

relate

information for all

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Contents

This Relate deals with a number of issues of particular relevance to older people – this is in line with Comhairle's current focus on the provision of information for older people.

Page No.

- 1. Paying for Long-Term Care**
Changes in the private nursing home subvention scheme come into effect in January 2007. There are plans for new arrangements for payment for long-term care from 2008.
- 4. Health Bill 2006**
This Bill provides for the setting up of the Health Information and Quality Authority and the Office of the Chief Inspector of Social Services.
- 7. Older People and Budget 2007**
Changes in payments and services for older people were announced in the Budget.
- 8. Vulnerable Adults and the Law**

Paying for Long-Term Care

Changes to the private nursing home subvention rules are being introduced from 1 January 2007 and plans have been announced for a new system of charging for private and public long-stay care from 1 January 2008. This new system also involves changes in the way long-term care places are accessed. Here we look at the current system and the main changes which are proposed.

At present there are almost 9,500 public nursing home beds. Older people in need of long-term care occupy 7,415 of these beds. There are 13,785 older people in private nursing homes. Of these, 1,900 are in contract beds, approximately 8,000 are getting a subvention. The rest – about 4,000 – are not getting direct state support (but are highly likely to be getting indirect support in the form of tax relief).

Public nursing homes

The current system of charging for long-term care has a clear distinction between care provided in public nursing homes and that provided in private nursing homes. Public nursing homes are those which are owned and run by the Health Service Executive (HSE). They include welfare homes, continuing care units, geriatric hospitals and community nursing units – these are generally occupied by older people in need of care. These homes, and most of the institutions which are provided by not-for-profit organisations for people with disabilities, have the same charging arrangements. Virtually all residents pay some long-stay charges in these homes.

Residents in private nursing homes are charged the full cost of staying there. They may qualify for a nursing home subvention. The Health Service Executive (HSE) has “contracted beds” in private nursing homes and the financial arrangements for these places is similar to those for public nursing homes.

Access

Everyone who needs long-term care is eligible to get that care in a public nursing home but there are not enough places available. There are no set rules about who may get a public nursing home place. In general, if you want to avail of public nursing home care, your needs are assessed by the HSE. This assessment of need is concerned with such matters as your housing, your social situation, your family support and your health. If no public place is available, the HSE may provide a “contracted bed” in a private nursing home.

Charges for public nursing home care

Most residents in long-stay public nursing homes have to pay long-stay maintenance charges. The legislation dealing with long-stay maintenance charges is set out in the Health (Amendment) Act 2005 and the Health (Charges for In-Patient Services) Regulations 2005.

Long-stay maintenance charges are payable by all residents in long-stay care except the following groups:

- People aged under 18
- Women receiving maternity services
- People involuntarily detained under the mental health legislation
- People in acute hospitals (including psychiatric hospitals) who require medically acute care and treatment
- People who are suffering from Hepatitis C as a result of blood transfusions

There is no general exemption for medical card holders or for people with dependants. The HSE has the power to waive the charges if they would cause hardship.

The long-stay charges apply when you have been receiving in-patient services for 30 days. They apply whether you are receiving those services in an acute hospital or in a long-stay institution.

The maximum charge for anyone in public long-stay care is €120 a week and everyone must have at least €35 left. The maximum charge is the same regardless of income. In practice, your assets and your family home are irrelevant.

People in public long-stay are divided into two groups:

Class 1

People in Class 1 are those who are receiving in-patient services in premises where nursing care is provided on a 24-hour basis. The maximum weekly charge for them is €120 or their weekly income less €35, whichever is the lesser.

Class 2

People in Class 2 are those who are receiving in-patient services in premises where nursing care is not provided on a 24-hour basis. The maximum weekly charge is the lesser of

- €90 or
- the person’s weekly income less €55 or
- 60% of the person’s weekly income.

Private nursing homes

Access

Anyone who can afford it can become a resident in a private nursing home whether or not they need care. Those who are dependent may get the subvention or may get a “contracted bed”. There is no upper limit on the amount of money you may have to spend on nursing home care. Tax relief is available on nursing home fees – this may be claimed by whoever is paying the fees and is available at the taxpayer’s highest rate of tax.

