NURSING HOMES AND HOSTELS LEGISLATION AMENDMENT BILL 1986

Date introduced: 15 October 1986
House: House of Representatives
Presented by: Hon. Brian Howe, M.P.,
Minister for Social Security

DIGEST OF BILL

Purpose

To increase capital funding for residential care for the aged; to increase the level of hostel, respite and personal care subsidies; to introduce new growth control measures for new nursing homes and nursing home beds in existing nursing homes; and to introduce a mechanism to enable the provision of special needs beds.

Background

The 1945 referendum gave the Commonwealth power to legislate for health benefits, including nursing home benefits, but did not authorise all legislation regarding health and welfare matters. Traditionally, the Commonwealth has made assistance available through section 96 of the Constitution which authorises the granting of financial assistance to the States. As a result, the Commonwealth has provided financial assistance while the States have been responsible for the control, supervision, regulation and licensing of home and community care facilities and services.

Commonwealth legislative action in this area has generally been concerned with the establishment and running of institutional care. One of the first initiatives was the passage of the Aged Persons Home Act 1954. Under this Act assistance was provided on a dollar for dollar basis to religious and charitable organisations for the capital costs of building homes for the aged. The Act aimed to provide assistance to those without family ties rather than to encourage people into institutions. The next initiative was the Home Nursing Subsidy Scheme which commenced operating in 1957 under the Home Nursing Subsidy Act 1956. The scheme

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provided assistance to home nursing organisations to care for people in their own homes. However, the scheme was not intended to be a long term alternative to institutional care. The House of Representatives Standing Committee on Expenditure has stated: “The subsidy arose mainly because of the shortage of hospital beds and the consequent need for adequate, properly equipped home nursing”.[1]

The concentration on institutional care became clear in the 1960s and 1970s. A nursing home benefit, based on bed occupancy, was introduced in 1963. It encouraged a belief among certain investors that nursing homes were low risk, high profit financial ventures'.[2] Indeed, the number of nursing home beds grew by 48 per cent in the following 5 years with most of the growth in private, profit making institutions. Further assistance to nursing homes was made available in 1966 when the capital cost subsidies available under the Aged Persons Homes Act 1954 was extended to nursing homes, provided that they made a certain number of residential beds available.

The method of financing nursing homes proved to be a disincentive to the expansion of home and community based nursing care. Whereas the Commonwealth funded nursing homes, other than State nursing homes, the States were required to provide home nursing services. As a result, there was an incentive for the States to authorise new private nursing homes which would be paid for by the Commonwealth, rather than provide home care at their own cost. For example, in 1979-80 the States spent $35 million on institutional care while the Commonwealth outlayed $314 million in the same period for the same purpose.[3]

A number of Acts were passed in 1969 dealing with the care of the aged and frail. One of these Acts, the States Grants (Nursing Homes) Act, continued the incentive towards institutional care by providing the States with a dollar for dollar subsidy for State nursing homes. However, two other Acts provided assistance for home care. Under the States Grants (Home Care) Act, the Commonwealth provides a dollar for dollar subsidy for the provision of homekeeping or other in-home domestic assistance to aged persons.

In both of the home care Acts, the States are required to contribute a proportion of the expenditure on home care. Consequently, the incentive remains for the States to rely on Commonwealth funded nursing homes. Further assistance for home care came with the passage of the Delivered Meals Subsidy Act in 1970. The Act provided
assistance towards the provision of meals to the aged or invalids in their homes. However, the subsidy covers only the cost of the meal, and other associated costs, such as transport, are excluded.

A major attempt to make home care a viable alternative to institutional care occurred in 1972 when the National Health Act 1953 was amended. The amendments placed controls on admissions to, and the growth of, nursing homes. As well, a Domiciliary Nursing Care Benefit (DNCB) was introduced for people providing care to a relative over 65 years whose condition would otherwise warrant admission to a nursing home. When introduced, the DNCB benefit was $14 per week or 40 per cent of the Commonwealth nursing home benefit in NSW. However, the DNCB has lost this relativity and in 1985 was less than 10% of the total Commonwealth nursing home benefit in NSW.

