# Health (Long-term Residential Care Services) Bill
## Regulatory Impact Analysis

# 1. Policy Context

**Government Policy on Long-term Care for Older People**

1.1 Government policy in relation to older people is to support people to live in dignity and independence in their own homes and communities for as long as possible and, where this is not possible, to support access to quality long-term residential care. This policy approach is renewed and developed in the latest partnership agreement, *Towards 2016*.

1.2 In *Towards 2016*, the Government and the social partners agreed a number of principles to inform the development of future policy on long-term care for older people. Among them are:

- All relevant public services should be designed and delivered in an integrated manner around the needs of the care recipient based on a national standardised needs assessment. Care needs assessments should be available on a timely, consistent, equitable and regionally balanced basis.

- The use of community and home-based care should be maximised and should support the important role of the family and informal care.

- Where community and home-based care is not appropriate, quality residential care should be available.

- There should be appropriate and equitable levels of co-payment by care recipients based on a national standardised financial assessment.

- The level of state support for residential care should be indifferent as to whether that care is in a public or private facility.

- No current resident of a nursing home, public or private, should be put at a disadvantage by whatever new co-payment arrangements for residential care are introduced.

The proposed nursing home support scheme is consistent with the above principles.

**Current System**

1.3 The present system of State support for those in long-term residential care is inequitable. It offers a vastly different level of support to patients in the public system and patients in the private system. Under the current system, an individual who obtains a public long-term care bed may be charged a maximum of up to 80% of the State Pension (Non-Contributory) towards the cost of care. By contrast, the same individual availing of a private long-term care bed may be entitled to a subvention but is otherwise obliged to meet the full cost of care. Under the present subvention

scheme, the State effectively meets only 40% of the estimated average cost of care in a private facility. In a public facility, the State meets approximately 90% of the cost of care. This discrepancy is at odds with the principle of equity endorsed by the Government. Currently, public beds account for approximately one third of long-term residential care beds, while private beds make up the remaining two thirds.

1.4 In addition, applicants for subvention are subject to stringent means-testing and may be deemed ineligible for subvention based on the means test. This is in marked contrast to the current public system under which an individual may never be charged more than 80% of the State Pension (Non-Contributory) regardless of his or her level of means. The capped public charge is also regressive since better off people pay a much lower proportion of their income towards the cost of their care.

1.5 The present system of private nursing home subventions is also a significant causal factor in the number of delayed discharges from the acute hospital sector. In order to avoid delayed discharges reaching an unacceptable level, the HSE often has to contract beds in private nursing homes. Contract beds further increase inequity within the system.

# 2. Objectives

| | |
|---|---|
| Long-term Objective: | To put in place an infrastructure of high quality and sustainable long-term residential care services for older people |
| Immediate Objectives: | To equalise State support for public and private long-term residential care recipients;<br><br>To render private long-term residential care affordable and anxiety-free, and ensure that no-one has to sell their home during their lifetime to pay for their care;<br><br>To remove the incentive to avail of public rather than private long-term residential care, thereby helping to alleviate the problem of delayed discharges from the acute hospital sector. |

# 3. Policy Options

**A. Do Nothing**

As is evident from the policy context provided in section 1 above, “Do Nothing” is not a realistic option. However, it is included in this analysis for comparative purposes.

**B. Improvements to the existing Subvention Scheme**

Option B explores the possibility of utilising the subvention scheme to attain the objectives outlined in section 2.

Substantial improvements have been made to the existing nursing home subvention scheme in 2007. Since 1st January 2007, the three separate rates for subvention have been replaced by a single, increased maximum rate of €300 per week. Additional funding has also been provided for enhanced subvention although the payment of enhanced subvention is still ultimately a discretionary matter for the HSE. Finally, the HSE will cease imputing income from the principal private residence where it has already been imputed for three or more years. This is consistent with the proposed new scheme, *A Fair Deal*.

