Letter to the new Minister for Ageing

The Hon Justine Elliot MP
Minister for Aging
PO Box 6022
House of Representatives
Parliament House
Canberra, ACT 2006

December 11th 2007

Dear Minister,

Aged Care Promises given by the previous government and other matters

May I congratulate you and welcome you to your new post with open arms in the hope that we will see some real changes to the shipwreck that you have inherited.

Summary

This letter draws attention to major problems in aged care regulations relative to the suitability of nursing home owners and promises made by the previous ministers.

I ask for an undertaking to address two key issues and to critically examine and make plans to address a third.

1. a. Assessment of the suitability of potentially influential owners of nursing homes before they purchase and

b. what action is taken when an existing owner is shown to be a criminal or otherwise unsuitable? This has been a serious problem in Australia.

2. The bundling of nursing home approval status with the sale of nursing home companies. What steps will be taken to ensure that all those who play or might play an influential role behind the scenes are assessed as suitable in their own right?

These are issues which both the previous health and aged care ministers undertook to address They lost power before they could do so. I urge you to go even further by reinstating probity requirements in the legislation and giving them adequate legal backing.

3. The threat posed by private equity ownership of nursing homes. I ask that sufficient transparency be introduced urgently into the system so that the quality of care provided by different providers can be easily compared by the community and early action taken. I also ask that the conclusions reached by the recent senate economic committee inquiry and the advice given be reviewed and adjusted in the light of subsequent revelations.

I also briefly refer to a number of issues which I feel should be carefully considered when restructuring the aged care system. These include the impact of conflicting marketplace paradigms on staff, problems in the accreditation system, and the implementation in the nursing home sector of the new prime minister's promise of transparency.

In the long term I ask you to consider the social viability of a system that is driven by underlying paradigms that conflict with those on which the effectiveness of such services depend.

Introduction

During 2007 I exposed major deficiencies in the aged care regulations relating to nursing homes. I took these to community groups with an interest in aged care, and to politicians. We secured undertakings to make changes from both of the federal ministers responsible for aged care. Shortly before the election I learned that nothing had been done and that the ministers would soon be out of office.

I asked the shadow minister Senator Jan McLucas if she would undertake to meet these promises. Perhaps understandably given the complexity of the problems and the immediate political implication she did not do so. I am now asking whether you would give this and other matters some attention and in a reasonable time period give some indication of the way you and your government are going to deal with these problems.

I am particularly concerned about the rapidly emerging threat posed by private equity ownership of nursing homes – already a major problem in the USA.

I also use this letter to canvas some other issues in the hope that you will find this input constructive.

My experience

I have 15 years experience studying and examining the negative impact of a competitive for profit corporate marketplace in health and aged care in the USA and Australia. I have taken a particular interest in the social forces and the social dynamics which result in recurrent failures in care, and in fraud at the expense of trusting and vulnerable people. Citizens have no choice but to place their faith in those who become successful in this system. I have also tracked and examined the recurrent failure of regulatory effort.

I have assisted in collecting information and been successful in keeping some of the largest, most ruthless, and inappropriate multinationals out of our system. I analyze this information and make it available on the www at http://www.corpmedinfo.com/.

The Issues

The immediate issues of concern relate primarily to:

- regulatory loopholes,
- the important role played by nursing home owners, and
- private equity,

These are immediate problems which I believe require early attention, policy decisions and expeditious action to protect citizens. I ask for confirmation that you will honour or exceed the promises made by your predecessors, and for some indication as to whether you plan to address the pressing issue of private equity.

Other issues I raise include issues relating to

- the market and staffing,
- the failure of the accreditation and complaints mechanism,
- lack of transparency, and
- some concerns about the adverse consequences and ultimate viability of current aged care policy

These are all troubling issues which require long term planning and carefully controlled changes. I ask that they should be on the table when policy is discussed. As a community we need to have some idea of the sort of health and aged care system we would like and then plan to move carefully in that direction. There is no place for more ideology.

The regulatory loophole

This issue is explored in greater depth and copies of most of the correspondence are accessible on the web from the following two pages and links from them. Your staff can examine these and brief you further.

- http://www.corpmedinfo.com/dca_sale.html
- http://www.corpmedinfo.com/bupa_approval.html

In 1994 the aged care department boasted to me about the diligence of its probity review of purchasers of nursing homes. I was firmly assured by the department in 1999 that, even though the probity provisions had been removed from the aged care regulation in 1997, the regulations would still ensure that only "suitable people " would become providers of aged care.

