

Sociaal Economische Raad
Social Economic Council

Letter of Advice

Concerning the draft national decree, containing general measures, regarding the expansion of AVBZ care-elderly care (in Dutch: “Concept Landsbesluit uitbreiding AVBZ-zorg ouderenzorg”)

SER / 15/DCB/091
December 7th, 2015



Information

The Social Economic Council Sint Maarten (“Sociaal Economische Raad”, referred to below as “SER”) is an independent advisory body to the government of Sint Maarten. The SER advises upon request by one or more Ministers (solicited) or on its own initiative (unsolicited) on all important social economic issues.

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Colophon

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To the Minister of Public Health, Social Development and Labor
Mr. Emil Lee
Clem Labega Square
Philipsburg
Sint Maarten

Philipsburg, December 7th, 2015

Letter Of Advice

Our reference: SER /15/DCB/091

Re: Letter of advice concerning the draft national decree, containing general measures, regarding the expansion of AVBZ care-elderly care (in Dutch: “Concept Landsbesluit uitbreiding AVBZ- zorg ouderenzorg”)

Honorable Minister Lee,

In reply to a request of your predecessor, the Ad Interim Minister of Public Health, Social Development and Labor, Mrs. Rita Bourne-Gumbs, an advice request was received by our Council on October 9th, 2015, concerning the national decree, containing general measures, regarding the expansion of AVBZ care-elderly care (in Dutch: “Concept Landsbesluit uitbreiding AVBZ- zorg ouderenzorg”)

The Social Economic Council (SER) has evaluated the social, economic and legal consequences of the advice request and came to the following conclusions:

1. To reject the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, in its current form.
2. That due diligence should always be carried out when drafting laws; i.e. the elucidation attached to the proposed national decree, containing general measures, regarding expanding AVBZ care-elderly care should contain correct and sufficient information.
3. That the Ministry of Public Health, Social Development and Labor should only forward the draft, national decree, containing general measures, regarding expanding AVBZ care-elderly care to other (advisory) institutions within our Government system, after the draft national decree, containing general measures, and associated elucidation have been amended as advised by the SER.

Background on the national decree, containing general measures, regarding the expansion of AVBZ care-elderly :

According to the draft national decree, containing general measures, regarding the expansion of the AVBZ care-elderly care the White and Yellow Cross was being subsidized by the Government of Sint Maarten to provide care for the elderly. The subsidy consisted of 21 spaces for residential elderly care.

The White and Yellow Cross defines “elderly care” as care for the elderly who are no longer able to provide for themselves, due to various, most often social economic reasons. Those elderly persons are not (necessarily) sick. See the definition Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010- 2013¹:

Care product: residential elderly care Eligible: Residents of Sint Maarten who are 60 years and older and **in need of residential care** with an ADL score of 6 or higher. The indication for admission into a Residential Elderly Care facility is **not primarily based on their needs for nursing care**, but on their inability to sustain an independent life in the community. **This means that their primary need is usually not nursing care** but **support** in daily life activities (emphasis added).

The Government of Sint Maarten indicated that it can no longer subsidize above mentioned care, thus the Ministry of Public Health, Social Development and Labor proposed the idea to have the elderly care set up under the National Ordinance AVBZ, in order to reach out to this vulnerable group.

The SER would like to emphasize that it is in favor of adjusting the law to accommodate those in need of (residential) care. However, the SER remarks that such adjustments should be done properly by defining the relevant group(s) accordingly and providing correct and sufficient information.

Executive Summary

On October 9th, 2015 the Social Economic Council hereafter the “SER” received an advice request from the Ministry of Public Health, Social Development and Labor, concerning the draft national decree, containing general measures, regarding the expansion of AVBZ care-elderly care (in Dutch: “Ontwerp Landsbesluit uitbreiding AVBZ- zorg ouderenzorg”)

1 Information received on November 18th, 2015 by the Ministry of Public Health, Social Development and Labor.

On Tuesday, October 20th, 2015, the SER sent its preliminary concerns/ comments on the draft national decree to the policy department of the Ministry of Public Health, Social Development and Labor. The SER received a reaction from the relevant Ministry on Wednesday, November 18th, 2015. With this information the SER drafted its advice.

