



Australian Government

Department of Health and Aged Care

Introduction of 24/7 onsite registered nurse and increased minimum care minutes requirements

Supplementary Regulatory Impact Analysis July 2022

Purpose of this document

This Supplementary Regulatory Impact Analysis has been prepared by the Department of Health and Aged Care (the Department) to inform Australian Government decision-making on reforms to improve the quality of residential aged care by:

- making it mandatory to have a registered nurse (RN) onsite 24-hours a day 7 days a week in residential aged care facilities from July 2023;
- increasing the minimum number of care minutes per resident per day to 215 minutes, including 44 RN minutes, from October 2024.

This supplementary analysis complements the certification by the Department that an independent review (The Royal Commission into Aged Care Quality and Safety) undertook a process and analysis equivalent to a Regulatory Impact Statement (RIS) for these regulatory changes.

This supplementary RIS analysis compliments the analysis undertaken by the Royal Commission by addressing RIS *Question 7 - How Will You Implement and Evaluate Your Chosen Option?*

Background

In February 2021, as part of their final report, the Royal Commission into Aged Care Quality and Safety (the Royal Commission) recommended (Rec 86) the adoption of a regulatory requirement that established minimum care time requirements in residential aged care facilities, including:

1. An initial requirement to deliver an average of 200 care minutes per resident per day, including 40 RN minutes as well as to have an RN onsite for 16-hours per day (from July 2022).
2. increasing the requirement to 215 minutes, including 44 RN minutes, as well as making it mandatory to have a registered nurse onsite 24-hours a day (from July 2024)

On 11 May 2021, in response to the Royal Commission, the previous government announced a package of support and reform to aged care as part of the 2021-22 Budget, including funding the first component listed above from 1 October 2022, and making the requirement mandatory from 1 October 2023.

As part of its election commitments, the Government undertook to require an onsite RN in residential aged care facilities 24-hours a day, 7-days a week (24/7) and to increase to the average minimum care minutes requirement to an average 215 minutes, including 44 minutes of RN time, in line with the full Recommendation 86 of the Royal Commission.

The Government is introducing legislation that contains a number of measures including introducing the 24/7 RN onsite requirement as a new approved provider responsibility from 1 July 2023.

Subordinate legislation changes will also be introduced following this to mandate the minimum care time requirements of an average of 200 minutes (including 40 RN minutes) from October 2023, increasing to 215 minutes (including 44 RN minutes) from October 2024.

These measures are aimed at improving the quality of care delivered within residential aged care by ensuring appropriate levels of staffing are provided at all times.

The regulatory impacts of the introduction of the 200 minute care time requirement was assessed previously, and so are not included in the analysis of this supplementary RIS.

The importance of 24/7 RN availability and increased care minutes

People living in residential aged care facilities are some of the most vulnerable people in society and have increasingly complex health and personal care needs.

RNs facilitate the delivery of high quality nursing care, blending skills in chronic and acute illness, with an individualised, person-centred approach to the nursing care of all care recipients. The multi-faceted role of the RN in residential aged care facilities underpins the provision of collaborative, coordinated and integrated care. RNs collaborate with general practitioners, health professionals and service providers in the provision of quality care in residential care.

The Australian Institute of Health and Welfare records that 50% of people in residential aged care facilities experience some form of dementia, 87% require high level care and approximately 80% are known to have a mental health condition¹. The result is an increasing demand for services that can support a growing pattern of frailty, dependence and complexity amongst populations receiving care in residential aged care.

Further, data provided to the Royal Commission by the Australian College of Emergency Medicine indicates that up to 40% of all transfers of care recipients from residential aged care facilities to hospital emergency departments are potentially avoidable through the provision of quality clinical care in the aged care facility. Falls, antimicrobial misuse, poor wound management, medication error, escalation plans for expected deterioration of chronic diseases, end of life care and palliative care reflect some of the key contributors to avoidable presentations². These are all conditions and situations that an onsite RN is well placed to manage.

Evidence also indicates that almost half of all ambulance transfers from a residential aged care facility to a hospital emergency department occur after hours³. This is a time when staffing levels in aged care facilities are reduced, with access to nursing care, particularly RN skills, limited.

RNs are able to recognise and ensure early intervention and management in response to changes in an individual's health, thus reducing the risk of deterioration and potentially reducing the need for unplanned admissions to acute facilities or transfer to emergency departments. This not only assists in maintaining quality of life for care recipients but also reduces overall costs to the health system.