Developments in recent years have mainly centred on the Acts described above which have had minor amendments to alter the rate of assistance or the eligibility criteria. As a result, institutional care in nursing homes has remained the major form of care for the aged and infirm and consumes the majority of Commonwealth funds spent on this area. For example, in 1984-85 payments to nursing homes totalled $940.6 million while grants under the States Grants (Home Care) Act 1969 totalled $42.7 million and the DNCB scheme cost $26.4 million.[4] Against this background, under the Home and Community Care Act 1985, the Commonwealth, in conjunction with the States, is developing a comprehensive range of integrated home and community care services for frail or at risk aged people and younger disabled people to help them to continue to live in their own homes. Funding is cost-shared with the States above an indexed base level of expenditure. In the 1986-87 Budget, the Commonwealth has provided $131.9 million, an increase of $31 million over 1985-86, covering the full year effect of expansion of services in 1985-86 and establishment of new services in 1986-87.[5]

In July 1985, the Minister for Community Services established the Nursing Homes and Hostels Review to report on a future strategy for the development of nursing homes and hostels. The Review concentrated on developing policies for aged persons, who account for about 95% of nursing home beds and most hostel places.

The Report of the Review, which was tabled in the Senate on 14 April 1986, contained a number of
recommendations covering assessment and rehabilitation procedures, program structure, growth control, the need for innovation and flexibility, standards, and funding.

In his Statement on the Care of Aged People, delivered in the Senate on 17 September 1986, the Minister for Community Services announced that the Government's central objective in the Budget was "to begin the process of redistributing resources for care of the aged away from nursing homes to alternative forms of residential care and to community care in order to increase the range of aged care services and to achieve improved quality of care arrangements". The Minister said that in response to the Report, the Government had consulted with State Governments and a wide range of interested groups. A number of matters had been raised in this consultation process including the requirement for flexible planning, which provides for monitoring, evaluation and changes where necessary, including more integration with community services, and a publicised and better resourced hostel sector so that hostels can care for increasingly dependent aged people.

Accordingly, as part of the Budget process, the Government has made the following decisions:

. to develop a planning strategy of maintaining growth in new services on the basis of the current national ratio of 100 residential care places per 1000 people aged 70 or over, and within this national ratio to limit the rate of growth of numbers of new nursing home beds to a maximum of 10% of new approvals. Within this strategy, the Government will allow for the provision of beds for special needs groups such as Aboriginals, ethnic communities and the aged disabled, including the deaf and blind aged. The strategy is consistent with the Government's overall aim of reducing reliance on nursing homes and encouraging more appropriate levels of care including Home and Community Care. In the Minister's Second Reading Speech, it is estimated that this will result in savings of $4 million in 1986-87 and $27.7 million in 1987-88.

. to increase capital funding for residential care for the aged by $13.5 million in 1986-87, providing the basis for significant expansion of hostel accommodation. Up to 100% funding will be provided for financially disadvantaged groups, including Aboriginals and ethnic communities. This measure is estimated by the Minister in the Second Reading Speech to cost $500 000 in 1986-87 and $2.8 million in 1987-88.
to increase and automatically index the hostel care subsidy, respite care subsidy and personal care subsidy with effect from November each year, beginning in November this year; and to additionally increase the value of the personal care subsidy from May next year to assist the hostel industry to provide more adequate levels of personal care for dependent elderly people. In his Statement on the Care of Aged People, the Minister estimated that these measures will cost $5.6 million in 1986-87 and $24.7 million in 1987-88.[8]

This Bill will implement these decisions by amending the following Acts:

- Aged or Disabled Persons Homes Act 1954
- National Health Act 1953
- Nursing Homes Assistance Act 1974
- Health Legislation Amendment Act (No. 2) 1983

Main Provisions

For a detailed analysis of the clauses of the Bill refer to the Explanatory Memorandum.

