain if it has appropriate systems in place.

To achieve the best outcome for residents of aged care, the Department and the Agency have implemented protocols to regulate referral and compliance monitoring processes.

On 25 July 2009, the Minister for Ageing announced a review of the operation of the Aged Care Complaints Investigation Scheme. The terms of reference include considering,

“The relationship between the CIS, the Aged Care Commissioner, the Aged Care Standards and the Accreditation Agency Ltd, and other relevant bodies.”

There is also a review of the accreditation process currently being undertaken by the Department of Health and Ageing which may result in required amendments to the *Aged Care Act 1997* and the Principles. In considering and drafting any amendments flowing on

from either review, consideration will be given to providing greater clarity on the role of the Agency and the Department.

DRAFT RECOMMENDATION 2.9

When a provider has notified police concerning a missing resident it must also contact the Department of Health and Ageing. Reporting to the Department is primarily concerned with addressing longer term systemic problems that may be contributing to residents going missing. The Australian Government should amend the missing resident reporting requirements in the Accountability Principles 1998 to allow providers to report to the Department on missing persons once every twelve months (including any action taken). It should also be stipulated that those homes where more than a threshold number of residents have been reported missing need to inform the Department at the time this threshold is exceeded. This recommendation would not impact on the reporting of missing residents to state police services by providers.

RESPONSE

The reporting of missing residents to the Department in certain circumstances has only been in place since 1 January 2009. Routine and timely reporting to the Department about missing residents allows the Department to undertake a real time risk assessment in respect of whether a home may have systemic defects that allow residents to go missing. In a number of situations, an immediate visit by investigators has identified situations at a home that has or could impact on the residents' safety.

DRAFT RECOMMENDATION 2.10

The Department of Health and Ageing, in consultation with relevant state and territory government departments, should use current reviews of the accreditation process and standards to identify and remove, as far as possible, onerous duplicate and inconsistent regulations.

RESPONSE

The *Aged Care Act 1997* requires approved providers to be cognisant of, and compliant with, relevant state and local government regulations, for example, infectious disease outbreaks, food safety, and nursing scope of practice.

The Accreditation Standards require approved providers to have systems in place for identifying relevant legislation, regulations, standards and guidelines, and for monitoring and ensuring compliance with these in relation to the Accreditation Standards. Regulatory compliance requirements are specified under Expected Outcomes 1.2, 2.2, 3.2, 4.2 and 4.5.

The Department is of the view that there is no duplication between State/local Government legislation and the activities of the Agency as the Agency assesses whether a home has systems in place to identify and ensure compliance with all relevant legislation, regulatory requirements, professional standards and guidelines" (Outcome 1.2).

Agency quality assessors do not assess whether or not the Service is actually complying with various State/ Territory regulations, as it remains the responsibility of the approved provider to ensure compliance.

The Department may become aware of non-compliance with local and state regulatory requirements during the course of a CIS investigation. When this occurs, the CIS refers the information to both the Agency and the relevant state or local authority, for appropriate consideration and action.

Nevertheless, the concerns of approved providers in respect of this matter will be incorporated into the reviews of the accreditation process and Standards, with a view to minimising confusion about the requirements in respect of regulatory compliance.

As well as the review of the accreditation standards, the Minister for Ageing announced on the 25 July 2009, a review of the operation of the Aged Care Complaints Investigation Scheme. The terms of reference include considering,

“The relationship between the CIS, the Aged Care Commissioner, the Aged Care Standards and the Accreditation Agency Ltd, and other relevant bodies.”

DRAFT RECOMMENDATION 2.11

The Australian Government should abolish the annual fire safety declaration for those aged care homes that have met state, territory and local government fire safety standards.

RESPONSE

The annual Fire Safety Declaration made to the Department of Health and Ageing provides evidence of compliance by residential aged care services with State, Territory and local government fire and safety regulations.

Services that indicate non-compliance with regulations can be referred to the relevant authorities for follow-up and necessary action to remedy any deficiencies in fire safety standards.

The annual declaration is one method of measuring and promoting safety in Commonwealth funded residential aged care services

DRAFT RECOMMENDATION 2.12

The Department of Health and Ageing should submit a Proposal for Change to the Australian Building Codes Board requesting the privacy and space requirements contained in the current building certification standards be incorporated into the Building Code of Australia. Newly constructed aged care facilities would then only be required to meet the requirements of the Building Code of Australia. Once all existing residential aged care facilities have met the current building certification standards those standards should be abolished.

RESPONSE

The primary aim of certification is to encourage improvement to the physical quality of Commonwealth-funded residential aged care buildings by providing access to continuing streams of funding from accommodation bonds and charges and concessional resident supplements.

Certification requirements extend beyond privacy and space and include aspects of safety and amenity for residents such as fire and safety, heating and cooling and the identification and

rectification of hazards. Certification sets nationally consistent standards and ensures that vulnerable frail aged care residents are provided with an appropriate environment.

DRAFT RECOMMENDATION 2.13

The Australian Government should allow residential aged care providers choice of accreditation agencies to introduce competition and to streamline processes for providers who are engaged in multiple aged care activities.

RESPONSE

The Aged Care Sector is a relatively small one, with around 2800 residential aged care homes. Accreditation is the arrangement established by the Australian Government to verify that residential aged care homes provide quality care and services for residents. All residential aged care homes must be accredited in order to receive funding from the Australian Government through residential care subsidies.

Currently, Government policy is that having one accreditation body is important to provide consistency of assessment. Any change to the arrangement would need to be considered by the Government in the context of responding to the reviews underway on accreditation processes and standards.

DRAFT RECOMMENDATION 8.1

The Australian Government should implement the remaining recommendations from the Productivity Commission's 2003 Review of General Practice Administrative and Compliance Costs and the recommendations from the Regulation Taskforce's 2006 review relating to general practice which include: introducing a single provider number for each general practitioner; removing the Pharmaceutical Benefits Scheme authority approval requirement or allowing GPs to re-use an authority number for a repeat prescription where a patient's condition is unlikely to change; and rationalising the incentive programs for GPs.

RESPONSE:

- GP Incentives - The Rudd Government's health reform agenda is considering a range of issues impacting on primary health care, including general practice. Following the previous PC report and the Red Tape Taskforce, the Department consulted closely with the medical profession to simplify and make administrative improvements to the Practice Incentives Program (PIP).
- PBS Changes
 - Streamlined authorities - in July 2007, the Government established a streamlined process for many of the PBS Authority Required medicines. The streamlined process means that prescribers no longer need to contact Medicare Australia for approval before prescribing these streamlined authorities medicines. The streamlined authorities arrangements are limited to those authority required medicines that treat chronic and stable long term conditions, with stable dosage regimes, and those that are less susceptible to risk of misuse or increased prescribing outside restrictions.

- 12 month repeat prescription measure - as part of the 2008-09 Budget, the Government extended the period for which a repeat prescription can be written for patients with chronic conditions from 6 to 12 months for certain medicines. Patients whose care is managed under a GP management plan or team care arrangements are eligible to receive up to 12 months supply of these medications, dispensed at regular intervals, in accord with the clinical discretion of their doctor. The list of medicines included in this initiative is available on the Department's website.