Staffing Regulations for Aged Residential Care Facilities
Consultation Document
## Contents

### Background

1

### Legislative and Contractual Requirements

2

- Licensing regime regulations (revoked) 2
- Hospitals Regulations 1993 2
- Old People’s Homes Regulations 1987 2
- Certification requirements 2
- National Age Related Residential Care Contract 3
- Proposed options for the new staffing regulations 3

### Appendices

5

- Appendix A: Hospitals Regulations 1993
- Appendix B: Old People’s Homes Regulations 1987
- Appendix C: Aged Related Residential Care Contract 7
Background

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 Health and Disability Services (Safety) Act 2001 (HDSS Act) came into effect.

It is proposed that new regulations be developed to maintain existing minimum staffing levels for aged residential care facilities and support the provision of quality and safe care under the HDSS Act.

Before 1 October 2004 licensed aged residential care providers had to comply with the minimum staffing level requirements set by the Old People’s Homes Regulations 1987 and the Hospitals Regulations 1993.

From 1 October 2004 providers who have attained certification under the HDSS Act do not have to comply with these two regulations, but need to meet all service standards.

Standard 2.7, Service Provider Availability, of the Health & Disability Sector Standards (NZS 8134:2001) sets out service providers’ staffing responsibilities. It is proposed that the standard be supplemented with specific staffing requirements in regulations.

In addition, the national Age Related Residential Care Contract (ARRC) sets staffing requirements for the provision of aged residential care by providers who have a contract with a District Health Board (DHB).
Legislative and Contractual Requirements

This section sets out previous and current staffing requirements. The two regulations discussed below are available from www.legislation.govt.nz/ or from Bennetts Bookshops. The Health & Disability Sector Standards are available from Standards New Zealand, Private Bag 2439, Wellington.

Licensing regime regulations (revoked)

Hospitals Regulations 1993

The Hospitals Regulations 1993 cover the provision of all forms of hospital care using the generic term ‘geriatric hospitals’ to include continuing care and dementia, specialist hospital and psychogeriatric care. The regulations identify the minimum number of registered and enrolled nurses that must be on duty at all times. The number of nurses required is based on the number of patients’ beds in the facility. The regulations specify only the number of nurses required and do not apply to any other types of staff in the facility. Section 4 and Schedule 2 of the regulations are in Appendix A.

Old People’s Homes Regulations 1987

The Old People’s Homes Regulations 1987 set minimum staffing levels in aged residential care facilities providing rest home level care. Staffing levels are defined as the minimum hours staff are required to work based on the number of residents in the facility. The regulations do not differentiate between staff who provide nursing and direct care and staff who provide other types of service, such as cooking and cleaning. Section 36 of the regulations is in Appendix B.

Certification requirements

Standard 2.7, Service Provider Availability, of the Health & Disability Sector Standards (NZS 8134:2001) states that ‘consumers/kiritaki receive timely, appropriate and safe service from sufficient suitably qualified/skilled and/or experienced service providers.’

To achieve this outcome, the organisation must ensure and implement ‘clearly documented rationale for determining service provider levels and skill mixes in order to provide safe service delivery’. The organisation must also appropriately allocate

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1 A ‘service provider’ is defined in the Standards as ‘an individual who is responsible for performing the service either independently, or on behalf of an organisation’, including all staff and management who provide direct and indirect care or support services to the consumer.

2 ‘Organisations’ are defined in the Standards as ‘associations, agencies, groups, independent practitioners and individuals accountable for the delivery of services to the consumer/kiritaki’. It also means aged residential care providers in this consultation document.
suitably qualified/skilled and/or experienced service providers\(^3\) to meet the needs of consumers/kiritaki in a competent, safe and timely manner’.

**National Age Related Residential Care Contract**

The ARRC Contract sets out the staffing requirements for the provision of rest home care and hospital care, including requirements where facilities provide multiple types of care. The ARRC Contract includes specific requirements with respect to dementia care.

