

Submission on the Proposed *Health Services (Supported Residential Services) Regulations 2001*
From the Community Visitors Board under the *Health Services Act 1988*

Introduction

This submission has been prepared by the Community Visitors Board established under the *Health Services Act 1988* (the Act). The Board consists of the Victorian Public Advocate and two Community Visitors. Community Visitors are appointed by the Governor in Council, pursuant to the Act, and have statutory powers to inquire into the standard and quality of residential facilities for people with disabilities, specifically, supported residential services.

This submission consists of a series of comments, some of which are general in orientation and others which relate to specific provisions in the proposed *Health Services (Supported Residential Services) Regulations 2001* (the Regulations).

General Observations on the Regulations

The impact of the Regulations in improving the standard of care for, and safety of, those who are vulnerable will, in large part, depend on the impetus and resources which are devoted to regulatory and prosecution activities. The Department of Human Services (DHS) is encouraged to outline, as a priority, how it intends to achieve the objectives of the Regulations within the context of its regulatory function, including an estimate of the resources required to effectively perform this task. Indeed, it is the Board's view that unless this type of appraisal occurs, and is followed by an appropriate resource allocation, it is unlikely that the circumstances of vulnerable people in supported residential services (SRSs) will improve.

The approach adopted in the Regulations, that of a "reasonable steps" standpoint on a continuum between self regulation and strong external regulation is generally supported. However, there are some provisions within the Regulations which would benefit from greater elaboration of that which constitutes "reasonable steps" and these will be identified. This is the case, as these particular provisions are so integral to the health, safety and well-being of residents that a more prescriptive approach is essential to ensure that the accepted standard is well-understood by those in the industry. Furthermore, general provisions should be inserted in the proposed legislation which require proprietors to document the "reasonable steps" which have been taken to meet any legislative requirement.

The rationale for the penalty determinations in the Regulations remains unclear, including the purpose of omitting a penalty statement in some instances. While it is recognised that, from a legal perspective, it is unnecessary to include a penalty clause after each provision in order to utilise this as a sanction, the inclusion of a penalty clause, and the penalty amount, will inevitably communicate a more powerful message to those who are required to comply with the legislation. The use of

subsequent breach penalties in critical areas, such as heating and cooling (Regulation 23), resident care plans (Regulation 15) and medication prescribed for residents (Regulation 19) should also be explored as well as the use of penalties other than fines, for example, the removal of registration. Some penalties, for example that imposed in Regulation 28 on power outlets, Regulation 33(2) for not engaging trained staff or that related to information for prospective residents and others (Regulation 38) should be increased. This is suggested on the basis of the significance of the provisions in question respectively for the quality of care which residents receive and the rights of residents to adequate information for decision-making.

Some provisions in the Regulations would be enhanced by reference to relevant Australian Standards, where these exist, for example, in relation to heating and cooling (Regulation 23), lighting (Regulation 24), grab rails (Regulation 26) and supply of water (Regulation 32). Consideration should be given to whether the applicable Australian Standard, where this exists, should be imported into the legislation.

The suitability of a proprietor to fulfil his or her role in the context of the Regulations is a central concern for the Board. The complex needs and vulnerability of those who live in SRSs, and the demands that this will inevitably impose on proprietors, must be evaluated prior to registration and at regular intervals thereafter. A link can be established between this issue and that of fees associated with an application for registration or annual renewal. As a prescribed fee reflects the administrative costs of processing an application, a determination can be made as to whether any fee assumes an adequate allocation of hours for thorough and appropriate investigatory time. In the opinion of the Board, it is this type of calculation and approach that should influence the setting of fees.

Specific Comments on the Regulations

Regulation 14 – Choice of health service providers

The proprietor of an SRS should be required to keep records which document the “reasonable steps” he or she has taken in order to comply with this Regulation. Given the priority given to consumer choice and competition in public policy over the past decade, both in Victoria and nationally, this would seem to give effect to public policy objectives which have been, and continue to be, seen as desirable.

