



Relate

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The journal of developments in social services, policy and legislation in Ireland

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Nursing home standards

The Health Information and Quality Authority (HIQA) has published the *National Quality Standards for Residential Care Settings for Older People in Ireland*. These settings include public, private and voluntary nursing homes. They do not include acute hospitals or psychiatric facilities.

At present, private nursing homes are registered and inspected by the Health Service Executive (HSE). The standards that apply to them are those set out in regulations under the Health (Nursing Homes) Act 1990. There are no statutory standards and no inspection system for public nursing homes. These new standards will apply to all nursing homes and will be implemented by the Social Services Inspectorate of HIQA when the necessary regulations have been made.

The document sets out 32 standards under 7 section headings. There are additional rules in respect of people with dementia. The 32 standards are made up of standard statements and criteria. The standard statements set out what you, the nursing home resident or prospective resident, can expect in terms of the service. The criteria set out what is required to ensure that the standard is met.

The following is a brief summary of the content of the standards and what they mean for you. In general, nursing homes must have written policies and procedures on virtually all aspects of your care. In all cases, the standards require that the law and best practice are put into effect, that proper records are kept and that issues are reviewed periodically in order to reflect any changes in your circumstances.

The full text of the standards, together with a guide for service users, is available at www.hiqa.ie

Section 1: Rights

Standard 1: Information:

You have access to information, in an accessible format, appropriate to your needs, to help you make a decision about the nursing home.

This means that there must be a clearly written accessible brochure describing, among other things, the nursing home's services and facilities; activities available in the home and the local community; the individual space you will have; the communal space provided and staffing arrangements. You and your family must be told of all the fees payable and any additional charges that may arise. You and your family must get an opportunity to discuss the issues with a staff member before you go in and you may visit before deciding to stay.

Standard 2: Consultation and participation:

Your right to consultation and participation in the organisation of the nursing home, and your life within it, are reflected in all policies and practices.

This means that:

- If you are admitted in an emergency, you get time, information and, if necessary, access to an advocate, in order to decide whether or not to stay
- You are able to contribute to and participate in day-to-day activities
- The nursing home facilitates the establishment of a residents' representative group for feedback and consultation; the group may include residents, family members and advocates
- Feedback is actively sought from you on the services provided and the nursing home can show how that feedback has had an effect.

Standard 3: Consent:

Your consent to treatment and care is obtained in accordance with the law and current best practice guidelines.

This means that:

- You are presumed to be capable of making informed decisions in the absence of evidence to the contrary
- You are facilitated to access an advocate/advocacy services when making decisions if necessary and if you wish
- Your capacity to make a decision is assessed each time it arises unless there is clear evidence that this is not necessary
- You are given sufficient accessible information and enough time to enable you to make an informed decision
- If you do not have the capacity to give or refuse consent, account is taken of your known wishes, needs and preferences, and your general well-being and cultural and religious convictions

Standard 4: Privacy and dignity:

Your right to privacy and dignity is respected.

This means that:

- Care practices are personalised to respond to your individual needs and preferences.
- There are arrangements to ensure that you can live the way you want to in respect of, among other things, social contacts, spending time alone, expressing intimacy and sexuality, choosing the clothes to wear, getting help with eating and drinking, dealing with social and health care professionals, end of life care
- Staff demonstrate their respect for you in their general demeanour and appearance and in how they address you
- You have access to a private telephone and control over your private space

Standard 5: Civil, political and religious rights:

You are facilitated to exercise your civil, political and religious rights, in accordance with your wishes.

This means that:

- The nursing home has a policy setting out how your rights will be facilitated
- You have access to Citizens Information and advocacy services.
- You have equitable and timely access to health care services
- You are facilitated to participate in the political process; to access legal advice and to access community-based facilities
- You are facilitated to practise your religion

Standard 6: Complaints:

Your complaints and those of your family, friends, and/or representative, are listened to and acted upon and there is an effective appeals procedure.

This means that:

- The environment is conducive to making suggestions and complaints
- Issues are immediately addressed
- There is a complaints procedure which outlines how complaints are dealt with, the time scales involved and the appeals procedure available

Standard 7: Contract/statement of terms and conditions:

You have a written contract/statement of terms and conditions with the nursing home.

This means that the contract includes, among other things, the room to be occupied (this is to remain the same unless medical reasons require a change); the care and services

covered by the fee; the fees payable and by whom; your rights, obligations and liability to the nursing home; the circumstances under which you may be discharged or the contract terminated; and the policy on what happens if you are absent from the home.

