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22 April 2013

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Aged Care (Living Longer Living Better) and associated Bills 2013

About Embracia

Embracia is a family company providing quality care for the aged in our nursing homes and providing excellent lifestyle choices for retirement living in our retirement villages with aged care homes on-site. We have nursing homes in both Melbourne and the Sunshine Coast, and retirement villages on the Sunshine Coast, Queensland. Our nursing homes are a more fulfilling, people-focused alternative to traditional aged care. Our name Embracia is all about people, family and community.

Peter and Dawn MacKenzie founded Embracia over 20 years ago with the driving passion to make a difference to the lives of people in need of support. Through big ideas, hard work and commitment of family and staff, the business has firmly established a reputation for quality and innovation, and become an active advocate for the best outcomes for our elderly in aged care homes and retirement villages.

From simple beginnings in small residential aged care the Group now operates six residential aged care homes in Victoria and three residential aged care homes in Queensland, totalling 804 aged care beds across nine aged care homes, employs 1,000 staff and has diversified into retirement villages built adjacent to two of the nursing homes in Queensland's Moreton Bay/Sunshine Coast region.

General Commentary

Embracia has commented extensively on the proposed Living Longer, Living Better aged care reforms since their announcement in April 2012. We have done so because we are concerned that we remain able to respond to the needs and wishes of our aged care clientele into the future. For that to happen, the aged care regime needs to be affordable for our clients and viable for providers such as us.

In respect of the legislative base for aged care, we concur with the concept of the Act describing the broad framework and important safeguards while the Principles and Ministerial Determinations deal with detail that changes regularly. It remains important though to ensure that appropriate scrutiny of proposed changes both now and into the future will still occur. For that reason we encourage minimal use of Ministerial Determinations in areas that actually determine the structure of the aged care system.

Removing the High Care vs Low Care Distinction at Admission

Embracia is supportive of the removal of the distinction between high and low care to provide greater choice and ensure funding is based on assessed care needs. We have considered for a long time

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that the distinction between low care and high care is artificial and a relic of past regimes but we believe that the changes to give effect to the goal need to be very carefully delivered to avoid adverse outcomes.

In the course of an assessment of eligibility for Government-subsidised aged care, that assessment considers what assistance a person may need and, in the case of residential care, is therefore charged with determining whether a person has needs that would attract the subsidies paid to an aged care home. As well as being a support to the person in need as a referral source, the assessment is therefore also a “gatekeeper’, the arbiter of who the Government should spend taxpayer subsidies on and who they should not.

In the aged care system, it is quite appropriate that a person should receive the support services that the person is assessed as needing as those services should be funded accordingly – regardless of any artificial distinction between high care and low care. High care and low care are concepts totally dependent on the assessment of resident need under the instruments used to determine funding levels as prepared by the aged care homes themselves. The concepts have for some time now not been independent of funding – rather they are all about the funding.

Embracia emphasises however, that the removal of a distinction between high care and low care does not make every person “high care”, just as it does not make every person “low care”. Industrial implications could potentially arise from this change as in some jurisdictions the label of “high care” implies a need for nursing and the label “low care” has implied the contrary. Some might seek to use the removal of the distinction to imply that all people now need nursing – just as others might now seek to use the removal to imply the opposite.

The reality, as is usually the case, will lie somewhere in between. In Embracia’s experience, a nurse should be provided (both by the funding and by the provider) where an aged care resident requires a nurse to do something for that person. If this is to be done properly, the issue is not the label, but the person’s need.

Removing the High Care vs Low Care Distinction – Respite Care

Embracia sees potential for problems in the implementation of the policy to remove the High Care/Low Care distinction in respect of approvals for Respite Care. The effect of the distinction in the case of respite care is very significant indeed, with:

- Low Care respite subsidy being $38.33 per day plus Supplement of $34.99 = $73.32 per day; and
- High Care respite subsidy being $107.47 per day plus Supplement of up to $83.48 = $190.95 per day.

Clearly, whether a person requires a High level of care or a Low level of care has a significant impact on both what care and services it takes to meet their needs and what subsidies the provider receives with which to meet those needs. An extra $117 per day is both a significant subsidy and a reflection of significantly higher care needs.

In 2008 the Government changed the system, amongst other things, so that ACAT approvals for residential respite care did not lapse after 12 months. Unfortunately, this seems to have developed into a cost-saving exercise as now (in 2013) we have aged care homes trying to meet the needs of respite residents whose needs are now High Care but who only attract a Low level of respite subsidy. All because the respite approval from an ACAT team, which could be up to 5 years old and which never expires, was Low Care at the time.

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Where else can some hope to receive $190 worth of care and services for only $73 per day? That is a saving to Government for each person with a low care respite approval whose needs have changed since their first low care ACAT assessment. And another aged care home struggling to do the right thing with inadequate income.

The Government would no doubt say that the person could get a re-assessment from their ACAT. And so they could, except for the fact the ACAT will tell them when they ask that their existing low care respite approval does not lapse and therefore never needs to be re-assessed. Already we are finding people seeking low care respite with assessments done in, say, 2008 who, when they enter respite care, are quite obviously very high need. We also find that the local ACAT says that a re-assessment is unnecessary and in any case they could not do the assessment before the person's booked respite ends (we often do very short respite stays less than a week as we do not require minimum stays as some do).