Prior to 1997 the community's expectation that only people who could be trusted to care for the vulnerable be allowed to do so was enshrined in state and federal regulatory requirements for health and aged care. Although poorly enforced these probity requirements have been largely responsible for keeping or ejecting some of the most dysfunctional multinationals out of our health system (Tenet, HCA, Sun Healthcare, HealthSouth etc.) and for restraining our own companies. These groups have been responsible for many billion dollar frauds, the misuse of patients, unnecessary and harmful treatment, and the neglect of the aged.

In December 2006 I became aware that a Citigroup subsidiary, which had already had its licenses restricted because of probity concerns in the far less vulnerable hospital sector had purchased DCA's nursing homes – a sector at far greater risk.

I drew the attention of the department to Citigroup's dreadful track record for exploiting those to whom it was responsible (see http://www.corpmedinfo.com/access_citi.html) and to NSW Department of Health's probity review and restrictions. I objected to the granting of approved provider status.

After a long delay I was informed that, under the 1997 regulations, the purchaser of a nursing home that already held approved provider status did not have to seek approved provider status in its own right.

Not only was this in breach of the assurances I was given in 1999 but the implications were mind boggling.

The alarming implications

- The possession of approved provider status has become a commercial commodity for which the purchaser pays when acquiring nursing homes. "Suitability" and approval can

be bought and sold attached to nursing home premises when the owners sell. They add value to the sale. This approval status was a very valuable commodity for the Citigroup subsidiary when it purchased DCA. It would have known that objections would be lodged and it would be found wanting.

- It can be inferred that once a purchaser has acquired approved provider status by purchasing it packaged with a nursing home or a company owning nursing homes, then it can continue to expand and build new homes without having to subject itself to any assessment of its suitability.

- Few if any of the large number of wealthy individuals, companies, banks and private equity groups focused on ways of squeezing ever more profits from their business would have had any sort of assessment of their suitability to own or operate nursing homes, or of how they planned to maximize their profits. Any plausible rogue or market misfit with unrealistic expectations and no knowledge of, or grounding in, the ethic of care has been free to enter the sector.

  Our for profit nursing home sector is now largely owned and controlled by these groups and they are driving the market process, forcing other for profit, and also not for profit groups into market mode and away from their ethic of care.

Probity

Probity has been a key concept arising from the long recognized fact that some sections of the community are disempowered and vulnerable to exploitation. The provision of caring services were therefore considered a privilege and were restricted to those whom the community felt it could trust to provide that service with integrity.

The test for probity is simply whether the community where the service is to be provided would trust the applicant to provide that service if it were in possession of all the information. A failure to disclose information impacting on trustworthiness is a breach of that trust and the privilege would be revoked.

No one will talk about probity because this is what the community would insist on if it were properly informed. A company which has a fiduciary duty to place the interests of disinterested and distant shareholders ahead of its duty to the community and its members could hardly qualify. This is a readily visible manifestation of the underlying paradigm conflicts festering at the heart of Australian health and aged care.

Action

As indicated above the matter was taken up, pressure applied and assurances obtained. There seems to have been a lack of commitment and no action resulted prior to the election. I ask that the issues be addressed.

The important role played by nursing home owners

The Australian nursing home system has also been bedeviled by problems because it has disregarded the critical role which owners play. When there have been failures such people have been barred from holding management or director positions but continue to own the services.

Not only is their no way of policing their continued involvement, but they continue to appoint staff and directors, control expenditure and set targets for profitability. The distinction between owners and managers is a contrived one. Our own experience shows that recurrent serious failure has

more to do with ownership than the spectrum of changing management. As the last minister for ageing recently acknowledged there are currently no restrictions on ownership.

The problems with private equity ownership recently revealed in the USA further reinforces the importance of ownership. In the most recent US congressional inquiry into transparency, ownership was a central issue. Proposed regulatory attention was being directed at ownership stakes as low as 5%.

Addressing this issue was implicit in the undertakings given by the previous government's two ministers.

Private Equity ownership

Private equity and large financial interests in various forms now own and have financial control over substantial sections of the nursing home industry in the USA and Australia (see http://www.corpmedinfo.com/austrbanks.html) This is a recent development in both countries.

Any sensible analysis of the social dynamics and evidence reveals that the social forces that have been so deleterious in a system directed primarily to profit rather than care, will be markedly increased when controlled by private equity. Two submissions (by Marie dela Rama and myself) coming from very different perspectives were discounted by the recent senate economic committee inquiry into private equity.

Within weeks of their report an analysis in the USA revealed that following acquisition of nursing homes by private equity groups staffing and reported failures in care deteriorated markedly, even when staffing and care had already been compromised by a previous corporate owner.

In addition to this corporate structures had been created that prevented authorities from collecting fines, and residents and families from seeking redress when they were harmed due to negligence or neglect. Additional studies are now verifying these findings.

