NHI
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Submission to the Department of Health
Value for Money Review

January 2019

Introduction

Nursing Homes Ireland welcomes opportunity to submit to this important review.

The State has engaged in a policy of procrastination and obscurity over many years with regard to public nursing home costs.

When the Nursing Home Support Scheme (Fair Deal) came into operation in 2009, a commitment was made it would be reviewed after three years. The review was delayed to 2015 and when published it effectively 'kicked for touch' with regard to public nursing home costs, stating: "A Value for Money and Policy (VFM) review will be carried out on public facilities which will recommend actions and timelines to address any cost distorting factors that cannot be attributed to inherent differences in resident profile or unavoidable costs as between the public and private sectors." Two years later in March 2017, the Department informed the Public Accounts Committee it had yet to commence the review but anticipated it would be undertaken and completed by that year-end[i].

We note the Oireachtas Pubic Accounts Committee's (PAC) statement within its December 2018 published *Periodic Report No 4, May - July 2018*: "The Department of Health commenced a Value for Money review of the cost of care in public nursing homes in 2017 and hopes to complete the review by the end of March 2019. Given the significant sum of public funds involved, the Committee recommends that the Department ensures the report is delivered and published within this timeframe." Given the unacceptable procrastination with regard to assessing Fair Deal expenditure and how the scheme is operating, it is imperative this critical review of the scheme is expedited.

The appropriate scrutiny of expenditure within HSE nursing homes has never been applied. This is unacceptable given it amounts to €300m+ spend per annum from our health budget. As stated within the PAC report: "It is not clear that the cost of care in public nursing homes is providing value for money to the taxpayer."

Within our sector the State, through the NTPF, has a dominant position as a monopolistic purchaser of care. Private and voluntary nursing homes operate in a constrained economic environment, where their income is fixed and set by the State. Their expenditure is scrutinised and independent analyses inform fees payable are not commensurate with care costs. It is a damning inditement of our health services that the Fair Deal budget of €1 billion – to support residents approved for nursing home care across HSE, private and voluntary providers - is applied in a discriminatory manner to the benefit of State nursing homes. It is unacceptable and reprehensible that particular care providers – private and voluntary – do not have the reality of costs incurred to provide nursing home care encompassed within their fees. Fair resourcing of residents in private and voluntary nursing homes under Fair Deal can ensure the reality of resident care costs are appropriately recognised. Furthermore, it can place such homes on a sustainable footing, ensuring care is provided in community settings in line with Government policy and the wishes of residents, and bring further employment and economic benefits to the relevant urban or rural community.

The reality of such is presented in the closure of private and voluntary providers. HIQA, the independent regulator, states within its *Overview of HIQA Regulation of Social Care & Healthcare Services 2017* report: "There are examples of certain smaller nursing homes – which provide a more homely environment – closing voluntarily due to concerns over the financial viability of running such services." Analysis of the sector undertaken by AIB informs 20 private and voluntary nursing homes have closed the past five years.

The complete lack of independent oversight with regard to HSE nursing home expenditure since Fair Deal commenced emphasises the critical importance of this VFM review. It is vital it undertake a comprehensive and independent assessment of expenditure within public nursing homes and the review is expedited. The issues it highlights must be acted upon. The discriminatory practice and non-accountability presently in effect with regard to public nursing home spend must be addressed with immediacy.

We are at a critical juncture in care of the older person. Half those availing of nursing home care are aged 85+[ii]. The CSO projects the number will increase by 53% over the next ten years, from 73,000 in 2018 to 112,000 in 2028[iii]. We must ensure spend within our health services is transparent, achieves value and is optimised. The excellence synonymous with nursing home care must be sustained through an appropriate and fair funding structure.

As a society, we must ensure people presenting for nursing home care are supported by a fit-for-purpose funding model that is appropriately resourced to ensure we meet the increasingly high-dependency, clinical care needs of persons who require nursing home care. This review presents landmark opportunity to assess State expenditure of €1 billion to fund the care needs of circa 24,000 people availing of nursing home care.

We should heed the stark warnings from the crisis presenting for care of the older person in the UK. The large growth in requirement for nursing home care and funding pressures are presenting a national emergency in the UK in healthcare delivery.

This review presents decisive opportunity to provide transparency regarding public nursing home care spend. We acknowledge your commitment to meet with NHI post submission.

We have in our submission responded as per Terms of Reference presented by the Department of Health.

TOR 1: Having regard to the overall objectives in provision of long stay care supported by the Nursing Home Support Scheme, identify the cost differentials between residents in the private/voluntary and public sectors.

Person's approved for State support under Fair Deal are all required to undertake a comprehensive, multi-step process. It entails assessment by a multidisciplinary team of HSE healthcare professionals to determine if nursing home care is most appropriate to the person's care needs.

All nursing homes – public, private and voluntary – must comply with the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 and the National Standards for Residential Care Settings for Older People in Ireland. The Standards are non-discriminatory and implicitly state the obligations upon all nursing home providers to respect the rights of residents and ensure their health, social and personal care needs are fulfilled. That said, it should be noted, in 2015 the Government announced the requirement for HSE nursing homes to comply with HIQA's physical environment standards deadline would be extended by six years to 2021 by legislation in the Care and Welfare Regulations. It was an act of political interference in a regulatory process and further discriminatory action against the private and voluntary sector who had incurred significant capital expenditure in compliance with the Care and Welfare Regulations.

The Dementia Services Information and Development Centre (DSIDC) report *An Irish National Survey of Dementia in Long-Term Residential Care*[iv], the first national survey to map the provision of specialist long-term care for people with dementia, informs "the private sector is the main provider of specialist long-term care to persons with dementia". It states: "Curiously, HSE operated facilities, which receive the highest payments for care from the Nursing Home Support Scheme because they are said to accommodate those with highest dependency needs were more restrictive than other providers in relation to admission criteria and were more inclined to refuse admission to those not independently mobile."

