Digest of Bill

Purpose
To introduce a standardised 'fees and benefits' system for nursing homes and to provide a mechanism for establishing standards of nursing home care.

Background
The 1945 referendum gave the Commonwealth limited legislative power over health benefits, including nursing home benefits. The Commonwealth has traditionally exercised this power by providing grants of financial assistance to the States under section 96 of the Constitution. The States retain responsibility for the control, supervision, regulation and licensing of home and community care facilities and services.

Commonwealth participation in residential care for the aged began with the enactment of the Aged Persons Home Act 1954 (subsequently, the Aged and Disabled Persons Homes Act 1974). Under this Act, assistance was granted for charitable and religious bodies to provide homes for the aged. The introduction of a nursing home subsidy of $2 per day in 1963, capital subsidy towards the cost of nursing homes in 1966, and an additional benefit of $3 per day for residents requiring 'intensive' care in 1966 continued the focus of policy on institutional care. During this period there was a 48% growth in the number of nursing home beds and by 1972, the cost to the Commonwealth of providing assistance for residential care was increasing rapidly. Nursing home fees 'were often considered to be excessive', placing a considerable financial burden on residents and their families.

In 1973, the Commonwealth introduced a series of administrative procedures to regulate the number of nursing home beds, control the level of fees and prevent unnecessary admissions to nursing homes. The procedures were of limited effect in what was already an administratively complex program.

A number of major reports in the 1980s have addressed the issue of care for the aged, culminating in the Report of the Nursing Homes and Hostels Review 1986. The Report contained recommendations covering assessment and rehabilitation procedures, program structure, growth control, the need for innovation and flexibility, standards and funding.

The Review based its recommended program strategy on the principle of flexible response to individual needs, requiring a shift of focus from nursing homes to
alternative hostel and community-based care. The Nursing Homes and Hostels Legislation Amendment Act 1986 marked the first stage in the Government's response to the Review by providing the basis for expansion in hostel accommodation.

Under the present fees control system, the Commonwealth pays a benefit which is determined by the daily fees charged by individual nursing homes. These are approved by the Commonwealth on the basis of allowable costs plus a profit component. The Review pointed to a number of problems with this system which had been identified in previous reports. In particular, it emphasised the significant differences in costs between States. This has resulted in the payment of different benefits which in turn produce inequities between residents of nursing homes. In addition, the system does not differentiate between the cost of ordinary and extensive care. The Review argued that payment of a benefit based on cost reimbursement failed to provide any incentive towards efficiency in the management of a nursing home. It recommended a standardised system of fees and benefits which has been adopted by the Government for implementation by this Bill. The new system is designed to overcome the present inequities by tying the payment of benefits to provision of an approved standard of care instead of to costs.

Main Provisions
Amendments of the National Health Act 1953 (the Act)

Clause 4 will insert a definition of 'transferred home' into section 4 of the Principal Act. Generally, this will be a nursing home to which approval has been transferred, under the Nursing Homes Assistance Act 1974 (Nursing Homes Act), from another nursing home conducted by the same proprietor.

Section 39AA of the Act sets out the arrangements for controlling the number of nursing home beds. Clause 7 will amend the section so that nursing homes for disabled people under the Nursing Homes Act will be excluded from these arrangements. When setting bed numbers, beds that have been approved for nursing homes for disabled people under the Act will be discounted (proposed sub-section 39AA(12)).

Section 39A of the Act enables the Minister to grant certificates giving approval in principle for new nursing homes and increases in bed numbers in existing nursing homes. Clause 8 will allow a certificate to specify that the approval is for a nursing home for disabled people (proposed paragraph 39A(2)(c) which will be substituted into the Act). The Minister will be able to grant a certificate approving in principle the demolition of an approved nursing home and the reconstruction of a new nursing home on the same site. The certificate is to specify the number of beds (proposed sub-section 39A(2A)) which may include beds for special needs groups (proposed sub-section 39A(4A) which will be substituted into the Act).

Section 40AA of the Act provides for premises to be approved as nursing homes. Clause 9 will enable the Minister to approve premises as nursing homes for disabled people (proposed sub-section 40AA(2A)) and rationalise admission procedures. It will be a condition of approval that the proprietor does not charge a fee or solicit any contribution or financial assistance for a person's admission, except as specified (proposed paragraph 40AA(6)(cd) which will be substituted into the Act).

