

relate

information for all

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Repayment of Nursing Home Charges

The Health (Repayment Scheme) Bill 2006 provides for the repayment of charges illegally levied on residents of public nursing homes – see *Relate*, February 2005 and July 2005 for the background to the problem. It also provides for the regulation of patients' private property accounts. The Bill must be read in conjunction with other Government decisions on who is entitled to a repayment.

Who will get a repayment

The repayment scheme will apply to people who are or were living in public nursing homes and in contracted beds in private nursing homes who paid charges even though they were not liable for such charges because they were entitled to free in-patient services. They are people who were entitled to what is called "full eligibility" for the health services (entitled to medical cards). Residents who never had a medical card when admitted to long-stay care but who met the means test for one will be regarded as qualifying. People who were resident in community hostels which provide either medical or nursing care on a rostered basis are considered to be receiving in-patient services and they will qualify for repayments if they paid charges.

The possible entitlement of people who were living in private nursing homes because they could not get a bed in a public home is being contested in the courts but the scheme currently being proposed does not apply to them.

People in nursing homes on 9 December 2004

People who were entitled to medical cards and who were living in the relevant nursing homes on 9 December 2004 will get a full refund of all the payments they made. The repayments will not be taxable and will not be taken into account for any social welfare or health means tests.

People who died between 1998 and 2004

People who were living in the relevant nursing homes and were entitled to medical cards and who died in the six-year period before 9 December 2004 will have all their payments refunded to their estates. The money will then be distributed in accordance with the terms of the person's will or in accordance with the rules on intestacy if there is no will.



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Repayments to living spouses of residents will not be taken into account in means tests. The repayments to deceased residents will be subject to Capital Acquisitions Tax – this means that tax may have to be paid depending on the relationship between the deceased person and the beneficiary.

Arrangements are being made with the Probate Office for a quick probate procedure for the processing of payments to the estates of deceased residents.

People who died before 1998

It has been decided that there will be no refund to the estates of people who died before December 1998. (There is nothing in the Bill about this.) It is considered that the Statute of Limitations allows the Government to refuse repayments to them. There are many legal issues arising from this decision but these will have to be decided in the courts.

What repayment will be made

The amount that will be repaid is the actual amount paid by or on behalf of the resident, adjusted for inflation but less the ex-gratia payment. Ex-gratia payments of €2,000 were made to the people who were living in public nursing homes on 16 December 2004 and who were paying the illegal charges.

Who may apply for a repayment

Residents who are alive may apply for the repayment themselves or a “connected person” may apply on their behalf.

For those residents who are alive, a connected person means:

- A person who has been nominated in writing by the nursing home resident for the purposes of applying for a repayment
- The Registrar of Wards of Court if the resident is a ward of court
- A person who has been given an enduring power of attorney by the resident
- A “next friend” appointed by a court
- The Health Service Executive (HSE) if none of the above applies and the resident is not able to apply for a refund because of a physical or mental disability or ill-health

If the application is being made by the HSE, the resident’s capacity must be certified by a doctor.

If the application is processed by a person who has

been authorised to do so by the patient or by the HSE, then the money is paid into the patient’s account.

In the case of people who have died, the following may apply for the repayment:

- The executor or administrator of the estate (personal representative) who will then distribute it to the people entitled to inherit
- A living spouse or child (including step-child) who paid all or part of the charges on behalf of the deceased person

Administration of the scheme

The HSE has the power to make service agreements with various bodies, for the purposes of the application for the payments and for the management of patients’ accounts. It seems likely that the HSE will make such an arrangement with some of the service providers in the intellectual disability area.

The HSE has already started to calculate the repayments due to living residents – over 10,000 such calculations have been made. These repayments will be made as soon as the legislation is passed and the administrative arrangements for repayments have been made – probably in June 2006.

The scheme administrator will have forms for the applications and may require various documents including statutory declarations. These forms must provide a summary of the scheme and information about appeals. There will be a cut-off date for applications – 1 January 2008 or a later date may be prescribed. Priority will be given to the applications in respect of residents who are still alive.

The payment will be made if the scheme administrator is satisfied that the patient is entitled to a repayment. If the amount of the repayment is in question, the administrator may make a payment by reference to the income the patient had, the type of care he/she received and the nature of the charge imposed. If this information is not available, the repayment may be 80% of the Old Age (Non-Contributory) Pension which was payable at the time during which the charges were being made (plus interest).

