



## Study of the Nursing Home Sector in Jamaica

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## Table of Contents

I. BACKGROUND .....	1
II. METHODOLOGY.....	2
III. LITERATURE REVIEW.....	3
IV. ANALYSIS AND FINDINGS.....	11
A. Registration and General Concerns.....	11
B. Availability of Information.....	13
C. Complaints and Complaints Procedure .....	15
D. Price Transparency .....	16
V. SUMMARY AND CONCLUSION.....	17
VI. RECOMMENDATIONS .....	19
REFERENCES .....	21

## I. BACKGROUND

1. The aging of the world's population has been a subject of discussion over the past twenty years. According to the United Nations (2019), the world's population aged 65 years and over is growing faster than all other age groups. The World Health Organization (2010) attributes the aging of the world's population to declining fertility rates and increasing life expectancy. With the changes to the demographic structure of the world's population, steps must be taken at the global and national levels to address the needs of this rapidly growing segment of the population.
2. In 2018, there were over 250,000 persons in Jamaica in the age group 65 years and over (Statistical Institute of Jamaica 2020). This represents approximately 9% of Jamaica's population. In a 2019 review of the demographic changes in Jamaica, the Planning Institute of Jamaica indicated that large-scale improvement in state residential housing for the elderly is needed across all parishes with low-cost housing options for elderly persons capable of taking care of themselves (Richards 2019). In addition, the aging of the population points to consumers' increasing need for useful and reliable information about their health and social care options, including nursing homes. While some elderly individuals may be able to live independently, others require constant care and supervision and require the services of nursing homes. Nursing homes provide accommodation as well as assistance with day-to-day activities that involve meeting nutritional and hygienic needs.
3. Nursing homes in Jamaica are required to be registered under the Nursing Homes Registration Act, 1934 ('NHRA'). The NHRA defines a nursing home as any premises used for the reception of and providing nursing for persons suffering from any sickness, injury or infirmity. As of 2019, there were 16 registered facilities in Jamaica across eight parishes (Ministry of Health and Wellness 2021). However, there are also facilities operating in Jamaica that are unregistered. In a 2020 *Jamaica Gleaner* article, it was reported that there were 214 nursing homes in Jamaica (Daley 2020). This report suggests that as of 2019, less than twenty percent of the facilities operating as nursing homes were registered.
4. Since the COVID-19 pandemic, nursing homes have come under increased scrutiny because they provide services to the population that is most at risk for adverse outcomes from the pandemic. Consequently, the Ministry of Health and Wellness ('MoHW') has increased its inspection of homes—both registered and unregistered. The MoHW indicates that it may order unregistered facilities to close, or give them time to meet the relevant requirements (Davis 2019).

5. In general, nursing homes provide services to a vulnerable segment of society. Therefore, family members seeking to place loved ones in a nursing home will seek information to ensure that their loved ones are well cared for. A Public Health and Ageing specialist in Jamaica indicated that family members should do rigorous background checks on prospective nursing homes to check for compliance with industry standards (Davis 2019). For family members to successfully screen nursing homes, information must be easily accessible.
6. The study aims to examine issues in the nursing home sector that may affect its efficient functioning. These issues include availability and access to information, contract/agreement terms, and scope for consumer redress.

## **II. METHODOLOGY**

7. A mystery shopper exercise was conducted to determine how readily nursing homes provided information to potential clients as well as the quality of the information provided. The interview sheet consisted of fifteen questions in four broad categories: the type of services offered, availability of information, complaints procedure, and price transparency.
8. The FTC relied on two sources to select the sample of nursing homes. Firstly, the FTC obtained a list of facilities registered under the NHRA by the Standards and Regulation ('S&R') Division of the MoHW. A total of 16 facilities were registered as nursing homes as of 2019. The second source of information used was from a telephone directory (Yello 2021, yellow pages) which listed 17 facilities under the category 'Nursing Homes'. The combined sources totaled 33 facilities; however, the listing was reduced to 31 nursing homes after removing listings which overlapped both sources.
9. On March 19, 2021, and March 22, 2021, the FTC contacted twenty of the thirty-one nursing homes shortlisted. (Either no telephone number was available for the other eleven nursing homes or the numbers listed were not functional). In the Mystery Shopping exercise the Staff played the role of a relative seeking to find a care home for an older relative.
10. The FTC informed the nursing homes that care was being sought for an individual described as a seventy-five-year-old grandparent, with mild arthritis and hypertension, with the ability to cater to

basic hygiene needs and self-feed.

11. Of the twenty facilities contacted, two nursing homes indicated that they only facilitated clients with mental illnesses and were therefore eliminated from the study. Another facility indicated that its clientele was solely bedridden persons and was therefore eliminated.
12. Accordingly, the sample size used in the study comprised 17 nursing homes.