To inform this submission, NHI undertook a snapshot survey with 123 random private and voluntary nursing homes. Of the 7,159 residents within those nursing homes, 63% had maximum or high dependency care needs (4,531 residents). The predominant validated tool used to measure was the Barthel Index. This measures the physical dependency needs of residents. It should be noted, there is no such tool to capture cognitive dependencies. 177 fewer people entered Fair Deal in year 2017 by comparison with year 2013[v]. The average length of stay of residents supported by the scheme halved over the period 2009, the year of its commencement, to 2014, from four years to 1.9, according to the Department review of the scheme. These trends reflect increasingly people are only availing of nursing home care if they have maximum to high dependency care needs.

The most recently published fees for HSE nursing homes – February 2018[vi] – informed such homes were being paid fees per resident that were a national average 60% above those payable to private and voluntary. The gross chasm and inequality in fees payable across the country is presented in Appendix 1. The VFM should recommend the HSE publish its Fair Deal fees on a minimum quarterly basis, to provide appropriate transparency for residents and the wider public.

Private and voluntary nursing homes operate within a constrained economic environment under a monopoly purchaser of care. In year 2017, one-third of the Fair Deal budget spend was allocated to fund one-fifth of those supported by the scheme[vii]. At year-end, 4,713 people funded by the scheme were availing of care in HSE nursing homes, whereas 18,236 were funded in private and voluntary. The indicative average HSE contribution under Fair Deal was circa €69,000 per resident in a HSE home over the course of the year by contrast with an average €35,000 per resident in a private or voluntary home.

The cost differential presented is exorbitant. And are the fees published by the HSE the true cost of care? In 2012, the HSE published an information document during a consultation process regarding the potential closure of nursing homes in the Midlands. It informed the cost to provide care on a weekly basis was €2,472 in Shaen and €2,340 in Longford Community Nursing Units. However, it had previously informed in its “cost of care” fees published in March 2011 the weekly cost of care in Shaen was €1,633 and €1,246 in Longford. The published costs in 2012 were 51% and 88% more than those stated twelve months previously. What is the reality of HSE costs and expenditure surrounding nursing home care? The above presents the “cost of care” fees published by the HSE are no way reflective of the reality of cost of care in HSE nursing homes and, as outlined above, the HSE figures cannot be trusted.

The *Elderly Care Services HSE Midlands – Information Document*[viii] informed the 2012 budget for pay costs for nine HSE nursing homes was €373,382 above anticipated Fair Deal income and income from patient charges[ix]. It informed total income budgeted for nine HSE nursing homes was €9,276,823 and the total budget for pay costs was €9,650,205. Furthermore, non-direct pay costs were budgeted for €1,486,024 and indirect pay costs for €188,432. Therefore, the budgeted expenditure exclusive of income derived was a further €2 million. This would amount to average €222,222 per nursing home per annum. Where is this budget coming from? Is this in breach of the provisions of the statutory Scheme that is the Nursing Home Support Scheme (Fair Deal)?

The breakdown of costs such as these presented within the *Information Document* should be published on a consistent basis to inform regarding the expenditure being incurred within HSE nursing homes. Yet they are not divulged, with the outcome being non-transparency with regard to HSE nursing home expenditure. It is imperative this review provides a breakdown regarding expenditure within individual HSE nursing homes. The HSE have a duty as a public body to ensure transparency and to ensure residents funded under the Fair Deal are in possession of the full accurate information to make an informed choice.

The HSE acknowledges pay rates to staff between its nursing homes and private and voluntary are not substantially different. It acknowledged such within its December 2016 submission to the Public Accounts Committee[x] in response to issues presented before the Committee by NHI, but further stated public service conditions of employment apply additional costs. Its 2019 Service Plan informed of a reliance on agency staff in residential care services to maintain the required workforce and skillset. It stated a priority for 2019 is a requirement to agree an appropriate model of residential care staffing and skill mix.

Private and voluntary providers are tasked with absorbing pay costs and other substantial costs, further detailed below, within the fees payable that are a national average 60% below those payable to HSE nursing homes.

The gross inequality in the application of funding under Fair Deal was further evident within the budgeting for the scheme for year 2018. Within the provision of €21.7 million of 'additional' funding, €12 million – 55% of the additional allocation – was earmarked for HSE pay levels in public nursing homes[xi]. With 4,713 supported by Fair Deal in HSE nursing homes at the end of 2017, this equated to circa an additional €2,546 being allocated per resident within such homes for the year. The equivalent contribution required for private and voluntary nursing homes, funding 18,236 people year-end 2017, would have amounted to €45.1 million.

Increases in public sector pay levels, particularly those within health services, have a direct impact upon wage levels in private and voluntary nursing homes. Yet, such increases are not recognised within the budget allocation. The non-recognition presents very significant challenges for private and voluntary nursing homes in the recruitment and retention of staff, with them tasked with operating in an economic environment that is discriminatory.

The Department of Public Expenditure and Reform staff paper *Nursing Homes Support Scheme Trends and Figures* (October 2017)[xii], presents the escalating pressures upon private nursing homes with regard to staffing costs. It states: "And with the general economy approaching full employment, recruitment in the private nursing home sector is becoming more challenging, possible resulting in higher pay rates." Yet the Fair Deal budget allocation for 2018 was specifically cognisant of increasing staffing costs for HSE nursing homes and ignored private and voluntary cost pressures.

The monopoly applied to private and voluntary nursing homes with regard to fees payable for provision of care compounds the inequality and the financial pressures that have resulted in closures of homes.