Donating the repayment

The HSE may establish the Repayment Scheme (Donations) Fund which will be used for capital improvements to public health services for dependent older people and people with disabilities. People who

are entitled to repayments may opt to donate the repayments to this fund. Such donations will be regarded as charitable so they will not be subject to Capital Acquisitions Tax.

People who are not capable of making a decision clearly cannot decide to donate the repayment and will have to have the money paid to their accounts. It would appear that the personal representatives of people who have died are obliged to take the refund and distribute it to the people entitled to inherit. The beneficiaries, of course, may give it back but it will have to be paid over in the first place.

Appeals

A person may appeal against a decision of the scheme administrator within 28 days of receiving the decision. The Minister for Health and Children will appoint a solicitor or barrister of at least five years standing to hear the appeals. The appeals officer's decision may be appealed to the High Court within 28 days.

Patients' private property accounts

The Bill deals with the regulation of patients' private property accounts. These provisions will apply in respect of all relevant patients and not just those who are eligible for a repayment.

A patient's private property account is an account holding the money and private property of certain patients in long-stay care and which is managed on behalf of the patient by the HSE or another person on behalf of the HSE (usually a service provider). The former health boards had a number of different arrangements in place for the operation of these accounts. The HSE is trying to put a standardised system in place.

In the case of the repayments scheme, if there is a doubt about an individual's legal capacity, the money will be paid into the patient's private property account unless the person is a ward of court or has another legal representative.

Money lodged in these accounts must be used for the benefit of the individual patient. The HSE may invest money held in the patient's private property account or spend it for the benefit of the account holder unless directed otherwise by the account holder or by a next friend appointed by the court. The HSE may apply to the Circuit Court for directions as to the use of amounts over €5,000 (or a larger amount that may be prescribed). The HSE must inform the account holder of the application to the Circuit Court and publish a notice of its intention in a daily newspaper.

The legislation does not specify this but it may be the case that this means that the money must be spent – allowing it to accumulate for the ultimate benefit of the person's heirs is not necessarily for the person's benefit.

The Minister may appoint an independent person to monitor these accounts and ensure that the money is used for the person's benefit.

Regulations may be made which would enable the HSE to impose a charge for administering patients' private property accounts or a class of patients' private property accounts.

Further information

National Helpline: 1800 777 737

E-mail: repaymentsscheme@mailq.hse.ie
www.hse.ie

Private Nursing Home Subventions

The Health (Nursing Homes) (Amendment) Bill 2006 has been published. This puts the existing subvention scheme into primary legislation and aims to help the HSE to standardise the scheme. In practice, the rules were applied differently by the different health boards. The problems with the nursing home subvention have been outlined in the *Review of the Nursing Home Subvention Scheme*. There were variations in how the means test was applied and there were quite different practices in relation to enhanced subventions and contracted beds. The "maximum" levels of subvention which are set in the legislation are not, in fact, the maxima which actually apply. The legislation does allow for enhanced subventions. At the end of 2004, the level of enhanced subvention ranged up to €680 a week. However, enhanced subventions were not paid in some areas. Some areas did not have any contracted beds.

The basic legislation on private nursing homes is the Health (Nursing Homes) Act 1990. It provides for the registration of most private nursing homes and for standards to be set and monitored. The rules on the subvention are currently contained in the Nursing Homes (Subvention) Regulations 1993 as amended. Changes in the means test for nursing home subventions came into effect on 14 December 2005 (under the Nursing Homes (Subvention) (Amendment) Regulations 2005). This was the first time the thresholds set in the 1993 rules were changed. The Bill does not propose major changes in the rules but it does provide for some changes. Here we describe the rules on qualifying for a nursing home subvention and on the ways in which the Bill proposes to clarify or change the rules.

Qualifying for a subvention

You may get a nursing home subvention from the Health Service Executive (HSE) if you want to go into a registered private nursing home. In order to qualify for a subvention you must be:

- Sufficiently dependent to require maintenance in a nursing home, and
- Unable to pay any or part of the cost of maintenance in the home, that is, you must pass a means test

The amount of the subvention depends on your means and your degree of dependence. The subvention is meant to help meet nursing home costs. In general, it is not meant to meet the full costs. However, there are circumstances in which the HSE may pay an enhanced subvention.

Applying for a subvention

Under the present rules, you must apply for a subvention **before** going into the nursing home unless there is an emergency. If you go into a nursing home before you apply, you may not be allowed apply for two years, unless the HSE decides otherwise. This provision is not included in the Bill so it will no longer apply when the Bill is enacted.

