

Draft Hospital and Health Boards (State Aged Care Facilities) Amendment Regulation 2019

Explanatory notes for SL 2019 No. ###

made under the

Hospital and Health Boards Act 2011

General Outline

Short title

Hospital and Health Boards (State Aged Care Facilities) Amendment Regulation 2019

Authorising law

Sections 138H, 138I and 282 of the *Hospital and Health Boards Act 2011*

Policy objectives and the reasons for them

Aged care ratios

The Health Transparency Bill 2019 will amend the *Hospital and Health Boards Act 2011* (HHB Act) to implement a legislative framework that introduces aged care ratios in public residential aged care facilities (RACFs). The aged care ratios will ensure residents receive a minimum level of care from an appropriately qualified mix of staff in Queensland public RACFs.

The proposed new sections 138G to 138M of the HHB Act provide for a minimum percentage of nurses and registered nurses and minimum average daily resident care hours to be prescribed by regulation. Prescribing these matters in regulation ensures the legislative framework has sufficient operational flexibility to adjust if changes are needed to the ratios and care hours in the public aged care sector over time. The draft Hospital and Health Boards (State Aged Care Facilities) Amendment Regulation 2019 (draft Amendment Regulation) prescribes the aged care ratios for public RACFs.

Achievement of policy objectives

Aged care ratios

The draft Amendment Regulation amends the *Hospital and Health Boards Regulation 2012* to prescribe the operational aspects of the aged care ratios for public RACFs for new part 6, division 5 of the HHB Act.

The draft Amendment Regulation will prescribe for public RACFs:

- a minimum nurse percentage, that is, registered nurses and enrolled nurses of 50 per cent, with a minimum of 30 per cent required to be registered nurses during a 24-hour period; and
- a minimum average daily resident care requirement of 3.65 hours.

The draft Amendment Regulation also prescribes the public RACFs that are subject to the minimum nurse percentage and minimum daily resident care requirements. Public RACFs are referred to as “State aged care facilities” to ensure consistency with section 61A of the *Public Health Act 2005*.

Consistency with policy objectives of authorising law

The draft Amendment Regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The draft Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The implementation of aged care ratios in public RACFs will require public RACFs to redistribute staff or potentially increase the number of enrolled and registered nurses. This will be managed locally by Hospital and Health Services including by using natural attrition strategies. Further workforce management strategies may be required to support some facilities, particularly those in rural or regional locations, where there is an overall lack of aged care nurses.

Implementation and maintenance of the minimum care standards in public RACFs is expected to cost approximately \$10 million annually. This cost will be managed within Queensland Health’s existing resources.

Aged care ratios will ensure residents in public RACFs receive a minimum level of care from an appropriately qualified mix of staff. Residents in public RACFs will benefit from improved safety and quality of care which will lead to better resident satisfaction and outcomes. The nursing workforce may potentially have safer workloads and improved staff retention and satisfaction.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles in the *Legislative Standards Act 1992*.

Consultation

In August 2019, Hospital and Health Services and the Queensland Nurses and Midwives' Union (QNMU) were consulted on an exposure draft of the Bill and Amendment Regulation. QNMU was generally supportive of the Amendment Regulation. QNMU noted public RACFs should continue to use the Business Planning Framework and relevant Service Profiles to calculate the actual care hours required for residents which may be above the minimum prescribed in the draft Amendment Regulation. QNMU suggested that the explanatory notes should clarify that the resident care hours prescribed in the draft Amendment Regulation is a minimum only.

The Amendment Regulation was assessed by Queensland Health in accordance with *The Queensland Government Guide to Better Regulation* as being excluded from further regulatory impact assessment. The proposed amendments relate to the internal management of public sector services and will ensure minimum standards of care for residents in public RACFs.

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Notes on provisions

Short Title

Clause 1 states the short title of the regulation is the *Hospital and Health Boards (State Aged Care Facilities) Amendment Regulation 2019*.

Commencement

Clause 2 states the regulation amends the *Hospital and Health Boards Regulation 2012* (HHB Regulation).

Insertion of new pt 6B

Clause 3 inserts new part 6B which includes new sections 30C, 30D and 30E.

New section 30C provides that for sections 138H and 138I of the *Hospital and Health Boards Act 2011* (HHB Act) the State aged care facilities prescribed in new schedule 2B Public residential aged care facilities are referred to as 'State aged care facilities'.

New section 30D prescribes the minimum percentage of nurses and registered nurses that must provide residential care to residents at a State aged care facility for section 138H of the HHB Act. The percentage applies to the total number of nurses and support workers, collectively referred to as *care staff*, that provide direct residential care during a 24-hour period.

State aged care facilities are required to ensure at least 50 per cent of the total care staff are nurses, that is registered nurses or enrolled nurses. At least 30 per cent of the total care staff must be registered nurses. The prescribed percentages of nurses and registered nurses have the effect that support workers can only form a maximum of 50 per cent of the total care staff.

New section 30E prescribes 3.65 hours as the minimum average daily resident care hours that State aged care facilities must provide to residents for section 138I of the HHB Act. Minimum average daily resident care hours refer to the minimum number of hours of direct residential care nurses and support workers must provide on average to residents daily.

Insertion of new sch 2B

Clause 4 inserts a new schedule 2B into the HHB Regulation. The schedule prescribes the State aged care facilities under section 30C of the HHB Regulation. The minimum nurse and registered nurse percentages under section 30D of the HHB Regulation and the minimum average daily resident care hours requirement under section 30E of the HHB Regulation apply to the facilities prescribed in schedule 2B.