Section 2: Protection

Standard 8: Protection:

You are protected from all forms of abuse.

This means that:

- The abuse prevention policy outlines procedures for prevention of abuse, responding to suspicion, allegation or evidence of abuse or neglect and reporting of concerns to the authorities
- The nursing home takes steps to ensure that you are safe from physical or sexual abuse, psychological abuse, financial or material abuse, neglect or acts of omission, or discriminatory abuse
- There is protection for whistle-blowers, and staff receive induction and ongoing training in dealing with abuse

Standard 9: Your finances:

Your finances are safeguarded.

This means that:

- There are clear policies and procedures on the management of your money and personal property and that records and receipts are kept
- The nursing home owner or manager is appointed as your agent for social welfare purposes only if no-one else is available. The Chief Inspector of Social Services must be informed of such arrangements at the time of inspection.

Section 3: Health and social care needs

Standard 10: Assessment:

You have your needs assessed before you move into the nursing home; you are assessed on admission, and subsequently as required.

Standard 11: Your care plan:

The arrangements to meet your needs are set out in an individual care plan, developed and agreed with you, or with your representative if you are not capable of doing so.

Standard 12: Health promotion:

You benefit from policies and practices that promote your health, rehabilitation and well-being.

Standard 13: Health care:

Your assessed health needs are reviewed and met on an ongoing basis.

Standard 14: Medication management:

You are protected by the nursing home's policies and procedures for medication management and, where appropriate, you are responsible for your own medication.

Standard 15: Medication monitoring and review:

You benefit from your medication to increase the quality or duration of your life. You do not suffer unnecessarily from illness caused by the excessive, inappropriate or inadequate consumption of medicines.

Standard 16: End of life care:

You continue to receive care at the end of your life which meets your physical, emotional, social and spiritual needs and respects your dignity and autonomy.

Section 4: Quality of life

Standard 17: Autonomy and independence:

You can exercise choice and control over your life and you are encouraged and enabled to maximise independence in accordance with your wishes.

Standard 18: Routines and expectations:

You have a lifestyle that is consistent with your previous routines, expectations and preferences, and satisfies your social, cultural, language, religious, and recreational interests and needs.

Standard 19: Meals and mealtimes:

You receive a nutritious and varied diet in pleasant surroundings at times which suit you.

Standard 20: Social contacts:

You maintain contact with your family, friends, representatives and the local community according your wishes.

Standard 21: Responding to behaviour that is challenging:

If your behaviour is challenging, (that includes behaviour that poses a high risk to yourself or others), the situation is managed in an environment that promotes well-being and has the least restrictions.

This means that there are objective, detailed written rules about the use of medical and physical restraints, that the use of such restraints is exceptional and all instances are recorded.

Section 5: Staffing

Standard 22: Recruitment:

Staff are recruited in accordance with best human resource management practices.

This means that, among other things, new staff, including staff from an agency, and volunteers are properly vetted. This includes Garda vetting.

Standard 23: Staffing levels and qualifications:

There are skilled and qualified staff, sufficient to ensure that services are delivered in accordance with these standards and your needs.

This means, among other things, that:

- The number and skill mix of staff on duty is determined and provided according to a transparently applied nationally validated assessment tool.
- The staffing numbers and skill mix of qualified/unqualified staff are appropriate to the assessed needs of the residents and the size, layout and purpose of the nursing home.
- There is a registered nurse on duty at all times.

Standard 24: Training and supervision:

Staff receive induction and continued professional development and appropriate supervision.

This means that:

- All nursing staff are facilitated to undertake a recognised post-registration qualification in nursing of older people.
- All newly recruited care staff and those in the job for less than a year start training to FETAC Level 5 or equivalent within 2 years of taking up employment.
- Long-standing care staff have their competency and skills assessed to determine their need for further training and suitable arrangements are put in place to meet their identified training needs.
- There is a staff training and development programme that maintains the skills of the workforce and ensures staff can meet your needs and abide by the standards set
- All staff receive induction training on commencement of employment.

Section 6: The care environment

Standard 25: Physical environment:

The location and layout of the nursing home are suitable for its stated purpose. It is accessible, safe, hygienic, spacious and well-maintained and meets the individual and collective needs of residents in a comfortable and homely way.

The standard sets out the detailed requirements in relation to building standards, fire safety, maintenance and decoration, infection control, heating and ventilation, lighting, furniture, accessibility, alarm systems, outdoor space, communal space, kitchens, cleaning areas, size of bedrooms.