Section D.17.1 of the ARRC Contract requires that the facility must ‘provide sufficient staff to meet the health and personal care needs of all Subsidised Residents at all times’.

Section D.17.2 of the ARRC Contract outlines who must be on duty and on call to meet the health and personal care needs of subsidised residents at all times. Minimum staff numbers are based on the number and dependency level of subsidised residents in the facility and the employment of registered nursing staff, a manager and supervised care staff. The term ‘care staff’ is defined as a nurse or caregiver.

Most residential care providers have a contract with a DHB (devolved from the Ministry of Health in October 2003) that is reviewed annually on a national basis. Section D1 of the ARRC Contract requires providers to comply with relevant legislation and standards.

A few providers have not signed a contract with the Ministry of Health or a DHB and provide a service only for private paying residents. These providers are not required to comply with the ARRC Contract.

Providers certified under the HDSS Act must comply with standards under the Act, such as the requirements of the Health & Disability Sector Standards (NZS 8134:2001).

**Proposed options for the new staffing regulations**

It is proposed that new staffing regulations cover all categories of aged residential care: rest home, continuing care (hospital level care), dementia care, and reflect current sector practices and management.

Two options are proposed. New staffing regulations:

1) are consistent with the staffing requirements under the ARRC Contract and applicable content from the Hospitals Regulations 1993 and Old People’s Homes Regulations 1987

\(^3\) The term ‘suitably qualified’ is defined in the Standards as ‘professionals who provide services (including clinical care or judgement) to consumer/kiritaki with qualifications and registration required by statute to practice or individuals with experience in the provision of care or support to the consumer/kiritaki deemed competent to perform this function by a recognised representative body. Where the above does not apply the organisation will be accountable for ensuring the service provider is competent to provide the service required of them’.
2) replicate the Hospitals Regulations 1993 and Old People’s Homes Regulations 1987 but with amendments to clarify that staffing refers only to nursing and caregiver staff.

It is intended that the new regulations will maintain existing minimum staffing levels and not impose extra compliance costs on providers.

It is proposed that there be a phase-in period of six months from the time the regulations are made until they come into force.

The Ministry of Health seeks your comments on the proposed content and phase-in period for the new regulations.

Please provide details of any compliance costs you consider will arise from the new staffing regulations.

Comments should be addressed to:
Kathryn Haliburton
Sector Policy Directorate
Ministry of Health
PO Box 5013
Wellington.

Alternatively email your comments to olderpeople@moh.govt.nz.

Please note that all correspondence and submissions on this matter may be the subject of a request under the Official Information Act 1982. If you consider any part of your correspondence could properly be withheld under the Act and you wish to do so, please include comment to that effect giving your reasons.

The closing date for submissions is Friday 3 December 2004.
Appendix A: Hospitals Regulations 1993

4. **nursing staff** –

(1) There shall at all times be on duty in a hospital at least one registered nurse.

(2) For the purposes of subclauses (3) to (5) of this regulation, a nurse who is normally employed at a hospital for a period of less than 40 hours every week shall be counted as a fraction of a nurse bearing the same proportion to 1 as the period for which that nurse is normally employed at that hospital every week bears to the period of 40 hours.

(3) There must at all times be employed at a geriatric, medical, obstetric, or surgical hospital not fewer than the number of nurses specified in the second column of Schedule 2 in relation to the number of beds for which that hospital is licensed specified in the first column of that Schedule.

(4) There must at all times be employed at a psychiatric hospital not fewer than the number of psychiatric nurses specified in the second column of Schedule 2 in relation to the number of beds for which that hospital is licensed specified in the first column of that Schedule.

(5) Revoked.

(6) Nothing in this regulation affects the provisions of the Obstetric Regulations 1986.