Regulation 15 – Resident care plans

Regulation 15(2) should be expanded to include not only the health, welfare and personal care needs of the resident, and the services to be provided to assist the resident with daily living requirements, but also any strategies which are needed and are not in the form of a service response. The nature of any need and the risks associated with it should be examined and articulated. For example, some residents require behaviour management strategies to be developed and implemented by responsive and trained staff. This expansion would reinforce the fact that residents need supported care rather than simply assistance with “daily living

requirements”.(Note that the Board’s understanding of the meaning of “health needs” encompasses more than that which is contained in a medical record.)

Regulations 15(5) & (6) could be strengthened by requiring a guardian or family member and health care provider to sign a completed resident care plan, indicating that they have been consulted on, and are familiar with, the content. Regulations (7) and (8) should also be more robust, given the importance of the care plan instrument to the well-being of residents. A proprietor must ensure that staff are familiar with the care plan of a resident and also that the care plan is implemented.

Finally, it is suggested that a further schedule to the Regulations be inserted which provides proprietors with a guide to the content and structure of a quality care plan. This would assist in emphasising the fundamental importance of care plans for residents as well as offering an instructive template.

Regulation 16 – Activities

This provision should be expanded to outline some of the “reasonable steps” required, such as consultation with the resident and significant others, contacting relevant community agencies in relation to available activities, documenting the alternatives considered and offered to residents, arranging for the provision of transport services as needed for activities and the like.

Regulation 17 – Privacy, dignity and security of residents

Further consideration needs to be given, in the Board’s view, to practicalities which may arise in the context of Regulation 17(g). Residents of a pension only SRS may have no discretionary funds available to them for the cost of telephone calls, as their entire pension/benefit is consumed by their care/accommodation needs. Meaningful access for these residents will require the availability of a free phone service in prescribed circumstances.

Regulation 18 – Personal hygiene of residents

A resident should have his or her own toiletries, not, as currently stated, “a choice to use his or her own toiletries”. This should extend to cream and ointments which should not be shared amongst residents.

The Regulation is silent on the issue of sexual health. Proprietors should make available to residents information on where to obtain free condoms for example.

Regulation 19 – Medication prescribed for residents

Regulation 19(1)(c) should specify that the medication record, including the type of medication, and when and in what dosage it is to be administered, be signed by a medical practitioner.

In relation to Regulation 19(1)(i), where a resident no longer requires medication this should be “safely disposed of” by returning it to the pharmacy, preferably to the facility where it was prescribed.

Regulation 21 – Suitable nutrition for residents

The quality of food services is a fundamentally important component of the daily lives of residents in an SRS. A further provision should, therefore, be inserted which focuses on the need for a balanced diet. This is consistent with the intention of the legislature in section 108D of the Act where it is stated that “the proprietor of a supported residential service must ensure that food and beverages of adequate nutritional value...are supplied to residents.” Medical conditions and religious beliefs of residents should also clearly play a part in menu determination.

A Regulation should specify that dietitians be used on a twice yearly basis to assess the appropriateness of food plans. It is noted that a similar quality measure is employed in detention services such as prisons.

Finally, it is argued that this, or the home-like environment provision (Regulation 22) should extend to specify reasonable times for meals such as the provision of breakfast from 7.30am and the evening meal from 5.30pm. This would assist in reducing the hours during which no food may be available to residents and also in ameliorating any ‘institutional’ sense which may arise from the group dining experience at times outside those considered reasonable.

Regulations 23 & 24 - Heating and cooling & Lighting

The general observations section of this submission identifies the need for standards to be specified in these areas, given their importance for residents quality of life. Targets will assist in any monitoring process and also provide guidance to proprietors. It has been noted, via an Internet search, that the Illumination Engineering Society of North America has produced a report entitled *Recommended Practice for Lighting and the Visual Environment for Senior Living* (www.iesna.org). This appears to establish some industry standards in relation to ambient lighting.

Regulation 25 – First aid kit

The minimum contents of a first aid kit should be specified in the Regulation as should the need for the kit to be readily accessible to staff, rather than in a location which is, for example, locked on week-ends.

Regulation 26 – Grab rails

Grab rails should not only be provided in each toilet, shower room and bathroom but must also be “correctly installed” at these locations. The general observations at the commencement of this document suggest that the use of Australian Standards in this area would assist in achieving consistent and good practice outcomes for residents.