Subventions

The current private nursing home subvention scheme is described in detail in Relate, May 2006. The rules are contained in the Nursing Homes (Subvention) Regulations 1993 as amended. Legislation is currently before the Seanad (it has been passed by the Dáil) to put the subvention scheme into primary legislation – the Health (Nursing Homes) (Amendment) Bill 2006.

Briefly, the scheme is as follows:

You may get a private nursing home subvention if you are:

- Sufficiently dependent to require maintenance in a nursing home and
- Unable to pay any or part of the cost of maintenance in the home

You must pass a means test.

The amount of the subvention depends on your means and your degree of dependence. There are three levels of dependency and three “maximum rates” of subvention related to the level of dependency. Until December 2006, the “maximum” rates were €114.30 a week for people assessed as having medium dependency, €152.40 for those with high dependency and €190.50 for people with maximum dependency.

From 1 January 2007, the maximum rate for all is €300 a week. This means that many people in private nursing homes may qualify for an increased subvention from that date.

In practice, the so-called “maximum” rates can be enhanced. Rates of up to €680 a week were being paid in some cases. There were wide variations throughout the country in the way enhanced subventions were payable.

Enhanced subventions will continue to be available during 2007. Guidelines are being issued to the HSE by the Department of Health and Children in relation to enhanced subventions in 2007. There will be two main considerations:

- Enhanced subventions will be focused on those whose income, including subvention, is insufficient to meet the cost of care and who have no other means or assets on which to depend
- The amount of the enhanced subvention will not be more than the cost of care, minus the person’s income (including income from property and basic subvention payments).

The means test for private nursing home subventions remains as described in the May 2006 issue of Relate except for one change in relation to the value of a house outside Dublin. The HSE may refuse a subvention if:

- You have assets (other than your house) of more than €36,000 or
- Your principal private residence is worth more than €500,000 in the Dublin area or €365,000 outside Dublin and your income is greater than €10,400

At present, the value of your house may be taken into account in the means test. The new legislation proposes that the value must be taken into account unless specific people are living in the house or certain other conditions apply.

Proposed new system from 2008

The Minister for Health and Children has described the current arrangements for accessing and paying for long-term care as “scrappy, inconsistent and unfair”.

It is proposed to introduce a new system from 1 January 2008 – this system is called “The Fair Deal on Nursing Home Care”

Anyone who is in long-term care when the new system comes into effect will not have to pay more for their care. If the new system will be to their advantage, then they can avail of it. People who go into public nursing homes after 1 January 2007 are likely to have to pay more for their care than those in public care before that date. Some people in private nursing homes may have to pay less.

Full details of the new scheme are not yet available. It will require legislation. The plan as published does not mention the question of tax relief for nursing home fees so it is not clear whether or not that will be continued.

The main features of the proposed new system are that there will be:

- The same charging arrangements for private and public care – everybody in long-term care, whether in the public or private system, will be expected to contribute to the costs of their long-term nursing home care according to their means.
- One means test which applies to everyone and is consistent throughout the country.
- One system of assessing the need for long-term care
- A system for assessing the family home but the charges arising from that assessment may be deferred until after your death and the deaths of certain other family members

Assessment of care needs

The first step in the new system will be an assessment of your need for care. There will be a uniform national system of assessment. The HSE has developed a common care assessment service which will be introduced during 2007 and will be fully in effect by the start of 2008. This assessment will be carried out by health professionals, for example, GPs, public health nurses and related professions.

The overall aim is to try to ensure that people can live at home for as long as possible and that only those who need long-term residential care go into nursing homes. So, if you are assessed as being capable of continuing to live at home, home supports will be put in place and you will not be able to get support for a long-stay residential place.

If you are assessed as being in need of long-term care, you can then apply for financial support for that care.

Means test

The full details of the means test are not yet available but it is likely that the assessment of your income will be broadly similar to the current means test for private nursing home subventions. You will be expected to pay 80% of your disposable income towards your long-stay care. Your disposable income includes income from the State Pension, occupational and private pensions and similar sources. If you are married, your income will be regarded as half of your joint income. The assessment of your disposable income will ensure that your spouse has enough to live on – this will be at least the amount of the State Pension (Non-Contributory).

If your disposable income is enough to meet the full cost of your care, then your assets or your home do not have to be taken into account. If, as would be the case for most people, your disposable income is not enough, then your assets and family home will be taken into account.