As a consequence, the SER observed that:

1. The draft national decree, containing general measures, regarding expanding AVBZ care-elderly care as currently drafted, serves another purpose than what was intended, because the draft national decree, containing general measures, was proposed to have the elderly care as provided by the White and Yellow Cross, set up under the National Ordinance AVBZ, in order to reach out to this vulnerable group (the elderly and poor people). But in the draft national decree, containing general measures, the aim is to reach out to another group: the old and sick people.
2. The Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care does not contain correct (and sufficient) information;
3. The SER did not receive all requested information;

[See the attached elucidation for a complete explanation on each of the above-mentioned points.]

Advice:

When studying all information received from the Ministry of Public Health, Social Development and Labor, with regard to the advice request draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, the SER observed that due diligence is lacking.

In order to adopt a national decree, containing general measures (or any other law), it is important that the elucidation to that law explains the reasons for drafting such a law and the context of how this law will be implemented.

The drafter(s) of the law, in this case the Ministry of Public Health, Social Development and Labor, has (have) an obligation to disclose all relevant, essential and correct information relating to this law in order to avoid legal, factual, social and economic complications/ consequences.

Therefore, pursuant to the SER meeting on this topic, the SER unanimously advises as follows:

1. To reject the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, in its current form.
2. That due diligence should always be carried out when drafting laws; i.e. the elucidation attached to the proposed national decree, containing general measures, regarding expanding AVBZ care-elderly care should contain relevant, correct and sufficient information.
3. That the Ministry of Public Health, Social Development and Labor should only forward this draft, national decree, containing general measures, regarding expanding AVBZ care-elderly care to other (advisory) institutions within our Government system, after the draft national decree, containing general measures and associated elucidation has been amended as advised by the SER.

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Oldine V. Bryson- Pantophlet
Chairwoman

Gerard M.C. Richardson
Secretary-General

Cc: The Minister of General Affairs, the Honorable Prime Minister William Marlin.

Attached: Elucidation to this advice

ELUCIDATION

1. *The draft national decree, containing general measures, regarding expanding AVBZ care-elderly care as currently drafted, serves another purpose than what was intended.*

With the Government's subsidy, the White and Yellow Cross was accommodating 21 senior citizens whom (usually due to social/economic reasons) could no longer rent a home or an apartment for themselves (for example: those who only receive an AOV allowance which is not enough). Basically, with government's subsidy, the White and Yellow Cross was accommodating senior citizens who are poor.

Since the Government indicated that it can no longer provide this subsidy, the Ministry of Public Health, Social Development and Labor proposed to reach out to those old, poor people who would otherwise be left destitute, but with this national decree, containing general measures, the Ministry expands the right to care to a much larger group (excluding the elderly and poor people), with all accompanying (financial) consequences.

Thus, with the draft national decree, containing general measures, the Ministry of Public Health, Social Development and Labor now wants to accommodate old and sick people and expand the AVBZ accordingly, which will still leave the initial group that was covered by the Government's subsidy destitute.

See Article 1 draft national decree, containing general measures, regarding expanding AVBZ care-elderly care (in Dutch):