**C. A Fair Deal**

This is the option proposed by the Minister for Health and Children to the Government in December 2006. The option involves introducing a new long-term residential care scheme which would replace both the system of charges for public long-stay beds and the private nursing home subvention scheme.

The proposed scheme would apply to all public long-term residential facilities predominantly designated as for care of older people, where 24 hour nursing care is provided, and to registered nursing homes. The scheme will apply equally to persons within these facilities whether they are under-65 or over-65. This is consistent with the current nursing home subvention scheme.

The scheme would offer a uniform system of financial support for individuals in both public and private nursing homes. In summary, it involves a co-payment arrangement between the individual and the State. At the time of receipt of care, the individual would contribute up to 80% of assessable income towards the cost of care. In addition, a capped contribution towards care costs based on an individual's asset wealth would be payable at the time of settlement of the individual's estate. The individual would retain the option of paying this contribution at the time when care is being received if s/he so wished. For its part, the State will meet the full balance of cost over and above the individual's contribution in public facilities or private facilities approved for the purpose of the scheme.

# 4. Costs, Benefits and Impacts

## 4.1 Costs

**A. Do Nothing**

As explained in Section 1, under the current system an individual who obtains a long-term care bed in a public facility may be charged a maximum of up to 80% of the State Pension (Non-Contributory) towards the cost of care. This represents about 10% of the average cost of care in a public facility, resulting in the State paying the remaining 90%.

By contrast, an individual availing of a long-term bed in the private sector may be entitled to a subvention but is otherwise obliged to meet the full cost of care. The

average weekly bed price in 2006 was €735 per week. Therefore, the maximum rate of basic subvention only covers about 40% of the cost of a person's nursing home care.

The cost to the Exchequer of the existing arrangements for 2007 is approximately €790m. This represents over 70% of the total estimated cost of residential care. It includes the costs of the existing subvention scheme and the provision of public and contract beds. The remaining cost of long-term residential care is borne by individual care recipients although, as already noted, this cost is disproportionately borne by private residential care recipients.

The 'do nothing' option would involve existing private residents continuing to bear a disproportionate and, for many, unaffordable proportion of the cost of long-term residential care. The situation whereby many such recipients are forced to sell assets including their home to afford care would continue. This fact must also be viewed in the context of future demographic trends. There are currently 22,000 people in residential nursing home care, approximately two-thirds of whom are in private residential care. This overall figure is set to increase to 44,000 in 2036 and 61,000 in 2056. Despite the large increase, the figure actually represents a reduction in the proportion of older people needing such care from 4.6% to 4%. This suggests that the 'do nothing' option would result in far greater future numbers of people facing unaffordable care costs.

The 'do nothing' option is also likely to force the HSE to continue purchasing contract beds. This will increase Exchequer expenditure on long-term residential care while exacerbating the inequities in the system.

**B. Further Improvements to the Subvention Scheme**

One of the principles of *Towards 2016* is that the level of state support for residential care should be indifferent as to whether that care is in a public or private facility. At present, the maximum rate of basic subvention is €300 per week. In comparison to this, the average weekly bed price in a private nursing home in 2006 was €735. This means that, on average, private nursing home residents may have to meet costs of €435 per week and, in some cases, significantly more.

To achieve the goal of equal support for public and private residents through further improvements to the subvention scheme, the maximum rate of subvention would need to be raised to a level that would enable private nursing home residents to pay the same fee as those in public beds. This would result in the State paying over 85% of the total costs of residential care and would be unsustainable when the predicted increases in the number of people in residential nursing home care are taken into account, i.e. currently 22,000 rising to 44,000 in 2036 and 61,000 in 2056.

This option would also entail significant administrative costs. This is because a subvention scheme that sought to support private care recipients to the same level as their public counterparts would have to contend with the varying prices paid for long-term residential care in different parts of the country.

Moreover, this option would still fail to guarantee equal support for public and private residents. This is because, unlike the commitment to meet the full balance of cost

offered by option C, the subvention scheme is based on capped maximum grant payments to the individual. As such, private residents would not be protected from nursing home price increases.