Assessing your assets

Your assets, including your family home may be taken into account but the charges due as a result may be deferred. The maximum charge is 5% of your assets for each full year up to a maximum of 15% in the case of your home. The value of your home and assets will be market value at the time the means test is carried out.

Assets including the home are treated as belonging jointly to a couple so, if one of the couple needs long-term care, the charge is 2½% of the value per year up to a maximum of 7½%. It is not entirely clear but it seems that the 15% cap (or 7½%) will not apply to assets other than the family home. You will not have to meet this charge immediately but you may do so if you wish to and are able to do so. Instead it can be deferred and taken from your estate after you die. If your spouse or certain dependants are living in the house at that stage, the charge may be deferred until after their deaths.

Nursing home

You will have some choice in which nursing home you go to. Clearly that choice will be limited by availability and by your particular needs. Both public and private nursing homes will be taking part in the scheme. The HSE will enter into contracts with private nursing homes under which the nursing home will provide care at agreed prices for people who are eligible for State support. Private nursing homes which do not opt into the scheme will be able to offer their services only to people who do not need State support.

If you go into a public nursing home, the HSE provides the service and collects your contribution towards the cost from you. If you go into a private nursing home, the HSE also collects your contribution and pays that and the rest of the costs to the private providers.

Health Bill 2006

The Health Bill 2006 provides for the establishment of the Health Information and Quality Authority (HIQA) and the Office of the Chief Inspector of Social Services. It also provides for the registration and inspection of residential institutions for older people, people with disabilities and children in need of care. It is expected that the Bill will be discussed in the Oireachtas in January 2007 and come into effect soon after that. The following is a summary of the main provisions in the Bill.

Health Information and Quality Authority

An interim Health Information and Quality Authority has been in existence since 2005. This Bill proposes to establish the Authority on a statutory basis. It provides that the main functions of HIQA will be to:

- Set and monitor standards on safety and quality in relation to services provided by the HSE or a service provider in accordance with the Health Acts (except for mental health services), the Child Care Acts and the Children Act 2001 and services provided by nursing homes
- Advise the Minister for Health and Children and the HSE on the level of compliance with those standards
- Undertake investigations as to the safety, quality and standards of services where the Minister believes that there is serious risk to the health or welfare of a person receiving services and the risk may be the result of any act, failure to act or negligence on the part of the HSE or of the service provider
- Review and make recommendations in respect of the services to ensure the best outcomes for the resources available to the HSE
- Operate accreditation programmes in respect of the services

- Evaluate the clinical and cost effectiveness of health technologies including drugs
- Carry out various functions in relation to information about the services and about the health and welfare of the population

When carrying out its functions, the HIQA must have regard to, among other things:

- The policies and objectives of the Government
- The need to co-operate with and co-ordinate its activities with relevant public authorities
- The resources available to the HSE

The Minister for Health and Children may give general directions to the HIQA and it must comply with those directions.

Service providers

As already stated, the HIQA will be responsible for setting and monitoring standards for services provided directly by the HSE and by service providers on behalf of the HSE or with financial support from the HSE. A service provider means a person who has an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the HSE or is getting financial assistance of a certain level under Section 39 of the Health Act 2004 or under Section 10 of the Child Care Act 1991. This includes, among others, the not-for-profit organisations which provide residential services to people with disabilities and to children in need of care and the organisations providing services such as day centres and meals on wheels. It does not include mental health services provided by the HSE or by service providers because the Mental Health Commission is responsible for setting and monitoring their standards (see Relate, November 2006 for details).

Setting and monitoring standards

The Bill sets out the process by which standards are to be set. The HIQA will propose standards. It then must consider and decide on any representations made in relation to the standards and then submit the proposed standards to the Minister for approval.

The HIQA has the power to require the HSE or a service provider to give it any information or statistics necessary for carrying out its function of monitoring compliance with standards.

The Bill does not itself set out the standards which are to apply but does include provisions for more detailed regulations on standards.

Office of the Chief Inspector of Social Services

The current Social Services Inspectorate has been in existence since 1999 but it does not have a statutory basis. At present, it is involved in inspecting children's homes.