You must be told the result of your application within eight weeks. If you are refused a subvention or granted less than the maximum applicable to your level of dependency, you must be told the reason and you must be told about your right to appeal.

Dependency

An assessment of your level of dependency is carried out on behalf of the HSE, usually by a doctor, nurse, occupational therapist or physiotherapist. The assessment involves interviewing you and your nearest

relatives. Your medical condition is taken into account and the assessment also includes an evaluation of your ability to carry out the tasks of daily living and of the level of social support available to you.

Daily living

The assessment of your ability to carry out the tasks of daily living takes into account your:

- Degree of mobility
- Ability to dress unaided
- Ability to feed unaided
- Ability to communicate
- Extent of orientation
- Level of co-operation (this is not in the Bill)
- Ability to bathe unaided
- Quality of memory (this is replaced in the Bill by “cognitive ability”) and
- Degree of continence

Social support

The assessment of your social support takes into account:

- Your housing conditions
- The number of people in the household
- The ability of the household members (if any) to care for you
- The extent of support from your community and the services you are receiving

The Bill does not specifically mention the elements of social support but says that the family and community support available and any other matter which affects your ability to care for yourself will be taken into account.

An assessment team, which is appointed by the HSE and includes people with professional experience in the care of dependent people, decides whether or not you meet the dependency requirements for a nursing home subvention and what your level of dependency is.

There are three levels of dependency:

Medium dependency – this exists when your independence is impaired to the extent that you need nursing home care because the appropriate support and nursing care required cannot be provided in the community. Your mobility is impaired to the extent that you require supervision or a walking aid. (The Bill calls this “Category III”)

High dependency – this exists when your independence is impaired to the extent that you need nursing home

care but you are not bed-bound. You may have a combination of physical and mental disabilities, may be confused at times and be incontinent. You may need a walking aid and physical assistance to walk. (The Bill calls this Category II and adds another possible criterion – that you suffer from some other moderate physical or mental impairment.)

Maximum dependency – this exists when your independence is impaired to the extent that you require constant nursing care. You are likely to have very restricted mobility, need assistance with all aspects of physical care and/or be confused, disturbed and incontinent. (The Bill calls this “Category I” and adds another possible criterion – that you suffer from some other substantial physical or mental impairment.)

The means test

The means test is usually carried out by the Community Welfare Officer. It takes into account all your income and assets, the income and assets of your spouse or the income of a cohabiting partner. At present, the HSE has a considerable degree of discretion about whether or not to take certain assets into account.

Income

Income received from all sources in the previous 12 months is considered. Income is assessed net of PRSI, income tax and the health levy. You may not deliberately try to reduce your income in order to qualify for a subvention. If you, for example, divert your income to another person, it may still be taken into account. If you are married or cohabiting, your income is taken to be half the total income of the two of you.

Your total income for the purposes of the means test is your net income less one-fifth of the weekly rate of the Old Age (Non-Contributory) Pension payable at the time. You must be allowed retain this amount which is sometimes referred to as pocket money.

Farm or business income

The income from a farm or business is calculated on the basis of the accounts if they are available. If they are not, the farm may be assessed as an asset. This means that the notional income from the farm is assessed at 5% of its capital value. There were variations between health boards in how farm income was assessed. The Bill does not include details of how farm or business income is to be assessed.

Assets

The following assets may be taken into account:

- House property (excluding household furniture and goods)
- Stocks, shares or securities
- Money on hand, in trust, lodged, deposited or invested
- Interests in a company or business of any kind (including a farm)
- Interest in land
- Life assurance or endowment policies
- Valuables held as investments
- Current value of equipment of a business or machinery, excluding a car, not covered under a previous heading

If you disposed of any assets in the previous five years, the value of those assets may also be taken into account. The first €11,000 of any assets is disregarded. (This was increased from €7,618 in December 2005.)

Your house

Your principal private residence is not taken into account if it is occupied immediately before the application and continues to be occupied by any of the following:

- Your spouse
- Your child aged under 21 or in full-time education
- A relative in receipt of Disability Allowance, Blind Pension, Disability Benefit, Invalidity Pension or Old Age (Non-Contributory) Pension

Under the present rules, if none of these people is occupying your house then the value of your house may be taken into account – the HSE does not have to take it into account. If the value of your house is being taken into account, it is assessed at 5% of the estimated market value, net of mortgage, loan rental or purchase repayments.