The matter is being debated at the highest level in the USA and is a major focus in several current or planned federal and state inquiries. A federal senate inquiry initiated by Senators Grassley (republican) and Clinton (democrats) will be held shortly.

I am aware that there have been hearsay accounts of similar developments in Australia but understand that those involved are too frightened of victimization to speak out.

The developments in the USA have been drawn to the attention of members of the senate economics committee but they have not seen fit to issue a supplementary report or to modify the one they made.

Private equity operates no differently in Australia and many are multinationals. While we may be able to take steps which reduce or delay the consequences for care there can no longer be a credible argument asserting that private equity involvement does not constitute a serious potential threat to a system already on its knees. See article by Marie dela Rama at http://www.brisinst.org.au/issue-details.php?article_id=69

The senate report suggested that the growth of private equity was over but only last week Mariner Financial, an Australian based multinational with a private equity arm announced its entry into the global aged care marketplace, although at this stage it is only targeting retirement services.

The market and staffing

Common discourse deals with issues of work satisfaction and workplace relations in industrial terms such as reimbursement and working conditions. While these are important my assessment of the marketplace is that there are fundamental paradigm conflicts which play an equal if not greater role in creating alienation, disillusionment, apathy, a flight of staff, and a reluctance to enter the nursing profession.

These frustrations are often not easily conceptualized in ordinary discourse so that the discontent is conceptualized and directed through industrial channels. Employers and politicians respond in similar terms.

This paradigm conflict is because corporate marketplace and professional paradigms are built on very different and conflicting cultural values, norms and objectives – what Graeme Samuel called "starting points" – see http://www.corpmedinfo.com/starting_points.html The industrial and market paradigms are those within which the system now operates and participants must pay service to it in order to remain credible.

In a published paper "*Belief versus Reality*" (download http://www.corpmedinfo.com/jmwynne83.pdf) I examine these two incompatible paradigms and show how participants develop strategies to respond to the dissonance created, and the consequences when social forces make a dysfunctional paradigm so dominant that it cannot be challenged. Those able to identify with the market ethic prosper and are promoted. Those unable to do so are marginalized. As a consequence it is often the least suitable and those least respected by staff in the sector who find their way into management – so creating ever greater problems.

The care provided in health and aged care ultimately depends on the extent to which staff identify with the Samaritan tradition and seek self realization through an ethic of compassionate service. Money alone cannot adequately reward their effort or replace this intrinsic reward system. While paying lip service the market ethic challenges and degrades this at a fundamental level.

I can vouch for the fact that the vast majority of nursing and medical staff entering the professions as trainees are strongly motivated by community and professional paradigms and identify with them. Problems arise later when they are confronted with powerful conflicts and a society that gives conflicting paradigms greater legitimacy.

My experience is that staff will often work with poor pay and conditions when their commitment and dedication are recognized and supported. When their dedication to genuine care is undervalued and their efforts directed instead to generating profits for disinterested others, they soon realize that they are being exploited.

Australia, one of the wealthiest countries in the world fails to properly reimburse its nurses. Their remuneration does not reflect their dedication and service but depends on their leverage in the marketplace. Their leverage has been eroded by changes made to workplace legislation. This places all employees in the same basket, regardless of the context within which they work.

My argument then is that while protest may be stifled, and benefits accrue from addressing salary and working conditions, and training more staff, the fundamental problems in staffing levels and in truly caring for people will not be adequately addressed until the context changes. A context where the primary focus is the profits that can be generated from citizen's misfortunes must be replaced by one where the focus is on care. A nursing home system in which aspiring participants realize that they will be unable to realize their ethic of service is unsustainable.

In my submission to the senate economics committee I dealt with the impact on staff in greater detail.
(http://www.aph.gov.au/senate/committee/economics_ctte/private_equity/submissions/sublist.htm)

The failure of the accreditation and complaints mechanism,

In 1997 probity provisions were removed and even though the nursing home industry was largely funded by the taxpayer, all restraints on the way it operated were removed and reliance placed on market forces. Disclosures that ensured transparency were no longer required.

Instead reliance has been placed on an industry friendly accreditation system. Experience elsewhere had already shown that accreditation and other oversight processes are not effective in this sector when confronted by market forces and a heavily lobbied government. This is particularly so when market entities participate in the process.

When confronted by potential dysfunction, by failures, and by criticism of the system, government and industry have responded by making unsupported claims about its excellence without addressing the root problems.

The social dynamics and the power structure explains why accreditation, like any other external coercive system is unlikely to work in the face of otherwise unchecked marketplace power. Experience in the USA and in aged care in Australia confirms this. It is clear that even after multiple attempts to improve the aged care accreditation and complaint system, it is still not working. It has an impossible task and we should not expect it to work.