Standard 26: Health and safety:

Your health and safety, as well as those of staff and visitors, are promoted and protected.

Section 7: Governance and management

Standard 27: Operational management:

The nursing home setting is managed by a suitably qualified and experienced nurse.

Standard 28: Purpose and function:

There is a written statement of purpose and function that accurately describes the service that is provided in the nursing home and the manner in which it is provided. Implementation of the statement of purpose and function is clearly demonstrated.

Standard 29: Management systems:

Effective management systems are in place that support and promote the delivery of quality care services.

Standard 30: Quality assurance and continuous improvement:

Your quality of care and experience are monitored and developed.

Standard 31: Financial procedures:

The continued viability of the nursing home is assured through suitable accounting and financial procedures.

Standard 32: Register of residents and your records:

You are safeguarded by the nursing home's record-keeping policies and procedures.

Sale and consumption of alcohol

The sale and consumption of alcohol are governed by detailed rules which are contained in several different pieces of legislation including the Licensing Acts 1833 to 2004 and the Registration of Clubs Acts 1904 to 2004. (The Licensing Acts include the various Intoxicating Liquor Acts.) The Government has announced its intention to introduce a Sale of Alcohol Bill in 2008. This Bill is expected to repeal and replace all the existing legislation on the sale and consumption of alcohol. It is also expected to have provisions relating to:

- The role of local authorities in addressing the regulation and control of the location of licensed premises in their development plans
- A uniform District Court procedure for all applications for retail licences, including wine licences and theatre licences
- Extending the grounds on which the Gardaí may object to the grant of retail licences to include an undue risk of public nuisance or a threat to public order or safety
- Clarifying the rights of members of the public to object to the renewal of licences
- A requirement for all off-licences to have written policies and control procedures in place
- A new offence of being in possession of a forged or altered Garda age card with intent to deceive

Here we describe the current rules on the sale and consumption of alcohol.

Licences for sale of alcohol

Alcohol may be sold in retail outlets only if the retailer has the appropriate licence. The issue of licences is governed by the Licensing Acts. Licences to sell alcohol are issued by the Revenue Commissioners. There are various steps which an applicant must take before applying for a licence.

In order to get a licence an applicant must have a certificate from the District Court (for an off-licence) or Circuit Court (for a publican's licence). A licence may be refused by either court on a number of grounds including:

- The character, misconduct or unfitness of the applicant
- The unfitness or inconvenience of the new premises
- The unsuitability of the premises for the needs of people living in the neighbourhood, or the adequacy of the existing number of licensed premises in the neighbourhood

At least 21 days before the hearing of the application, the applicant must notify the local Garda Superintendent of the intention to apply for a licence and must publish a notice in a newspaper circulating locally. A number of people have the right to object to the granting of a licence. They include the Garda Superintendent, any resident or owner of property in the surrounding area or any person who would be affected

by the decision to grant a licence. The Court will not grant a licence unless the holder of an existing licence agrees to extinguish it if and when the applicant is granted a licence.

Off-licences also need to have planning permission (under the Planning and Development Regulations 2005) for any change of retail use which involves the sale of alcohol other than wine.

A licence to sell wine for consumption off the premises may be obtained by applying directly to the Revenue Commissioners. The local Garda Superintendent or Inspector may object to the grant of such a licence.

The holder of a public music and singing licence (which is granted by the District Court) may apply to the Revenue Commissioners for a theatre licence. This licence entitles the holder to sell alcohol to people attending the performance in the period beginning half an hour before it starts and ending half an hour after it ends. There are different licensing arrangements for hotels and restaurants.

Licences to sell alcohol are annual and expire on 30 September each year and may be renewed. The annual renewal of licences takes place in the District Court. The local Garda Superintendent or any member of the public may object to the renewal of a licence on the basis of:

- The character of the licence holder or
- The manner in which the licensed premises were conducted during the preceding year or
- A District Court order for redress in relation to prohibited conduct under the Equal Status Act 2000

Exemption orders

Exemption orders are orders that allow pubs to stay open later than usual. Local authorities may pass a resolution to the effect that exemption orders may only be in effect up to certain times. The decision to grant or refuse an exemption is made by the District Court. The Court must take into account any resolution of the local authority. The local authority must consult with various groups, including the Gardaí and health interest groups, before passing a resolution. The grounds for objecting to an exemption include inconvenience to people living locally or an undue risk to public order.

Closing a licensed premises

If the publican is convicted of an offence, the Court may also order that the premises be closed for a period – up to 7 days for a first offence – and notice of the closure order must be prominently displayed.

