

AMENDMENTS PROPOSED

OLDER PERSONS BILL

[B68B – 2003]

CLAUSE 1

1. On page 3, from line 26, to omit the definition of "abuse" and to substitute:

"abuse" means abuse contemplated in section 30 (2);

2. On page 3, from line 34, to omit the definition of "community-based care and support services" and to substitute:

"community-based care and support services" means any programme contemplated in section 11;

3. On page 3, from line 40, to omit the definition of "facility";

4. On page 3, after line 46, to insert the following definitions:

"frail older person" means an older person in need of 24-hour care due to a physical or mental condition which renders him or her incapable of caring for himself or herself;

"health care provider" means a health care provider defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

5. On page 3, from line 47, to omit the definition of "home-based care" and to substitute:

"home-based care" means care provided or services rendered at the place where a frail older person resides, excluding at a residential facility, by a caregiver in order to maintain such frail older person's maximum level of comfort, including care towards a dignified death;

6. On page 3, from line 49, to omit the definition of "luncheon club";
7. On page 3, in line 52, after "a" to insert "residential";
8. On page 4, in line 6, after "a" to insert "residential";
10. On page 4, from line 12, to omit the definition of "professional health care provider";
11. On page 4, after line 14, to insert the following definitions:

"rehabilitation" means a process by which an older person is enabled to reach and maintain his or her optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care;

"residential facility" means a building or other structure used primarily for the purposes of providing accommodation and for providing a 24-hour service to older persons;

"respite care" means a service offered specifically to a frail older person and to a caregiver and which is aimed at the provision of temporary care and relief;

12. On page 4, from line 19, to omit the definition of "social worker" and to substitute:

"social worker" means a person registered as a social worker under section 17 of the Social Service Professions Act, 1978 (Act No. 110 of

1978), and in the employ or service of government or a registered welfare organisation;

CHAPTER 1

Chapter 1 rejected.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 1

OBJECTS, IMPLEMENTATION, APPLICATION AND GENERAL PRINCIPLES

Objects of Act

2. The objects of the Act are to—
 - (a) maintain and promote the status, well being, safety and security of older persons;
 - (b) maintain and protect the rights of older persons;
 - (c) shift the emphasis from institutional care to community-based care in order to ensure that an older person remains in his or her home within the community for as long as possible;
 - (d) regulate the registration, establishment and management of services and the establishment and management of facilities for older persons; and
 - (e) combat the abuse of older persons.

Implementation of Act

3. (1) Subject to this Act allocating roles and responsibilities, the Act must be implemented by all organs of state

rendering services to older persons in the national, provincial and, where applicable, local sphere of government in an integrated, coordinated and uniform manner.

(2) Recognising that competing social and economic needs exist, such organs of state must take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.

(3) To achieve the implementation of this Act in the manner contemplated in subsections (1) and (2), all organs of state must co-operate in the development of a uniform approach aimed at coordinating and integrating the services delivered to older persons.

Application of Act

4. (1) The rights which an older person has in terms of this Act supplement the rights which an older person has in terms of the Bill of Rights.

(2) All organs of state and all officials, employees and representatives of organs of state must respect, protect and promote the rights of older persons contained in this Act.

(3) This Act binds both natural or juristic persons to the extent that it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

General principles

5. (1) The general principles set out in this section guide—

- (a) the implementation of all legislation applicable to older persons, including this Act; and
- (b) all proceedings, actions and decisions by any organ of state in any matter concerning an older person or older persons in general.

(2) All proceedings, actions or decisions in a matter concerning an older person must—

- (a) respect, protect, promote and fulfill the older person's rights, the best interests of the older person and the rights and principles set out in this Act, subject to any lawful limitation:
- (b) respect the older person's inherent dignity:
- (c) treat the older person fairly and equitably: and
- (d) protect the older person from unfair discrimination on any ground, including on the grounds of the health status or disability of the older person.

(3) In any matter concerning an older person—

- (a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and
- (b) a delay in any action or decision to be taken must be avoided as far as possible.

HEADING TO CHAPTER 2

1. On page 5, in line 2, to omit "ENSURING" and to substitute "CREATING".

CLAUSE 3

Clause rejected

NEW CLAUSE

1. That the following be a new Clause:

Development of and compliance with national norms and standards

6. (1) The Minister may, from time to time, by notice in the *Gazette*, prescribe national norms and standards in order to define the acceptable levels of services that may be provided to older persons and in terms of which services must be monitored and evaluated.

(2) Any person who provides a service to an older person must comply with the norms and standards contemplated in subsection (1).