Schedule 2: Number of nurses required for hospitals (Regulation 4)

<table>
<thead>
<tr>
<th>Number of beds</th>
<th>Number of nurses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 25</td>
<td>5</td>
</tr>
<tr>
<td>26 to 30</td>
<td>6</td>
</tr>
<tr>
<td>31 to 35</td>
<td>7</td>
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<tr>
<td>36 to 40</td>
<td>8</td>
</tr>
<tr>
<td>41 to 45</td>
<td>9</td>
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<tr>
<td>46 to 50</td>
<td>10</td>
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<tr>
<td>51 to 55</td>
<td>11</td>
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<td>56 to 60</td>
<td>12</td>
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<td>61 to 65</td>
<td>13</td>
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<td>66 to 70</td>
<td>14</td>
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<td>71 to 75</td>
<td>15</td>
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<tr>
<td>76 to 80</td>
<td>16</td>
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<tr>
<td>81 to 85</td>
<td>17</td>
</tr>
<tr>
<td>86 to 90</td>
<td>18</td>
</tr>
<tr>
<td>91 to 95</td>
<td>19</td>
</tr>
<tr>
<td>96 to 100</td>
<td>20</td>
</tr>
<tr>
<td>More than 100</td>
<td>20 plus a further nurse for every five beds or part thereof in excess of 100</td>
</tr>
</tbody>
</table>
Appendix B: Old People’s Homes Regulations 1987

36. Staff –

(1) Subject to subclauses (2) to (5) of this regulation, and except as may be permitted by the Director-General in any particular case if the Director-General is satisfied on reasonable grounds that it would not be harmful to the welfare of residents, the minimum aggregate number of hours to be worked per week by the staff (including the manager) employed in a home (whether for payment or otherwise) shall be as follows:

<table>
<thead>
<tr>
<th>No. of residents</th>
<th>Minimum aggregate no. of hours to be worked per week by staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>3–5</td>
<td>60</td>
</tr>
<tr>
<td>6–10</td>
<td>120</td>
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<tr>
<td>11–15</td>
<td>160</td>
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<tr>
<td>16–20</td>
<td>200</td>
</tr>
<tr>
<td>21 or more</td>
<td>200, plus 40 additional hours for every four additional residents or part of that number</td>
</tr>
</tbody>
</table>

(2) For the purposes of calculating the aggregate number of hours worked by staff under subclause (1) of this regulation, no account shall be taken of any hours worked by any staff member in any week in excess of 40 hours.

(3) For the purposes of subclause (1) of this regulation, the number of residents in a home shall be computed exclusive of any person who is living in any part of the home that constitutes a self-contained flat or cottage in which not more than two persons reside.

(4) In every home where the number of residents is 15 or less, there shall be a staff member present on the premises at all times.

(5) In every home where the number of residents exceeds 15, there shall be a staff member on duty on the premises at all times.
Appendix C: Aged Related Residential Care Contract

D17  Human resources

D17.1 You must provide sufficient staff to meet the health and personal care needs of all subsidised residents at all times.

D17.2 Rest homes

a. In every facility where there are:
   i. 10 or fewer subsidised residents, there must be a care staff member on duty at all times
   ii. up to 29 subsidised residents, there must be one care staff member on duty and one care staff member on-call at all times
   iii. more than 30 subsidised residents, at least two care staff members shall be on duty at all times
   iv. more than 60 subsidised residents, at least three care staff members shall be on duty at all times.

b. Despite clause D17.2(a), where (having regard to the layout of the facility, the health and personal care needs of residents and the ease with which the residents can be supervised) the registered nurse or manager at any time considers that additional staff are required to meet the needs of all subsidised residents, you shall ensure that those extra staff are on duty for the period of time that the registered nurse or manager recommends.

c. Where you provide more than one category of services at your facility one of the staff members may, if qualified, provide on-call assistance in respect of another category of service, provided that you continue to meet your obligations under clause D17.1.

d. Manager
   i. Every rest home must engage a manager who holds a current qualification or has experience relevant to both management and the health and personal care of older people, and is able to show evidence of maintaining at least eight hours annually of professional development activities related to managing a rest home.
   ii. The role of the manager includes, but is not limited to, ensuring the subsidised residents of the home are adequately cared for in respect of their everyday needs, and that services provided to subsidised residents are consistent with obligations under legislation and the terms of this agreement.
e. Registered nurse