Under this Bill, HIQA will appoint a Chief Inspector of Social Services whose main functions will be to:

- Inspect the performance by the HSE of its functions under sections 39, 41 and 53 of the Child Care Act 1991, and section 10 of the Health (Nursing Homes) Act 1990, that is, foster care services, boarding out of older people and the HSE inspection of pre-school services
- Establish and maintain one or more registers of designated centres,
- Register and inspect designated centres
- Inspect special care units and possibly child detention schools

(The Minister may give written directions to the HSE to carry out inspections of children's residential centres or nursing homes. The HSE is then acting on behalf of the Chief Inspector and has the same powers and duties as the Chief Inspector.)

Designated centres

Designated centres are nursing homes as defined in the Health (Nursing Homes) Act 1990 and institutions at which residential services are provided by the HSE or a service provider in accordance with the Child Care Act 1991 or to people with disabilities in relation to their disabilities or other dependent people in relation to their dependency. This means that institutions such as public nursing homes, welfare homes, community nursing units and residential homes for people with disabilities are covered by the legislation and must be registered. At present, private nursing homes must be registered with the HSE but there is no registration system for the other institutions mentioned.

The following are not included in the definition of designated centres:

- A centre registered by the Mental Health Commission (see Relate, November 2006 for details)
- An institution managed by or on behalf of a Minister of the Government

- Parts of institutions in which the majority of people being cared for and maintained are being treated for acute illness or provided with palliative care (for example, acute hospitals and hospices)
- Institutions primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities
- Special care units (Section 23K of the Child Care Acts 1991 and 2001)
- Child detention schools

Regulation of designated centres

The Bill requires that designated centres be registered and sets out the process which must be followed and the time limits which apply. The Chief Inspector must maintain a register of such centres and the register must be available for public inspection. Registration will normally be for three years after which it may be renewed. The Chief Inspector may attach conditions to the registration. The certificate of registration must be displayed in the centre.

The Chief Inspector will have the power to cancel the registration, vary any of the conditions attached or attach extra conditions on any of the following grounds:

- The registered provider or any of the management of the centre has been convicted of an offence in relation to the running of the centre, an offence under the Child Care Act 1991 or an offence against the person
- In the opinion of the Chief Inspector, the registered provider or any of the management of the centre is not a fit person to fulfil that role
- The designated centre is being, or has at any time been, carried on in breach of any conditions laid down or any relevant law

The Bill sets out the procedure the Chief Inspector must adopt if it is proposed to do this and the time limits which apply. The centre may appeal a decision of the Chief Inspector to the District Court.

The Chief Inspector will have the power to apply to the District Court for an order cancelling the registration of a centre or varying or adding a condition if there are reasonable grounds for believing that there is a risk to the life, or a serious risk to the health or welfare, of the people who live in the centre because of any act, failure to act or negligence on the part of the provider of the centre or a person acting

on behalf of the provider. An application for an interim order may be made *ex parte* (without notice to the provider of the centre).

Either side may appeal a District Court decision to the Circuit Court.

If the registration of a centre is cancelled, either by the Chief Inspector directly or as a result of a court order, the HSE is responsible for making alternative arrangements for the residents. If the HSE is itself the provider, it may continue to carry on the centre as if it were still registered pending the provision of alternative arrangements. If it is not itself the provider then it may take charge of the designated centre and carry on its activities pending the provision of alternative arrangements. The taking charge may be with the consent of the provider or by order of the District Court.

The provider of a registered centre must give the Chief Inspector at least six months notice if it is intended to close the centre.

People who are providing residential services when this Bill comes into effect may continue to do so for three years but must notify the Chief Inspector within six months that they are doing so.

Managers of designated centres may be required to make arrangements for a complaints system. This will be subject to the provisions of the Health Act 2004. This provides for the setting up of an HSE complaints system but it is not yet in effect.

Inspections and investigations

The Bill sets out the powers that will be available to the Chief Inspector and to HIQA to enable the inspections and investigations to be carried out. These include the power to enter the relevant premises, inspect items there, examine documents and computers and interview staff and residents in private. The management of the centre is required to co-operate with such inspections and investigations. There are provisions for HIQA staff to be accompanied by the Gardaí if there are concerns that an inspection or investigation may be impeded and to apply to the District Court for an entry warrant if necessary.

Offences

The Bill sets out the penalties that may be incurred if there are breaches of the rules.

Older People and Budget 2007

Budget 2007 included a number of changes in social welfare, taxation and health services and these apply to older people as well as others. Full details of the Budget are contained in the Budget Pack issued by Comhairle. There are some specific measures for older people – the following are the most important.

