



**Competition &  
Consumer Protection  
Commission  
Contracts of Care in  
Long-Term  
Residential Care  
Services for Older  
People**

**February 2018**

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## Nursing Homes Ireland

Nursing Homes Ireland (NHI) is the representative organisation for the private and voluntary nursing home sector. 448 private and voluntary nursing homes across Ireland are providing care to over 23,000 persons. They are directly employing in excess of 30,000 dedicated, caring and committed staff to facilitate round-the-clock care within these home-from-home dedicated healthcare settings. Our Members are essential for healthcare delivery in Ireland. Furthermore, they provide high-quality, diverse employment, both direct and indirect, within urban and rural communities across the country.

Nursing homes provide specialist, 24/7 care, within dedicated 'home from home' health settings. The care entails ongoing access to clinical support and ensures persons with high dependency needs have their health, care and living requirements met on a continuous basis. As recently highlighted by the Department of Health, nursing home care equates to 8,736 hours of care per annum, per person<sup>1</sup>.

NHI recognises the move to a nursing home is one of the most difficult a person will have to undertake in their life.

NHI and our members are committed to openness and transparency with regard to Contract for Care. The resident's contract, detailing the terms and conditions and rights and responsibilities of parties to the contract, is presented on enquiry stage and agreed on admission to the nursing home.

We provide a range of supports, through head office and our Membership, to support persons' making the transition to nursing home care. These supports include the following guides:

- Quality Living, Quality Care – NHI Guide to Living in a Nursing Home
- Nursing Home Care it's your choice...Advice on choosing a nursing home and understanding the Fair Deal
- 'Guide to Nursing Home Charges for Fair Deal (NHSS) Residents'
- Nursing Home Finance & Tax Guide

Copies of the above NHI guides are available upon request.

Our Members are provided with an NHI developed, template contract for care that fulfils the regulatory requirements. It requires amendment by each of our Members to be adopted specific to their nursing home.

We have also has developed for Members *Guiding principles on charges for additional goods and services for Fair Deal residents*. These commit our Membership to:

- Engaging with prospective residents / representatives in an amicable, transparent and open manner
- Openness and transparency with regard to all our fees and charges
- Making the Contract for Care, clearly listing all Charges, available at earliest opportunity to prospective residents

- Clearly listing all fees and Charges in the Contract, within guidance and all information provided to residents
- Clearly explaining the Contract for Care, all services and Charges prior to admission and when asked by residents
- A 14-day cooling off period to the resident / nominated next of kin
- Openly addressing any concerns residents or representatives may have with regard to charges or services provided - informally or through our complaints process
- Ensure all residents who raise concerns or complaints are treated fairly
- Informing all residents / representatives if an issue arising has not been satisfactorily addressed through the nursing homes complaints process, they may consider appealing that decision to Office of the Ombudsman

## Background

1. Nursing Homes Ireland (NHI) welcomes opportunity presented by the CCPC to provide a submission to this consultation process. As advanced by the Commission, contracts provide certainty and clarity to the resident regarding the services that will be provided to them within the nursing home.
2. NHI and our members are committed to openness and transparency with regard to Contract for Care. The resident's contract, detailing the terms and conditions and rights and responsibilities of parties to the contract, is presented on enquiry stage and agreed on admission to the nursing home.
3. There are two principle legal parameters for persons availing of nursing home care in Ireland. The Nursing Home Support Scheme, commonly referred to as Fair Deal, is the statutory scheme that provides the framework for the State financial support to enable persons avail of nursing home care. The scheme is specific in defining the goods and services it encompasses. The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 set out the parameters for the provision of clinical, health and social care services to be provided to the resident within the nursing home.
4. Inter-alia, the nursing home has entered into a Deed of Agreement with the NTPF. Under the agreement, a maximum permissible fee is agreed between the individual nursing home and the State (with the NTPF acting on its behalf) to charge for residents availing of the Fair Deal scheme.
5. It should also be noted private payers also avail of care within nursing homes and are required to agree a Contract for Care. The ESRI has estimated over 2,600 persons within nursing home care are private payers<sup>ii</sup>. They may be availing of care on a long- or short-term basis. Short-term care within a nursing home may entail respite, transitional or rehabilitative care.
6. NHI appreciates the move to a nursing home presents one of the most challenging and difficult experiences in a person's life. Being presented with a contract may add to the worry and angst for the resident and, or, their next of kin. It is important to note the contract is a regulatory requirement and provides to the resident assurance and certainty regarding their care, the terms and conditions and rights and responsibilities of both parties to the contract.
7. NHI and our members are committed to openness and transparency with regard to all fees and charges. Charges are clearly listed in each resident's Contract for Care. Fees charged by nursing homes will vary based on a range of factors, including costs incurred and the differing range of goods, services, facilities and activities provided as agreed with the resident.
8. NHI has developed a template contract fulfilling the regulatory requirements. The template requires amendment by each of our Members to be adopted specific to their nursing home. It is presented on enquiry stage and agreed on admission to the nursing home.
9. Approximately 30,000 people are availing of nursing home care in Ireland. This represents circa 4% of our older population.
10. Approximately 80% of persons availing of care in nursing homes are financially supported by the Nursing Home Support Scheme, commonly referred to as Fair Deal.

