New Zealand Nurses Organisation

Submission to the Department of Building and Housing

on the

Retirement Villages Code of Practice 2008

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INTRODUCTION

1. The New Zealand Nurses Organisation (NZNO) thanks the Department of Building and Housing for this opportunity to comment on the Retirement Villages Code of Practice 2008.
2. NZNO is the professional body of nurses and the leading nursing union in Aotearoa New Zealand, representing over 41 000 nurses, midwives, kaimahi hauora, students, healthcare workers and allied health professionals.
3. Our members are the key workforce in Aged Care, comprising the majority of the regulated workforce – Registered and Enrolled Nurses and Nurse Assistants – and over 4500 unregulated caregivers.
4. They are the interface between providers and consumers in Aged Care, and are also the key delivery agents for the government's Primary Health Care Strategy (2001) and the Disability Strategy (2001), which both address specific challenges for an aging population and aim to ensure the provision of coordinated home-based and residential support services.
5. NZNO members' extensive experience in working with older people and their families in a variety of residential, community and geriatric hospital settings informs this submission, particularly in assessing the degree of security a Code of Practice for operators, residents and supervisors in Retirement Villages is realistically likely to offer.
6. NZNO believes that a Code of Practice for Aged Care Providers is urgently required and that this draft code contains good information which would be extremely useful to all concerned, and their families.
7. However, NZNO is not satisfied that the limited focus of this code will provide effective protection and regulation for consumers because Retirement Villages are only one service being offered in facilities for aged care.
8. NZNO's concern is that disparate codes, which will need to be developed, governing these privatised facilities will not fully protect the elderly as they

move from one level of care to another. There is a huge risk that many senior citizens will be severely disadvantaged or 'fall through the cracks' if regulation does not encompass aged care as a whole.

9. NZNO is particularly concerned that the staffing provisions are completely inadequate for any clientele other than fit and healthy senior citizens and the draconian termination provisions which allow a resident to be evicted at a month's notice on medical grounds, are bizarrely at odds with the stated purpose of retirement villages – to provide security to older people.

10. NZNO strongly contends that those in the business of making money from older people, and there are many outstandingly profitable companies which do so, should be obliged to recognise their responsibility to that community and deliver appropriate services, especially since many of them are subsidised.

11. The complex mix of subsidised community and residential care, private property development and District Health Board (DHB) contracted services pertaining to aged care makes it impractical to regulate one area withourt consideration of the rest.

12. Our preference is to develop a comprehensive code of practice covering the full range of services being offered which encompass retirement villages to the provision of more acute dementia/stroke rehabilitation care.

13. Accordingly NZNO recommends conducting a second consultation to develop a comprehensive code which is aligned and in keeping with key government health and social policies.

14. NZNO respectfully questions whether the Department of Building and Housing is the appropriate authority to lead the development of a Code of Practice where complex health and social factors are driving housing needs. There are issues with appropriate staffing, safety, public/private funding, for example, which do not arise with similar complexes and which need

comprehensive input from other Ministries, clinicians and other service providers, such as ACC.

DISCUSSION

15. NZNO is aware of the concerns over property and occupation rights driving the development of the Code of Practice for Retirement Villages, but is not confident that the Code can deliver the necessary consumer protection. There are specific political, economic and demographic factors impacting on housing and care for older people which must be considered outside the normal boundaries appropriate for fair contracting and asset protection for the rest of the population, namely:

- over time older people will require more care as their capacity to contribute financially decreases or ceases;
- people are living longer as the proportion of wage earners to support them decreases;
- government responsibility to ensure care for older people is widely accepted in New Zealand and supported by legislation dating back to the Old Age Pensions Act of 1898;
- aged care is predominantly privatised;
- the wages and conditions of regulated and non-regulated workers are significantly below those employed by District Health Boards; and
- there is a growing trend for aged care facilities to encompass a range of residential and care options from residential villas to geriatric and dementia hospital wards on one site.

16. NZNO strongly believes that these combined factors indicate that it would be economically and socially prudent for housing and healthcare for older people to be considered conjointly, and that health needs rather than asset protection should be the driving force.

17. A Code of Practice limited to for Retirement Villages is inadequate in the current environment where mixed services are becoming more prevalent in aged care. Indeed offering a continuum of care is a significant selling point for retirement villages as it offers the advantage that an elderly person, or his/her partner, does not need to move away from the community they are established in if more acute care is required.

