

EXPOSURE DRAFT



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Aged Care Legislation Amendment (Registered Nurses) Principles 2023

I, Anika Wells, Minister for Aged Care, make the following principles.

Dated 2023

Anika Wells **[DRAFT ONLY—NOT FOR SIGNATURE]**
Minister for Aged Care

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1 Name

This instrument is the *Aged Care Legislation Amendment (Registered Nurses) Principles 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	1 April 2023.	1 April 2023
2. Schedule 1	1 April 2023.	1 April 2023
3. Schedule 2	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Aged Care Act 1997*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments commencing 1 April 2023

Schedule 1—Amendments commencing 1 April 2023

Information Principles 2014

1 After paragraph 8(a)

Insert:

- (b) if an approved provider of a residential care service has an exemption from section 54-1A of the Act in relation to a residential facility—the steps the Secretary is satisfied the provider has taken to ensure that the clinical care needs of the care recipients in the facility will be met during the period for which the exemption is in force;

Quality of Care Principles 2014

2 Section 4

Insert:

MM 5 area means an area in the MM category known as MM 5.

MM 6 area means an area in the MM category known as MM 6.

MM 7 area means an area in the MM category known as MM 7.

MM category has the meaning given by section 64H of the *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

offline place: a place is an **offline place** for a residential care service on a day if:

- (a) the place is covered by a notice under subsection 27B(2) of the *Accountability Principles 2014*; and
- (b) the day is within the period specified in the notice.

operational place: a place is an **operational place** in a residential facility on a day if, on the day:

- (a) the place is allocated in respect of:
 - (i) the facility's location; and
 - (ii) a residential care service through which residential care is provided at the facility; and
- (b) the allocation of the place is held by the approved provider that provides residential care through the service; and
- (c) the place is not provisionally allocated; and
- (d) the place is not an offline place for the service; and
- (e) the provider would be eligible for residential care subsidy under Part 3.1 of the Act, or Part 3.1 of the *Aged Care (Transitional Provisions) Act 1997*, if a care recipient were provided with residential care through the service.

3 After Part 4B

Insert:

Part 4C—Responsibility relating to registered nurses

Division 1—Preliminary

15P Purpose of this Part

For the purposes of subsection 54-1A(3) of the Act, this Part provides for:

- (a) the circumstances in which an exemption from section 54-1A of the Act may be granted to an approved provider in relation to a residential facility; and
- (b) the period for which an exemption may be in force; and
- (c) the conditions that apply to an exemption; and
- (d) the revocation of an exemption.

Note: Section 54-1A of the Act imposes a requirement on certain approved providers, on and after 1 July 2023, to ensure that at least one registered nurse is on site, and on duty, at all times at a residential facility.

Division 2—Process for granting exemptions

15Q Application for exemption

- (1) An approved provider may apply to the Secretary for an exemption from section 54-1A of the Act in relation to a residential facility at which the provider provides residential care.
- (2) The application must:
 - (a) be in a form approved, in writing, by the Secretary; and
 - (b) include the following information:
 - (i) the name of the approved provider;
 - (ii) the name of the residential care service or services through which the provider provides residential care at the facility;
 - (iii) the name and street address of the facility;
 - (iv) any other information required by the approved form; and
 - (c) be accompanied by any documents required by the approved form.

15R Secretary may request further information or documents

- (1) If the Secretary receives an application under section 15Q from an approved provider, the Secretary may, by notice in writing given to the provider, request further information or documents specified in the notice for the purposes of considering the application.
- (2) If the approved provider does not provide the requested information or documents within 14 days after the day when the notice is given, or within such longer period specified in the notice, the application is taken to have been withdrawn. The notice must contain a statement setting out the effect of this subsection.