The hospital environment poses a number of substantial risks to older people, especially patients from residential aged care including; hospital acquired infections, deconditioning, delirium, pressure injuries and further falls⁴. An RN onsite 24/7 is able to provide care that avoids these potentially adverse outcomes and improves the quality of life of care recipients.

The Royal Commission contracted a report from the University of Wollongong's Centre for Health Service Development, which found that, on average, each resident in a residential aged care facility currently receives 180 minutes of care per day, of which 36 minutes are provided by registered nurses⁵.

¹ AIHW (2019b) People's care needs in aged care <https://www.gen-agedcaredata.gov.au/Topics/Care-needs-in-aged-care>

² ACEM (2019), ACEM Submission to the Royal Commission into Aged Care Quality and Safety, https://acem.org.au/getmedia/27518608-64e3-4752-aa1c-a4c6036fbf0b/SUB418_190910_ACEM_Submission_Royal_Commission_into_Aged_Care

³ Dwyer RA, Gabbe BJ, Tran T, Smith K and Lowthian JA (2020), Residential aged care homes: Why do they call '000'? A study of the emergency prehospital care of older people living in residential aged care homes, J Emergency Medicine Australasia

⁴ ACEM ibid

⁵ AHSRI and University of Wollongong, Resources Utilisation and Classification Study - <https://www.health.gov.au/resources/publications/resource-utilisation-and-classification-study-rucs-reports>

The Royal Commission report concluded that staffing levels within large parts of residential aged care fall well short of good or even acceptable practice standards. It found that the evidence is compelling that overall staffing levels in aged care are linked to quality of care, and that RN numbers are a particularly important factor in meeting an acceptable quality of care for care recipients.

In their final report, the Royal Commission noted 2016 data indicating that RNs comprised 21% of the residential direct care workforce in 2003, but that by 2016 this had dropped to around 15%. The proportion of enrolled nurses also dropped, from 13% to 10%. Over the same period, the proportion of the residential direct care workforce who were personal care workers increased from around 58% to around 70%. This has resulted in increasingly complex resident care needs being managed by a workforce with lower skills levels.

Following consideration of the evidence, the Royal Commission recommended...

...that the Australian Government should require approved providers of residential aged care facilities to meet a minimum quality and safety standard for staff time. The standard should set required daily minimum staff time for registered nurses, enrolled nurses and personal care workers for each resident, over two stages—with 200 minutes of care per day of which 40 minutes are provided by registered nurses by 2022, and 215 minutes of care per day by 2024, of which 44 minutes are provided by registered nurses. In addition, when fully implemented in 2024, the standard should require at least one registered nurse on site at each residential aged care facility at all times.

Supplementary Assessment RIS Question 7 - How Will You Implement and Evaluate Your Chosen Option?

Implementation

The key implementation timeframes for the new mandatory care time reforms are:

- From **1 October 2022** providers will be funded for the new care minutes target of an average of 200 minutes, including 40 registered nurse minutes per resident per day;
- From **July 2023** it will be mandatory to have an RN onsite 24/7;
- From **1 October 2023** it will be mandatory to deliver to an average of 200 minutes, including 40 registered nurse minutes per resident per day;
- From **1 October 2024**, the average minimum care minutes per resident per day will increase to 215 minutes, including 44 RN minutes.

With the implementation of the Australian National Aged Care Classification (AN-ACC) from 1 October 2022, there will be a \$5.4 billion funding boost (over the 2022-23 Budget forward estimates) to enable residential aged care providers to increase staffing levels to meet the new 200 care minute requirements (targets). The care minute targets will form new care minute standards that will be mandatory from 1 October 2023. This requirement will be set in subordinate legislation.

The care time targets for each facility are adjusted according to the AN-ACC casemix classification for each resident (as recommended by the Royal Commission). In practice this means that facilities with a higher total casemix outcome (meaning higher needs residents) would receive more funding while also being required to meet higher care minute targets.

New quarterly reporting at the facility level of direct care time and costs commences for the July-September period as part of the new Quarterly Financial report (QFR). This reporting will allow the Department and the Aged Care Quality and Safety Commission (the Commission) to assess whether providers are meeting their care minutes requirements.