### III. LITERATURE REVIEW

13. The NHRA came into operation on the 28<sup>th</sup> of June 1934, and its purpose is to provide for the registration and inspection of nursing homes. Section 2 of the NHRA defines nursing homes as follows:

“...any premises used or intended to be used for the reception of and the providing of nursing for persons suffering from any sickness, injury or infirmity, and includes a maternity home.”

The NHRA, however, excludes public and regional hospitals or any other premises maintained or controlled by a local authority from being categorized as a nursing home. A psychiatric facility is also not categorized as a nursing home.

14. To operate a nursing home in Jamaica, the NHRA requires that an application in writing is made to the Chief Medical Officer ('CMO'). Where the applicant intends to operate a nursing home with a bed capacity of twenty-five beds or less, a fee of JM\$5,000 is payable. Where the bed capacity is more than twenty-five, the applicant is required to pay a fee of JM\$10,000.<sup>1</sup> It is the responsibility of the CMO to keep a register of nursing homes and issue the successful applicant a certificate of registration<sup>2</sup>.
15. The NHRA prohibits a person from carrying on a nursing home without being registered, and a person will be guilty of an offence and liable of a fine not exceeding JM\$250,000 in the Parish Court or if it is their second or subsequent offence imprisonment not exceeding three months or a fine not exceeding JM\$500,000 or both such imprisonment and fine<sup>3</sup>.
16. It is noteworthy that where a person indicates that their unregistered home is registered, they may also be in contravention of the Fair Competition Act, specifically section 37(1)(a). This section speaks to

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<sup>1</sup> Section 3(2) of the Nursing Homes Registration Act

<sup>2</sup> Section 3(3) of the Nursing Homes Registration Act

<sup>3</sup> Section 3(1) of the Nursing Homes Registration Act

misleading representation. The unregistered home would have provided false information to consumers and, in this regard, breach section 37(1)(a) of the Act that states:

“A person shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or for the purpose of promoting, directly or indirectly, any business interest, by any means make a representation to the public that is false or misleading or is likely to be misleading in a material respect.”

Where a party is found to be in breach of section 37(1)(a) they may be liable to a penalty not exceeding a JM\$1,000,000 for an individual and a person other than an individual JM\$5,000,000<sup>4</sup>.

17. Regarding the registration to operate a nursing home, the CMO must be satisfied with the following circumstances before an applicant is permitted to register:

- i. The applicant and their employees are fit and proper persons;
- ii. The premises are fit to be used for a nursing home;
- iii. The nursing home is in the charge of a registered medical practitioner, a registered nurse, or there is a proper proportion of registered nurses having the superintendence of or employed in the nursing of the patients in the home;
- iv. Where it is a maternity home, the CMO must be satisfied that the person having superintendence is either a registered nurse or registered midwife and the person employed regarding childbirth and nursing is either a registered medical practitioner or a registered midwife<sup>5</sup>.

18. Where the CMO is satisfied that the above obtains, a certificate of registration is issued and is valid for two years from the date of issue<sup>6</sup>. If the CMO is not satisfied that the stipulated requirements have been met, the CMO may refuse to register the applicant. The NHRA requires that the registration certificate is posted in a conspicuous place at the nursing home; failure to do is an offence against the NHRA.<sup>7</sup>

19. A complete list of nursing homes registered during the most recent 12 months should be made available by the CMO to the Registrar General before the last day of March each year for publication in

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<sup>4</sup> Section 47(1)(a) of the Fair Competition Act

<sup>5</sup> Section 3 of the Nursing Homes Registration Act

<sup>6</sup> Section 3(6) of the Nursing Homes Registration Act

<sup>7</sup> Section 3(4) of the Nursing Homes Registration Act

the Gazette<sup>8</sup>. In this regard, consumers can ascertain whether a nursing home is registered in compliance with the NHRA, thus allowing them to make informed choices in their selection of a nursing home.