Compounding the gross distortion in utilisation of the Fair Deal budget is the fact private / voluntary nursing homes must encompass a myriad of substantial costs within their Fair Deal fees which are not applicable for HSE nursing homes. These include, but are not limited to:

- Capital costs
- Commercial rates
- Land and maintenance costs
- Local authority charges
- Land costs
- Insurance premiums
- Education and training

A 2017 NHI survey of private and voluntary nursing homes where revaluations had occurred presented increases in commercial rates had averaged 116% and had risen up to 277%. The average increase was the equivalent of €614 per resident, per annum, equating to an average increase of €35,000 over the course of a year for a 60-bed nursing home.

152 private and voluntary nursing homes informed NHI annual survey published in 2015 the total capital expenditure they had incurred in capital costs to meet HIQA compliance requirements was an average €1,136,942 per home. The average capital expenditure incurred over the previous 36-month period was €579,430. Failure to encompass such costs within fees payable under Fair Deal

led to closure of nursing homes. The survey states: “Given the large cost of compliance with the Standards, it is perhaps unsurprising that some operators, unable to achieve a satisfactory Fair Deal rate, were unable to fund the necessary expenditure and were forced to take the decision to close their homes.”

In contrast, the Government has committed €385 million for capital investment in 90 HSE nursing homes – an equivalent of €4.3 million expenditure per nursing home. Furthermore, in an act of gross political interference with independent regulation and of discriminatory behaviour, in 2015 the Government changed the regulations to extend the period for compliance with HIQA’s physical environment standards by six years to 2021. Private and voluntary nursing homes had incurred enormous expenses and considerable financial pressures to meet the deadline. An inability to meet the standards and non-flexibility from the regulator had led to the closure of some nursing homes. The change to the regulations represented abuse by the State of its powers to act on behalf of State-run HSE nursing homes. It presented flagrant discriminatory practice in care of the older person.

The fees payable to public nursing homes do not include the capital costs, further significantly understating the published weekly cost per resident in HSE nursing homes. NHI questions has there been a thorough cost benefit analysis by the State of continuing to operate and maintain ageing buildings to ensure HIQA compliance.

Report on the Cost of Employer and Public Liability Insurance[xiii], the Cost of Insurance Working Group report published January 2018, presented insurance costs are likely to have increased by 57% for businesses from January 2011 to July 2016. Given the high dependency care needs of residents in private and voluntary nursing homes, premiums for such homes are likely to have increased substantially more.

The requirement to upskill and educate staff in the provision of care is a continuous requirement for private and voluntary nursing homes. Residents present with high dependency, acute clinical care requirements and the necessity for staff to continuously engage in education and training is imperative. Ensuring staff are appropriately skilled is a key regulatory requirement. NHI’s annual survey informed circa 2.7% of private and voluntary nursing home turnover encompasses training. Such costs are not recognised under the Fair Deal fees.

TOR 2: Quantify and analyse the reasons for the cost differentials between the private / voluntary and public sectors

The NTPF Deed of Agreement explicitly defines the costs covered under Fair Deal fees. It states:

"Long-term Residential Care Services"	shall have the meaning assigned to it by the Act and shall, without prejudice to the generality of the foregoing, include: o Bed and board; o Nursing and personal care appropriate to the level of care needs of the person; o Bedding; o Laundry service; and o Basic aids and appliances necessary to assist a person with the activities of daily living. For the avoidance of doubt, Long-term Residential Care Services shall not include: *inter alia* o Daily delivery of newspapers; o Social programmes; o All therapies; o Incontinence wear o Chiropody; o Dry cleaning; o Ophthalmic and dental services; o Transport (including care assistant costs); o Specialised wheelchairs; and o Hairdressing and other similar services

The definition of "long term residential care services" for HSE nursing homes is intended to mirror care services as per private and private providers under the NTPF Deed of Agreement. However, the reality is the costs entailed for the provision of a myriad of services are incurred by the HSE external of the fee payable and the Fair Deal budget. This is arguably in breach of the statutory Scheme that is the NHSS (Fair Deal).

The anomaly was highlighted in Accenture's *Funding Fair Deal – High Level Issue Analysis* report that was presented to the Minister for Health in November 2011. The report highlighted to the Minister: "The key point is that the current system for public beds has not been transparent in relation to cost and activity". It highlighted the treatment of ancillary services for HSE nursing homes. "There is an important distinction between the calculation of the cost of care and the inclusion of ancillary services in the subhead," it stated. "Both the Department and the HSE agreed that ancillary services are excluded from the cost of care calculation. The costs to be included under Fair Deal were considered in detail prior to the Scheme and cost components lodged with the Oireachtas. The central issue therefore has been how ancillary services are treated in the subhead.

Both the Department and the HSE calculated the 2011 subhead requirement excluding ancillary services. It is clear from a review of the Departments files that the Department's explicit intent was that ancillary services should be excluded from the subhead. This was also the understanding of some HSE personnel who engaged with the Department in establishing the scheme. However, it was not the consistent view taken by the HSE. Ancillary services will be funded through subheads B1 to B4 in 2012."

Yet, funding for long-term residential care is from subhead B12 of the HSE's Vote (Vote 39), effectively the Nursing Homes Support Scheme. It is explicit services within the definition of "long term residential care services" defined for HSE nursing homes are not funded from the Fair Deal budget allocation.

Accenture further stated: "The HSE needs to have full visibility and transparency around public beds at national as well as regional level to implement Fair Deal. A critical related factor has been the quality of management information on Fair Deal. The level of oversight on Fair Deal was constrained by lack of real-time information available to managers on activity levels and pressure points." The report highlighted Fair Deal funding for public beds "is effectively treated as a historically-based block budget" and recommended "revising how public beds are funded and managed from a historic block funding basis to a model where the money follows the patient."