The Commission is an independent statutory authority tasked with overseeing the regulation of aged care. The Commission's role is to uphold the objects of the [Aged Care Quality and Safety Commission Act 2018](#) to:

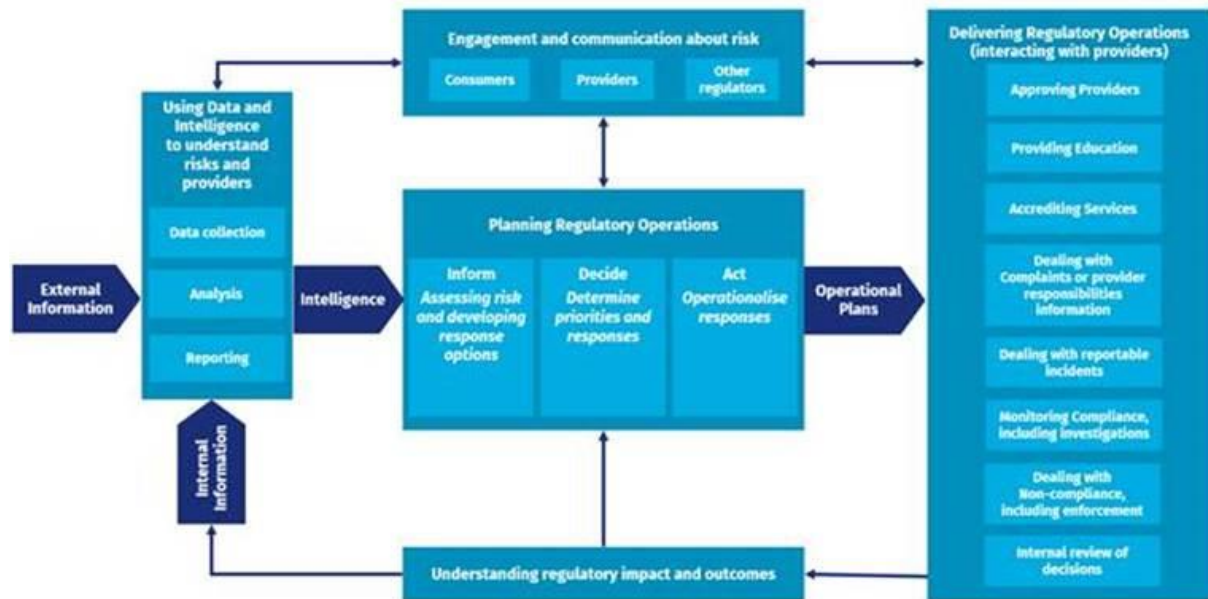
- protect and enhance the safety, health, well-being and quality of life of aged care consumers
- promote confidence and trust in the provision of aged care
- promote engagement with consumers about the quality of care and services.

As the national regulator of aged care services subsidised by the Australian Government, the Commission's role is to approve providers' entry to the aged care system, to accredit, assess, monitor and investigate aged care services against requirements, and to hold services to account for meeting their obligations.

The Commission resolves complaints about aged care services and to provide education and information about our functions, and engages with consumers to understand their experiences and to provide advice to providers about working with consumers in designing and delivering best practice care.

The Commission delivers regulation that is proportionate, risk-based, responsive and intelligence-led. This regulatory approach enables the Commission to focus activities on the areas of greatest risk to the safety, health and wellbeing of aged care consumers, and on those providers providing care and services that fall short of legislated standards.

The Commission uses education, information and targeted communications to support their regulatory objectives, including publishing outcomes of our regulatory activities to promote greater transparency and accountability, and highlighting best practice.



The reporting for care minutes and 24/7 RN care will be used to inform the new star ratings – primarily the rating for the delivery of quality care outcomes for residents. The star ratings are being developed to allow consumers to meaningfully compare aged care facilities based on the amount of resident care they deliver.

The requirement for 24/7 RNs will be set in primary legislation, with funding arrangements to support providers to meet this requirement to be determined through the October 2022-23 Budget. It is likely that additional reporting will be required by providers on 24/7 RN coverage, for example reporting at the end of each month through a form on the My Aged Care Provider Portal on the periods a facility did not have an onsite RN. This will be developed in consultation with the sector, including through the Residential Aged Care Funding Reform Working Group.

The Commission will have a substantial role in relation to the 24/7 RN and care minute measures. This includes:

- educating the residential aged care sector about how the new requirements will be regulated;
- identification of high risk services through analysis of data, including in combination with other regulatory intelligence;
- monitoring and enforcing service compliance with the requirements; and
- managing increases in the volume of complaints about aged care staffing matters.