**C. A Fair Deal**

The proposed scheme will apply to all public residential facilities predominantly designated as for care of older people, where 24 hour nursing care is provided, and to registered nursing homes that have agreed prices with the NTPF. The scheme will apply equally to persons within these facilities whether they are under-65 or over-65.

The estimated annual cost of the proposed new scheme during 2008 is €900 million (based on 2007 care costs). As already stated, the cost to the Exchequer of the existing arrangements for 2007 is approximately €790m.

The above estimate includes transitional costs associated with the scheme. These costs arise because existing residents in public facilities will continue to pay a maximum of 80% of the State Pension (Non-contributory) while those in private facilities will immediately benefit from the new scheme if they so wish. From the introduction of the scheme, new residents in public facilities will contribute towards their care on the same basis as those in private facilities.

The State will also immediately have to meet the costs associated with the deferred contribution from assets. The value of deferred contributions will increase over the transition phase of the scheme as new entrants to public nursing homes come in under the new scheme. The estimated costs of deferred contributions will be €100 million in 2008. The funds in relation to deferred contributions will be recouped by the State in subsequent years.

The overall cost to care recipients in long-term residential care in 2008 is estimated at approximately €290 million. Ultimately, this cost would be distributed evenly amongst public and private care recipients in accordance with each individual's ability to pay.

Relative to the present system, the overall cost to private care recipients would immediately decrease under the new scheme, while the cost to public care recipients would increase for new entrants from 2008 onwards, subject to ability to pay.

There will be no additional cost to the operators of private long-term care facilities. The cost associated with bad debts, often complained about by operators, could be expected to be effectively eliminated and would certainly substantially decrease relative to options A and B.

There may be a small additional cost to the HSE in terms of administration. This would be associated with the management of deferred contributions and the deferred payment agreement. The benefits of these deferral mechanisms for the public could be expected to outweigh any additional administrative burden.

## 4.2 Benefits

**A. Do Nothing**
The main benefit to the "Do Nothing" option accrues to future entrants to public long-term residential care places who would continue to only pay the maximum amount of the public charge regardless of their wealth. Conversely, this represents a disadvantage for future entrants in private long-term residential care as they will continue to be faced with unaffordable costs. In addition, the State will continue to fund 90% of the cost of nursing care in public nursing homes irrespective of whether the persons in question have sufficient means.

It has been widely acknowledged that the current arrangements are inequitable and unsustainable. Moreover, no-one is guaranteed that they will be able to access a public rather than private long-term residential care bed should they need it in the future. Proportionately, a future entrant to long-term residential care is more likely obtain a private rather than a public bed due to capacity within the existing system.

**B. Further Improvements to the Subvention Scheme**
It may be argued that substantial improvements to the subvention scheme could help to significantly alleviate the financial burden for care recipients and their families. However, it is unlikely that this option could fully meet the objective of equalising the level of State support for public and private patients. This is because a system of capped grant payments can never guarantee that private residents would not contribute more towards their care costs than public residents. Private residents would bear the burden of potential price increases.

The risk of bad debts for nursing home owners would likely decrease relative to option A.

**C. A Fair Deal**
Crucially, the scheme will address the inequities inherent in the present system. It will ensure that, subject to an individual's means, the level of co-payment by the individual will be the same regardless of whether an individual enters public or private long-term residential care.

- ❖ Affordability and Security

The proposed new scheme provides assurance to those in need of residential care regarding their care costs. This is because the new scheme guarantees that all care costs (over and above 80% of assessable income) will be met by the State and that the individual need not meet any further costs in the course of his or her lifetime. This guarantee of affordability means that individuals need not worry about being impoverished or forced to sell off assets such as their home. They need not worry either about having to turn to relatives or friends for assistance in meeting care costs. Furthermore, the proposed cap of 15% on depletion of the principal primary residence reassures individuals that the value of their assets will not be substantially depleted even after their death. The current subvention scheme, based as it is on means testing and capped payments, does not offer this level of commitment to private nursing home residents.