(The relevant Statutory Instrument is presented in Appendix 3).

Private and voluntary nursing homes are tasked with providing services to residents under regulatory requirements that are excluded from their fees payable by NTPF under the Fair Deal; whereas residents in HSE nursing homes retain access to such.

Non-transparency in public nursing home expenditure presents challenges in presenting specific cost differentials arising between public and private/voluntary nursing homes. This review needs to provide long overdue public transparency and scrutiny of expenditure that is being incurred within HSE nursing homes. This examination should encompass a breakdown informing of:

- Salaries expenditure
- Indirect staffing / administration and agency staff costs
- Pension contribution expenditure
- Day-to-day costs such as food and beverage, heating and electricity
- Cost of maintenance
- Insurance costs
- Rates
- Capital costs
- Spend on:
    - Therapies,
    - Activities (staff and other cost),
    - GP services / medical cover
- Medication expenditure
- Expenditure on furnishings and 'household' equipment
- Shared services:

- HR
- Accounts/Finance
- Auditing
- IT support
- Admin support

Note, the list is not exhaustive.

It must be implicit with regard to the expenditure that is incurred within the Fair Deal budget by HSE nursing homes and inform of separate spend for items and services excluded from the scheme.

TOR3: Define outputs and inputs associated with activity in the private/voluntary and public sectors and identify the level and trend of these outputs and inputs.

Private and voluntary nursing homes are the significant majority providers of nursing home care in Ireland. At the end of September 2018, 79% of the 22,742 residents funded by Fair Deal were availing of care in private and voluntary nursing homes[xiv].

Analysis of Fair Deal expenditure for the year 2017 informs the indicative contribution per resident is €35,000 per annum. The indicative contribution per HSE resident is €69,000. Over the 16-month period October 2016 to February 2018, Fair Deal fees payable to HSE residents increased by an average 11%. Over the corresponding period, average fees for residents in private and voluntary nursing homes increased by 3.9%. The Department's review of the Fair Deal scheme, undertaken by Deloitte, informed Fair Deal fees were not keeping pace with inflation. It said "in the period 2010 to 2013…the increase in prices negotiated (1.71%) has been lower than the increase in the CPI over the same period (3.79%)". It should be noted CPI is not the appropriate index to reflect rising costs of medical inflation. We previously informed of a specific €12 million increase in the Fair Deal 2018 budget to increase salaries in HSE nursing homes. The huge disparity in Fair Deal budget spend has been highlighted as a concern by the Public Accounts Committee.

As presented within TOR 2, the DSIDC analysis of provision of specialist dementia care informs the private sector is the main provider of specialist dementia care.

The Department of Health commissioned DKM Economic Consultants report *Potential Measures to Encourage the Provision of Nursing Home and Community Nursing Unit Facilities* starkly highlights the shortcomings of the present funding model and its impact upon private and voluntary providers. It states the scheme's failure to address differing levels of dependency in patient care "increases risks for operators with respect to deterioration of residents subsequent to their admittance and discourages some of the more sophisticated financing options". It adds: "There is no standard objective assessment basis for setting the price, related to either efficient capital and operating costs or the level of dependency of residents; while the NTPF does use some benchmarks, in the final analysis the rate for each nursing home is a matter for ad hoc negotiation. The most important factors appear to be the "going rate" in the particular county."

It warns: "In short, it is untenable that the State quality regulator can assess differentiated dependency levels and in doing so impose costs on nursing homes, while the State regulator claims it is unable to reflect the same factor in its pricing decisions."

Private and voluntary nursing homes are required to function under a funding model that DKM states fails to acknowledge the dependency levels of nursing home residents and "operates in an ad hoc manner, lacks rationale, consistency and fairness, only applies to the private sector, and in the long run is unsustainable". Against this backdrop, current health expenditure for HSE long-term residential facilities increased by 18.5% over the period 2011 to 2016[xv].

It is a gross aberration that private and voluntary nursing homes residents are paying additional fees to secure access for specialist care services that are vital to support their health and wellbeing.. These include services such GP care, therapies such as OT / physio, specialised equipment and therapeutic activities. Such services are provided within HSE nursing homes but private and voluntary residents are required to pay for many services that they are entitled to and should be provided to residents under GMS entitlement. Obligations are placed upon providers or residents to pay for such services to ensure residents can secure access to life-changing therapies and care.

The issue of access to therapies has been highlighted by HIQA and the Office of the Ombudsman. Within its report *An analysis of inspection findings during the first 15 months of inspections*, HIQA highlights "inadequate access to all care services, i.e. physiotherapy, chiropody, occupational therapy, or any other services as required by the resident" as being one of the most common breaches of regulation. It adds: "This reflects a wider funding and access issue in the sector and is an issue in particular for some private centres who are not able to access HSE services such as those listed above as they fall outside of the Fair Deal Scheme".

In its report *Who Cares? An Investigation into the Right to Nursing Home Care in Ireland*, the Office of the Ombudsman states: "The exclusion from the care package of therapies and social programmes appeared to be at odds with what (in the words of the Department) "is commonly understood as long-term nursing home care. Furthermore, it appeared that the care packages provided for in the NTPF agreements are not consistent with the obligations placed on private nursing homes under the Health (Nursing Homes) Act 1990 (as amended) and the Health Act 2007. The Ombudsman was concerned that, in many individual cases, the NTPF agreed care packages were not adequate to meet the actual care needs of that individual and that, in this event, the agreements made by the NTPF were falling short of the level of care apparently envisaged under the NHSS Act. However, a careful reading of the NHSS Act suggests that the narrow care packages agreed by the NTPF may not necessarily be at odds with the provisions of the Act." This informs the scheme, in its operation, exclude essential care services for private and voluntary nursing home residents.