20. The NHRA stipulates that applications for renewal of registration must be made at least 30 days before the expiration of the issued certificate of registration. The application should be made using the prescribed form to the CMO.<sup>9</sup> Further, the CMO is required to have the nursing home inspected upon receipt of an application for renewal of registration. Therefore, the said application will not be considered until a certificate of inspection has been issued to the applicant<sup>10</sup>. Additionally, every renewal application must be accompanied by the respective fees.
21. Section 7 of the NHRA speaks to the inspection of nursing homes and provides that a person “authorized by the Minister may, at all reasonable times enter and inspect any premises which are used, or which that person has reasonable cause to believe to be used, for the purposes of a nursing home, to inspect any records required to be kept in accordance with the Act<sup>11</sup>.”
22. A certificate of inspection is required to be submitted within three days of the date of the inspection<sup>12</sup>. It is an offence to refuse entry or inspection of the premises, inspect records, or obstruct any person carrying out the inspection<sup>13</sup>. A person found guilty of the offence is liable on summary conviction before the Parish Court to a fine not exceeding one million dollars<sup>14</sup>.
23. Arguably, the NHRA addresses some matters; however, the scope of the legislation needs to be broadened. For example, the NHRA focuses solely on registration matters and fails to address matters concerning the operation of the nursing home, quality of services, or consumer rights and needs. Consequently, another jurisdiction’s legislation was examined to obtain best practices that may be applied to Jamaica.
24. In the United Kingdom (‘UK’), nursing homes or care homes, as they are called in the UK, fall within the purview of the Care Standards Act, 2000 and the Care Homes Regulations 2001. The purpose of the

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<sup>8</sup> Section 3(5) of the Nursing Homes Registration Act

<sup>9</sup> Section 3A(1) of the Nursing Homes Registration Act

<sup>10</sup> Section 3(A)(2) of the Nursing Homes Registration Act

<sup>11</sup> Section 7(1) of the Nursing Homes Registration Act

<sup>12</sup> Section 7(2) of the Nursing Homes Registration Act

<sup>13</sup> Section 7(3) of the Nursing Homes Registration Act

<sup>14</sup> Section 8 of the Nursing Homes Registration Act



Care Standards Act extends beyond the registration requirements for a nursing home/care home but seeks to regulate and ensure that agencies and providers are competent in their duty of care. Accordingly, the Care Standards Act established a new system of national standards for services and established the National Care Standards Commission for social care inspection whose primary aim is to promote improvements in care by way of its triple functions of inspection, regulation, and review of all social care in England (Social Care Institute for Excellence 2021).

25. The Care Standards Act ('CSA') states that an establishment in England is a care home if it provides accommodation together with nursing or personal care for persons with illness, mental disorder, disabled or infirmed, and/or dependent on alcohol or drugs or for persons who have had the aforementioned issues<sup>15</sup>.
26. The CSA also makes it a requirement to register the care home, otherwise, the person carrying on or managing the care home will be guilty of an offence. Additionally, the CSA states that a person seeking to register must apply to the registration authority using the prescribed form, provide information that is reasonably required and pay the prescribed fee<sup>16</sup>.
27. The registration authority may grant the application where it is satisfied that the requirements have been met; otherwise it shall refuse it. The Act also permits granting either an unconditional registration or subject to conditions as the registration authority sees fit<sup>17</sup>.
28. The CSA also stipulates the circumstances under which the registration authority for the care home may at any time cancel the registration. These include but are not limited to the person who has been convicted of a relevant offence, has been convicted of an offence relating to the care home, or that the care home is being or has at any time carried on otherwise than in accordance with the relevant requirements<sup>18</sup>.
29. The above provisions of the CSA are similar in purpose to the NHRA. However, the CSA, specifically the provisions of the Care Homes Regulations, 2001, extends beyond the registration of care homes as it also focuses on consumer rights and needs. These laws may be a model of the direction that the NHRA

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<sup>15</sup> Section 3 of the Care Standards Act

<sup>16</sup> Section 12 of the Care Standards Act

<sup>17</sup> Section 13 of the Care Standards Act

<sup>18</sup> Section 14(1) of the Care Standards Act

needs to undergo to broaden its scope and applicability to address the current needs of both providers and consumers. Additionally, the oversight body in Jamaica for nursing homes should be included and strengthened. It is of note that the last amendment to the 1934 promulgated NHRA was in 2004.

30. The Care Homes Regulations refer to service user and same is defined as “any person accommodated in the care home who is need of nursing or personal care by reason of disability, infirmity, past or present illness, past or present mental disorder or past or present dependence on alcohol or drugs”<sup>19</sup> . An examination of the Regulations reveals that the quality of service to be provided to consumers is of the utmost importance.
31. The Regulations speak to a registered person who is registered to carry on the care home or registered to manage the care home. A registered person is required to compile a written statement of purpose concerning the care home. This statement of purpose should speak to the aims and objectives of the care home and the facilities and services provided by the care home, among other matters<sup>20</sup>. This is absent from the NHRA and would assist consumers in making informed decisions regarding their choice in a nursing home.
32. Importantly, the Regulations stipulate that a written guide should be produced and made available to service users. The guide should contain, among other things:
  - a summary of the statement of purpose;
  - the terms and conditions regarding accommodation to be provided for service users, including amount and method of payment of fees;
  - a standard form of contract for the provision of services and facilities by the registered provider to service users;
  - a summary of the complaints procedure<sup>21</sup>.
33. Accordingly, the Regulations mandate that consumers are provided with access to information regarding the care home. This requirement is absent in the Jamaican legislation due to its limited scope and focus. Admittedly, mandating full disclosure of the information in updated Jamaican legislation would benefit both nursing home providers and consumers. It would provide a balanced approach to the provision of services. The providers would be provided with a clear guide as to their rights and

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<sup>19</sup> Regulation 2 of the Care Homes Regulations

<sup>20</sup> Regulation 4 of the Care Homes Regulations

<sup>21</sup> Regulation 5 of the Care Homes Regulations

responsibilities, likewise the consumers. In the sphere of competition law, the ability of consumers to make informed purchasing decisions enables good competition in a market.