1. *Verzekerden als bedoeld in artikel 4 van de Landsverordening algemene verzekering bijzondere ziektekosten hebben aanspraak op verblijf in een instelling voor ouderen met samenhangende zorg bestaande uit verzorging en begeleiding, indien de verzekerde de pensioengerechtigde leeftijd heeft bereikt en is aangewezen op een beschermende woonomgeving.*
2. *Onder verzorging als bedoeld in het eerste lid wordt verstaan: het ondersteunen bij of het overnemen van activiteiten op het gebied van de persoonlijke verzorging in verband met een **somatische of psychogeriatrische aandoening of beperking**, gericht op het opheffen van een tekort aan zelfredzaamheid.*
3. *Onder begeleiding als bedoeld in het eerste lid wordt verstaan: het aanbieden van activiteiten aan verzekerden met een **somatische of psychogeriatrische aandoening of beperking die matige of ernstige beperkingen hebben** op het terrein van de sociale redzaamheid, het bewegen en verplaatsen, het psychisch functioneren of het geheugen en de oriëntatie, welke activiteiten gericht zijn op bevordering, behoud of compensatie van de zelfredzaamheid.*

(Empasis added).

The content of this article is contrary to the definition used in the Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010- 2013:

Care product: residential elderly care

Eligible: Residents of Sint Maarten who are 60 years and older and in **need of residential care** with an ADL score of 6 or higher. The indication for admission into a Residential Elderly Care facility **is not primarily based on their needs for nursing care**, but on their inability to sustain an independent life in the community. This means that **their primary need is usually not nursing care** but **support** in daily life activities (Emphasis added).

By expanding the AVBZ care in the above described manner, the Ministry reaches out to an entire new group of persons, instead of taking in the elderly and poor people (the group that the White and Yellow Cross was accommodating with the subsidized funds from the Government). If this is indeed the intention of the Ministry, this should be communicated clearly in the elucidation. As it is worded at the moment, the draft national decree, containing general measures, serves another purpose than that what was intended (according to the Elucidation), thus not covering the original group in need of (residential) care.

Furthermore, the draft national decree, containing general measures, only makes a distinction between [Bejaardenhuis met een verzorgingshuisfunctie] and [verzorgingshuis voor ouderen]. But these concepts are not properly explained.

Article 2

A

- h. *bejaardenhuiszorg met een verzorgingshuisfunctie: zijnde een verzorgingshuis voor bejaarden, waar aan de bewoners verzorging en begeleiding wordt aangeboden in een beschermende woonomgeving.*

B

- f. *verzorgingshuiszorg voor ouderen: de zorg die een bejaardenhuis biedt aan personen boven de pensioengerechtigde leeftijd die zijn aangewezen op een beschermende woonomgeving. De omvang van de zorg betreft het totaal aan zorg wat het bejaardenhuis op dit gebied kan geven, hetgeen nader is omschreven in het zorgcontract dat het Uitvoeringsorgaan met de bejaardenhuisen afsluit. De duur van deze zorg gaat in vanaf de eerste dag van opname en is verder onbeperkt, maar staat onder toezicht van het Uitvoeringsorgaan.*

It is not clear what the difference is between [Bejaardenhuis met een verzorgingshuisfunctie] and [verzorgingshuis voor ouderen], when it is not defined who is a [bejaarde] and who qualifies to be an [oudere], therefore it is difficult to translate these notions/ concepts into English, because there is no proper explanation given in the draft national decree, containing general measures² and it is not up to the SER to define those concepts.

Additionally, the Ministry of Public Health, Social Development and Labor made the following statements³:

- The elderly who are sick, are in need of nursing care. This group is eligible for [verpleeghuiszorg].
[Verpleeghuiszorg] is not the same as [Verzorgingshuiszorg].

Please note that the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care does not mention [Verpleeghuiszorg].

First of all, the group that falls under the scope of article 1 of the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care are people who are old and sick. But the Ministry stated that these people are not eligible to fall under the [Verzorgingshuiszorg]. As a consequence thereof, old and sick people should not fall under the scope of the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care, but under the scope of the [Verpleeghuiszorg] (which is not covered by the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care).

The other statement made by the Ministry of Public Health, Social Development and Labor is that the Ministry does not see any big difference between the definition of [bejaardenhuiszorg]⁴ the group that is insured under the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care and the descriptions in the subsidy decree and the definition given in the Policy Plan Stichting Zorgverlening Het Wit Gele Kruis 2010- 2013.