The PAC effectively confirmed denial of access to such within its aforementioned periodic report. It stated the HSE'S Assistant National Director for Older People and Palliative Care Strategy informed the Committee "a person residing in a public, private or voluntary nursing home with 24-hour care is considered less of a risk than a person who might be residing alone in their home". "As medical card services are a scarce resource, there may not be sufficient capacity to provide the services for everyone, and the Assistant National Director indicated that some prioritisation must take place," the report states.

Private and voluntary nursing home residents must retain equal access to primary care services. The review must examine the cost outlay by HSE nursing homes to facilitate the access to primary care services / therapies, GP services and specialised equipment. Discriminatory practice in the provision of care services between HSE and private and voluntary nursing homes must be highlighted and addressed.

As presented within TOR 1, private and voluntary nursing homes must also absorb substantial operational and development costs that are not encompassed within fees payable to HSE homes: commercial rates, capital costs, land and maintenance costs, local authority charges, land costs, insurance premiums, education and training.

It is a damning inditement of our health services that the Fair Deal budget of €1 billion – to support the residents requiring nursing home care across HSE, private and voluntary providers - is applied in a discriminatory manner to the benefit of State nursing homes. It is scandalous that particular care providers – private and voluntary – do not have the reality of costs incurred to provide nursing home care encompassed within their fees. Such nursing homes are under severe financial pressure and as presented by the regulator HIQA and AIB – within this submission, smaller nursing homes are closing their doors because of failure by the funding model to meet the reality of care costs.

TOR 4: Examine the extent to which the objectives of the Nursing Home Support Scheme have been achieved, and comment on the effectiveness with which they have been achieved.

Fair Deal has largely fulfilled its stated objective by then Minister for Health Mary Harney in 2006 of making nursing home care “accessible and affordable and ‘anxiety-free’”. However, the scheme has been in operation for ten years and the necessity to review its pricing mechanism – central to the effective / non- effective operation of the scheme – has been procrastinated by State agencies.

Residents presenting for nursing home care have increasingly high dependency, specialised care needs. It is incumbent upon the State to bring into effect an effective, fit-for-purpose funding model to meet the care needs of nursing home residents.

The requirement was recognised in the Department of Health review of Fair Deal[xvi]. Published in July 2015, 42 months ago, it recommended: “In the medium term (within 18 months) the NTPF should review the present pricing system and submit proposals to the Minister for Health.” The review remains outstanding.

As presented, gross distortion within health spending is facilitated under the Scheme. Analysis of it by independent organisations (statutory and non-statutory), inform it is not fit for purpose and requires redress. This includes:

- Within its *Overview of HIQA Regulation of Social Care & Healthcare Services 2017* report, HIQA states: “There are examples of certain smaller nursing homes – which provide a more homely environment – closing voluntarily due to concerns over the financial viability of running such services.”
- The independent regulator highlighting breaches of regulations arising with regard to accessing therapies which reflect “a wider funding and access issue in the sector and is an issue in particular for some private centres who are not able to access HSE services…as they fall outside of the Fair Deal Scheme”.
- The Office of the Ombudsman stating “care packages” provided for in the NTPF “agreements are not consistent with the obligations placed on private nursing homes” under the Health Act and Regulations.
- DSIDC advancing “the complex and high dependency needs of persons with dementia in specialist care units now need to be more realistically reflected in fairer resource allocation, in recognition of the skill mix of staff employed in specialist care units, their training needs and the level of care expected to be delivered to residents with dementia. A new funding model is required if the private sector is to be further incentivised, with more funding allocated to private nursing homes in recognition of the specialist services needed to support PWD [persons with dementia] including those with behaviours that challenge.”
- The *Sunday Business Post*, 19th August 2018, stated with regard to Minister Jim Daly in an article headlined ‘Dementia villages’ needed to prevent ‘next housing crisis’: “Daly said there was a need to examine these rates [Fair Deal] for care providers who were “making strides to provide top-quality care for dementia patients”.”

- The Oireachtas Joint Committee on Health and Children recommends in its *Report on End of Life and Palliative Care in Ireland*: "In reviewing the current Fair Deal scheme, an evidence-based cost of care model could be used in assessing the real cost of residential nursing home care in Ireland."
- The aforementioned DKM report states: "The nursing home sector in Ireland is a very substantial sector of the economy. Through the Fair Deal scheme the State procures several hundred million euros worth of services annually from private nursing homes. While the scheme has delivered many benefits and is a significant advance on what was in place heretofore, its current pricing model operates in an ad hoc manner, lacks rationale, consistency and fairness, only applies to the private sector, and in the long run is unsustainable."
- The report, commissioned by the Department of Health, also states Fair Deal fees "do not reflect the degree of dependency of residents", adding: "In short, it is untenable that the State quality regulator can assess differentiated dependency levels and in doing so impose costs on nursing homes, while the State price regulator claims it is unable to reflect the same in its pricing decisions."
- These fundamental failings of the scheme are compounded by lack of independent recourse for providers during the negotiation process. Failure to agree a fee with the NTPF will effectively lead to the closure of a nursing home. Yet no right of independent appeal is available to a provider if they cannot agree a fee with the NTPF.
- Economist Jim Power warned within NHI Budget 2018 submission, *Cost Pressures in the Private Voluntary Nursing Home Sector*: "While cognisant of the requirement to achieve value for spend, the State must be mindful of the very serious economic and social implications of a failure to appropriately resource long-term residential care. Failure to resource providers and ensure that costs encompassed in delivering care within a labour-intensive 24/7, 365 days a year health setting are taken into account, will have broader cost implications for State spending and will also have serious social implications. Failure to take cost realities into account will prove counterproductive and come at enormous expense to the exchequer."
- Bank of Ireland has undertaken an assessment of nursing home bed requirements to year 2026. In an interview with the *Irish Times,* published 9th October[xvii], its Head of Health Sector warned nursing home beds might not materialise where they are needed "because the capital value of greenfield nursing homes, once operational, may, as a result of those rates [Fair Deal] and increased staff costs, be lower than the actual development costs". "In reality it may require a change in policy direction and possibly Fair Deal rates to promote a more balanced regional development to ensure that capital investment is directed towards the regions where bed stocks will be most needed and people can actually age in their communities."
- Within its *Nursing Homes – Outlook* report, published November 2018[xviii], AIB Health of Healthcare states: "As cost pressures continue to build, the financial model underpinning smaller homes is becoming increasingly more difficult to sustain, especially where investment is required to ensure regulatory compliance into the future. Twenty private and voluntary nursing homes with 535 beds in total have closed over the past five years and all

