

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

Senate Standing Committee on Community Affairs Legislation Committee

Inquiry into the Aged Care Bill 2024 (Provisions)

03 October 2024

PDR Number: IQ24-000148

Corporate structuring within the in-home aged care sector and regulations

Written

Senator: Marielle Smith

Question:

Is the department aware of corporate structuring that is already occurring within the in-home aged care sector to avoid regulations? How does the bill address the risk of providers using corporate restructuring to avoid regulatory oversight and accountability

Answer:

Under the *Aged Care Act 1997* (Act), an entity must become an approved provider to receive the government subsidy to deliver services through the Home Care Packages Program. Approved providers must be constitutional corporations, and changes to corporate structures would need to be within that entity type. Approved providers must notify the Aged Care Quality and Safety Commission if there is a change of circumstances that materially affects its suitability to provide aged care. A material change includes organisation-wide changes, for example a change in incorporation type, or a change in the way an organisation operates, for example changes to the organisation's business model.

Providers for the Commonwealth Home Support Programme (CHSP) are funded through grant agreements. CHSP providers do not need to be approved providers and do not need to meet the requirements mentioned above.

Under the Aged Care Bill 2024 (Bill), there will be a single registration for all providers delivering Commonwealth funded aged care services, including CHSP. This new approach will be supported by six registration categories that group provider services based on similar types of care, complexity, and risk. This allows for regulation to be proportionate.

In addition, the definition of 'entity' in the Bill expands entity eligibility to be registered from constitutional corporations under the current Act to non-corporations. An entity seeking registration must have an Australian Business Number (ABN) and demonstrate their suitability to deliver Commonwealth funded aged care, which may include providing information about the corporate structure and business model.

Once registered, a registered provider will need to maintain their suitability as they will need to undergo a renewal process before the end of the registration period to remain in the aged care sector. In addition, the Bill continues the expectation that providers notify the Aged Care Quality and Safety Commission of changes to their organisational structure through the change of circumstances notification obligation. Notifications about changes in circumstances will apply to all registered providers.

An organisation may choose for various business reasons to maintain multiple provider registrations. This approach may limit the benefits of maintaining a single registered provider record. It would also mean multiple renewal of registration processes and costs, as well as reporting and notification requirement required of each registered provider.

To support the transition, existing providers will be deemed as registered based on the aged care programs they deliver. This process will capture where providers have changed their organisation in current state and ensure they are appropriately regulated in the future.

The Bill also includes a definition of associated provider to cover subcontractors. Any conduct of an associated provider under an agreement with a registered provider to deliver funded aged care services is taken to be conduct of the registered provider. This means that registered providers are always accountable for the services that are delivered, and they cannot contract out of their obligations.