2 There is, for example, no explanation given for “bejaarde”, nor for “oudere”. “Bejaarde” according to the online Dutch Van Dale dictionary is someone who reached the age of 65 or older whereas, “oudere” is explained by the Van Dale dictionary as someone who is approximately 55 years and older. The draft national decree, containing general measures, however, explains “oudere” as someone who has reached the pensionable age. Thus what is the difference between “bejaarde” and “oudere” according to the draft national decree, containing general measures?

3 Statements made in the Working paper for the SER dated, October 26th, 2015 from the Department Public Health of the Ministry of Public Health, Social Development and Labor.

4 This concept is nowhere to be found in the draft national decree, containing general measures regarding expanding AVBZ care-elderly care.

Since there are mayor differences in above- mentioned definitions, the SER considers this statement incorrect.

2. *The Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care does not contain correct and sufficient information.*

- I) The White and Yellow Cross was informed on April 9th, 2015 that Government's subsidy to this institution will discontinue as per May 1st, 2015, while the Elucidation to the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care states that the subsidy ended per January 1st, 2015. So, in reality, the first four months of the year 2015 were still covered from Government's budget, but the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care is drafted with the impression that the AFBZ fund will have to cover the costs as per January 2015.

The Ministry of Public Health, Social Development and Labor informed the SER that the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care (and the associated Elucidation) was (were) drafted before January 1st, 2015. The Ministry furthermore confirmed that for the first four months of the year 2015, the White and Yellow Cross did indeed still receive subsidy from the Government. But when the national decree, containing general measures, regarding expanding AVBZ care-elderly care goes into effect, the first four months of 2015 will not be paid out (for a second time) from the AFBZ fund (the General Fund for exceptional medical cost (In Dutch: Algemeen Fonds Bijzondere Ziektekosten AFBZ), according to the Ministry of Public Health, Social Development and Labor.

However, the SER cannot agree with above statements made by the Ministry. When the advice request was signed off on October 6th, 2015 by the then Minister of Public Health, Social Development and Labor the necessary due diligence should have been carried out. There should have been another check if all information is still relevant before sending it to an advisory body for advice. Information in the elucidation to a national decree, containing general measures, that is not or no longer based on the correct information/ circumstances can and should be changed up until the moment the national decree is adopted⁵.

Furthermore, the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care with associated elucidation in its current form, does not elaborate on the first four months of 2015 where the subsidy was

5 See "Aanwijzing 158 jo. 165 (met toelichting) Regeling van de Minister- President van 27 juni 2013, houdende de vaststelling van de Aanwijzing voor de regelgeving van Sint Maarten, AB 2013, GT. No 26".

paid from Government's budget. Thus, if these first four months of 2015 will be paid out a second time, (this time from the AFBZ fund), it will be difficult to discover that a financial error was made, without having the crucial background information on Government's continued subsidy up until April 2015.

- II) As of January 1st, 2014 the subsidy from the Government to the White and Yellow Cross consists of 21 spaces (before January 1st, 2014 the subsidy consisted of 26 spaces). The White and Yellow Cross has a continuous waiting list of 12-16 persons.

The draft national decree, containing general measures, (see article 1 paragraph 1 of the draft national decree, containing general measures) mentions that ALL old people (who are insured and apply to the other conditions) can claim a place in an elderly/retirement home. But the SER asked the Ministry whether there is space for ALL old people who claim such a space in an elderly home, since the White and Yellow Cross only accommodated 21 elderly.

The Ministry did not provide the SER with a proper answer to this question. The Ministry informed the SER that the White and Yellow Cross has plans to expand its facility. The SER is aware of this, because the SER contacted the White and Yellow Cross, who notified the SER that the expansion of its facility will start by the end of 2016 and will comprise 30-40 additional spaces.

Therefore, the SER is still wondering whether there is space for ALL old people who claim such a space in an elderly home, according to article 1 paragraph 1 of the draft national decree, containing general measures, regarding expanding AVBZ care-elderly care.