Social welfare payments

All weekly social welfare payments are increased from January 2007. The maximum State Pension (Contributory) is €209.30 a week and the maximum State Pension (Non-Contributory) is €200 a week from January 2007.

The Qualified Adult Allowance is being increased to the level of the State Pension over three years starting in 2007. The allowance will be paid directly to the qualified adult from September 2007.

There are changes in the means test for the State Pension (Non-Contributory) including an increase to €200 a week in the amount of earnings which may be disregarded.

Carers

Carers who are receiving a social welfare benefit in their own right were not eligible for Carer's Allowance. This is being changed to allow certain carers to qualify for half rate Carer's Allowance from September 2007.

There are some changes in the means test for Carer's Allowance. From April 2007 the weekly income disregard is increased to €320 for a single person and €640 for a married couple

The Respite Care Grant is increased to €1,500 – this is payable in June 2007.

Other benefits

The Fuel Allowance is increased to €18 a week and the income threshold for eligibility is increased from €51 to €100 per week.

The Companion Free Travel Pass will be available to 66 to 74 year olds who are certified as medically unfit to travel alone – from March 2007.

The Telephone Allowance Scheme will include mobile phone options.

Health services

Additional allocations for improved services for older people are expected to finance more community care services, extra long-term care beds and changes in the private nursing home subvention.

There is provision for an extra 2,000 home care packages in 2007. This means that about 4,000 such packages should be available.

There are expected to be 780,000 extra hours of home help and 1,100 extra day places.

It is proposed to provide an extra 1,210 long-term care beds in 2007; 860 of these will be public nursing home beds. The changes in the private nursing home scheme are described above.

Private companies which provide home care packages

Home care packages may be provided directly by the HSE or the HSE may provide the money which to the person needing care in order to buy in that care. Private companies which provide home care packages have been obliged to charge VAT on their services. It is proposed to remove this obligation.

There is no system in place for the registration, monitoring or inspection of private companies who provide home care services. Individuals who contract with these companies need to be clear about exactly what is being provided. Many companies effectively operate as an employment agency in that they provide people to work in your home but you are the direct employer and must deal with all the employer's obligations in relation to wages, tax and social insurance.

Elder abuse

Funding is being provided for the implementation of the recommendations of the Task Force on Elder Abuse *Protecting Our Future*.

Vulnerable Adults and the Law

The Law Reform Commission (LRC) has issued its *Report on Vulnerable Adults and the Law*. This follows on from two previous publications - the *Consultation Paper on Law and the Elderly* which was published in 2003 and the *Consultation Paper on Vulnerable Adults and the Law: Capacity* which was published in 2005. After public consultation on the issues raised and the provisional recommendations outlined in these two publications, the LRC's report is, in effect, its final recommendations.

The report deals with the law on mental capacity and sets out the general principles which should apply. It makes recommendations for the reform of the law on powers of attorney including its extension to certain minor health care and treatment decisions.

The report proposes the establishment of a new guardianship structure to replace the current wards of court system. This would involve the establishment of a Guardianship Board which would have the power to make Guardianship Orders and Intervention Orders. If a Guardianship Order is made, the Guardianship Board could appoint a personal guardian to deal with the property, financial affairs and welfare of a person who does not have the capacity to do this. An Intervention Order would be made for a specific purpose where a more general Guardianship Order would not be required.

The guardianship system and the power of attorney system would be supervised by the Office of Public Guardian. This office would also have the power to develop and publish suitable codes of practice and have an educational role in this area, acting in cooperation with other bodies, including the National Disability Authority and the Health Service Executive.

These recommendations need legislation in order to be implemented and the Report includes a draft Scheme of a Mental Capacity and Guardianship Bill to give effect to those recommendations. The report is available on the LRC website: www.lawreform.ie

Budget Pack 2007

Contains information relevant to the public and to information-providing organisations.

The pack incorporates information on measures announced on Budget day as well as pre-Budget measures and other measures made known since Budget day. It is intended as a reference guide to the implementation of changes in government schemes and services throughout the year.

Includes:

- Information on changes in health and social welfare schemes and services.
- Changes in personal taxes
- Comprehensive tables of rates of payment of all income supports
- Information on capital spending in relevant areas

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