Regulation 27 – Bedside lighting

This Regulation requires access for residents to bedside lighting. It should be clarified to ensure that there is personal, as distinct to communal, access to such lighting. If

each resident's bedside table cannot accommodate a lamp, or this is seen as problematic for safety reasons, then a wall lamp should be used.

Regulation 28 – Power outlets

The Regulation as currently articulated does not result in each resident having a power point beside his or her bed, which should be the standard. Access to power is intimately connected to quality of life, for example facilitating the capacity to listen to music or radio commentary, and also to issues of health and safety, such as the use of extension leads and the capacity of circuit boards. The penalty should also reflect this fundamental importance.

Regulation 29 – Identification of rooms

Given the rationale and comments in the Regulatory Impact Statement on this provision, it would be appropriate for the plan to include information on which residents are located in particular rooms to assist with any evacuation.

Regulation 30 – Maintenance and cleanliness of supported residential service

The frequency of removal of human solid and liquid waste from rooms on a daily basis, as currently specified in Regulation 30(g)(i), is inadequate. Such waste should be removed as soon as possible or within a 1 hour period. This is suggested, notwithstanding the effort this may require during night-time hours.

Regulation 31- Communication systems in supported residential service

This provision should include a requirement that primary and back-up communication systems be regularly checked, in a not dissimilar way to the maintenance of fire alarms, to ensure that they are in working condition when needed. Any back-up system should be comparable in operation and function to the primary system, that is, it should not significantly diminish communication standards within a facility.

Regulation 34 – Resignation or termination of employment of personal care co-ordinator

It is argued that Regulation 34(4), which only requires that an acting personal care co-ordinator have a specified qualification if they are to be employed for more than six months, is inadequate. The time frame should be reduced to 6 weeks, given the link between quality of care and the training of staff.

Regulation 35 – Minimum staff requirements

For reasons of clarity, a definition of “special or personal care staff member” would be a useful inclusion, to ensure that it clearly excludes those who are cooks, maintenance staff or cleaners in an SRS. This is important from safety and hygiene perspectives. In addition, the provision should articulate those circumstances in which it would be necessary to employ additional personal or care staff to ensure that the needs of residents are “fully met in a timely manner”.

Regulation 35(4) should specify the hours which constitute “day” and those which constitute “night”, specifically “during the day” as 7am – 9pm and “at night” as 9pm – 7am.

Regulation 36 - Residents not to be employed

It is acknowledged that the substantive matter of this Regulation is complex. On the one hand it is important that SRS residents are not exploited through the provision of free labour for tasks that should be paid. On the other, it may improve the quality of life of an SRS resident to be able to participate, on a voluntary basis, in household tasks, such as gardening.

If a resident assists with tasks in an SRS this should be documented in that resident’s care plan. Such tasks should be undertaken voluntarily and be regularly reviewed. Such tasks should not be viewed as a substitute for therapeutic recreational activities.

Regulation 37 – Complaint procedures

The ability to raise concerns and make complaints in a free and accepting arena is essential to maintaining the rights of residents. In order to be effective, the complaint process should be at arms length from those who have the power to decide whether a resident is to be, or continued to be, accommodated in a facility. In this context, it is unacceptable that a resident be required to make a complaint to a proprietor as part of the any procedure. This is likely to inhibit complaint making amongst a vulnerable target group. Generally, the process should be that a complaint is made to a staff member, who is not the proprietor, or to the relevant program adviser at DHS.

The Regulation should also specify that the written records of complaints, actions taken and outcomes, be forwarded to program advisers at DHS on a regular basis, perhaps quarterly.

Regulation 42 – Accident reporting

Clarification is sought as to whether this provision also includes the recording of incidents, for example where one resident pushes or hits another, as distinct from accidents. Does “injury to a resident” only refer to an injury that occurs by accident or also that which is more deliberate?

Conclusion

This submission is made with a primary focus on residents in SRSs, particularly those who are vulnerable due to inadequate financial and personal resources, and in the recognition that how government responds to those who are marginalised reflects on us all. A civil society requires laws which create and enforce rights, but which are also robust in protecting those who are most in need.