



**Health  
Information  
and Quality  
Authority**

An tÚdarás Um Fhaisnéis  
agus Cáilíocht Sláinte

# CCPC consultation on contracts of care in long-term residential care services for older people

## HIQA submission

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February 2018

*Safer Better Care*

## HIQA

The Health Information and Quality Authority, HIQA, has been Ireland's health and social care regulator since 2007. During that time, we have been responsible for the development and monitoring of standards in health and social care services, the registration and inspection of designated services and the conduct of a wide range of health technology assessments (HTA). We have also played a major role in facilitating and advising on Ireland's eHealth infrastructure.

All of these functions are focused on making services safer and better, providing assurance to the public as to the quality of services and ensuring that the findings of our work are reflected in decision-making at local and national levels. Putting the needs and the voices of the people who use health and social care services to the fore is the essence of everything we do.

HIQA began regulating residential services for older people in 2009. Our Older Persons' Team is legally responsible for the monitoring, inspection and registration of designated centres for older people, which include nursing homes. This team oversees almost 600 registered nursing homes with over 30,000 registered beds. In order to be registered to operate, services must meet the requirements set out in the Health Act 2007, in the associated regulations, and in the National Standards for Residential Care Settings for Older People in Ireland 2016.

HIQA acknowledges and supports the role of the Competition and Consumer Protection Commission (CCPC) in the protection of the consumers' rights, and welcomes the publication of a consultation on contracts of care in long-term residential care services for older people. HIQA too has a role in the protection of the public, particularly with a view to safeguarding people who may be vulnerable in long-term care.

The contract of care between a service provider and the resident of a designated centre for older people is an indispensable document, which should provide clarity and unambiguity as to the terms and conditions of the agreement, and rights and responsibilities of both parties. In HIQA's view, there is a clear need for guidelines setting out the obligations and responsibilities of service providers, in particular with regard to compliance with the law. We welcome the fact that the CCPC is to develop such guidelines, informed by the feedback from key stakeholders.

## National Standards for Residential Care Settings for Older People in Ireland 2016

Older people should be supported to remain independent in their own homes for as long as possible. However, some older people require placement in residential care when their needs cannot be met at home or in the community.

People who live in residential settings have the right to enjoy a good quality of life in a safe environment which meets their health and social care needs. The providers of such services must ensure that residents are treated with respect and dignity at all times and are involved in decisions about their care. Moreover, all residents of designated centres have the right to be safeguarded and protected from abuse or neglect. HIQA strives to promote continual improvements to the safety and quality of services provided to older people in residential care.

HIQA's National Standards for Residential Care Settings for Older People in Ireland 2016 place a strong focus on quality of life and a person-centred approach to care for all residents. These standards advise the following in relation to contracts of care:

- admission and discharge to the residential service is timely, planned in a safe manner, determined on the basis of fair and transparent criteria, and placements are based on agreement for contract of care with the registered provider (2.8.5)
- each resident signs an agreement for contract of care, in an accessible format, with the registered provider. If a resident is unable or chooses not to sign, this is recorded (2.8.6)
- the agreement provides for and is consistent with the assessment, the service's statement of purpose and the individual care plan (2.8.7).
- each resident has a lifestyle in the residential service that is consistent with their previous routines, expectations and preferences, and satisfies their social, cultural, language, religious, and recreational interests and needs where possible. Daily routines of the residential service, including mealtimes and bed times, are solely dictated by the needs of residents (2.8.11)
- the prospective resident is informed of all fees payable including charges for activities and services that may have additional costs (2.8.12)
- each resident living in the residential service on a long-stay basis enjoys the security of a permanent home and is not required to leave against their wishes unless there are compelling reasons for the move. Each resident is consulted with in advance of any move (2.8.13).

## The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013

The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 is a statutory instrument setting out the minimum standard a registered provider must meet when operating a nursing home. Regulation 24 sets out the requirement for regulatory compliance in issues relating to contracts of care, specifying that the registered provider must ensure that, on admission, a written contract is agreed with every resident.

In measuring compliance with this regulation, HIQA inspectors routinely inspect a random sample of written contracts to ensure that agreement exists on:

- the terms on which the resident will reside in the nursing home
- the services to be provided, whether under the Nursing Homes Support Scheme or otherwise
- the fees to be charged for these services, if any
- the arrangements for application for or receipt of financial support under the Nursing Homes Support Scheme, where appropriate
- any other services which the resident chooses to avail of but are not included in the Nursing Homes Support Scheme or any other entitlement, for example a medical card.

The concerns raised by HIQA's inspectors in relation to contracts of care are predominantly financial in nature, and include:

- the weekly charge levied
- the financial burden of weekly charges on residents and their families
- the levying of charges for services to which the resident is entitled, free of charge
- the levying of charges for social activities in which the resident is unable to partake
- the levying of charges for the use and or purchase of equipment, for example pressure-relieving mattresses
- the renegotiation of contracts with residents who have lived in the centre for several years.