There were variations between health board areas in how the house is treated in the means test. The HSE cannot require you to let or sell your house but a subvention can be refused on the basis of the value of your house. If you sell your house, the proceeds are taken into account in the assessment of your means.

The Bill provides that your house must be taken into account unless it is occupied by one of the people mentioned or if taking it into account would result in the destitution or homelessness of a person who was closely connected with you in the previous year.

Refusal of subvention

The HSE may refuse to pay any subvention if:

- Your assets, excluding your house, are greater than €36,000 (this was increased from €25,394.96 in December 2005) or
- Your principal residence is valued at more than €500,000 in the Dublin area or €300,000 in the rest of the country and your income is greater than €9,000. (The pre-December 2005 threshold was €95,230 everywhere and the income limit €6,349)

Level of subvention

There are three maximum weekly rates of subvention which are related to the assessed level of dependency:

Medium dependency: €114.30

High dependency: €152.40

Maximum dependency €190.50

These rates were set in April 2001.

If your means as assessed by the HSE are equal to or lower than the weekly rate of Old Age (Non-Contributory) Pension payable at the time, the maximum rate appropriate to the level of dependency is paid. If your means are higher than the rate of Old Age (Non-Contributory) Pension payable at the time, the subvention may be reduced by the amount of the excess. So, if your means are €20 per week over the level of the Old Age (Non-Contributory) Pension, the subvention may be reduced by €20.

Enhanced subventions and contracted beds

The HSE has the power to pay enhanced subventions, that is, greater than the stated maximum amount for the relevant dependency level. The HSE also has "contracted beds" in private nursing homes where the HSE pays the full cost of the bed at the rate agreed with the nursing home owners. Generally, these contracted beds and enhanced subventions are paid for people who are considered to be entitled to in-patient services in a public long-stay place or are considered to be unable to pay the costs of a private nursing home. (In theory, everyone is entitled to in-patient services in a public long-stay bed – see Relate, April 2005.)

Decisions and appeals

The HSE must inform you of its decision within eight weeks of the receipt of the application or within eight weeks of receiving all relevant information. If the HSE decides that you do not qualify for the maximum rate of subvention appropriate to your level of dependency, it must inform you of the grounds of its decision. It must also inform you of your right of appeal. These deadlines are not included in the Bill.

If you qualify for a subvention, your dependency level and your means may be reviewed after six months and at six-monthly intervals after that. You or someone on your behalf may ask for a review. The Bill provides for reviews at any time.

If you, or a person acting on your behalf, are not happy with a decision in relation to means you may appeal to an internal appeals officer in the HSE. There is no right of appeal on the assessment of your level of dependency. You must appeal within 28 days of receiving the notification of the decision. (This is increased to 60 days in the Bill.)

The appeals officer must inform you of his or her decision within 28 days of receiving the appeal. Decisions of the appeals officer are subject to review by the Ombudsman.

Choice of nursing home

If you are considered to be eligible for a subvention, the HSE may offer you a place in a public long-stay home instead. The rules do not specifically say that you may be refused a subvention if you refuse the HSE offer of a place but the implication is that you may. In practice, people are almost never offered a public long-stay place.

If you are not offered a public long-stay place, the HSE must pay the subvention to the nursing home chosen by you or by someone on your behalf, provided it is a registered home. You are entitled to move to a different nursing home and have the subvention transferred to it. You may choose a nursing home in Northern Ireland if it is registered by a health and social services board there.

Health Information and Quality Authority

The legislation to set up the Health Information and Quality Authority (HIQA) is being prepared. It will be called the Health Bill 2006. The heads of the Bill have been published and a public consultation process is taking place. A Background Paper outlining the proposals and the draft General Scheme and Heads of the Bill are available at <http://www.dohc.ie/healthbill2006>. Submissions should be made by 26 May 2006.

The Interim HIQA was set up in 2005. Its functions are mainly concerned with preparation for the establishment of the full HIQA. It also has power to carry out projects for the purpose of evaluating standards and quality but it is specifically prohibited from encroaching on the statutory functions of a number of bodies including the regulatory bodies for doctors and nurses and the Mental Health Commission.