18. That has implications for staffing, particularly in the provision of nursing care. NZNO notes that current pay, conditions and staffing levels throughout much of the aged care sector are significantly below those in the DHBs. Consequently, retention and recruitment problems are pervasive and an increasing number of migrant workers are being recruited. Several facilities now have a majority of migrant workers, many of whom come from countries where geriatric care is not common, who are unable to communicate easily with residents and who lack mentoring and support.

19. While clinical care may seem less important in retirement villages where the residents are relatively healthy and able to live independently, the reality is that many do have minor disabilities such as deafness, impaired vision, mild dementia, diabetes, etc. which require monitoring and medication, and they are prone to falls and strokes requiring rehabilitative care. Registered Nurses (RNs), especially in areas such as Capital Coast DHB where there is a shortage of General Practitioners, have a vital role in coordinating medical services, informing and liaising with family and providing continuity of care to prevent escalating health problems. NZNO Professional Nurse Advisers note the quality of care and positive feedback in villages where RNs are employed in this role. However this level of care is not always available in retirement villages.

20. Moreover, NZNO is aware that sometimes RNs are “borrowed” from one subsidised facility, for example a rest home, to go out to retirement villages, particularly after hours. As one member comments: “The residents are billed for each call out. The worker doesn’t get any of this money and the time that

the worker spends caring for the person in the village is time which has been paid for by the government for that worker to be with someone in resthome/hospital care. So basically the employer is double dipping – they are getting money from the village resident and the government. This is also an issue in terms of the work of those people in the resthome/hospital as they have to work short staffed while a member of their team is elsewhere. "

21. Similarly, in some facilities, 'emergency response' calls which imply that medical staff are on call, merely link in to the local ambulance service.

22. It is a moot point whether the government should be subsidising services which are ostensibly a business expense, but the real point is that there is an opportunity now to develop innovative guidelines and regulations which proactively promote efficient, safe, quality care for senior citizens in the broad context of modern aged care residences.

23. Currently there are no mandatory staffing requirements in the aged care sector. Minimum requirements for safe staffing levels formerly included in the Old People's Homes Regulations 1987 and the Hospital Regulations 1993 were not included in the Health and Disabilities (Safety) Act 2001, not because they were deemed unnecessary, but because they were based on an outmoded system which combined medical, and ancillary administrative, cleaning and catering staff.

24. But even the minimal levels outlined in the New Zealand Standards Handbook *Indicators for Safe Aged-care and Dementia-care for Consumers* (2005) are neither monitored nor attained, putting at particular risk the growing number of older people in need of care. The Handbook, prepared by a cross-sector committee representing business, community and government interests and drawing on the advice of an Expert Advisory Group, unequivocally states: "The sector is in agreement that a minimum number of staff is required to ensure safe care."

25. NZNO notes that a two year period following the 2005 issue of the handbook was allowed to give time for data to be collected and tested by means of a trial (pilot) of indicators. The Ministry of Health was required to consider the trial results in the expectation that "the data generated will enable informed decisions to be made on the full adoption of the handbook as a National Standard or as a component of NZS 8134". The NZNO is unaware of any such data collection or trial taking place and urges that priority be given to its collection to facilitate informed decision making and monitor progress.

26. While there is no requirement to monitor either outcomes or staffing levels, both patient safety and the ability of healthcare workers to maintain professional standards of care are severely compromised. The safety issues surrounding inadequate numbers of trained staff is graphically illustrated by the number of major inquiries into services in several district health boards and private facilities following high profile failures, such as the recent incident at an Auckland rest home facility where a resident was found with tape over her mouth. It was not an isolated incident and certainly not the most serious. Winifred Clemens bled to death at St Helena's Rest Home in 2006, having not even been offered first aid.

27. It is not difficult to see that adding retirement villages to these sites and more acute care facilities without addressing fundamental safe staffing issues will exacerbate not relieve the problem. NZNO's research in 2005 found staffing levels in rest homes for nurses were at 53 percent of those expected by the indicators. Clearly voluntary staffing levels are not ensuring safe healthcare for the aged.