Transparency

In the USA the general deficiencies in care in market listed nursing homes when contrasted with not for profit ownership, and the further deterioration following private equity ownership, were revealed only because there was sufficient (if still restricted) readily available information for interested parties to analyze. There is insufficient transparency in Australia for any similar analyses. Hiding results in undigested form in the accreditation authority's archives makes this extremely difficult if not impossible.

The claim that the latest accreditation is all important for resident choice is patent nonsense and reveals the extent to which the agency is influenced by ideology and the marketplace. These people are not buying meat balls while in stock, they are giving the rest of their life to the care of the nursing home. Its long term history and the nature of its owners is critically important.

Symptomatic of this lack of transparency is the failure to collate and publish overview data showing patterns of care. It is not credible for the authority to claim that it does not collect and collate data relating to the history of individual nursing homes and of owners, and does not compare this data. If not then it is failing the public.

The new prime minister has promised greater transparency and I sincerely trust that that promise will be implemented in aged care.

Aged care cannot and has never operated as a marketplace. There is a bed shortage so there is no choice, and even if there was choice the dynamics of these late in life choices ensures that it is not effective. Rhetoric about choice and market forces is ideological gibberish. The marketplace in nursing homes has become one where participants compete to see how much profit they can squeeze from the system without alarming the agency and without generating a community backlash – a mediocre standard.

Transparency is not required to give families choice. They have very little. It may help those advising potential residents but even this is limited.

The importance of transparency is that individuals and community groups can analyze data and bring community pressure to bear on nursing homes, on owners, and on politicians.

As indicated accreditation based on an external body is unlikely to be effective. All nursing homes either do or should keep records of income and expenditure, as well as ongoing data of failures in care including staff levels, pressure sores, contractures, weight loss, medication errors, recreational activities and feedback from staff and families. Such data is essential for proper management.

This is the data which, in an ideal world, they would be disclosing publicly and discussing with groups from the community served, as they worked together for the residents. They can hardly claim this as onerous. It should be the responsibility of the outside authority to check the accuracy of the data and ensure that it is collated and taken to the community.

I realise that a system where transparency is primarily internal and external oversight primarily confirmative cannot work in a competitive profit centred marketplace so is not practical now.

Some concerns about the adverse consequences and ultimate viability of current aged care policy.

Professor Arnold Relman has studied the marketplace health system in the USA for nearly 30 years. His recent book “A Second Opinion” argues that this market based system is economically unsustainable and that sooner or later a US government will have no choice but to tackle the difficult task of changing it and move away from marketplace solutions. A for profit corporate controlled health and aged care system is undoubtedly far more costly and less efficient in terms of care per dollar than any other. It squanders the money provided for care in marketplace activities and then siphons large sums into profits. This is called efficiency.

My focus has been on the consequences for care, on dysfunctional practices, and on the impact on society and its value systems. The commodification of humanitarian services into packages traded in the marketplace detaches them from the values and norms of society. Without exercise these values atrophy.

In Canada the market independent Romanow Commission examined all of the evidence and challenged the marketplace to produce evidence supporting their claims. Their 2002 report strongly advised that the Canadian health system should be based on community norms and values.

In my view a health and aged care system which is based on a mechanism which exploits the misfortune and vulnerability of the sick and elderly for the financial benefit of disinterested shareholders is socially unsustainable and destructive of a caring society. The conflicting paradigms intrinsic to a system, which aims to provide intensely personal humanitarian caring services through an impersonal market mechanism, render the system at ongoing and sustained risk.

I stress that I am not opposed to private care, nor am I advocating a nationalized system. I am pressing for a system focused on community and professional values and aspirations. I believe that we should be looking for mechanisms which can deliver that. The paradigm’s underpinning the competitive corporate marketplace and the impersonal mechanisms that underlie its operations render it unsuitable and an ongoing threat.

Attached to this letter are the undertakings given by the previous ministers.

There is a large volume of recently published useful material supporting these arguments and several useful reports. This is quite bulky. I am busy collating and summarising it to make it easier for your staff to rapidly review it. I will take the liberty of emailing this to you separately in the next day or two.

I trust that the new cuts in ministerial staffing will not be so drastic as to prevent your staff from examining material and reporting to you.

Staff at the Aged Care Crisis Centre have seen this letter but not contributed to the content. They have indicated their full agreement with the content and thrust of the argument. They have asked me to convey this to you.

Yours sincerely,

J Michael Wynne

Attachments : Letters from previous ministers
Copy : The Hon Nicola Roxon MP, Minister for Health and Ageing