- III) It is proposed to have the elderly care financed via AFBZ fund. The AFBZ fund was chosen for obvious reasons ("voor de hand liggend") according to the Ministry of Public Health, Social Development and Labor and financing elderly care from this fund will not affect the (AFBZ) fund. The SER is of the opinion that the fund will surely be affected financially. (If one plans to finance a new kind of care via the fund, the fund will automatically be affected). Whether the costs will not negatively affect the AFBZ fund, could not be determined by the SER with the information provided in the Elucidation.

The Elucidation states:

1. Financiering vanuit het Algemeen Fonds Bijzondere Ziektekosten is voor de hand liggend. Niet alleen is dit fonds financieel gezond en zou financiering van genoemde zorgverlening geen onevenredige belasting voor het fonds zijn. (See page 4 Elucidation [Nota van Toelichting])
2. ...,maar tevens wordt de financiële positie van het Algemeen Fonds Bijzondere Ziektekosten (AFBZ) niet aangetast. (see page 5 Elucidation [Nota van Toelichting])
3.terwijl de kosten die gepaard gaan met deze zorgverlening niet langer ten laste komen van de landsbegroting. (see page 5 under “Financiële paragraaf” of the Elucidation [Nota van Toelichting])
4. Op basis van bovenstaande cijfers wordt inzichtelijk dat de financiële positie van het fonds niet wordt aangetast met de uitbreiding van het pakket. (see last paragraph under “financiële paragraaf” of the Elucidation [Nota van toelichting]).

With regard to the third statement above, the SER remarks that the Government of Sint Maarten contributes to the AFBZ fund on a yearly basis. Therefore, it cannot be stated that the country’s budget will not be affected.⁶

The SER did receive the SZV financial year report 2014 from the Ministry of Public Health, Social Development and Labor, but the SER notes that the figures stated under the financial paragraph in the elucidation do not correspond with the financial information of the AFBZ fund as reflected in the SZV year report 2014⁷.

IV) In the Elucidation to the draft national decree, containing general measures, the Ministry stated several reasons why the SER was not going to be part of this advisory process.

The SER emphasizes that this is not a choice for the Ministry. The law⁸ is clear: article 5 paragraph 1 under r: in this case, the National Ordinance AVBZ can only be expanded after the SER has been consulted. The SER remarks that the information of not including the SER in the advisory process in this case,

6 Even though the country’s contribution stopped temporarily for a period of two years (AB 2014, no. 4).

7 Information in the Elucidation states: “Baten NAF 22.655.000”; information SZV year report 2014 states other figures.

8 National Ordinance AVBZ

should never have been included in the Elucidation to the draft national decree, containing general measures.

- V) See page 5 Elucidation [Nota van Toelichting] under “Artikelsgewijs deel”, last sentence:


“Op basis van artikel 5, tweede lid, is de inhoud en omvang van die zorg geregeld in het landsbesluit zorg, onder meer door te bepalen dat de zorg onder beperkingen wordt verleend en onder de voorwaarde dat degene die de zorg geniet, bijdraagt in de kosten daarvan”.

De SER noticed that those who are eligible for the care **CAN** be requested to contribute to the related costs. See article 5 paragraph 2 National Ordinance AVBZ. The contribution is not an obligation as it is being stated in the Elucidation. This is essential financial information that should be corrected in the Elucidation.

3. The SER did not receive all requested information

Article 19 of the National Ordinance AVBZ states that the Minister of Public Health, Social Development and Labor should give an annual instruction about the different groups/care that fall under the AVBZ and how the budget will be divided between the different groups of sick people that fall under the scope of the AVBZ. The SER requested to see the instruction for the year 2015 to determine whether the intended elderly care was previously calculated/ included.

The Ministry informed the SER that this (requested) information is not available at this moment. The SER finds this very unfortunate, since this information is essential financial information in this case.



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