had less than 40 beds. There is evidence that smaller homes have lower Fair Deal rates, almost 80% of homes with less than 40 beds have Fair Deal rates below the county average rate. The national average Fair Deal rate for these homes was €910, €52 below the national average rate of €962 in August 2018."

TOR 5: Identify, examine and compare the cost differential and how it is dealt with for Residential Care Centres in other jurisdictions.

We must be cognisant of the crisis presenting for care of the older person in the UK. The large growth in requirement for nursing home care and funding pressures are presenting a national emergency in healthcare delivery in the UK.

The Competition and Markets Authority (CMA) is an independent non-ministerial department that was enacted by the UK Government's Department for Business, Innovation and Skills. Its remit is to promote competition for the benefit of consumers. Within its *Care Homes* market study report published November 2017[xix], it presents the sustainability of care homes in the UK is threatened "due primarily to the low fee rates being paid for state-funded residents. It warns the fees being paid by local authorities to providers for provision of care are "below the full costs involved in serving these residents". The report states: "The current model of service provision cannot be sustained without additional public funding; the parts of the industry that supply primarily local authority funded residents are unlikely to be sustainable at the current rates local authorities pay. Significant reforms are needed to enable the sector to grow to meet the expected substantial increase in care needs… Our assessment is that if LAs [local authorities] were to pay the full cost of care for all residents they fund, the additional cost to them of these higher fees would be £0.9 to £1.1 billion a year."

The CMA warns: "Many care homes, particularly those that are most reliant on LA-funded residents, are not currently in a sustainable position. Our analysis shows that while many can cover their day-to-day operating costs, they are not able to cover any additional investment costs. This means that while they might be able to stay in business in the near term, they will not be able to maintain and modernise facilities, and eventually will find themselves having to close, or move away from the LA-funded segment of the market."

It recommends accurate and informed planning regarding future care needs is required and subsequently "necessary commissioning steps" should be taken on the basis of those plans. "For capacity to be in place to meet the future increase in demand, these decisions need to be made in good time," it adds. The VFM should be cognisant of such warnings and the recommendations emanating.

The UK National Audits Office states between 2010-11 and 2016-17 local authority spending on adult social care services reduced by 5.3% in real terms[xx].

The Public Accounts Committee in the UK Parliament published a report in May 2018 titled *The adult social care workforce in England*[xxi]. The report states: "We are also concerned about the short-term funding fixes aimed at adult social care which are not sustainable…There are, however, clear and obvious signs of significant financial stress in the sector now with levels of unmet need high and rising… The Department [of Health and Social Care] should establish quickly the funding local authorities need to commission care at fair prices, to support a workforce of the right size and shape to deliver a sustainable care sector in the long-term."

The King's Fund is an independent charity working to improve health and care in England. In February 2018 it published a paper titled *Approaches to social care funding – Social care funding* *options*[xxii]. It states: "It is widely accepted that the system for funding social care is in urgent need of reform. Faced with shrinking budgets, local authorities are struggling to meet the growing demand for care, linked to increasing complexity in need and an ageing population. As a result, the number of older people receiving publicly funded social care has declined. While in practice, much of this shortfall has been met by private spending and informal care; it is also likely that many people's care needs are going unmet."

The Care Quality Commission, the independent regulator of health and social care services in England, has warned social care is approaching "tipping point" and what is required is a long-term sustainable solution for future funding and quality of adult social care. Within its report, *The State of Health Care and Adult Social Care in England 2016/2017*[xxiii]*,* it describes the future of care of older people as "one of the greatest unresolved public policy issues of our time". It states: "Care providers need to be able to plan provision of services for populations with the right resources, so good funding and commissioning structures and decision making should be in place to help boost the ability of health and social care services to improve. Funding challenges of recent years are well known, and in June 2018 the government announced an extra £20.5 billion funding for the NHS by 2023/24. However, at the time of writing, there is no similar long-term funding solution for adult social care."

Within its report published May 2018, *Fixing the care crisis*[xxiv], Alzheimer's Society UK states: "In England, the amount after which someone pays for care – assets above £23,350 – has not changed in eight years. The combination of expensive care, and no limit on what someone can spend, means some people spend nearly everything they have. At the same time, the number of local authorities offering an increased rate to providers to reflect the extra cost of dementia support has dropped. This has meant increased demands for top-up fees from families, poor quality care from providers operating on a shoestring budget, and providers even refusing to accept people with dementia."

As per Ireland, unsustainable financial pressures have severe implications. The Association of Directors of Adult Social Services' Budget Survey 2018[xxv] found "continued evidence" of failure in the adult social care provider market. In the six months to May 2018, at least 66% (69% in 2017) of councils surveyed reported that they had either had providers close or cease trading, or had had care contracts handed back, affecting thousands of individuals as a consequence.

TOR 6: Evaluate the degree to which the objectives warrant the allocation of public funding on a current and ongoing basis and suggest recommendations for improving the value for money obtained by the State.

