



Staffing by Registered Nurses in NSW Nursing Homes

An explanation of the NSW Public Health Act 2010 No 127

The *NSW Public Health Act 2010* requires that '**a registered nurse is on duty in the nursing home at all times**' and defines which aged care homes are 'nursing homes'.

From the 1st of July 2014, wording changed in the *Commonwealth Aged Care Act 1997* affecting the definition of a nursing home in the *NSW Public Health Act 2010*. The changes could have erased the requirement to have a registered nurse on duty at all times in a nursing home in NSW.

However, after lobbying from the Association, the NSW Minister for Health announced an Amendment of the *Public Health Act 2010* from the 1st of July 2014, requiring all nursing homes previously covered to continue as usual: with a registered nurse on duty at all times.

If a home operated as a 'nursing home' up until the 30th of June 2014 – then it must continue to do so while this Amendment is in force.

This includes meeting the requirements for 24/7 registered nurse cover and appointing a director of nursing in a nursing home. The *NSW Poisons and Therapeutics Goods Act 1966* and Regulations use the same definition of a 'nursing home' to regulate the handling of Schedule 4D and Schedule 8 medications in a nursing home and these also remain in force.

WHAT IS THE PUBLIC HEALTH ACT 2010?

The *NSW Public Health Act 2010, No. 127* relates to public health, the control and prevention of infectious diseases and the role of local government in public health. One part of the Act is about staffing by registered nurses in nursing homes (*Division 4, 104*):

"Nursing homes to be staffed by registered nurses

- (1) A person who operates a nursing home must ensure that:
 - (a) a registered nurse is on duty in the nursing home at all times, and
 - (b) a registered nurse is appointed as a director of nursing of the nursing home, and
 - (c) any vacancy in the position of director of nursing of the nursing home is filled within 7 days.Maximum penalty: 100 penalty units.
- (2) The regulations may prescribe the minimum qualifications for appointment as director of nursing at a nursing home.
- (3) In this section, *director of nursing* of a nursing home means the person responsible for the overall care of the residents of the nursing home."

WHAT HAS CHANGED?

Changes on 1 July 2014 to the *Commonwealth Aged Care Act 1997* affected NSW legislation. At the commonwealth level, the distinction between 'high care' and 'low care' was removed, for the purposes of reforming finance and payment systems.

This change caused problems at a state level because the *NSW Public Health Act 2010* refers to 'a high level of residential care' as defined in the *Aged Care Act 1997*. As there was no longer this definition at the commonwealth level, the reference to it in the *NSW Public Health Act 2010* was affected.

There are 881 accredited aged care homes in NSW, and a proportion of these are defined as 'nursing homes' under the definition of the *Public Health Act 2010 No 127*.

If a home was operating as a 'nursing home' on 30 June 2014 then it must continue to do so under the Amendment, while the Ministry of Health consults with the sector.



Join with the NSW Nurses and Midwives' Association to keep this requirement in place permanently: **INSIST ON REGISTERED NURSES 24/7 IN NSW NURSING HOMES.**

To find out more or get involved contact gensec@nswnma.asn.au or phone 02 8595 1234 or 1300 367 962.