28. Rather than risk gaps and fragmented regulation, NZNO suggests that developing a comprehensive code of practice for the continuum of housing and health needs of the elderly would be more effective, fair and sustainable in the long term.

PART 1 CODE OF PRACTICE

Introduction

29. NZNO suggests that the Code should refer to a nominated representative of the resident throughout the document rather than mentioning this once in the reference section, since the Code is likely to be used as a reference and the whole document may not be read at once.

Layout of code of practice

30. We suggest that contact details for the Health and Disability Commissioner be included in part 4.

PART 2 POLICIES AND PROCEDURES

31. NZNO believes these are useful.

PART 3 MINIMUM REQUIREMENTS TO BE INCLUDED IN ANY OCCUPATION RIGHT AGREEMENT

Staffing policies, processes and procedures

32. NZNO does not believe these are adequate because they impose no mandatory minimum requirements which we believe are essential. Residents do not go into retirement villages primarily for the décor – they go in to be assured of safety and, increasingly, continuity of care. It is widely acknowledged and recognised in the sector that the villages are profitable, so increasingly employers are looking at the Village option as a way to expand or cross-subsidise their business and attract residents. We urge that minimum staffing requirements be made mandatory and we suggest that these must take cognizance of the whole aged care community.

33. Though the code specifies that staff past employment and references are checked, there is no requirement for a police check. We acknowledge the cost and time delays which would ensue if this were a requirement but we

also acknowledge the particular vulnerability of the elderly. NZNO notes that under the Health Practitioners Competence Assurance Act (2003), regulated healthcare staff abide by a professional code of ethics and code of practice, and suggest it would be possible for retirement villages to at least develop their own code of ethics with which it expected staff to comply.

34. NZNO notes that there are no restrictions on the number of staff who may not be able to communicate with residents. NZNO is aware of facilities where only the manager is able to communicate clearly in English and is familiar with New Zealand systems. We suggests that this is not safe for residents whose age puts them at increased risk of not being able to communicate well themselves, and who may not be able to get other help.

35. NZNO also suggests that consideration should be given to having restraint policies and training in calming and restraint.

36. NZNO is also aware of the increasing number of migrants recruited in aged care and warns that there are particular risks associated with this, particularly as there are generally no good mentoring and support programmes facilitating their involvement in the New Zealand workplace or community. It is highly problematic when a majority of staff of one culture are tending to residents of another within a system which is completely foreign. NZNO believes that senior citizens who've made a lifetime's contribution to Aotearoa have the right to be cared for by those familiar with their language and culture, just as it believes that migrant workers should not be put into a foreign situation without proper support. Employers employing large numbers of migrant workers need to be aware of the potential risk and conflict it can create and should provide training and cultural awareness programmes for both migrants and New Zealand workers to facilitate better understanding and safe workplaces.

Safety and personal security of residents

37. NZNO draws your attention to the fact that some rest homes have been built where safety equipment, for example for showering or lifting patients, cannot be utilised because it cannot be got through the door. NZNO suggests that such factors are taken into consideration with relevant building codes.

38. We note that safety and security processes are only considered in relation to residents, not staff. NZNO believes that staff should be considered and,that retirement village operators, like DHBs , should be required to fully comply with the emergency management and procedures in the Health and Safety in Employment Act 1992.

Fire protection

39. NZNO strongly believes that sprinklers rather than smoke alarms should be mandatory in all facilities built for the elderly.

Emergency response procedures

40. NZNO warmly applauds the requirement for emergency procedures to be practiced every six months and trusts this is monitored.

41. NZNO suggests that where 'home alone' alarms are used and where the emergency response is provided from outside the village, the resident cannot be charged.

Termination of an occupation right agreement

42. This section of the Code raises particular concerns for NZNO and we recommend that further considered consultation with groups such as the Health and Disability Commissioner's office, and NZNO take place. This section includes practices relating to when and how a retirement village operator can terminate a resident's right to occupy.