11. Under the Scheme, nursing home residents make a means assessed payment towards their care to the nursing home of their choice, and the HSE pays the balance. Each person approved for Fair Deal is free to choose the nursing home (public, private or voluntary) that best meets their needs.
12. Under the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations, all nursing homes must agree a contract of care with each resident on admission that includes the services to be provided, whether under the Nursing Homes Support Scheme or otherwise, and the fees to be charged for such services
13. The Regulations stipulate nursing homes must ensure that contracts of care are clear, unambiguous and contain full details of the services to be provided to the resident, reflecting the requirements of the regulations and HIQA's *National Standards for Residential Care Settings for Older People in Ireland*.
14. The Regulations stipulate the registered provider shall agree in writing with each resident, or their representative where the resident is not capable of giving consent, the terms on which that resident shall reside in the designated centre.
15. The Contract shall:
  - (a) "include the support, care and welfare of the resident in the designated centre and details of the services to be provided for that resident and, where appropriate, the fees to be charged; and
  - (b) provide for, and be consistent with, the resident's needs..."
16. The contracts within all nursing homes are subject to independent oversight by HIQA, the statutory independent regulator of the nursing home sector.
17. Nursing homes are required by legislation to address and document investigate concerns or complaints brought to their attention and the outcome must be brought to the attention of the complainant. The regulations stipulate any nursing home resident with a complaint must not be adversely affected by reason of their complaint having been made.
18. Failing resolution with the nursing home, the complaint can then be brought to the attention of the Office of the Ombudsman. The Office deals with all complaints independently and impartially.

## The Nursing Home Support Scheme (Fair Deal)

Under the Nursing Home Support Scheme, commonly referred to as Fair Deal, the State offers financial support to people whose care needs are best met through nursing home care. Participants contribute to the cost of their care according to their income and assets while the State pays the balance of the cost. It aims to ensure that long-term nursing home care is accessible and affordable for everyone and that people are cared for in the most appropriate settings.

A comprehensive care needs assessment is undertaken by a team of HSE healthcare professionals to assess the applicant's requirement / non-requirement for nursing home care and the support of the scheme. Following on from this, a local placement forum multidisciplinary team considers the assessment and makes a further determination as to whether the applicant requires nursing home care. As stated by then Minister of State for Older People Helen McEntee TD in Dáil Éireann 14<sup>th</sup> February 2017: "This is a comprehensive process and has been put in place to ensure that there is no doubt surrounding whether a person has a requirement for long-term nursing home care or not."

The NTPF provides the following definition of Long Term Residential Care Services under the Nursing Home Support Scheme (Fair Deal).

Long Term Residential Care Services shall have the meaning assigned to it by the Act and shall, without prejudice to the generality of the foregoing, include:

- Bed and board;
- Nursing and personal care appropriate to the level of care needs of the person;
- Bedding;
- Laundry service; and
- Basic aids and appliances necessary to assist a person with the activities of daily living.

The definition states: "For the avoidance of doubt, Long-term Residential Care Services shall not include: inter alia

- Daily delivery of newspapers;
- Social programmes;
- All therapies;
- Incontinence wear
- Chiropody;
- Dry cleaning;
- Ophthalmic and dental services;
- Transport (including care assistant costs);
- Specialised wheelchairs; and
- Hairdressing and other similar services"

## The importance of activities & services for nursing home residents

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

#### Residents' rights

9. (1) *The registered provider shall carry on the business of the designated centre concerned so as to have regard for the sex, religious persuasion, racial origin, cultural and linguistic background and ability of each resident.*

(2) *The registered provider shall provide for residents—*

(a) *facilities for occupation and recreation, and*

(b) *opportunities to participate in activities in accordance with their interests and capacities.*