To support approved providers to understand and deliver on the new care time requirements, the Department has:

- developed an online AN-ACC funding and care minutes estimator to help providers estimate their care time requirements (and funding levels) based on their mix of residents
- established a specialised AN-ACC Funding Helpdesk to help providers understand their potential funding and care minutes targets (email: ANACCfundinghelp@health.gov.au or phone: (02) 4406 6002)
- published fact sheets explaining how the care minutes targets are calculated, and information on what counts as care time.

Further information and training will be provided to support providers to support implementation, as further policy details are settled. These will include broadcasts to providers through webinars, newsletters and websites, fact sheets and other resource material.

Potential implementation challenges/barriers

Key challenges for implementation of the 24/7 RN and care minutes reform measures are likely to be the preparedness of service providers and their ability to meet the new requirements.

There are several reasons why these challenges may arise:

- the ongoing need for priority to be placed on responding to COVID-19;
- difficulty in attracting sufficient staff to deliver the increased care minutes requirements;
- difficulty in attracting RNs, particularly in rural and remote settings; and
- the breadth of aged care reforms arising from the Royal Commission.

The ongoing COVID-19 pandemic, combined with seasonal influenza, is creating significant staffing issues across the aged care sector as both residents and staff are affected. This is adding additional stress to current staffing levels and impacting the relief staffing pool normally accessed to meet such short-term staffing requirements.

Further, the need to grow the current aged care workforce – both nursing and care workers – is a key element in sourcing the workforce needed to deliver both the 24/7 RN and care minutes reforms into the future. Without significant increases in migration, growing the workforce locally will be challenging – at least in the short to medium term.

The Government recognises that addressing low pay is critical to recruiting the workforce needed to provide safe, quality care to the growing number of older Australians. The Government will support workers' calls for better pay by making a submission to the Fair Work Commission's aged care work value case by 8 August 2022, meeting recommendation 84 of the Royal Commission. This vital and essential work needs to be treated with respect and rewarded with better pay.

While the aged care legislation allows for non-compliance actions to be used when a provider breaches its responsibilities, the initial focus of implementation will be to support providers to understand and implement the new provisions.

Risk mitigation actions include staggered implementation timeframes, commencing from 1 October 2022, with consultations with the sector including discussion about how workforce shortages impacting implementation of the 24/7 RN requirement will be considered, particularly for aged care facilities in rural and remote settings.

The Department has also established a confidential help desk for facilities seeking specific assistance on reporting residential care labour costs and hours to support providers to submit high quality information.

With regard to the revised reporting requirements, an information and communication technology (ICT) capability is being developed. This capability will enable the extraction of existing information held by the department, additional information to be submitted by providers, and for reports in compliance with both the 24/7 RN measure and the average minimum care minutes measure to be made publicly available on the My Aged Care portal, specifically through inclusion of this information in the star rating measure. Stakeholders will be consulted during the development of the ICT solution to help enhance the user experience for providers in submitting data and for those accessing information on My Aged Care.

Aged care stakeholders will be supported to implement the ICT solution by:

- involvement in user testing
- online training for approved providers
- online support tools

- an environment that will allow providers to become familiar with the tool prior to formal submission of their data
- a Department staff member being available to respond to sector enquires regarding the revised reporting requirements and their use in informing star ratings.

A key challenge to the ICT capability is the development of an elegant solution to extract data that is currently held by the Department in multiple databases to minimise the need for providers to resubmit this data. The ICT solution will be developed in close consultation with owners of each source database to respond to this challenge.

Implementation of the AN-ACC represents a significant change to the aged care sector, and the Department is working closely with stakeholders to ensure they are supported through the implementation phase to deliver improved quality care outcomes for residents.

The role of the Commission in implementation

It is critical that the Commission is appropriately resourced and equipped to regulate the new provider requirements. The public will rightly expect a strong response from the regulator once the requirements come into effect. This will in turn inspire confidence in the regulatory framework that safeguards vulnerable consumers. The Commission anticipates that their response will include unique and new regulatory activities that look specifically at the 24/7 RN and care minute requirements and respond to the increased volume of complaints.