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Schedule 1 Amendments commencing 1 April 2023

15S Decision whether to grant exemption

Criteria for grant of exemption

- (1) If the Secretary receives an application under section 15Q from an approved provider for an exemption from section 54-1A of the Act in relation to a residential facility, the Secretary may grant the exemption only if:
 - (a) the facility is located in an MM 5 area, MM 6 area or MM7 area; and
 - (b) there are no more than 30 operational places in the facility on the day of the Secretary's decision; and
 - (c) the Secretary is satisfied that the provider has taken reasonable steps to ensure that the clinical care needs of the care recipients in the facility will be met during the period for which the exemption is in force.
- (2) In deciding whether to grant the exemption, the Secretary must have regard to:
 - (a) any sanction imposed on the approved provider under section 63N of the Quality and Safety Commission Act; and
 - (b) any notice given to the approved provider under section 63S, 63T, 63U or 74EE of that Act; and
 - (c) any information given to the Secretary by the Quality and Safety Commissioner in accordance with section 56 of that Act that is relevant to assessing whether the provider has taken the reasonable steps mentioned in paragraph (1)(c) of this section.
- (3) The Secretary may grant an exemption to an approved provider in relation to a residential facility for which the approved provider has previously been granted an exemption.

Period of exemption

- (4) If the Secretary decides to grant an exemption, the Secretary must decide the period for which the exemption is to be in force.

Note: The responsibility in section 54-1A of the Act commences on 1 July 2023.
- (5) The period:
 - (a) must not be longer than 12 months; and
 - (b) must not begin before the day on which the Secretary grants the exemption.

Conditions that apply to exemption

- (6) The following conditions apply to an exemption:
 - (a) the approved provider must give the Secretary notice in writing of any material change to the information given to the Secretary:
 - (i) in the application for the exemption; or
 - (ii) in response to a request by the Secretary under subsection 15R(1);
 - (b) any additional conditions that the Secretary decides to impose on the exemption.

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Amendments commencing 1 April 2023 **Schedule 1**

15T Notice of decision

- (1) If the Secretary grants an exemption from section 54-1A of the Act to an approved provider in relation to a residential facility, the Secretary must give the provider notice in writing of the decision that:
 - (a) states the period for which the exemption is in force; and
 - (b) states the conditions that apply to the exemption.
- (2) If the Secretary refuses to grant an exemption from section 54-1A of the Act to an approved provider in relation to a residential facility, the Secretary must give the provider notice in writing of the decision, including:
 - (a) the date of the decision; and
 - (b) a statement of the approved provider's right to review of the decision.

Note: Section 15U of this instrument provides that this is a reviewable decision. Section 85-3 of the Act requires the notice of a reviewable decision to include reasons for the decision.

15U Reviewable decision—refusal to grant exemption

- (1) A decision under section 15S of this instrument to refuse to grant an exemption from section 54-1A of the Act to an approved provider in relation to a residential facility is a reviewable decision under section 85-1 of the Act.
- (2) Part 6.1 of the Act applies to a reviewable decision mentioned in subsection (1) as if a reference in that Part to this Act included a reference to this instrument.

Division 3—Revocation of exemptions

15V Revocation on request

- (1) The Secretary must revoke an approved provider's exemption from section 54-1A of the Act in relation to a residential facility if the approved provider requests the revocation in writing.
- (2) The Secretary must give the approved provider notice in writing of the date that the exemption ceases to have effect, which may be the date of the notice or a later date.

15W Revocation on other grounds

Grounds for revocation

- (1) The Secretary may revoke an approved provider's exemption from section 54-1A of the Act in relation to a residential facility if:
 - (a) the Secretary is satisfied the approved provider has breached a condition of the exemption; or
 - (b) the Secretary is not satisfied that the clinical care needs of the care recipients in the facility:
 - (i) are being met; or
 - (ii) will be met during the period the exemption would otherwise be in force; or

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Schedule 1 Amendments commencing 1 April 2023

- (c) the Quality and Safety Commissioner imposes sanctions on the approved provider under section 63N of the Quality and Safety Commission Act; or
- (d) the Secretary becomes aware there are more than 30 operational places in the residential facility.

Submissions by approved provider

- (2) Before the Secretary decides to revoke the exemption, the Secretary must give the approved provider notice in writing that the Secretary is considering revoking the exemption.
- (3) The notice must:
 - (a) set out the reasons why the Secretary is considering revoking the exemption; and
 - (b) invite the provider to make submissions, in writing, to the Secretary in relation to the matter within:
 - (i) 14 days after receiving the notice; or
 - (ii) if a shorter period is specified in the notice—that shorter period.
- (4) The Secretary must consider any submissions made by the approved provider in accordance with the notice.