34. Like the Jamaican legislation, the Regulations require that the person carrying on the care home is fit and proper. The person should be of integrity and good character and is physically and mentally fit to carry on the care home, among other requirements<sup>22</sup>. Regarding the person who manages the care home, they are also required to possess the aforementioned qualities. However, the Regulations also require that the registered manager has the necessary qualifications, skills, and experience necessary for managing the care home, considering the size of the care home, the statement of purpose, and the number and needs of the service users<sup>23</sup>. The Staff should also be fit to work in a care home and have the same qualities as the person who carries on the care home and manages it, as well as be physically and mentally fit for their required duties<sup>24</sup>.
35. Further, the Regulations speak to the need for premises for the care home to be suitable and appropriate for the needs of service users<sup>25</sup>. It is contended that this requirement is like the considerations that the CMO must consider before granting the registration of a nursing home. There is, however, a notable difference as the Regulations have extensive requirements concerning the fitness of the premise.
36. Of significance to note, the Care Homes Regulations require that the registered person of the care home establishes a complaint procedure. The complaint procedure should facilitate complaints from a service user or a person acting on their behalf. It is required, among other things, that any complaint made should be thoroughly investigated and within 28 days after the complaint has been made, inform the complainant of the action (if any) to be taken<sup>26</sup>. In contrast, neither the NHRA nor its Regulations have established how consumers complain about a nursing home. It is observed that the grounds on which the registration of a nursing home may be canceled, that is, if the CMO is dissatisfied with certain criteria, does not take specifically consider complaints.

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<sup>22</sup> Regulation 7 of the Care Homes Regulations

<sup>23</sup> Regulation 9 of the Care Homes Regulations

<sup>24</sup> Regulation 19 of the Care Homes Regulations

<sup>25</sup> Regulation 23 of the Care Homes Regulations

<sup>26</sup> Regulation 22 of the Care Homes Regulation

37. Regarding the care homes management, the Regulations speak to the review of the quality of care.

Regulation 12 states that:

- (1) “the registered person shall establish and maintain a system for –
  - (a) Reviewing at appropriate intervals; and
  - (b) Improving the quality of care provided at the care home, including the quality of nursing where nursing is provided at the care home.
  - (c) The registered person shall supply to the Commission a report regarding any review conducted by him for the purposes of paragraph (1) and make a copy available to service users.

Accordingly, the Regulations ensure that care homes continuously review the needs of their users and ultimately aim for the provision of better service to consumers.

38. Consequently, the NHRA requires an extensive overhaul to meet the current needs of consumers and to provide a well-balanced legislative framework that will guide the providers/operators of nursing homes.

39. Additionally, there was an examination of the market studies conducted in other jurisdictions. This was done to identify issues related to the nursing home sector and ascertain best practices and recommendations that may apply to Jamaica. In this regard, it was noted that in 2005, the Office of Fair Trading (‘OFT’) conducted a market study that examined how well the care homes market served the over 65 population in the UK. The study looked at the conditions for consumer choice, transparency of price information, price variation clauses, and redress. It was reported that information was lacking as it relates to moving into a home.

40. This is similar to the United States (‘US’) where Shugarman and Brown (2006) identified three major factors that influenced US consumers’ decision when selecting a care home: 1) the *decision problem* (e.g., number of choices and time available to make a decision); 2) the *decision-maker* (e.g., knowledge level and approach to seeking information); and 3) the *social context* in which the decision is made (e.g., short vs. long-stay and social norms around caring for older adults).

41. The major conclusions of the Shugarman and Brown (2006) study were that:

- (i) Consumers generally do not avail themselves of the multitude of information and resources available to them in the process of selecting a nursing facility. Even given the wide variety of

information sources available either in print, by phone, or on the Internet, many of the focus group participants perceived that the information they needed or wanted was not available to them when they needed it.

- (ii) In selecting a facility, consumers are most likely to rely on lists of facilities that provide general information such as location, supplemented by word of mouth, and more easily observed characteristics of the facility that reflect a sense of the quality of life.