When then Minister for Health Mary Harney announced the commencement of Fair Deal, she stated it would place residents firmly at the heart of the service. However, it is evident Fair Deal is operating in a discriminatory manner and there is gross inequality in the funding of residents in HSE nursing homes as opposed to those in private and voluntary homes. It is a grotesque abuse of public funds that HSE providers are paid fees that are, on paper, a national average 60% above those payable in respect of residents in private and voluntary counterparts. Furthermore, all nursing homes must comply with the same regulations and standards and all residents undertake the same assessment to determine if nursing home care is most appropriate to their care needs.

As presented within this submission, independent analyses have highlighted the severe unfairness of Fair Deal funding. It is stark that the analyses have highlighted the failure to appropriately fund the care provided to residents in private and voluntary nursing homes is impacting upon the capacity of such homes to meet care needs, capacity requirements and is leading to closures. The analyses independent of NHI have included:

- The review of Fair Deal stating geography and history are the predeterminants with regard to fees payable under the Fair Deal scheme.
- Accenture stating ancillary services provided in HSE nursing homes are paid for outside of the Fair Deal budget and there is requirement for visibility, transparency and oversight with regard to public nursing home spend.
- HIQA, the independent regulator, informing smaller nursing homes have closed due to concerns over financial viability and it is concerned regarding the viability of similar homes.
- PAC stating concerns that public nursing homes do not provide value within a €1 billion budget.
- Oireachtas Joint Committee on Health and Children advancing necessity for “evidence-based cost of care model” to determine “real cost of residential nursing home care in Ireland”.
- DSIDC stating the complexity and dependency care needs of nursing home residents “need to be more realistically reflected in fairer resource allocation” and presenting case for “a new funding model”.
- HIQA stating inadequate access to care services is breaching regulations and it is reflective of a wider funding issue for private nursing homes.
- Office of the Ombudsman highlighting care defined under Fair Deal is not consistent with obligations placed on private nursing homes.
- DKM Economic Consultants analysis, on behalf of the Department of Health, stating Fair Deal’s failure to address the differing dependency levels of residents is presenting risks for the residents and nursing home providers. The analysis – now four years completed – states Fair Deal fees are not cognisant of regulatory requirements.
- Bank of Ireland stating there will be regional shortage of beds because Fair Deal rates will negate required development in regions.

- AIB informing of closure of 20 nursing homes and asserting “the financial model underpinning smaller nursing homes is becoming increasingly more difficult to sustain”.

ENDS

Appendix 1
Nursing Homes Support Scheme Average Fee Per Resident Per Week

The fees are based upon assessment of latest published HSE fees, February 2018, by comparison with fees payable for private and voluntary nursing homes in same period.

County	Average weekly cost of care HSE nursing homes	Average private / voluntary nursing homes	% Differential - average cost public v average fee private/voluntary
Westmeath	€2,229 (2 nursing homes)	€846 (11 nursing homes)	163%
Laois	€2,078 (3 nursing homes)	€935 (4 nursing homes)	122%
Longford	€1,912 (1 nursing home)	€887 (3 nursing homes)	115%
Offaly	€1,661 (3 nursing homes)	€846 (7 nursing homes)	96%
Monaghan	€1,679 (1 nursing home)	€918 (5 nursing homes)	83%
Cavan	€1,673 (4 nursing homes)	€917 (7 nursing homes)	82%
Limerick	€1,549 (2 nursing homes)	€853 (22 nursing homes)	81%
Clare	€1,526 (4 nursing homes)	€851 (11 nursing homes)	79%
Donegal	€1,465 (11 nursing homes)	€822 (12 nursing homes)	78%
Kilkenny	€1,596 (1 nursing home)	€901 (8 nursing homes)	77%
Kerry	€1,495 (6 nursing homes)	€859 (17 nursing homes)	74%
Roscommon	€1,464 (3 nursing homes)	€844 (11 nursing homes)	73%
Wexford	€1,477 (2 nursing homes)	€858 (13 nursing homes)	72%
Galway	€1,444 (7 nursing homes)	€849 (35 nursing homes)	70%
Mayo	€1,443 (6 nursing homes)	€860 (17 nursing homes)	68%
Meath	€1,636 (2 nursing homes)	€982 (18 nursing homes)	66%
Louth	€1,614 (4 nursing homes)	€978 (8 nursing homes)	65%
Tipperary	€1,411 (4 nursing homes)	€852 (25 nursing homes)	65%
Carlow	€1,366 (1 nursing home)	€871 (6 nursing homes)	57%
Kildare	€1,594 (2 nursing homes)	€1022 (21 nursing homes)	56%
Wicklow	€1,597 (2 nursing homes)	€1032 (19 nursing homes)	54%
Waterford*	€1,396 (2 nursing homes)	€915 (8 nursing homes)	53%
Cork	€1,438 (19 nursing homes)	€958 (48 nursing homes)	50%
Sligo	€1,448 (1 nursing home)	€963 (6 nursing homes)	50%
Leitrim	€1,296 (4 nursing homes)	€880 (2 nursing homes)	47%
Dublin	€1,605 (17 nursing homes)	€1145 (87 nursing homes)	40%

*Waterford also contains Dunabbey House, HSE nursing home (€370 perweek), which is a low dependency centre

Appendix 2
Extract from NTPF Deed of Agreement – definition of Long Term Residential Care Services, NHSS (Fair Deal)

"Long-term Residential Care Services" shall have the meaning assigned to it by the Act and shall, without prejudice to the generality of the foregoing, include:

- Bed and board;
- Nursing and personal care appropriate to the level of care needs of the person;
- Bedding;
- Laundry service; and
- Basic aids and appliances necessary to assist a person with the activities of daily living.