Proposed functions of HIQA

The HIQA will be involved in setting and monitoring standards for safety and quality for all general health services and childcare services provided by the HSE or by a service provider on behalf of the HSE. It is intended that HIQA will set and monitor standards for services provided by or on behalf of the HSE except those which are already covered by the Mental Health Commission and the Inspector of Mental Health Services. This does not generally include services provided by private providers except where these are provided on behalf of the HSE but it will apply to private nursing homes. The standards set by HIQA will not be binding on the HSE but the HSE will be required to have regard to those standards.

Among other things, the HIQA will also operate accreditation programmes and will be involved in the investigation of health service failures.

Social Services Inspectorate

The Social Services Inspectorate (SSI) will be part of the HIQA. The SSI has operated on an administrative basis since 1999 and has been involved in monitoring and inspecting child residential homes. Its functions will be vested in a statutory office to be known as the Office of the Chief Inspector of Social Services. The legislation will also provide for the establishment of a registration system in respect of residential services for children, older people and people with disabilities to replace existing registration procedures in the Health (Nursing Homes) Act and the Child Care Acts. It is intended that the functions of the office of the chief inspector will include, among other things, monitoring of standards in respect of residential services for people with disabilities, older people and children.

Regional Health Forums

The Health Act 2004 which mainly dealt with the establishment of the Health Service Executive also provided for the establishment of various consultative procedures. (See Relate, February 2005 for a description of the Act.)

National Health Consultative Forum

The Minister may (but is not obliged to) convene a National Health Consultative Forum to advise on matters relating to the provision of health and personal social services. The Minister will decide how the members are to be chosen. To date, no such forum has been established.

Regional health forums

The Minister is obliged to establish regional health forums. The legislation provides that there may be up to

four such forums. The function of a regional forum is to make representations to the HSE on the range and operation of health and personal social services provided within its area. It may not make representations about matters of clinical judgement or staff matters. Four forums were established on 1 January 2006 under the Health Act 2004 (Regional Health Forums) Regulations 2005. The HSE is responsible for convening the first meeting of each forum which must take place not later than four weeks after the final member of each forum has been appointed.

The forums cover the following areas:

Dublin – Mid Leinster: this is composed of local authority members from Dublin City Council south city electoral areas and the county councils of Dun Laoghaire-Rathdown, Kildare, Laois, Longford, Offaly, South Dublin, Westmeath and Wicklow.

Dublin and North East: this is composed of local authority representatives from Dublin City Council north city electoral areas and the county councils of Cavan, Fingal, Louth, Meath and Monaghan.

South: this is composed of local authority representatives from the city councils of Cork and Waterford and the county councils of Carlow, Cork, Kerry, Kilkenny, South Tipperary, Waterford and Wexford.

West: this is composed of local authority representatives from the city councils of Galway and Limerick and the

county councils of Clare, Donegal, Galway, Leitrim, Limerick, Mayo, North Tipperary, Roscommon and Sligo.

The HSE has a regional office in each of these areas. The regional offices are not directly involved in delivering services. One of their main functions is to oversee the consultation processes.

Other consultation

The HSE may (but is not obliged to) consult with local communities or other groups about health and personal social services. It may appoint panels of service users, carers of service users and service providers. The Minister may direct the HSE to establish an advisory panel for a specific purpose and may appoint specific people to the panel.

Charities Regulation Bill 2006

The general scheme of the Charities Regulation Bill 2006 (usually known as the heads of the Bill) has been published. This indicates how it is proposed to provide for the regulation of charities. The Bill itself is now being drafted. The current rules in relation to the regulation of charities are set out in the February 2006 issue of *Relate*.

It is proposed that the Bill will provide for:

- A statutory definition of charitable purposes
- The establishment of an independent regulatory body for the charities sector – the Charities Regulator; the regulator would decide whether or not bodies are charitable, maintain a register of charities and monitor
- Compliance with the law; there would be a Charity Appeals Board to deal with appeals against decisions of the Regulator. The Regulator would be obliged to consult widely when operating the new regulatory system
- A mandatory registration system for charities
- Changes to the rules on fund-raising by, among other things, amending the Street and House to House Collections Act 1962 and giving the Charities

regulator various powers to monitor fund raising activities

- Various accounting requirements for charities

It is not proposed to deal with the issue of a legal form for charities in the Bill.

It is proposed that the legislation would provide for a general statutory duty of care which would apply to all charity trustees.

It is not clear when the draft Bill will be published. We will have further information at that stage. The general scheme is available at:
<http://www.pobail.ie/en/CharitiesRegulation>

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