From the Commission's perspective, the elements that may impact implementation include:

1. Sector size and understanding. The residential aged care sector is large, with approximately 2,700 services delivering care to approximately 189, 000 consumers, illustrating the need to significantly invest in communication and education activities which build sector understanding and capability. Residential aged care services are not currently required to meet mandatory requirements for staffing and time spent on care delivery. A critical part of ensuring compliance will be explaining how the Commission will regulate the requirements, and what our expectations of the sector are. The Commission will take care to understand the information needs of residential care services and consumers about care minutes and RN requirements, to develop materials that are fit for purpose for this sector, and to ensure that key messages are received by all target audiences - providers, services, and consumers.
2. Impact of increased regulatory activity. The Commission anticipates a reasonable proportion of services will be non-compliant with the requirements and require some form of regulatory treatment. The data collation and analysis, and compliance monitoring and enforcement activities implicated in the implementation of these measures are complex and will require a nuanced approach to be developed and executed in collaboration with the Department. It is understood that the ability of services to meet the requirements will be highly variable due to a range of factors, and in thin markets (geographically or otherwise) may be compromised. The Commission will also consider provider compliance through the broader lens of risk related to poor quality of care for consumers, and actively consider compliance with related responsibilities, like the Aged Care Quality Standards.
3. Increased volume of complaints. The Commission anticipates an increase in both new and unique complaints, and complaints processing activity, with the implementation of the new measures. It is expected that consumers and their families/representatives will be highly sensitive to services' compliance with these new requirements. This, in turn, is likely to lead to an increase in complaints to the Commission about related matters.

Evaluation

The Department is planning a multi-level evaluation strategy, consistent with the systemic nature of the AN-ACC reform. The evaluation of this specific measure will use qualitative and quantitative metrics to measure success against the objectives of the 24/7 RN and average minimum care minutes reforms in support of broader aged care reform for senior Australians. This approach will also enable identification of whether additional reforms are required to deliver

sustainable quality and safety in Australia's home and residential aged care services. The approach will feed into Ministerial and public reporting.

The Department is exploring the feasibility of publishing the de-identified data resulting from assessments, to encourage independent academic research on factors correlating with better practice care provision by providers and improved care experience for recipients.

The Department will monitor financial impacts through payment system data produced by Services Australia. The annual independent pricing review function will additionally use costs data supplied by a representative sample of providers as a key input in forming its recommendations about the overall funding envelope and specific subsidy rates within it.

At the overall level, the department would report various financial and output metrics annually in the Portfolio Budget Statement, the Annual Report and in the Report on the Operation of the Act.

Specific components of the 24/7 RN access and average minimum care minutes reforms will also be monitored using a mixed methods approach, drawing on quantitative and qualitative data sources. Monitoring activities will help keep track of sector performance against the new responsibilities and help to inform any decision to modify aspects of the approved provider responsibilities. Activities will also track changes in the quality of life for care recipients – for example through reductions in transfer to hospital, reduced falls, improvement in condition and fewer pressure injuries.

Where practicable the evaluation will use existing data. Where new systems are being developed technical reporting mechanisms will be incorporated to allow real time monitoring and feedback notifications – existing My Aged Care monitoring tools will be leveraged where possible.

Examples of data that may be tracked include:

- care time data collected through the QFR
- formal and informal feedback and consultation with the aged care sector on the impact of the reforms
- monitoring provider compliance, including provider performance against Aged Care Quality Standard 3 – Personal Care and Clinical Care, Standard 4 – Services and supports for daily living and Standard 7 – Human Resources
- analysis of complaints data for matters relating to clinical care and support for daily living.

While ACFI and other legacy funding arrangements would cease in October 2022, ACFI influences on provider behaviour would take some time to wash out of the system. The Department would undertake a review of the AN-ACC model as a whole after two years of full operation, once it becomes possible to assess accurately the extent to which it is achieving reform objectives.

Estimate of Regulatory Burden

The regulatory burden to business, community or individuals is quantified using the Australian Government's Regulatory Burden Measurement Framework and is provided below.

The arrangements for 24/7 RN and increasing the minimum per resident care minutes requirements to 215 minutes will increase the regulatory burden on business and community organisations. However, the Royal Commission into Aged Care Quality and Safety made strong links between the access of care recipients to 24/7 RN care and increased average minimum care minutes and the quality and safety of services. In addition it should be noted, that residential aged care providers will be provided additional government funding to deliver the additional required care. This funding is not included in the costing below.

No offsets were identified to offset this regulatory burden, the department remains alert to reduce the regulatory burden for affected stakeholders.

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$49	\$82	-	\$131

**Independent reviews for certification of response to the Royal Commission into
Aged Care Quality and Safety**

1. Royal Commission into Aged Care Quality and Safety, *Final Report*,
26 February 2021

Available at: <https://agedcare.royalcommission.gov.au/publications/final-report>