The Gardaí have the power to apply to the District Court for a closure order against a licensed premises if there was disorder on the premises or in the vicinity of the premises (within 100 metres) or if there was excessive noise coming from it and if this disorder or noise is likely to continue. Before applying for a closure order, the owner of the premises must have been formally warned by the Gardaí and failed to address the problems. The closure order could require that the premises close early or remain closed for a period – up to 7 days initially. It could also require that the person in charge of the premises take various precautions against a recurrence of the problem, for example, by limiting the number of people on the premises or installing appropriate equipment.

Underage drinking

The law on underage drinking is contained in the Intoxicating Liquor Act 1988 (as amended by the Intoxicating Liquor Acts of 2000, 2003 and 2004).

In general, people under the age of 18 are not entitled to drink alcohol anywhere other than in a private residence and then only with the explicit consent of their parents. There are also detailed rules about the presence of young people in a licensed premises.

Selling/providing alcohol to young people

The Acts provide that it is an offence for the holder of a licence to:

- Sell or deliver alcoholic drinks to a person under 18
- Sell or deliver alcoholic drinks to any person for consumption on the licensed premises by a person under 18
- Allow a person under the age of 18 to drink alcohol on the licensed premises, or
- Allow any person to supply a person under the age of 18 with alcoholic drinks on the licensed premises

It is also an offence for a licence holder to sell or deliver alcohol to any person for consumption off the premises by a person under 18 except, with the explicit consent of the person's parent or guardian, in a private residence in which he or she is present either as of right or with permission.

If a licence holder is convicted of one of these offences, the court must, in addition to any other penalties, make an order for the closure of the premises concerned for up to 7 days for a first offence, or between 7 and 30 days for a second or subsequent offence.

It is also an offence for any person to buy alcohol for delivery

to or purchase by a person under 18 except for consumption in a private residence with the explicit consent of the parents.

It is an offence for people under the age of 18 to:

- Buy alcoholic drinks
- Drink alcohol in any place except in a private residence with the explicit consent of their parents
- Represent themselves as being over 18 in order to get or drink alcohol

Generally, young people who are charged with these offences are dealt with under the Garda Diversion Programme (described in *Relate*, April 2006).

Young people on licensed premises

There are detailed rules about when young people may be present in licensed premises. In general, these rules apply to bars and not, for example, to other areas of hotels or to function rooms in pubs. The prohibition on the presence of young people on licensed premises does not apply to children of the licence holder, to people employed in the premises or to people who are passing through the premises.

Persons under the age of 18 may work in licensed premises but are not permitted to sell alcohol.

The Gardaí have powers of arrest and powers to enter bars for inspections. These powers are also available to Gardaí who are not in uniform.

Licence holders are entitled to exclude all children under 18. However, they may allow a child under 15 to be present until 9 p.m. (10 p.m. between May and September) if accompanied by a parent or guardian. They may refuse permission for a particular child to be in the bar if it is considered that this could damage the child's health, safety or welfare. The licence holders may allow young people aged 15 to 17 to be in a bar until 9 p.m. even if they are not accompanied by parents or guardian.

Children and young people may be in a bar after 9 p.m. if they are attending a private function at which a substantial meal is served but those under 15 must be accompanied by a parent or guardian.

Age document

Anyone aged under 21 who is not accompanied by a parent or guardian must carry an age document in order to go into and stay in a bar. An age document may be a Garda age card, a passport, an EU member state identity card or a driver's licence.

Adults in licensed premises

In general, adults are entitled to go into a licensed premises but this right is subject to behaving in an orderly way while there. The licence holder has an obligation to run an orderly premises.

Age limit for drinking

The licence holder may set a minimum age for the sale and consumption of alcohol which is above the age of 18 as long as the policy is publicly displayed and is implemented in a non-discriminatory manner. So, for example, a licence holder could have a policy of not selling alcohol to anyone aged under 21 but this must be clearly displayed and it must apply equally to all people under 21 – there cannot be a policy of not selling alcohol, for example, to young men.

People who are drunk

In general, it is not an offence to be drunk. It is an offence for the licence holder to supply alcohol to a person who is drunk, to allow a drunk person to drink alcohol or to allow a drunk person into the bar. It is also an offence for any person to buy or supply alcohol for a drunk person to drink in a pub.

If you are drunk, you are obliged to leave a pub if asked to do so by a Garda.

