



Over-subscribed and/or under-funded?

Matthew Ryan assesses the operation of the Fair Deal Scheme.

There are over 440 private and voluntary nursing homes in Ireland that, together, provide over 20,000 nursing home beds to residents in need of long term residential care services. Residents participating in State sponsored schemes occupy over 60 per cent of these nursing home beds.

An overview of the Fair Deal Scheme

The Fair Deal Scheme was established by the Oireachtas pursuant to the Nursing Homes Support Scheme Act 2009 (the "2009 Act"). The Scheme is administered by the Health

Service Executive (the 'HSE') and provides financial support for eligible people who are

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ordinarily resident in Ireland and in need of long term residential care ("State Support").

A person seeking funding under the Fair Deal Scheme must first undergo a care needs assessment which will identify whether or not he/she is in need of long term residential care. Where the individual is in need of such care, he/she will be permitted to make an application for State Support under the 2009 Act. As a next step, the HSE will conduct a financial assessment of the applicant to determine the contribution to be made by the applicant to the cost of his/her long term residential care and, consequently, the level of State Support

to be provided by the HSE. A successful applicant will generally contribute 80 per cent of his/her income and 5 per cent of the value of his/her assets per annum (subject to certain minimum thresholds).

Contributions by eligible residents under the Scheme can be made contemporaneously or they may be deferred until after death. Through Ancillary State Support, the HSE may pay the eligible resident's entire cost of care, having first obtained a charge over his/her assets as security. Upon death, the HSE will proceed to recover the amount paid by it in excess of State Support.

The role of the National Treatment Purchase Fund

The National Treatment Purchase Fund (the "NTPF") is designated by the Oireachtas the role of reaching agreements with private and voluntary nursing home proprietors as to the maximum price that may be charged by home owners for long term residential care services provided to those residents in receipt of State Support.

A nursing home will be considered to be an "approved nursing home" under the 2009 Act solely where it has entered into a binding written agreement (the so-called NTPF Deed) with the NTPF.

As a matter of law the NTPF Deed, once agreed between the NTPF and the nursing home owner, effectively operates as a State licence which entitles the nursing home owner to impose any price on the eligible resident for long term residential care services up to the Maximum Permissible Amount agreed under the NTPF Deed.

How the Fair Deal Scheme operates in practice

Once an applicant has been approved for State Support, he/she will be provided with a list of approved nursing homes by the HSE. The applicant is free to choose any approved nursing home and may enter into a contract for care with the chosen nursing home. The HSE is then responsible for paying the appropriate amount of State Support due to the resident directly to the relevant approved nursing home.

Recent developments

While the benefits of the Fair Deal Scheme are apparent to all stakeholders, nonetheless

the operation of the scheme continues to face ongoing challenges, including:

(a) Lack of funding

This year, for the first time, the HSE announced that the Fair Deal Scheme's funding was at a level whereby it would not be sufficient to provide State Support in respect of all those who successfully applied for it. In consequence, new applications are being processed by the State but on qualifying for State Support individuals are being placed on a waiting list until further funding becomes available. Those on the waiting list will have to

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cover the entire cost of their residential care until such time as Fair Deal Scheme funding becomes available to them. At the time of writing approximately 500 people are in such a position.

(b) Failure of HSE to pay entire amount of State Support

We are aware of several cases where the State through the HSE has recently refused to pay in full agreed sums of State Support to certain nursing home owners despite the State having earlier agreed (through the NTPF Deed) to allow nursing home owners to charge residents participating in the Scheme increased fees under their contracts for care.

It would appear that the HSE by engaging in such conduct has exposed the State to actions for breach of contract.

(c) Negotiating a fair price for care

It is widely known that nursing home owners have ongoing and grave concerns regarding the lack of transparency and procedural safeguards in the NTPF's process for 'negotiating' the terms of the NTPF Deed. Objectively speaking, engagement between the NTPF and

nursing home owners is often one-sided and the figure "agreed" under the NTPF Deed in several instances does not reflect the true cost of the provision of care in individual nursing homes. During the course of negotiations nursing home owners are faced with a dilemma: (i) agree to the amount unilaterally offered by the NTPF (whether reasonable or not) or (ii) fail to reach an agreement with the NTPF and fail to obtain/retain their "approved nursing home" status, thereby losing access to over 60 per cent of the nursing home market.

It is clear that the NTPF's procedures lack transparency. Nursing home owners when entering into negotiations with the NTPF are unclear as to the factors to which the NTPF must have regard when agreeing the Maximum Permissible Amount and remain generally concerned that the capital investment made or the standard of care provided by them are not properly reflected in the "agreed" maximum price under the NTPF Deed.

All stakeholders acknowledge the fact that the Fair Deal Scheme's funding is limited. Nevertheless, the negotiation of a fair price to reflect the true cost of care remains in the interest of all stakeholders, especially residents. Simply squeezing nursing homes for every last penny is not sustainable. The State (through schemes such as the Fair Deal Scheme) pays for residential care services from private nursing homes at a significantly lesser amount than that applying in public nursing homes. Further, Ireland's demographic is such that an increasing number of individuals will require nursing home care in the coming decades. Without being paid a fair price, nursing home care provision in Ireland is unlikely to undergo the capital investment it will require in order to accommodate future demand.

In conclusion, it is incumbent upon the State through the Minister for Health, the HSE and the NTPF to ensure legal certainty in the operation of the Fair Deal Scheme. Transparency and fairness must be injected into the operation of the Scheme especially in the key relationship between the HSE/NTPF on the one hand and nursing home owners on the other. ●

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