- Transparency and Fairness

The scheme will be based on a national standardised care needs and means assessment. As such, it will be fair and transparent. Furthermore, it is proposed that the new scheme will not incorporate any upper exclusion limits or thresholds such as those in place in the current subvention scheme. This means that no individual will be automatically rendered ineligible although no payment will be made under the scheme unless the cost of care exceeds 80% of an individual's assessable income.

Within the scheme, an individual's co-payment will be based on his or her ability to pay. As such, the scheme is fairer to low earners than the current public charging regime and offers greater support to low and middle-income earners than the current subvention scheme. Furthermore, the calculation of the co-payment will take account of certain expenses incurred by the care recipient or their spouse. This is not provided for under the present subvention scheme and is an issue that generates considerable anxiety amongst those in residential care or faced with the prospect of needing residential care.

Finally, the scheme is fair and equitable with regard to its treatment of spouses, providing a number of important safeguards that are not available under the subvention scheme at present.

- Flexibility

The scheme will offer maximum flexibility to the individual. It will assure those who are entering long term care that their element of the costs can be met by either cash payments or as a bill against their estate. From the perspective of the individual, the option of a deferred contribution from assets ensures that the person does not have to avail of market-based equity release schemes or sell assets such as the family home. From the perspective of the State, the option of the deferred contribution is likely to lead to a greater acceptance of the scheme.

The scheme will not disadvantage current residents of public nursing homes as they will retain existing arrangements. It will help those who are in private nursing homes now and who will enter such homes in the future. As private nursing home residents now comprise approximately two-thirds of the total nursing home population, the new scheme will proportionately benefit more future long-term care residents than it will disadvantage.

The scheme will provide a clear, uniform system of support for long-term residential care. By addressing the inequity and financial unsustainability inherent in the current system, and particularly manifest in the purchase of contract beds, it should facilitate better planning and management of public resources.

Finally, the risk to nursing home owners of bad debts arising through inability to pay is effectively removed for nursing homes participating in the scheme. This may encourage more private providers to open nursing home facilities.

## 4.3 Impacts

### 4.3.1 Impact on National Competitiveness

Not Relevant

### 4.3.2 Impact on socially excluded or vulnerable groups

Option A would result in many people continuing to have to sell and re-mortgage their homes in order to meet the cost of long-term private nursing home care.

The effect of Option B would depend on the level of increase to the rate of subvention. However, even a substantial increase, while alleviating the financial burden on older people and their families, would not guarantee equal support for public and private residents. It would also not be financially sustainable.

The introduction of Option C would make private long-term care affordable and anxiety-free, and would ensure that no-one has to sell or re-mortgage their home during their lifetime to pay for their care. In addition it would ensure that people receive the same level of State support regardless of whether they entered a public or private facility.

Option C will also result in increased charges for new entrants to public nursing homes. However, this is in keeping with the principle set out in *Towards 2016* that the level of state support for residential care should be indifferent as to whether that care is in a public or private facility. In addition, there are safeguards provided for in the legislation to ensure that individuals only ever contribute an amount that is affordable.

In certain cases, a relative of the person who entered long-term residential care may not qualify for a second deferral. The legislation provides protection for certain specified family members of the person who entered long-term residential care in the form of a second deferral of the contribution based on the principal private residence. Individuals who do not qualify for such a deferral will be aware of the outset and will therefore be able to plan ahead.

### 4.3.3 Impact on the environment

Not Relevant

### 4.3.4 Whether the proposals involve a significant policy change in an economic market including an examination of the impacts on consumers and competition

Options A & B – Not Relevant

If Option C were implemented, consumer choice would improve because applicants could choose either a public or private facility regardless of their level of means. Added to this, the risk of bad debts for private nursing homes

would be eliminated. This would be likely to encourage more providers into the market which, in turn, would hopefully ensure healthy competition.

**4.3.5 Impacts on the rights of citizens**

Not Relevant

**4.3.6 Whether the proposal involves a significant compliance burden**

Under Options A & B the compliance burden for applicants and the HSE would be no greater than at present.

