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## Aged Care Update: The vexed issue of fees for additional services in residential aged care

The regulation of fees for additional and higher quality goods and services in residential aged care is confused and consumes a good deal of attention by providers, consumers, policy makers and regulatory authorities. It has become significantly more confused and uncertain since the *Living Longer Living Better* package.

A clear way forward remains elusive.

This article traces how we got to the current imbroglio, and charts a way out of the prevailing uncertainties which is consistent with reform directions aimed at increasing consumer choice and control within a more competitive aged care service environment that is more responsive to consumer preferences and rising community expectations.

### Some history to set the scene

A long standing feature of the original construct of Australia's residential aged care system is government regulation which expects that all residential aged care residents will be responsible for meeting the cost of their living expenses, including by tapping into their age pension entitlement. At the same time, government regulation caps the price that all[1] residents may be charged for living expenses at 85% of the single pension (i.e. the basic daily fee, currently \$51.63).

In effect, if applied to the letter, this construct would limit the extent to which older people and their families may purchase additional and higher quality lifestyle goods and services in line with their preferences and life experiences. This makes sense if aged care is conceived of as a basic service provided by the government on a universal and 'one size fits all' basis.

As well as the basic daily fee, the price residential aged care providers receive for providing personal and nursing care is also set by government, and overwhelmingly paid for by the government. On the other hand, accommodation prices for non-supported residents are market-based prices set by providers, which provides a useful reference point for setting government accommodation supplements for supported residents. [2]

Because residential aged care providers are effectively contracted by government to provide personal care and nursing and daily living services, government has specified in a Schedule to the *Aged Care Act 1997* the hotel and care services that are expected to be provided within the care subsidy and basic daily fee it sets. While specifying types of goods and services, the Schedule is somewhat vague in terms of quantity and quality of goods and services and overall amenity. The complementary Quality and Safety Standards are equally of limited help in this regard as they have an outcomes focus. Their drafting also had little regard to the cost of delivering the Standards' outcomes which focus on person-centred care. It was just expected that current funding would be sufficient.

A rigid application of this Orwellian arrangement for daily living expenses and lifestyle amenities was never sustainable. Aged care homes are not hospitals, where one of the key performance targets is reducing average length of stay, measured in days. Aged care is long term care where older people are supported to live quality and meaningful lives for as long as possible. It was plainly inappropriate and unrealistic to expect all older Australians (and their families) to settle for a life style based on 85% of the single pension, noting that the age pension is predicated on a good deal of self-provision and management of daily living activities, rather than services being provided by and purchased from third parties.

As a result, a menu of goods and services that are considered additional to the legislated specified care and services, and which residents and their families can purchase for a fee set by the provider, was developed over time by the Department of Health as a guide for consumers, providers and the regulatory authorities. Such services include, for example, social outings, hairdressing and higher quality toiletries.

In addition, the government introduced the concept of Extra Service status whereby a proportion of rationed residential aged care places released through the annual Aged Care Approvals Round (ACAR) was reserved for providers to operate aged care homes or dedicated wings in which extra and higher quality services were provided for a fee (approved by the regulator). The fee applies for the duration of a resident's stay in the facility, irrespective of consumption of the services.

But the main motivation for providers to seek Extra Service places was that providers were permitted to charge an accommodation bond for all residents of Extra Service facilities to support higher amenity accommodation, whereas in mainstream services, an accommodation bond could only be charged for low care residents. Instead, in mainstream services, a daily accommodation charge set by government applied for high care residents, for both non-supported and low means residents, except that the government met the cost for the latter.

As well as responding to sections of the community aspiring to higher quality services than the government was prepared to fund under a 'one size fits all' policy, Extra Service aged care homes were introduced as a savings option. The government would 'clip the ticket' through a 'claw back' of a percentage of the additional fee approved by the regulator. This was effectively a tax on residents choosing to live in Extra Service homes. [3]

### **The Living Longer Living Better (LLLB) Package puts a spanner in the works**

The above arrangements worked tolerably for a couple of decades, with community expectations that prevailed during this time being substantially met through the existence of Extra Service facilities and some flexibility for residents in mainstream services to purchase additional/higher quality goods and services for which a fee applied based on consumption of the good or service ie on an opt in/opt out basis.

This arrangement was disrupted by the incentives created by measures included in the LLLB package, but also the ACFI-related pressures on funding for personal care and nursing that emerged after the 2017 changes to ACFI, and rising community expectations about service quality and consumer choice of services.