You must employ, contract or otherwise engage at least one registered nurse, excluding a registered psychiatric nurse, who will be responsible for working with staff and (where that registered nurse is not the manager) the manager to:

i. assess subsidised residents:
   1. on admission
   2. when the subsidised resident’s health status changes
   3. when the subsidised resident’s level of dependency changes
   4. at each six-month review date in accordance with clause D16.4(a)

ii. develop and/or review care plans in consultation with the subsidised resident and family/whanau

iii. advise on care and administration of medication, possible side-effects and reported errors/incidents

iv. provide and supervise care

v. act as a resource person and fulfil an education role

vi. monitor the competence of other nursing and care staff to ensure safe practice

vii. advise management of the staff’s training needs

viii. assist in the development of policies and procedures.

g. Care staff for rest homes

You must maintain records that document the hours worked by care staff in the facility. The hours documented in the records must list only the actual hours worked by care staff in providing the services at the facility for which payment is claimed under this agreement. For the avoidance of doubt, staff hours spent working in flats or apartments associated with the facility do not qualify as hours spent working in the facility.

D17.3 Hospitals

a. In every hospital:

i. there shall at all times be on duty at least one registered nurse, excluding a registered psychiatric nurse

ii. the distribution of care staff over a 24-hour period shall be in accordance with the needs of the subsidised residents as determined by a registered nurse. A minimum of two care staff are required to be on duty at all times
iii. the layout of the facility must also be taken into consideration when determining the number and the distribution of care staff required to meet the needs of the subsidised residents under clause D17.3(a)(ii).

b. Manager

i. You must engage a manager who is either a general practitioner or a registered nurse (excluding a registered psychiatric nurse) and holds a current practising certificate. The manager must hold a current qualification or have experience relevant to both management and the health and personal care of older people, and is able to show evidence of maintaining at least eight hours annually of professional development activities related to managing a hospital;

ii. The role of the manager includes ensuring the subsidised residents of the hospital are adequately cared for in respect of their everyday needs, and that services provided to subsidised residents are consistent with obligations under legislation and the terms of this agreement.

c. Registered nurse

Registered nurses must be employed, contracted or otherwise engaged by you and are responsible for:

i. the development of an initial care plan within 24 hours of admission

ii. the co-ordination and documentation of a comprehensive care plan within three weeks of admission

iii. ensuring that the care plan reflects the assessments and the recommendation of other health professionals where their input is required

iv. ongoing reassessment and review of care plans in accordance with clauses D16.3 and D16.4

v. implementation/delegation of nursing tasks

vi. supervision and provision of care according to each subsidised resident’s care plan

vii. acting as a resource person and fulfilling an education role

viii. monitoring the competence of nursing and care staff to ensure safe practice

ix. providing advice and assistance to management on the staff’s training needs.

d. If you provide continuing care (hospital) and rest home care at your facility and

i. you provide continuing care (hospital) to 10 or less subsidised residents

ii. you provide rest home care to more than 30 but not more than 60 subsidised residents
iii. those subsidised residents all reside on the same physical level of the facility

then clause D17.3(a)(i) and the requirement in clause D17.3(a)(ii) that a minimum of two care staff be on duty at all time do not apply for the period between 10.00 pm on any day and 7.00 am on the next day if, during that period and to the extent permitted by laws relating to the number and qualifications of registered nurses on duty at a facility, there is at least:

iv. one care staff member on duty in the part of your facility where you provide continuing care (hospital)

v. one care staff member on duty in the part of your facility where you provide rest home care

vi. one other care staff member on duty, who may be on duty at both the part of your facility where you provide continuing care (hospital) and the part of your facility where you provide rest home care

provided that at least one of the care staff members referred to in subparagraph (iv) or (vi) is a registered nurse, excluding a registered psychiatric nurse.