(3) *A registered provider shall, in so far as is reasonably practical, ensure that a resident—*

(a) *may exercise choice in so far as such exercise does not interfere with the rights of other residents,*

(b) *may undertake personal activities in private,*

(c) *may communicate freely and in particular have access to—*

(i) *information about current affairs and local matters,*

(ii) *radio, television, newspapers and other media...*

Within its research report *Improving Quality of Life for Older People in Long-Stay Care Settings in Ireland* (2006), the National Council on Ageing and Older People highlights “a resident’s engagement in meaningful activities” as being one of four broad domains for quality of life in long-stay care. “Another key finding from the study is that quality of life is enhanced when residents have plenty to do, particularly if what they have to do is meaningful and, to some extent at least, is freely chosen,” it states.

Research by Cooney (2012), *'Finding home': a grounded theory on how older people 'find home' in long-term care settings*, NUIG, highlights ‘being active and working’ with structured activities within the home helped many residents gain a sense of satisfaction within their daily lives.”

Dr Kevin Moore and Professor Assumpta Ryan, Ulster University, within their research report *The Lived Experience of Nursing Home Residents in the Context of the Nursing Home as their Home*, states: “For many residents, the day-to-day normal routine of activities was important and central to their sense and feeling of home, as it created a sense of community and belonging and of significant importance for many residents was outings and leisure type activities....For others, it was an acceptance of their current circumstances, coupled with their profound sense of belonging within the home and having day-to-day purposeful and meaningful activities and company, which appeared to underpin their contentment and happiness.”

Activities fulfil an essential role in supporting the health and wellbeing of residents in nursing home care. They are broad encompassing, incorporating indoor and outdoor, therapeutic and non-therapeutic. They fulfil a key role in contributing to a residents’ well-being, independence and health.

*“There are a whole range of psychosocial approaches or non-pharmacological interventions that can be used by trained staff to promote well-being and improve quality of life for people with dementia living in residential care. These include: reality orientation, which uses rehearsal and physical prompts to improve cognitive function related to personal orientation; cognitive stimulation therapy, which focuses on information processing; reminiscence therapy, which involves discussion of past experiences and activities individually or in a group; music therapy, aromatherapy, doll therapy, Snoozelins and validation therapy,”* *Creating Excellence in Dementia Care – A Research Review for Ireland’ National Dementia Strategy (2012), Cahill, O’Shea, Pierce*

*“Modifiable lifestyle risk factors, such as tobacco and alcohol use and physical inactivity, should be actively managed as part of the care plan for people with dementia,”* *The Irish National Dementia Strategy (2014)*

*“The primary way to achieve a restraint free environment through the appropriate management of responsive behaviours is to implement a comprehensive individualised plan of care which focuses on providing meaningful activity, occupation and diversional techniques for residents. This therefore serves to highlight the importance of activities in nursing home care particularly given that it is estimated that up to 63% of all residents residing in nursing home care have a dementia,”* *Creating Excellence in Dementia Care – A Research Review for Ireland’ National Dementia Strategy (2012), Cahill, O’Shea, Pierce*

The provision of activities and goods and services is on an individualised and/ or group basis. Choice and enabling people to live as independent a life as desired are fundamental ethos’s within nursing home care. An individual care plan, tailored to the clinical, health and social care needs of the individual resident, is developed by a healthcare professional upon resident admission to the nursing home.

The essential role of activities within nursing home care are recognised within the regulations made under the Health Act 2007, as outlined. The *National Standards for Residential Care Settings for Older People in Ireland 2016* stipulate: “Each resident is offered a choice of appropriate recreational and stimulating activities to meet their needs and preferences.” They further stipulate: “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.”

The independent regulators emphasis upon quality living is long-standing and fully supported by NHI and our Members. HIQA’s 2009 published *National Quality Standards for Residential Care Settings for Older People in Ireland* stipulate: “The residential care setting provides opportunities for the resident to pursue healthy lifestyle choices and recreational activities” and “opportunities are provided for indoor and outdoor exercise and physical activity, personal development, communication and other psychosocial development.”

Fair Deal’s definition of long term residential care services, as outlined, specifically excludes and does not fund a wide array of activities and services that are provided by nursing homes to enhance residents’ health and wellbeing. Excluded, for example, are social programmes, physiotherapy, occupational therapy and other health and social care services. These services are essential to

support the living and healthcare requirements of older persons in nursing home care, as recognised within the national standards and Regulations.