The licence holder is obliged not to allow disorderly conduct to take place and it is an offence to engage in disorderly conduct. If you are engaging in disorderly conduct and you are asked to leave by the publican or a Garda, you must do so and you must stay away for at least 24 hours. If you are convicted of such an offence, the publican can effectively bar you from coming to the pub again for a period.

General offences relating to alcohol

As already stated, it is not generally an offence to be drunk. However, it may be an offence if there are public order issues involved and, of course, it is an offence to be drunk while driving. The laws in relation to drink driving were described in the December 2006 issue of *Relate*.

Public order offences

There is a range of public order offences related to alcohol. The Criminal Justice (Public Order) Act 1994 is the main piece of legislation dealing with public order offences. It has been amended by the Criminal Justice (Public Order) Act 2003 and the Criminal Justice Act 2006. As well as the specific penalties for each of the offences you may be excluded from entering certain premises or being in their vicinity for up to a year.

The main offences are:

Being drunk – “intoxication in public place”

It is an offence to be drunk in a public place if you are likely to endanger yourself or any other person in the vicinity. If a Garda suspects that you might be likely to commit such an offence he/she may take away any alcohol that you have in your possession.

This is a summary offence; the maximum penalty is a fine of €127. This may be treated as a fixed-charge offence. This

means that, instead of charging in the normal way, the Gardaí may serve notice that you will not be charged if the fixed charge is paid within 28 days. In order to have the offence treated as a fixed-charge offence, you must give your name and address to the Garda – failure to do so means you may be arrested without warrant and be convicted of a summary offence for which the maximum penalty is a fine of €1,500.

Offensive conduct in a public place

It is an offence to engage in offensive conduct in a public place between 12 midnight and 7 a.m. or any other time if you are asked to stop by a Garda. Offensive conduct means any unreasonable behaviour which in the circumstances is likely to cause serious offence or annoyance to any person who is or might be aware of the conduct.

This is a summary offence; the maximum penalty is a fine of €635. It may be treated as a fixed-charge offence.

Threatening, abusive or insulting behaviour in a public place

It is an offence to use or engage in any threatening, abusive or insulting words or behaviour in a public place or to display any such words, signs, threatening or obscene displays etc. with the intention of provoking a breach of the peace or being reckless about provoking such a breach. Again, the Garda may confiscate alcohol.

This is a summary offence; the maximum penalty is a fine of €635 and/or 3 months' imprisonment.

Failure to comply with direction of a Garda

If you are in a public place and a Garda suspects that you have been acting in a disorderly way, or you were loitering in such a way that there was cause for concern about the safety of other people or property or about the maintenance of public peace, the Garda may order you to stop or to leave the place. It is an offence not to comply with the Garda's orders.

This is a summary offence; the maximum penalty is a fine of €635 and/or 6 months' imprisonment.

Failure to comply with Garda directions at public event

The Gardaí have various powers to control the movement of people in the vicinity of public events. For example, they may erect crowd-control barriers and order people to stay on one side of them or only allow them past if they are not carrying drinks or offensive articles. They also have powers to confiscate various objects at public events. They may search a person whom they suspect has intoxicating liquor or other items which might cause injury and may confiscate the offending items or refuse access to the person if he/she refuses to surrender the item. Failure to comply with Garda instructions in these cases is an offence. This is a summary offence; the maximum penalty is €635.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

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Legislation update

The following is a brief update on various pieces of legislation, all of which are available at www.oireachtas.ie

Medical Practitioners Act 2007

The Medical Practitioners Bill 2007 was described in *Relate*, May 2007. It has been passed. It was amended by the Health (Miscellaneous Provisions) Act 2007. These amendments were designed to facilitate the phased commencement of the Act. It has not yet been commenced.

Health (Miscellaneous Provisions) Act 2007

This Act was passed in December 2007. It is mainly concerned with ensuring that various bodies established under the Health Corporate Bodies Act 1961 have a

correct legal basis. These bodies which include a number of hospitals have now been established in primary legislation.

It also gives legal authority to certain hospitals to enter into co-location agreements with private hospitals.

Charities Bill 2007

This Bill was described in the September 2007 issue of *Relate*. It has passed Committee Stage in the Dáil, where there were some amendments.



Voice: influencing social policy

The latest edition of *Voice* has recently been published.

Voice is a Citizens Information Board social policy newsletter which highlights the concerns of users of information services. It feeds back to information providers on how these concerns are used as evidence in submissions and reports to government agencies and departments. The newsletter also documents how policy can be influenced at local and national level. It is distributed to Citizens Information Services (CISs), other voluntary organisations and statutory bodies.

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