For the avoidance of doubt, Long-term Residential Care Services shall not include: *inter alia*

- Daily delivery of newspapers;
- Social programmes;
- All therapies;
- Incontinence wear
- Chiropody;
- Dry cleaning;
- Ophthalmic and dental services;
- Transport (including care assistant costs);
- Specialised wheelchairs; and
- Hairdressing and other similar services

Appendix 3

Nursing Homes Support Scheme Act 2009
Cost Components in respect of Care Services
(Public Nursing Homes)

In accordance with section 33(2) of the Nursing Homes Support Scheme Act 2009 (No. 15 of 2009), I, Mary Harney, Minister for Health and Children, following consultation with the HSE, hereby lay before the Houses of the Oireachtas details of the goods and services which constitute care services within the meaning of paragraph (a)(i) of the definition of "long-term residential care services".

Care services within the meaning of paragraph (a)(i) of the definition of "long-term residential care services" in section 3 of the Nursing Homes Support Scheme Act 2009 shall encompass the following:

Pay Related Services

- Management/ Administration Staff directly involved in running the relevant facility
- Nursing Staff directly involved in managing and providing health and personal care services within the relevant facility
- Health Care Assistants, Attendants and equivalent grades directly involved in providing health and personal care services within the relevant facility
- Porters, Catering, Laundry and Housekeeping Staff directly involved in maintaining the relevant facility and its residents
- Maintenance/ Technical Staff directly involved in maintaining the relevant facility

The staff costs listed above shall include pay, including any overtime and allowances, and Employer's PRSI.

Non-Pay Related Goods and Services

- Basic clinical consumables, including: basic bandages; basic, non-medicated dressings; swabs; aseptic packs; syringes and needles; sterile gloves, wipes, aprons etc.; hip protectors and disposable underwear; sharps box; catheters; drainage bags and leg bags; tubing for oxygen, feeding pumps etc.
- Oxygen
- Catering
- Heat, Power and Light
- Cleaning and Washing
- Upkeep of Furniture, Equipment, Crockery and Hardware
  Costs under this heading are capped at a maximum of €7,000 per annum.

- Bedding and Clothing

- General Maintenance
  This item encompasses only regular maintenance works and service contracts with an annual value of €7,000 or under.

- Education and Training directly related to health and long-term care and undertaken by staff directly involved in the provision of care within the relevant facility.
  This item excludes pre-registration training. It is also capped at a maximum of 4% of the gross cost of direct salaries for the relevant facility.

- Insurance (public liability, employer's liability and property)

- Audit

- Office Expenses Rent / Rates directly attributable to the relevant facility
  Costs under this heading are capped at a maximum of €7,000 per annum.

- Miscellaneous
  This cost category is capped at a maximum of 2% of the overall non-pay expenditure per annum in accordance with existing HSE accounting principles

References

[i] Oireachtas Public Accounts Committee meeting 9th March 2017, Greg Dempsey, Assistant Secretary at the Department of Health: "It [Value for Money review] will be undertaken by the Department [of Health]. We have not actually started yet. In the next couple of months we will scope it out… I think our expectation is that we would get it completed in 2017."

[ii] Health in Ireland Key Trends 2018, 49.5% of nursing home residents year-end 2017 aged 85+

[iii] CSO Population and Labour Force Projections

[iv] Dementia Services Information and Development Centre, *An Irish National Survey of Dementia in Long-Term Residential Care,* February 2015

[v] NHI analysis based upon HSE data. In year 2017, 8,073 people 'entered' Fair Deal. In year 2013, 8,250 entered the scheme.

[vi] https://www2.hse.ie/file-library/fair-deal/cost-of-care-in-public-nursing-homes.pdf

[vii] HSE Annual Report and Financial Statements 2017

[viii] https://www.hse.ie/eng/services/publications/olderpeople/older%20person%20services%20consultation%20and%20information%20document.pdf

[ix] Elderly Care Services HSE Midlands – Information Document informed total income budgeted for nine HSE nursing homes was €9,276,823. The budget for total pay costs was €9,650,205.

[x] https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2017/2017-01-19_correspondence-hse-nursing-homes-ireland_en.pdf

[xi] HSE Service Plan 2018

[xii] http://www.budget.gov.ie/Budgets/2018/Documents/7.Nursing%20Homes%20Support%20Scheme%20%E2%80%93%20Trends%20and%20Figures.pdf

[xiii] https://www.finance.gov.ie/wp-content/uploads/2018/01/180125-Report-on-the-Cost-of-Employer-and-Public-Liability-Insurance.pdf

[xiv] HSE Performance Report September 2017

[xv] Department of Health, Health in Ireland Key Trends 2018

[xvi] https://health.gov.ie/wp-content/uploads/2015/07/Review-of-Nursing-Homes-Support-Scheme.pdf

[xvii] https://www.irishtimes.com/news/ireland/irish-news/rural-ireland-facing-shortage-of-nursing-home-beds-1.3628058

[xviii] https://business.aib.ie/content/dam/aib/business/docs/help-and-guidance/nursing-homes-outlook-nov-2018.pdf

[xix] https://www.gov.uk/government/publications/care-homes-market-study-summary-of-final-report/care-homes-market-study-summary-of-final-report

[xx] https://www.nao.org.uk/naoblog/adult-social-care-at-a-glance/

[xxi] https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/690/690.pdf

[xxii] https://www.kingsfund.org.uk/publications/approaches-social-care-funding

[xxiii] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663529/NEW_CQC_SoC2017_Web_accessible.pdf

[xxiv] https://www.alzheimers.org.uk/sites/default/files/2018-05/Dementia%20the%20true%20cost%20-%20Alzheimers%20Society%20report.pdf

[xxv] https://www.adass.org.uk/media/6434/adass-budget-survey-report-2018.pdf