Sub-section 40AB(3) of the Act requires the Minister to be satisfied that a patient requires nursing home care before approving admission. Clause 11 will enable the Minister to declare that people are no longer approved nursing home patients where satisfied that their state of health no longer requires nursing home care and that they
would be more suitably provided for in other available accommodation (proposed section 40AC).

Clause 14 will introduce new financial arrangements to apply to currently approved nursing homes and to transferred homes but not to Government nursing homes or nursing homes for disabled people. Approved nursing homes will be divided into 2 classes:

'class 1' will be a nursing home that is
  - approved before 1 July 1987 under this Act;
  - approved on or after 1 July 1987 under this Act or the Nursing Homes Act by certificate issued before 1 April 1987 giving approval in principle to a new nursing home; or by certificate issued on or after 1 July 1987 transferring approval from one home to another conducted by the same proprietor, where the application was made before 1 July 1987; or
  - transferred on 1 July 1987 under this Bill.

'class 2' will be any other approved nursing home.

The Secretary will be required to determine the standard ordinary care fee (SOCF) for each approved nursing home for a financial year (proposed sub-section 40AG(2)), and will take this into account when setting a scale of fees for an approved nursing home, in accordance with principles formulated by the Minister (proposed sub-section 40AG(4)). Proposed sub-sections 40AG(5) and (6) contain the formulas for calculating the SOCF for class 1 and class 2 nursing homes. These will depend on:-

- the annual infrastructure allowance (to be calculated according to the formula contained in proposed sub-section 40AG(8));
- the annual nursing and personal care cost;
- the estimated amount of extensive care benefit that will be payable to the proprietor;
- the estimated daily average number of beds multiplied by 365 or 366 days, depending on when the home was approved;
- the number of days in the financial year to which the determination applies, multiplied by the estimated daily average bed number;

all of which will be determined in accordance with principles formulated by the Minister (proposed sub-section 40AG(7)); and

- the standard infrastructure allowance per occupied bed per day which will be $27.65 or such higher amount as is determined by the Minister (proposed section 40AH).

When premises have been approved as a nursing home, the Minister is to issue a certificate to the proprietor (clause 15 which will substitute a new sub-section 41(1) into the Act).

Clause 16 will allow the Minister to determine standards to be observed in the provision of nursing home care in approved nursing homes (proposed section 45D) and to take action against proprietors for non-compliance (proposed section 45E).

Clauses 17 will ensure that the Commonwealth benefit for nursing home care is only payable to proprietors of approved nursing homes for patients whose admission has been approved. Clause 19 will insert a new section 48A into the Principal Act to provide for the payment of the Commonwealth benefit to the proprietor of a transferred home for approved nursing or repatriation home patients.
Section 49 of the Act provides for the payment of extensive nursing care benefit for qualified nursing home patients in approved nursing homes. Clause 20 will extend the provision for payment of the benefit to repatriation nursing home patients in transferred homes (proposed section 49 which will be substituted into the Act).

Amendments of the Nursing Homes Assistance Act 1974 (the Act)

Clause 35 will amend the long title of the Act to make it clear that it will only apply to disabled people who are under 70.

Section 3AA provides that nursing homes under the Act are subject to growth control arrangements under the National Health Act 1953. Clause 37 will repeal the section.

Amendments of the Aged or Disabled Persons Homes Act 1954 (the Act)

Section 9 of the Act provides for the payment of a capital grant for an approved home. The amount of the grant is calculated as a percentage of the capital cost of the home, taking into account the value of land based on the purchase price, or four times the value of the funds available for expenditure toward the capital cost of the home, whichever is lower. Clauses 43 and 44 will enable land that has been acquired through donation to be taken into account and will alter the basis for calculation to the market value of the property at the time of calculation or the time of acquisition, whichever is higher.

References


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

26 May 1987

Bills Digest Service
Legislative Research Service

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

© Commonwealth of Australia 1987

 Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.
This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Commonwealth of Australia 1987

Except to the extent of the uses permitted under the Copyright Act 1968, no part of this publication may be reproduced or transmitted in any form or by any means, including information storage and retrieval system, without the prior written consent of the Department of the Parliamentary Library. Reproduction is permitted by Members of the Parliament of the Commonwealth in the course of their official duties.