CLAUSE 4

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

Rights of older persons

7. Older persons enjoy the rights contemplated in section 9 of the Constitution of the Republic of South Africa and in particular may not be unfairly denied the right to—

- (a) participate in community life in any position appropriate to his or her interests and capabilities;
- (b) participate in inter-generational programmes;
- (c) establish and participate in structures and associations for older persons;
- (d) participate in activities that enhance his or her income-generating capacity;
- (e) live in an environment catering for his or her changing capacities; and
- (f) access opportunities that promote his or her optimal level of social, physical, mental and emotional well being.

Support for services delivered by third parties

8. (1) The Minister—

- (a) may, in consultation with the Minister of Finance, provide financial awards to service providers that provide social services to older persons from funds appropriated by Parliament for that purpose;
- (b) may for the purposes of paragraph (a) prioritise needs and services for older persons;
- (c) may in the prescribed manner enter into contracts with service providers to ensure that the services contemplated in paragraph (b) are provided;
- (d) must prescribe conditions for the receiving of financial awards, including accounting measures, compliance measures and norms and standards; and
- (e) must prescribe remedies for failure to comply with the prescribed conditions contemplated in paragraph (d).

(2) The Minister must open and maintain a register of all assets bought with Government funds and prescribe conditions for the management of such assets.

Guiding principles for provision of services

9. Any service must be provided in an environment that—

- (a) recognises the social, cultural and economic contribution of older persons;
- (b) promotes participation of older persons in decision-making processes at all levels;
- (c) recognises the multi-dimensional needs of older persons and therefore promotes inter-sectoral collaboration;
- (d) ensures access to information by, education of and training of older persons;
- (e) promotes the development and basic care of older persons in rural and urban areas;
- (f) promotes the prevention of exploitation of older persons;
- (g) promotes the respect and dignity of older persons;

- (h) ensures that older persons receive priority in the provision of basic services;
- (i) ensures rehabilitation and the provisioning of assisted devices to older persons; and
- (j) ensures, as far as is practicable, that services and facilities are accessible to older persons.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 3

COMMUNITY-BASED CARE AND SUPPORT SERVICES FOR OLDER PERSONS

Rights of older persons receiving community based-care and support services

10. An older person receiving community-based care and support services has, in addition to the rights contemplated in section 7, the right to—

- (a) reside at home as long as possible;
- (b) pursue opportunities for the full development of his or her potential; and
- (c) benefit from family and community care and protection in accordance with society's system of cultural values.

Community-based programmes for older persons

11. (1) The Minister may, in collaboration with any relevant Minister or Member of the Executive Council in a province—

- (a) develop community based programmes that fall into two broad categories, namely—

- (i) prevention and promotion programmes, which ensure the independent living of an older person in the community in which the older person resides; and
 - (ii) home-based care, which ensures that a frail older person receives maximum care within the community through a comprehensive range of integrated services.
- (b) determine how any person who runs a programme contemplated in paragraph (a) may be supported, either financially or otherwise.

(2) The programmes contemplated in subsection (1) are programmes aimed at—

- (a) economic empowerment of older persons;
- (b) establishment of recreational opportunities for older persons;
- (c) information, education and counselling services, including HIV and AIDS, care for orphans, Alzheimer's, dementia and basic emergency care;
- (d) spiritual, cultural, medical, civic and social services;
- (e) provision of nutritionally balanced meals to needy older persons;
- (f) promotion of skills and capacity of older persons to sustain their livelihoods;
- (g) professional services, including care and rehabilitation to ensure independent living of older persons;
- (h) appropriate services contained in the indigent policy for vulnerable and qualifying older persons;
- (i) the utilisation and management of existing facilities for older persons as multi-purpose community centres;
- (j) integrated community care and development systems for older persons; and
- (k) inter-generational programmes.

(3) Home-based care programmes directed at frail older persons within the community may include—

- (a) provision of hygienic and physical care of older persons;
- (b) provision of professional and lay support for the care of older persons within the home;

- (c) rehabilitation programmes that include provision of assisted devices;
- (d) provision of respite care;
- (e) information, education and counselling for family members, care-givers and the community regarding ageing and associated conditions; and
- (f) provision of free health care to frail older persons and to other older persons determined by the Minister.

Community-based care and support services to be registered

12. (1) No person may provide community-based care and support services unless the service is registered in terms of section 13.

(2) A person who renders a community-based care and support service that has not been registered in terms of section 13 is guilty of an offence.

Registration of community-based care and support services

13. (1) Any person who wishes to provide a community-based care and support service must apply to the Director-General for the registration of such service.

(2) The Minister must prescribe conditions for the registration of community-based care and support services, including application for registration, approval of registration, temporary registration, withdrawal and termination of registration, and any matter contemplated in subsection 4.

(3) Registration granted in terms of this section is not transferable to another person.

(4) If the provider of a service for any reason intends to stop providing the service, the provider must, prior to stopping the service in question—