First, noting that “there is currently little scope for care recipients to purchase additional amenities or supplementary care services from their residential care provider”<sup>[4]</sup>, the Government announced in its LLLB package that it would allow two levels of additional charges for amenities and hotel type services over and above that which would be expected to be provided through the care subsidy and basic daily fee it determines, viz.

- Level 1: Residents in all aged care homes would be able to purchase optional extra services for an additional fee; and
- Level 2: Subject to regulatory approval, homes would be able to offer a capped number of aged care places dedicated to the provision of services solely on an ‘extra service’ basis, which would offer residents a higher level of amenities and hotel-type services.

No legislative changes were introduced to implement the above two levels simply because they were already existing policy, except that governments have not released any new Extra Service places through the ACAR since the LLLB package was announced. Confused? The sector certainly was. The signal that the government seemed to be giving is that providers should be looking to fees for additional services in mainstream services, rather than Extra Service. But how does this square with the specified care and services menu?

The second measure in the LLLB package that came into play was the removal of the main motivation for providers to seek Extra Service status in the first place, i.e. the LLLB package introduced lump sum accommodation payments (Refundable Accommodation Deposits) across all aged care (low care and high care), whereas previously only Extra Service homes could charge a lump sum for high care residents. The other feature of Extra Service status, whose importance apparently was only subsequently appreciated, was that Extra Service status allows providers to charge a mandatory fee for additional services (approved by the regulator) for the duration of a resident’s stay irrespective of how much of the additional good or service each resident consumes.

Following the LLLB-related change to accommodation payment arrangements (effective from 1 July 2014), many providers effectively introduced Extra Service type arrangements into mainstream homes, which became known as ‘additional service’ facilities (but for which there is no provision in the *Aged Care Act 1997*). Many also converted former Extra Service facilities to ‘additional service’ facilities, possibly to avoid the requirement to seek the regulator’s approval of their extra service prices.

When it became apparent that the *Aged Care Act 1997* prohibits non-Extra Service facilities, including ‘additional service’ facilities, from charging residents for services that they cannot directly benefit from, rather than for the duration of their stay, differences in interpretations and tensions emerged between some providers and the regulators, leaving everyone uncertain and confused. This brought an effective halt to the trend of converting Extra Service facilities to ‘additional service’ facilities<sup>[5]</sup>.

As well as the above response by mostly Extra Service providers, an increasing number of mainstream providers, responding to ACFI-related financial pressures, increasing community pressure for higher quality services and the apparent imprimatur for additional service fees given by the LLLB package, have either introduced or are considering introducing fees for an expanded range of additional goods and services, often as a fee for a bundled menu of services. In some cases, fees are being applied to services that previously were being provided at no additional cost, but which can no longer be afforded under the ACFI since the 2017 ACFI changes.

## The consequences of the above changes

The behaviours generated by the incentives canvassed above have magnified the debate and uncertainty about the regulation of fees for additional goods and services. The sector, providers and consumers are all calling for greater clarity regarding the additional service fee regulations.

In particular:

- Can fees for additional services be mandatory in any aged care home or wing, whether mainstream, 'additional service' or Extra Service, at the discretion of the provider?
- Should providers be able to make fees for additional services mandatory for all residents?
- What are the implications for access to residential aged care services and quality of care for people with low means or challenging life experiences?
- While acknowledging that under the *Aged Care Act 1997* residents of mainstream homes who cannot directly benefit from a particular service cannot continue to be charged a fee for that service, can residents who change their mind opt out of receiving and paying for services, and what are the implications for security of tenure.
- Should prices for additional fees be published on MyAgedCare and on provider websites?
- Should the prices of services be itemised, even when priced and presented as a package?
- Should Extra Service be phased out and replaced by a standard fees for additional services policy applicable to all residential aged care?

Even if the above issues can be sorted, we are still left with the dilemma of determining whether particular services are indeed 'additional' to what is expected to be delivered within the government's capped price and specified care and services.

When the prevailing culture of mainstream providers was to use fees for additional services sparingly on an opt in/opt out basis, and in accordance with a list of examples maintained by the Department, the situation was manageable. But when fees for additional services was profiled by the LLLB and the ACFI-related margin pressures emerged, in conjunction with the profiling of greater consumer choice and control in an environment of increasing consumer expectations, many mainstream providers sought to extend the scope of fees for additional services.