42. Similarly, in the European market, the OFT identified the lack of a single clear reference point for persons to consult for information before moving into a care home as a critical issue of concern. The OFT recommended the following solutions to solve this issue: (i) the Local Authority care home directories list all care homes and services they offer in that area as well as the level of funding provided by the Authority; (ii) care home regulators publish online inspection reports of the standard of services in care homes; and (iii) government to provide a central information source for persons to get information about care for the elderly.

43. Another concern from the OFT's study was that of price transparency weaknesses. The OFT reported that one in ten care homes failed to provide basic price information. Contrastingly, in a secret shopper survey conducted on 1022 care homes in the UK by Allan (2018), it was revealed that 96.3% provided price details. In those cases where price information was not forthcoming, this was usually because it was stated that price would be dependent on an assessment of the potential resident.

44. The Laing Buisson's Care Homes for Older People, UK Market Report, shows the average weekly cost of a residential care home for an older person in the UK rose by 3% to £672 in 2019-20 or £34,944 a year. In July 2021, this translates to approximately JM\$141,000 per week (Peart 2021). Over in the USA, according to Genworth (2020), based on a Cost of Care Survey, a private room in a nursing home costs \$290 per day, or \$8,821 per month (JM\$1,323,150). Semi-private rooms are more affordable, though they average \$255 per day, or \$7,756 per month (JM\$1,163,400).

45. The OFT recommended that care homes provide written information on price before the elderly decide to move in. The OFT also recommended that the government amend the regulations to include the abovementioned requirement.

46. A further issue highlighted in the study was unfair contracts. The OFT found that some contracts had potentially unfair and unclear fee-related terms. Also, some contracts were found to be unnecessarily complex, thus making it difficult to assess rights and obligations under the contract. These nuances can have serious consequences for care home residents as the law takes legally binding contracts seriously.
47. In Ireland, the Competition and Consumer Protection Commission ('CCPC') also identified problematic terms in its review of contracts of care in nursing homes in 2019. The CCPC found that the language used in contracts was technical and essential information was often omitted. Similar to the OFT's review, the CCPC also reported that there were potentially unfair contract terms that older persons were subjected to. In responding to the findings, the CCPC published guidelines that set out the obligations and responsibilities that care home providers must adhere to under consumer protection law. The CCPC also released an information booklet for consumers aimed at improving their understanding of what they should expect in contracts of care.
48. The OFT addressed the concerns of the unfairness of terms and clarity of contracts by alerting care homes to its general guidance on Unfair Terms in Consumer Contracts ('UTCC'). The UTCC states that a consumer is not bound by a standard term in a contract with a seller or supplier if that term is unfair. A standard term is unfair if it creates a significant imbalance in the parties rights and obligations under the contract, to the detriment of the consumer, contrary to the requirement of good faith. Good faith simply requires businesses to deal fairly and openly with consumers. The OFT further indicated that it would take enforcement action against care homes where appropriate.
49. The final issue highlighted was that of complaints procedure and availability of redress for complainants. The OFT reported that data on complaints and outcomes were not readily available and recommended that care home regulators improve their collection and use of complaints data. Furthermore, the OFT recommended that regulators produce a document with practical information on redress avenue and that the document be made available to care home residents.

## **IV. ANALYSIS AND FINDINGS**

### **A. Registration and General Concerns**

50. One important factor that relatives/representatives may consider when selecting a nursing home for older relatives is the registration status of the facility. Under the NHRA, nursing homes are required to

register through the CMO with the MoHW. The registration of care homes is important because it gives clients and prospects the assurance that at least some minimum level of standards can be expected. To obtain a certificate of registration from the MoHW care homes must show the following:

- Approval following an inspection from the Fire Department;
- Approval from the local Municipal Corporation;
- Registration from the Companies Office of Jamaica;
- Approval following an inspection from the Public Health Department;
- Approval following an inspection from the MoHW.

51. The MoHW Inspects for:

- i. Staffing – care homes must be under the charge of a Registered Nurse (RN) or Medical Doctor (MD). RNs must be in the homes for at least 12 hours per week.
- ii. Approval from all the relevant departments and entities named above.

52. Registration, therefore, gives clients and prospects some confidence that the care home is safe for its residents, and relatives can be assured that their loved ones are not at any undue risk.

53. The MoHW outlines the following as the process by which a registration can be obtained:

- i. Complete application form, which may be obtained through the MoHW's website, which must include approval from the relevant departments; fit and proper owners and employees, and fit and proper premises.
- ii. Pay a biennial fee of JM\$5,000 for care homes with 25 beds or less; JM\$10,000 for care homes with more than 25 beds.

54. The MoHW does not have a specific timeline for advising applicants on the status of their application as a number of variables can impact the length of the process. However, the Nursing Homes Registration Committee meets every three months and recommends to the CMO whether an applicant should be granted the certificate of registration. Additionally, an application for registration may be approved pending the submission of documents from the other entities associated with the application process.