Option C would require all applicants to undergo a financial assessment irrespective of whether they are entering a public or private facility. This is already the case for people in public nursing homes and for those in private nursing homes who apply for a subvention and the information which they would be required to provide remains the same.

Option C would also give applicants the option of deferring a portion of their contribution. This is a significant benefit and would relieve the burden of having to liquidate assets in order to pay for long-term care.

# 5. Summary of Costs, Benefits and Impacts

## 5.1 Summary Table

| | **Option A**<br><br>**Do Nothing** | **Option B**<br><br>**Further Improvements to the Subvention Scheme** | **Option C**<br><br>**A Fair Deal** |
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| **Costs** | • Continuation of unaffordable costs for many private residents<br><br>• No additional cost to Exchequer but pressure to finance further contract beds would prevail | • Potential diminution of costs for private residents<br><br>• Additional Exchequer cost which could amount to as much 85-90% of total cost of long-term residential care depending on magnitude of improvement | • Diminution of costs for private residents and guarantee of affordability<br><br>• Future entrants to public places will be eligible for co-payments under the scheme |
| **Benefits** | • Future entrants to public beds would likely pay less than under new scheme (public charge only would apply) | • Potential benefit for private residents although this is contingent upon care prices | • Fair and Transparent<br><br>• Guarantees affordability for care recipient<br><br>• Safeguards incomes of resident and their spouse, and individual's assets, in particular the principal residence<br><br>• Will not disadvantage existing residents |

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| | | | • Will facilitate better planning and financial sustainability<br>• Will effectively remove the risk of bad debts for private nursing home owners |
| **Impacts** | • Negative impact on potentially vulnerable group (those in private nursing homes – approx. two thirds of all beds) | • Negative impact on potentially vulnerable group (those in private nursing homes – approx. two thirds of all beds) | • Positive impact on potentially vulnerable group (but possible negative impact in those in public beds – approx. one third of all beds) |

### 5.2 Conclusion

Some of the principles identified in *Towards 2016* as informing the development of policy in this area are:

- All relevant public services should be designed and delivered in an integrated manner around the needs of the care recipient based on a national standardised needs assessment. Care needs assessments should be available in a timely, consistent, equitable and regionally balanced basis;
- There should be appropriate and equitable levels of co-payment by care recipients based on a national standardised financial assessment;
- The level of state support for residential care should be indifferent as to whether that care is in a public or private facility;

Having regard to these factors, as well as to the information set out in Section 4 above, the option which would provide the greatest level of support for people in need of residential care, including older people, as well as being the most financially sustainable, is Option C – *A Fair Deal.*

## 6. Consultation

The Minister originally announced her proposals for the *Fair Deal* in December 2006. Since that time Information Leaflets, a Guide to the Fair Deal and a Frequently Asked Questions document have all been available to the public.

In addition to dealing with queries and representations from interest groups, public representatives and members of the public, the Department also met with a number of interested parties including the Social Partners, the IFA and the Irish Senior Citizens Parliament.

## 7. Enforcement and Compliance

The operation of the *Fair Deal* scheme will be the legislative responsibility of the HSE. In addition, any Regulations enacted under the legislation will be implemented by the HSE and it will have responsibility for their enforcement.

The legislation contains anti-avoidance measures which will assist the HSE to properly enforce the legislation. In addition, the deferred payment agreement is

underpinned by a contractual commitment thereby ensuring that the scheme remains sustainable and fair.

Finally, it is proposed that the Revenue Commissioners would collect deferred contributions under the scheme. Revenue's existing expertise in this area could be expected to enhance compliance.

## 8. Review

The HSE & the NTPF have been furnished with Data Collection Requirements which need to be built into their information systems. The information produced as a result of this will enable the Department and the HSE to monitor the scheme.

The Minister has stated that further analysis of funding options for the future infrastructure of long-term care services will be undertaken. As part of this process, it is intended that the scheme will be subject to review over a two to three year period.