Notice of decision to revoke

- (5) If the Secretary decides to revoke the exemption, the Secretary must give the approved provider notice in writing of the decision, including:
 - (a) the date that the exemption ceases to have effect, which may be the date of the decision or a later date; and
 - (b) a statement of the approved provider's right to review of the decision.

Note: Subsection (6) of this section provides that this is a reviewable decision. Section 85-3 of the Act requires the notice of a reviewable decision to include reasons for the decision.

Reviewable decision—revocation of exemption

- (6) A decision under this section to revoke an approved provider's exemption from section 54-1A of the Act in relation to a residential facility is a reviewable decision under section 85-1 of the Act.
- (7) Part 6.1 of the Act applies to a reviewable decision mentioned in subsection (6) as if a reference in that Part to this Act included a reference to this instrument.

Schedule 2—Amendments commencing 1 July 2023

Accountability Principles 2014

1 After Part 4A

Insert:

Part 4B—Information about registered nurses

44A Purpose of this Part

For the purposes of paragraph 63-1(1)(m) of the Act, this Part specifies the responsibility of certain approved providers to give a report to the Secretary about registered nurses at residential facilities.

44B Report about registered nurse responsibility at residential facility

Provision of report

- (1) An approved provider who provides residential care through a residential care service to care recipients in a residential facility during a calendar month must give the Secretary a report about the responsibility relating to registered nurses in section 54-1A of the Act (whether or not the approved provider has been granted an exemption from section 54-1A of the Act in relation to the residential facility).
- (2) The report must be given to the Secretary within 7 days after the end of the calendar month, or within a longer period specified by the Secretary by notice in writing given to the approved provider.

Form and content of report

- (3) The report must:
 - (a) be in a form approved, in writing, by the Secretary; and
 - (b) include the following information in relation to the residential facility:
 - (i) each period, on a day during the calendar month on which residential care was being provided to care recipients in the residential facility, of 30 minutes or more that a registered nurse was not on site and on duty at the residential facility;
 - (ii) for each such period, the reason a registered nurse was not on site or not on duty (or both) during the period;
 - (iii) for each such period, the alternative arrangements that were made for the period to ensure the clinical needs of care recipients in the facility were met, or a statement that no alternative arrangements were made;
 - (iv) any other information required by the approved form to be included in the report.

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Schedule 2 Amendments commencing 1 July 2023

44C Provision of further information and documents to Secretary

Approved provider must comply with notices under this section

- (1) An approved provider must comply with a notice under subsection (3) or (4) within the period specified in the notice or, if no period is specified in the notice, within 28 days after the day when the notice is given.
- (2) An approved provider complies with a notice under subsection (3) or (4) requiring the provider to give information or documents only if the provider gives the information or documents in a form (if any) approved by the Secretary for the purposes of that subsection.

Notice to provide updated information

- (3) The Secretary may at any time, by notice in writing, require an approved provider to give the Secretary updated information about a matter, as specified in the notice, if information about the matter is included in, or is required to be included in, a report by the provider under section 44B.

Notice to provide supporting information or documents

- (4) The Secretary may at any time, by notice in writing, require an approved provider to give the Secretary specified information or documents that the Secretary considers are, or may be, relevant to assessing the accuracy of:
 - (a) information included in a report by the provider given to the Secretary under section 44B; or
 - (b) updated information given to the Secretary by the provider in accordance with a notice under subsection (3).
- (5) To avoid doubt, a notice under subsection (4) may require an approved provider to give the Secretary information or documents whether or not the information or documents are required to be included in a report by the provider under section 44B.

Information Principles 2014

2 Paragraph 8(b)

Repeal the paragraph, substitute:

- (b) the following information relating to a residential care service through which residential care is provided to care recipients in a residential facility:
 - (i) information included in a report given to the Secretary under section 44B of the *Accountability Principles 2014* in relation to the facility;
 - (ii) if the approved provider has an exemption from section 54-1A of the Act in relation to the facility—the steps the Secretary is satisfied the provider has taken to ensure that the clinical care needs of the care recipients in the facility will be met during the period for which the exemption is in force;

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Amendments commencing 1 July 2023 **Schedule 2**

Quality of Care Principles 2014

3 At the end of subsection 15S(1)

Add:

; and (d) the approved provider has given to the Secretary the reports required under section 44B of the *Accountability Principles 2014* in relation to the residential facility for each calendar month.