43. The provisions under section 47 enable an operator to terminate the resident's occupation right if the operator appoints a medical practitioner who then certifies that the resident cannot live safely in the retirement village for physical or mental health reasons. This certification may be based on an assessment that is uninformed and/or inaccurate if the practitioner appointed does not know the resident's medical and/or social history.
44. This section states that the medical practitioner must be independent of the operator. However, the operator may have appointed a medical practitioner who is not qualified in the area that is required to make such an assessment.
45. Further the operator then only needs to give one month's notice to terminate under section 48 (3). For a resident who is unwell, to have a medical assessment by a practitioner who has been appointed by the operator and not even their own GP or specialist, for example, to then have to terminate their right to occupy their home with one month's notice may be untenable while they are unwell. It could essentially make a sick elderly person homeless. The assessor may not have accurately assessed the likelihood that the resident will recover after treatment, which they may be in the middle of when they are essentially evicted.
46. The risk of this is exacerbated by the opportunity in section 47. 2. for the operator to decide that it is in the best interests of the retirement village community after consulting with the statutory supervisor, to continue with the termination on medical grounds even while a complaint against this action is being dealt with.
47. The resident or his/her power of attorney may obtain a second opinion as part of the consultation process on the termination proposal and present it to the operator under 47.3.c. But there is no requirement for the operator to take it into account in the decision to terminate. There is also no requirement that the operator will fund the second opinion or indeed hold off on the termination decision while a second opinion is being sought.
48. Of further concern is that the Code states at section 45.2 that an occupation agreement terminates automatically when the resident or the last named

resident of the occupation dies. There may be cases where the second resident is not named and so when the only resident named dies, the unnamed resident then faces automatic termination, at a time when grief means they are less able to cope with such a situation.

49. These termination provisions give very little protection to a resident in the most vulnerable times, in grief and in illness, and are designed to give maximum rights to the operator to make decisions on a purely property law and contractual law basis. There is scant consideration for the human rights and the care and welfare needs of the elderly residents, and the scant consideration that there is afforded can be overridden by applying other provisions.

PART 4: USEFUL INFORMATION

Schedule 4 code of residents' rights

50. NZNO suggests it would be useful to have contact information about the Health and Disability Commissioner in the "Other contact persons" section.

CONCLUSION

51. In conclusion the New Zealand Nurses Organisation recommends that you:

- **note** our support for having a code of practice and that we consider the information in this code a useful base for developing a more comprehensive code;
- **note** that we support a second consultation round which would consider retirement villages in the context of the continuum of aged care facilities in the current environment and would develop a comprehensive code of practice for aged care facilities;
- **agree** that a code of practice limited to retirement villages does not cover the existing or potential residential options for aged care and therefore does not offer robust consumer protection of either assets or care;

- **note** that we believe minimum safe staffing levels be a mandatory part of such any code and that these should include particular reference to nursing care;
- **note** that pay and conditions in the aged care sector are generally lower than in DHBs which contributes to high staff turnover and increasing recruitment of migrants;
- **note** we do NOT support the termination clauses in the code;
- **agree** that contact information for the Health and Disability Commissioner should be included in the code;
- **agree** that the second round of consultation should be led or strongly informed by the Ministry of Health and that wide consultation should be sought specifically from those most involved with the provision of care for the elderly; and
- **note** our appreciation of this opportunity to comment on the code of practice for Retirement Villages.

Marilyn Head
NZ Nurses Organisation

ABOUT THE NEW ZEALAND NURSES ORGANISATION

52. NZNO is a Te Tiriti o Waitangi based organisation. It is the leading professional body and nursing union in Aotearoa New Zealand, representing over 41 000 nurses, midwives, kaimahi hauora, students, health care assistants and other health professionals. Te Runanga o Aotearoa NZNO comprises Māori membership and is the arm through which our Treaty based partnership is articulated.

53. .The NZNO vision is “Freed to care, Proud to nurse”. Our members enhance the health and wellbeing of all people of Aotearoa New Zealand through

ethically based partnerships. Our members are united in the achievement of their professional and industrial aspirations.

54. NZNO has consulted its members in the preparation of this submission in particular NZNO staff (Management, Professional Nursing Advisors, Policy Analysts, and Industrial Advisors) and NZNO members (Colleges and Sections, Board Members and other health care workers).

REFERENCES

Standards New Zealand, (2005), *New Zealand Handbook*: *Indicators for Safe Aged-care and Dementia-care for consumers*, SNZ HB 8163:2005, NZ Standards

NZNO, (2005), *A Snapshot of Staffing Levels in Aged Care Services*, NZNO, Wellington.