55. During the mystery shopper exercise, all the nursing homes indicated that they were registered with the MoHW; however, information from the MoHW showed that only six of the seventeen homes surveyed were registered. The MoHW indicated that they were aware that several nursing homes are unregistered, specifically of the approximately 220 nursing homes that are in operation in Jamaica, only 104 even bothered to submit applications for registration in since 2019. These registrations were

divided as follows: new registrations (43) and re-registrations (61). This means that only 45% of nursing homes in operation are registered or attempted to get registered. One reason cited for this statistic is that, according to the MoHW, several operators are of the impression that registration with the Companies Office of Jamaica was the sole requirement to operate.

56. The MoHW does not have the authority to close down facilities that are not registered. This is so as the NHRA does not empower the MoHW to close them. As a result, the MoHW's prerogative has been to bring these unregistered facilities into compliance with the legislation.
57. However, the MoHW may instigate proceedings against unregistered nursing home operators, and operators are liable to pay a fine if they are found guilty of operating an unregistered home. Additionally, the S&R Division, which is responsible for nursing homes and the monitoring and handling applications and complaints against private health facilities in Jamaica, often collaborates with other governmental agencies to carry out its function. One such agency is the Public Health Department that is also involved in the inspection of nursing homes. Notably, unlike the NHRA, the Public Health Act permits the Public Health Department to close a facility where it is found to breach that Act. However, the main objective of the MoHW is to facilitate compliance with the NHRA, as they are mindful of the shortage of facilities and the need to care for abandoned residents.
58. The Institutions and Facilities Unit in the S&R Division is responsible for monitoring and inspecting all nursing homes and other private health facilities in Jamaica. The Unit is understaffed with two persons assigned to carry out its functions. In addition, the Institutions and Facilities Unit has only one location – the MoHW's Head Office in St. Andrew.

## B. Availability of Information

### Nursing Homes

59. During the mystery shopper exercise, fifteen of the seventeen nursing homes readily provided information. Prior to providing the information, the representatives commonly asked about the condition of the prospective client concerning existing health conditions or any physical limitations.
60. Two of the seventeen nursing homes surveyed in the mystery shopper exercise indicated that information would be provided only after visiting the facility; these two nursing homes were unregistered. Of the seventeen nursing homes interviewed, all indicated that they were registered;



however, only six were registered according to checks with the MoHW. This finding of nursing homes providing inaccurate information on their registration status is concerning as registration status may be an important and deciding factor for potential clients.

61. Information with respect to services provided was also readily provided by the representatives. Services provided included three to five meals daily; activities such as devotion, nature walks, and reading; and games such as dominoes and bingo. The representatives indicated that their activities have been restricted due to the coronavirus pandemic.
62. As it relates to the staffing, nursing homes readily provided information when questioned. For all nursing homes, the staff consisted primarily of practical nurses, with registered nurses reporting to the facility one to three times weekly. In addition, one facility indicated that it employed geriatric nurses, and two facilities reported that they had enrolled nursing assistants on staff.
63. As it relates to the provision of contracts, none of the nursing homes surveyed were willing to provide a sample of the contract before enrolling in the nursing home. Access to the contracts would assist consumers in identifying and be aware of any undesirable contractual terms.

#### The Regulator

64. The MoHW reported that it maintains a list of registered care homes, which it publishes on its website after every update as well as in the Gazette. The list on the website as at March 2021 is from 2019, which shows 16 registered nursing homes. As at July 2021, however, the MoHW reported that 104 facilities submitted applications for registration as nursing homes. The number of these homes that will meet the requirements for registration is not yet known. However in the year 2020, thirty-four (34) nursing homes were registered. This signifies 112.5% increase in the number of registered nursing homes over the period 2019 to 2020.
65. The significant increase in the number of registered nursing homes may result from increased demand for nursing home facilities and/or added scrutiny placed on nursing home facilities due to the Covid-19 pandemic. Of note, the MoHW also reported that almost 220 nursing homes were operating in Jamaica, more than double the number of nursing homes that applied for registration.
66. Despite the increase in the number of registered nursing homes, there is still a lack of information available from the MoHW's website regarding the updated list as at July 2021. Consumers can access this information only by directly contacting the MoHW. A timely updating of the Gazette list and other

public displays of the registered list of nursing homes will significantly assist consumers in making informed choices when selecting nursing homes.

67. In addition to visiting the website of the MoHW or calling them, the registration status of individual nursing homes can be ascertained from the respective nursing home's premises. At the premises of the nursing homes, the NHRA mandates that the registration certificates be displayed in a conspicuous location; failure to do so is an offence under the Act.