The situation needs to be addressed urgently now but most certainly will not be helped by removal of the High Care/Low Care distinction. We suggest that a decision be made that the respite subsidy for all respite admissions is to be the former High Care respite subsidy.

If not, the distinction between High Care and Low Care is still required for Respite approvals.

Specified Care and Services

One of the problems in the course of this current aged care reform process to date has been that there is always some point of detail not disclosed and which will be divulged at some future point in time. Aged care providers have learnt over many years that "the devil is in the detail". The absence of details does give cause urging caution.

The principle of amending the Aged Care Act to abolish the distinction between high care and low care is commendable. But that is not the case if it is simply being used to require high care services to be delivered to all residents – even if their subsidies are still at low care levels.

Examples abound. Some are major – such as currently a registered nurse must manage the care for high care residents, but that qualification is not required for low care residents. Some are minor issues – such as currently aged care homes have to provide toothpaste for all high care residents, but low care residents can be asked to pay for their own. But in all cases, we must ask the question, "If there is no distinction who pays?" We do not know the answer as it would be in the Principles, not the Act. We are being asked to agree to the change without knowing whether the rules change or whether the change is funded.

Accommodation Payments

In the past we have had a system where we have Accommodation Bonds as lump sums that equate to daily amounts when the person chooses not to pay by a lump sum. That has been the resident's choice under the current system and, despite considerable fanfare about giving people more choice, it will still be resident's choice under the proposed regime.

The difference under the proposed system in this Bill is that instead of lump sums converting to an equivalent daily or monthly amount, these Bills propose a system where daily amounts must be reversed to calculate lump sums as an alternative.

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The Accommodation Payments have been announced as:

- Up to $50 per day – no approval required;
- Up to $85 per day – self-assessment (and this publicised) on same criteria as next category:
- Higher – assessment to be approved by Government (Aged Care Finance Commissioner)

The Daily Payments equate to lump sums by virtue of the MPIR interest rate. Thus, $85 per day has been said to be equal to a lump sum of $406,000. This was presumably calculated as follows:

$85 x 365 ÷ MPIR (7.64%) = $406,000 or so

The MPIR has traditionally been based on the Long term Bond Rate + 4% (the penalty rate in the Taxation regime). As I understand it, interest rates rise when inflation rises. So, if inflation and costs go up, interest rates would be expected to rise. For instance, in the September 2008 quarter, the MPIR rate was 11.75%.

Our concern is as follows is that every quarter, when the MPIR interest rate changes, so too would our lump sum equivalent for these daily Accommodation Payments. However, increases in interest rates will have a very perverse impact on aged care providers:

As interest rates go up, the formula will make Lump Sum equivalents go down. Based on the formula above, $85 per day = a lump sum of $406,000. But, if interest rates were again to rise to 11.75%, the formula would give a very bad result, namely $85 x 365 ÷ MPIR (11.75%) = $264,000 or so.

The result is that if the environment's economic situation gets more difficult and inflation puts costs up, aged care homes will get lower lump sums to repay debt, perversely meaning that their ability to offset borrowings will reduce as operational costs rise. If borrowings cannot be offset, then operational funds need to spent on interest rather than care, services and amenities for residents.

This could lead us down the uncertain path of aged care facilities having to increase their daily accommodation payment every time the interest rate changes. And that would be the case in a regime where the accommodation payment is meant to be set by reference to the standard, quality and amenity of the building, its location and similar issues – not be reference to whether inflation is high or low.

Asset Assessments

Some time ago, it was decided to allow Centrelink or the Department of Veterans Affairs to issue the decision as to what might be the value of a person's assets. This fundamentally changed the premise of the asset test from being a decision about a person's assets on the day they entered care, to a decision about the person's assets on the day they chose to have the relevant agency (Centrelink or DVA) make the assessment. The effect has been exploited by financial advisors and their wealthier clients with substantial assets, particularly if those assets are tied up in the family home.

Here's how they do it. If both members of a couple need care, the advisor submits the application for an asset assessment to the relevant agency before any one of the couple needs to actually enter care. For both members of the couple then, the officers at Centrelink or DVA will make a decision about each person's assets based on the assumption that the other partner is still living in the home. Then both partners enter care together while that asset assessment remains current

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Thus a couple with a house in a capital city worth $700,000 and $40,000 in the bank will each obtain a letter confirming that they are each qualified to be a Supported Resident and pay no Accommodation Payment. In fact the Government will subsidise their care with an Accommodation Supplement – while the couple now has $740,000 ($370,000 each) in their bank account.

And all that because the asset assessment was moved to a time when the parties are not in care rather than the relevant date of when the parties enter care. The assessment of assets needs to be either taken away from Centrelink and DVA and returned to providers or someone else, but in any case the effective date of the assessment needs to be returned to the date of admission to residential care, not some date months beforehand.

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