Feedback from residents and their families highlight a number of current concerns with contracts of care, ranging from the inadequate provision of information, unilateral changes to the terms and conditions and the compulsory renegotiation of contracts.

## Contracts of care

From HIQA's perspective, a contract of care must contain a number of key components:

1. It should provide security of tenancy for the resident, providing that he or she is not having an adverse effect on other residents.
2. It must also describe the care and level of service that the resident can expect and provide details of services not covered by the Nursing Homes Support Scheme for which the resident will be charged.
3. The contract should indicate what will happen should a resident's needs change and increase over time, specifying the policy to be adhered to should either party wish to renegotiate the existing contract.
4. Complete transparency is required in terms of the contents of long-form contracts of care, and the processes involved should be fair and unambiguous.
5. All contracts of care must be accessible to prospective residents and their families or loved ones, and written in plain English according to NALA guidelines. Assistance in understanding the terms and conditions of the contract should be provided to the relevant party where requested.

Furthermore, HIQA proposes the introduction of service-level reporting against contracts of care. This would require service providers to set out in the contract of care the services to be provided for an agreed price against an agreed standard. Regular reporting against the contract, for example biannually, would provide the resident or his or her nominee an appraisal against the contract, i.e. how they have performed against their contract.

## Provision of information on a contract of care

From our experience of regulating residential services for older people, it is evident that many residents and their families have difficulties finding relevant and comprehensive information before accepting a place in a nursing home. Often the full catalogue of additional charges is not presented in a transparent manner and so-called 'hidden fees' do not become apparent until the resident has already taken up residence in the home.

It is key that residents understand the terms of a contract of care and what it means to them; however, many residents struggle to understand the language used in these contracts, which is frequently jargonistic and overly legalistic. Many residents in these circumstances may suffer from cognitive impairment due to aging or other

morbidities such as dementia. These issues are dealt with in the section below on 'capacity'.

Direct feedback received by HIQA indicates that residents and their families can feel powerless when negotiating contracts of care as they are often limited in terms of the choice of nursing home, due to geographical, familial or other factors. Indeed, some residents have suggested that they felt under pressure to quickly accept a place in a nursing home in order to 'free up' a bed in an acute hospital and avoid being accused of 'bed blocking'.

### Negotiating a contract of care

Provision should be made for amendments to the terms of a contract of care when circumstances or needs change; however, revisions should only occur with the explicit agreement of both parties to the agreement. Contracts of care must specify how and in what circumstances changes can be made. HIQA is aware of situations where registered providers have sought to change the terms and conditions of an existing contract, leaving some residents with no option but to sign a new contract or to relocate to a different nursing. Imposing unilateral changes puts residents and their families in an impossible and stressful situation where they feel unfairly, and wrongfully, under duress.

### Capacity

While most older adults are in a position to exercise choice over their care and welfare, others may lack consistent mental capacity to make decisions in certain circumstances and at certain times. Current contractual agreement practices do not accommodate for residents with changing mental capacity. As a consequence, pending a change in legislation, service providers must ensure effective advocacy and supports are available to assist residents with challenged mental capacity.

The Assisted Decision-Making (Capacity) Act 2015 provides a statutory framework to support adults with impaired mental capacity to enter legally-binding agreements. This legislation champions human rights and respects the autonomy and dignity of vulnerable adults with capacity issues.

Under the act, everyone is presumed to be in a position to make decisions unless otherwise proven. When fully commenced, this legislation will provide clarity for older people in residential facilities and offer guidance to family members, carers, nursing home providers and others in terms of the steps that must be taken to safeguard people with capacity issues. It will be the responsibility of nursing home

providers and their staff to be confident that a resident, or prospective resident, has full capacity to enter into a contract of care. This is an important and necessary step to safeguard vulnerable people in nursing homes and other residential facilities.

It should be noted that the designation 'next of kin' does not infer any rights upon a family member to sign a contract on behalf of a person being admitted to long-term care. The process of agreeing a contract of care should be predicated on the premise that the person taking up residence in a nursing home is the primary signatory/relevant person in the contract. The current position of accepting the signature of a next of kin or other is not acceptable.

HIQA would also urge the CCPC to have regard for the recently-published preliminary draft heads of bill on deprivation of liberty safeguards, which will form a new part of the Assisted Decision Making (Capacity) Act 2015 — particularly head 3, which deals with a person's capacity to make a decision to live in a 'relevant facility'.

## Conclusion

HIQA welcomes the fact that the CCPC has undertaken to develop guidelines for service providers on their obligations and responsibilities towards residents when drafting, agreeing and abiding by a contract of care.

A good contract of care puts the needs of the resident first, ensuring that he or she is guaranteed the highest-possible standard of care in a safe and comfortable environment. The contract should empower the resident to exercise greater control and choice over their care, fully informed of their rights and entitlements as established in this document.

Contracts of care must also be fair and transparent, clearly outlining the terms of the agreement in an accessible and straightforward manner. Clarity in terms of the costs, in particular any additional costs, is vital.

Above all, a contract of care respects the wishes, values, dignity and autonomy of the resident.

ENDS

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