### C. Complaints and Complaints Procedure

68. When questioned about common complaints from residents and their representatives, fourteen of the fifteen nursing homes indicated they did not receive any complaints. One nursing home operator stated that the complaints that it received were primarily superficial. This is in line with the number of complaints received by S&R.
69. During the period 2019 – 2020, the MoHW recorded just four (4) complaints directly from nursing home clients regarding nursing homes. The complaints were primarily centered on negligence, ill-treatment, and overcrowding in the facilities. The S&R division has an Investigation and Enforcement Branch that deals with complaints from public health facilities. The complaints may be routed to the Institutions and Facilities Unit, which has responsibility for monitoring and inspecting the nursing homes. The MoHW generally conducts an investigation, and if a breach is confirmed, the facilities are sanctioned with a warning letter. If the matter persists, then further actions are taken as deemed necessary. Options available to the MoHW are that of a fine and or imprisonment. Litigation is done through the MoHW's legal unit, which makes representation to the Attorney General.
70. The finding of a low number of complaints filed in nursing homes is similar to the results obtained from the OFT in its study on care homes in the UK. Based on a survey of residents in care homes and complaints data from regulators, it was reported that overall satisfaction with care homes was high (OFT 2005). Alternatively, the OFT reported that consultations with consumer groups and charities raised the issue that the true situation may be masked as persons were unwilling or unable to complain. The OFT (2005) identified three reasons for reluctance to complain: (i) low awareness of rights and complaints procedure; (ii) lack of support for making a complaint; and (iii) fear of repercussions.

71. Regarding access to making complaints, the nursing homes indicated that complaints about services or treatment may be lodged with the senior nurse/ supervisor and/or owner of the facility. Two homes indicated that they have a complaints book for recording such matters. One facility indicated that when representatives of clients lodge complaints, the matter is brought to the attention of the Board for investigation. There was no mention of clients being able to make complaints to the MoHW.
72. Furthermore, there is no publicly available information to inform the public that the MoHW is the body to complain to when they have grievances with nursing homes. The MoHW indicated that the public generally contacts the Public Health Department, who then directs the complaints to the MoHW. The MoHW also stated that they received complaints directly via walk-ins and phone calls.

#### D. Price Transparency

73. Price is usually one factor under consideration for consumers who shop around for services, along with product variety and quality of service. The approach taken by two nursing homes of refusing to provide information over the telephone or providing partial information increases search costs for consumers, as consumers will have to expend time and financial resources to visit the facilities. In particular, one of the nursing homes is located in St. James and the other in Manchester. One nursing home was unwavering in its refusal to provide information on its prices. None of the seventeen care homes surveyed had any information relating to pricing on their social media pages (Facebook or Instagram) or websites. In fact, only three of the seventeen care homes had a website. Seven of the seventeen care homes had social media pages, of which only six were active.
74. The refusal to give full pricing information or provide pricing information on websites or social media pages puts customers at a disadvantage as they would be unable to compare that nursing home with others prior to visiting. Consumers would also be faced with a reduction in the number of facilities to choose from. Once settled in a care home, it is very difficult for residents to switch to avoid undesirable conditions, as moving to a different home can adversely impact on the residents' health.
75. The monthly fee for accommodating the model patient by the nursing homes surveyed ranged from a low of \$50,000 to a high of \$150,000, with fourteen nursing homes indicating that it would charge a higher rate if the client was unable to perform specific tasks independently or had restricted mobility. In addition, one nursing home indicated that before providing any basic information such as fees and services provided, the potential client must arrange to visit and view the facility.

76. For one facility, after providing information on its fee and services, the representative then requested that the caller visit the facility before any further information is provided.
77. This stands in direct contrast to the OFT's recommendation that nursing homes provide written information to its prospects prior to the elderly deciding to move in. The OFT also recommended that the government amend the regulations to include this requirement.

#### Refund Policy

78. When questioned about the refund policy of the facility as well as the existence of a contract outlining the terms of the services provided, six of the representatives advised the FTC to contact the owner of the facility; and provided the necessary contact details. This suggests that the representatives were either not fully aware of their employers' policy or were directed by their employers not to disclose the information. Therefore, information on refund policy and terms of service was not readily available at the first point of contact.
79. A total of twelve facilities indicated that they had a stated refund policy, while two facilities indicated that they did not have a refund policy in place.
80. Regarding providing clients and their representatives with a contract outlining the terms of services provided, thirteen facilities indicated clients were provided with contracts. One nursing home indicated that it did not generally provide contracts; however, a contract can be provided if requested.