D17.4 Manager of a facility providing services in more than one category

Where you provide both rest home and hospital care at the same facility the manager, if holding a nursing qualification recognised by the Nursing Council of New Zealand that is relevant to care of older people, may act as manager of both these services so long as they are being delivered at a single facility.

D17.5 Orientation and competency of newly engaged staff

a. You must ensure that all newly engaged staff receive a planned orientation programme that familiarises them with your philosophy and vision, physical layout of the facility, their job description, policies, procedures, protocols and guidelines relevant to their engagement and non-clinical and clinical emergency protocols.

b. You shall ensure all staff who will be in direct contact with the Subsidised Residents have completed education that is related to the care of older people. Those staff who have not completed the training at the time of their appointment must complete appropriate training within six months of appointment. The training must address:

i. the ageing process, including sensory, physical, psycho social, spiritual and cultural aspects

ii. practical care skills

iii. awareness of cultural issues

iv. communication, including sensory and cognitive loss and other barriers to communication, communication aids

v. observation and reporting
vi. promotion of independence and recognition of individuality
vii. understanding of subsidised residents’ rights.

c. You may arrange the education referred to in clause D17.5(b) at the facility or externally. Any staff member carrying out tasks, procedures, or treatment must have demonstrated they are competent at performing the task, procedure and treatment, and follow documented policies, and protocols developed by you to ensure safe practice.

D17.6 Staff support and guidance

a. Any registered nurse or health professional carrying out a delegated medical task or a specialised procedure or treatment must have demonstrated prior competency in the task, procedure or treatment, and follow documented policies, and protocols developed by the facility to ensure safe practice.

b. Where certification is required to carry out a particular task or specialised procedure (for example, an IV certificate), care staff must have such certification.

c. Tasks specified in clause D17.6(a) above shall be carried out in accordance with the relevant accepted ethical and professional standards.

d. Strategies and/or protocols shall be operational to ensure that advice and/or support is available to on duty staff at all times, should the need arise.

e. You must implement protocols to guide staff managing clinical and non-clinical emergencies.

f. You must plan and undertake ongoing staff performance appraisals. Such appraisals must be documented at least annually.

D17.7 Ongoing programme of staff development

You must undertake a planned, documented programme of staff development or in-service education, with at least eight hours of programmes being provided annually, including courses attended other than at the Facility. You must keep a written record of staff attendance at such programmes.

Section E: Service specifications – specialist dementia services

E4.5 Human resources

a. You must provide sufficient staff to meet the health and personal care needs of all subsidised residents, at all times.

b. There must be at least one care staff member on duty in the unit at all times. A second staff member must be available at the facility (or, where you only provide specialist dementia services, at the unit) and on-call.

c. Staffing requirements for specialist dementia services:
You must employ, contract or otherwise engage:

i. a registered nurse, who (notwithstanding clause D17.2(e)) may be a registered psychiatric nurse, and who, in addition to the requirements of clause D17.2(e), has had experience and training in the care of older people with dementia and the ageing process

ii. a designated person in respect of each subsidised resident, skilled in assessment, implementation and evaluation of diversional and motivational recreation, such as a diversional therapist

d. You must ensure that:

i. all staff assigned to work in the Unit receive a planned orientation programme specific to their area of service. This shall include a session on how to implement activities and therapies

ii. all caregivers directly involved in caring for the subsidised resident as at the commencement date have, by 1 October 2004, obtained passes in the following unit standards (or any unit standards registered in accordance with the Education Act 1989 on the national qualifications framework in substitution for these listed unit standards):
   1. 17029
   2. 5012
   3. 5019
   4. 5020

iii. New caregivers who are assigned to work in the unit:
   1. in respect of unit standards 5012, 5019 and 5020, commence study within six months of their appointment and obtain passes in those standards within 12 months of their appointment; and
   2. in respect of unit standard 17029, commence study within six months of obtaining passes in unit standards 5012, 5019 and 5020 and obtain a pass in that standard within 12 months of obtaining passes in unit standards 5012, 5019 and 5020.

iv. You must maintain records of staff achievement in such standards.