Amendments to the Aged or Disabled Persons Homes Act 1954

Sub-section 9(1) of this Act fixes the maximum amount of a capital grant that may be made to an eligible organisation to assist in meeting the capital cost of a home for the aged or disabled at 80% of the capital cost of the home. Clause 4(a) will provide for a grant of up to 100% for a home intended to accommodate financially disadvantaged persons. Classes of financially disadvantaged people will be determined by the Secretary of the Department of Community Services.

Clause 5 will amend section 10C of this Act to increase the rates of subsidy payable to people requiring hostel care (increased from $1.80 to $1.95 per day); personal care (increased from $7.80 to $8.40 per day); and respite care (increased from $7 to $7.50 per day) and to allow higher rates to be fixed by regulations (paragraph 5(1)(a)). Paragraph 5(1)(b) will provide that regulations may prescribe a method of calculating a rate of subsidy.
Amendments to the National Health Act 1953

Clause 8 will insert a new section 39AA into the National Health Act 1953 (the Principal Act) which will provide a new mechanism for regulating the number of nursing home beds. It will enable the Minister to specify the maximum State (or Territory), regional and special needs bed numbers which can exist at any time during a financial year. The sum total of regional and special needs beds may not exceed the relevant State maximum. The Minister will be prevented from granting approval for a new nursing home or bed unless it is consistent with the State, regional or special needs quota in force. New sub-sections 39AA(6) to (11) provide mechanisms for calculating the number of approved beds at a particular time for State, or region, or special needs groups.

Clause 9 will insert new sub-sections 39A(4A) and (4B) into the Principal Act which will provide a mechanism for the Minister to approve, revoke or vary the number of special needs beds upon application by the proprietor or proposed proprietor of a nursing home.

Section 40AA of the Principal Act provides the mechanism for the approval of premises as a nursing home. Paragraph 10(c) will make Government nursing homes subject to the same conditions of approval that apply to other nursing homes including the new growth provisions contained in clause 8. However, paragraphs 10(e) and (f) will ensure that Government nursing homes are not made subject to the conditions.

Clause 13 will amend section 40AD of the Principal Act by inserting new sub-sections to enable the Minister to: alter the conditions applicable to a nursing home (proposed sub-section 40AD(1AB)); determine beds as special needs beds (proposed sub-section 40AD(1AC)); and revoke or vary a determination made under proposed sub-section 40AD(1AC) (proposed sub-section 40AD(1AD)).

Clause 19 will amend section 105AAB of the Principal Act to withdraw from the jurisdiction of the Administrative Appeals Tribunal all proposed provisions which contain the new growth control arrangements.

Clause 23 will preserve the operation of the current Act in relation to applications for review by the Administrative Appeals Tribunal made before the commencement of this Bill.
Amendments to the **Nursing Homes Assistance Act 1974**

Clause 26 will insert a new section 3AA into this Act which will provide that sections 3A, 4 and 9 of the Act have effect subject to the growth control mechanism in the proposed section 39AA of the **National Health Act 1953**.

Clause 27 will amend section 3A of the Act, which provides the mechanism for approval in principle of new nursing homes and new nursing home beds, to reflect the proposed amendments of the **National Health Act 1953**.

Clauses 32 and 39 will amend this Act in relation to appeals to the Administrative Appeals Tribunal in the same manner as clauses 19 and 23.

For further information, if required, contact the Education and Welfare Group.

10 November 1986

Bills Digest Service

LEGISLATIVE RESEARCH SERVICE
References

1. "In a Home or at Home: Accommodation and Home Care for the Aged". House of Representatives Standing Committee on Expenditure Report, October 1982, p.12.
2. Ibid., p.13.
3. Ibid., p.52.
4. 1985-86 Budget Paper No. 6, pp.38 and 40.
5. 1986-87 Budget Paper No. 1, pp.139-140.
7. Ibid., p.491.
8. Ibid.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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