This has led to an exacerbation of the 'what service is additional' dilemma, which remains intractable and a source of confusion between the policy makers, regulators, consumers and providers.

## Time to re-imagine fees for additional goods and services

The long standing policy approach that all aged care residents would have to settle for the quantity and quality of services that providers could deliver within the prices set by government may have made some sense in the days when aged care was a pure government outsourced 'one size fits all' service.

Price control also makes sense when demand for residential aged care exceeds supply of subsidised residential aged care places.

However, as aged care is transitioned more towards a competitive service industry based on greater consumer choice and control, which includes an incentive for Australians to plan for their aged care in the same way as they plan for their retirement (rather than have to settle for what the government is prepared to provide), it is time to re-imagine aged care and fees for additional services.

An alternative way to address the issue is not to consider additional services policy as part of specified care and services in isolation, but in the context of reforms to give consumers greater choice and control in a more competitive service environment. Considered in this context, an alternative approach is to allow consumers discretion to purchase additional services according to their preferences and capacity to pay.

On this basis, providers would be able to plan service offerings having regard to consumer characteristics and service expectations in each service area and community, but always subject to the Aged Care Quality and Safety Standards, and have flexibility to offer services on a mandatory basis (applicable to a whole of service or wing) and/or on an opt in/opt out basis.

When considering this option, two key issues need to be addressed to complement existing consumer law, viz. protecting consumers from excessive prices and exploitation, and ensuring access by all who need care irrespective of means and life circumstances and experiences.

If Government is concerned that the rationing of subsidised residential aged care places may lead to excessive prices, it could set a cap on prices (the basic daily fee) above which regulatory approval would be required, as recommended by the *Report of the Legislated Review of Aged Care 2017* (the Tune Report), and take steps to increase consumer choice and control by allocating funding to the consumer rather than to the provider. Approval-in-principle to the latter was given in the 2019–20 Budget, subject to resolution of implementation issues.

Government could go one step further to foster competition by uncapping the supply of subsidised residential care places, noting that the fiscal risk, compared with uncapping subsidised home-based care, is minimal. Declining average occupancy rates despite significant reductions in residential provision ratio targets, the planned rapid increase in the availability of home care packages, and the large number of consumers on the home care package queue also assessed for residential care but who are rejecting residential care, all point to a low fiscal risk.

Further, the Government should also require publication of prices, including on MyAgedCare, to support informed choice, and the incorporation of agreed prices and services in individual Resident Agreements. There is also a transformational role for performance rating of services in a competitive environment.

It is also relevant that because supported residents comprise such a large proportion of people using or likely to use residential aged care, supported residents cannot be ignored by providers operating in a competitive environment. Some, especially not-for-profit providers, will cross-subsidise across residents and services, and different offerings and prices can be expected across regions and communities (as occurs in the economy at large), but all subject to the aged care quality standards and compliance with the other quality regulatory requirements.

The experience following the introduction of market-based accommodation prices also suggests that the risk of price exploitation is not great. As a safeguard, a threshold could be set, as was done for accommodation prices, above which the agreement of the regulator would be required. Significantly, market-based accommodation prices for non-supported residents have become a benchmark for assessing the adequacy of the accommodation supplement paid by government for supported residents.

Looking forward to the proposed new funding model for residential aged care, the additional services that residents and their families seek should feed into the independent costing reviews envisaged under the new funding model, and help inform the setting of government subsidies for low means residents and help avoid the emergence of unreasonable disparities in service quality.

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[1] Except for residents of Extra Service facilities, discussed later in this article. Extra Service places represent 6% of total operational residential care places.

[2] Supported residents includes people with low means and residents whose accommodation costs are met by the government because they have a partner or dependent living in their former home.

[3] As part of the 2012 Living Longer Living Better package, this 'tax' was discontinued for all new residents in Extra Service homes.

[4] Living Longer Living Better Australian Government April 2012

[5] Between 2014 and 2017, there was a 32% reduction in operational Extra Service places, but since the tensions with regulators, some Extra Service providers have started re-commissioning approved ES places that they had not relinquished.

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*Disclosure statement: The author of this Update, Nick Mersiades, is a member of the Aged Care Financing Authority. The opinions in this Update should not be read as being an expression of the views of the Aged Care Financing Authority.*

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