## **V. SUMMARY AND CONCLUSION**

81. Choosing a nursing home is often an extremely difficult decision for people to make at a point in their lives when they are particularly vulnerable. The study has identified several challenges to ascertaining the information needed to make the best possible decision. Several inherent barriers existed, which means that people are not able to make well-informed decisions. The mystery shopper exercise highlighted an unwillingness of nursing home operators to provide pertinent information to prospective customers over the phone. Such information was not available on nursing homes' websites or their social media pages.
82. Furthermore, operators misrepresented their registration status with the MoHW. For example, all 17 care homes interviewed indicated that they were registered; however, only six were registered according to checks with the MoHW, and two failed to provide any information on their registration

status.

83. Prior to enrolling in a nursing home, persons may not understand the care system and the options they have at their disposal. While the information and guidance may be available, accessing it is difficult as the information is not readily available. For instance, persons may not know where to obtain information, and search costs are increased by operators insisting that a physical visit must be done. Further, providers often do not provide people with the key information to make well-informed choices, such as fee levels, upfront charges, contractual terms, and refund policies.
84. The study also identified an apparent lack of resources at the MoHW to handle matters relating to nursing homes. The Institutions and Facilities Unit lacks vital resources to adequately handle all its responsibilities. The Unit is understaffed with only two members to serve the entire island and therefore struggles to execute its mandate. It must also be noted that the Unit also has other facilities that it serves, including dialysis centres and private health facilities; the Unit operates from a single location in Kingston. In addition, the Unit also is responsible for monitoring the situation of abandoned nursinghome residents when determining if a nursing home can be recommended for closure.
85. For the public to gauge affordability and compare different nursing homes, they need to know the cost of providing care. However, such information is not readily available from all the operators. For instance, for those who have websites and/or social media, there is no information about the cost of the service provided. Prospective customers would have to attend the nursing homes to obtain information, which may not be affordable.
86. Consequently, the NHRA addresses some matters; however, the scope of the legislation needs to be broadened. For example, the NHRA focuses solely on registration matters and fails to address matters concerning the operation of the nursing home, quality of services, or consumer rights and needs including but not limited to access to information.
87. Finally, the NHRA requires an extensive overhaul to meet the current needs of consumers and to provide a well-balanced legislative framework that will guide the providers/operators of nursing homes.

## VI. RECOMMENDATIONS

The functioning of the nursing homes sector as it relates to consumers' needs and choices could be improved by addressing several areas:

### A. Providing resources to the Standards and Regulations Division of the MoHW

- i. Provide adequate staffing – The Institutions and Facilities Unit of the S&R Division has two persons on Staff who handle registration, monitoring and inspecting Nursing Homes as well as other public facilities that are located across Jamaica. Recruiting additional suitable staff should improve the Division's effectiveness.
- ii. Establish satellite locations – The S&R Division is located only in St. Andrew. Satellite locations should be set up to handle Nursing Homes located across other parishes.

### B. Make information more readily available regarding the complaints procedure and redress system (MoHW)

- i. Provide the public with good quality, relevant and timely support when they are making life-changing decisions about care;
- ii. Assist the public to quickly and easily identify the relevant, local care options; and
- iii. Empower nursing home residents by ensuring that they understand the feedback and complaints and redress systems available to them if they are unhappy with the care they are receiving.

### C. Make it mandatory to provide information upon request (Operators)

- i. Develop and make mandatory standards for providing information on nursing homes by including the standards in legislation such as the NHRA. The NHRA presently does not address matters concerning the operation of nursing homes, quality of services, contractual requirements, or consumer rights and needs.
- ii. Consumer rights and needs include having fair, easy-to-understand contractual terms; a sound complaints and redress system where responsibilities of all parties are specified; and access to information through various channels. For example, standards should be published on nursing homes' websites to support the development of online comparison services and make it easier for people to compare care providers.

**D. Make necessary amendments to the NHRA to regulate and ensure that agencies and providers are competent in their duty of care.**

- i. Expand the NHRA to go beyond the registration of care homes and to also focus on consumer rights and needs.
- ii. Establishment of a system of national standards for services along with a Commission for social care inspection whose primary aim is to promote improvements in care.
- iii. NHRA should not only ensure that the person(s) involved in the operation of a care home are fit and proper but they should also require that the registered manager has the necessary qualifications, skills, and experience necessary for managing the care home, considering the size of the care home, the statement of purpose, and the number and needs of the service user. The staff should also be fit to work in a care home and have the same qualities as the person who carries on the care home and manages it, as well as be physically and mentally fit for their required duties.
- iv. Mandate that consumers are provided with access to information regarding the care home.

There are several benefits from these recommendations, including (a) helping persons make better and more informed choices; (b) helping persons to potentially live independently for longer; (c) reducing the stress associated with going into a nursing home; (d) placing greater competitive pressure on providers thereby improving the quality of service available across all nursing homes.

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