*Some examples of individual and group services, activities & goods provided to nursing home residents (not an exhaustive list)*

*Activities Staff, Arts & Crafts, Animal Therapy, Baking / Cooking, Board Games, Bingo, Bowling, Boules, Cards, Celebrations – birthdays, anniversaries, seasonal, Computers, Crosswords, Flat screen TV, Extra TV channels, Flower Arranging, Foot Spa Therapy, Gardening, Hand Therapy, Head Massage, Knitting, Jigsaws, Keep Fit Exercise, Library, Light Exercise, Magazines, Manicures, Music Therapy, Musical Afternoons, News of the Day, Outings, Pampering, Pet Therapy, Physio, Poetry, Quiz, Radio, Reading, Relaxation Therapy, Religious Services, Reminiscence Therapy, Sonas Program, Sensory Therapy, Spiritual Reflections, Sing A Long, Social Afternoons, Sudoku, Walks, Wi – Fi, Wordsearch.*

Therapeutic activities are critical to quality of life and rehabilitation objectives within nursing home care. Therapies such as physiotherapy, occupational therapy and chiropody have particular significance in supporting and improving the physical wellbeing of a nursing home resident. The findings of an unpublished HSE audit<sup>iii</sup>, undertaken October 2012 to January 2013 and reported within media, revealed the majority of nursing home residents do not have access to essential therapies provided by the HSE. Such therapies are life-enabling and life-saving. It is essential nursing home residents are enabled to access such services.

HIQA and the Office of the Ombudsman have expressed concerns regarding the Fair Deal scheme's exclusion of therapeutic activities and social programmes.

HIQA's *Designated Centres for Older People: An analysis of inspection findings during the first 15 months of inspections (2012)* highlighted the most common breaches of the regulations underpinning nursing home care. In this respect it stated: "Inadequate access to all care services, i.e. physiotherapy, chiropody, occupational therapy, or any other services as required by the resident. This reflects a wider funding and access issue in the sector and is an issue in particular for some private centres who are not able to access HSE services such as those listed above as they fall outside of the Fair Deal Scheme. Therefore, the options in these circumstances are either that the resident pays privately, or the provider pays. Otherwise the resident does not receive the service."

The Office of the Ombudsman report *Who Cares? An Investigation into the Right to Nursing Home Care in Ireland (2010)* stated: "The exclusion from the care package of therapies and social programmes appeared to be at odds with what (in the words of the Department) "is commonly understood as long-term nursing home care. Furthermore, it appeared that the care packages provided for in the NTPF agreements are not consistent with the obligations placed on private nursing homes under the Health (Nursing Homes) Act 1990 (as amended) and the Health Act 2007 (including regulations made under the latter Act) (14). The Ombudsman was concerned that, in many individual cases, the NTPF agreed care packages were not adequate to meet the actual care needs of that individual and that, in this event, the agreements made by the NTPF were falling short of the level of care apparently envisaged under the NHSS Act. However, a careful reading of the

NHSS Act suggests that the narrow care packages agreed by the NTPF may not necessarily be at odds with the provisions of the Act.”

It is explicit activities and services excluded from the Fair Deal scheme are essential to support the health and wellbeing of nursing home residents. Nursing homes must ensure they fulfil their obligations under the Health Act and Care and Welfare Regulations (and as care providers) to ensure residents are provided with an array of goods, services and activities that are in keeping with their interests and promote their health and wellbeing. They are required to achieve without associated costs being recognised within the Fair Deal negotiation process or within the fee payable.

## Charges for Services

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

#### *Contract for provision of services*

24. (1) *The registered provider shall agree in writing with each resident, on the admission of that resident to the designated centre concerned, the terms, including terms relating to the bedroom to be provided to the resident and the number of other occupants (if any) of that bedroom, on which that resident shall reside in that centre.*

(2) *The agreement referred to in paragraph (1) shall relate to the care and welfare of the resident in the designated centre concerned and include details of—*

- The services to be provided to the resident whether under the Nursing Homes Support Scheme or otherwise;*
- The fees to be charged for such services;*
- Where appropriate, arrangements for the application for or receipt of financial support under the Nursing Homes Support Scheme including arrangements for the payment or refund of monies;*
- Any other service which the resident may choose to avail of but which is not included in the Nursing Homes Support Scheme or to which the resident is not entitled under any other health entitlement.*

The list of services expressly excluded under the NTPF deed with nursing home providers, as outlined previously, is not exhaustive. Prior to and since inception of the Fair Deal scheme, NHI consistently highlighted the narrow definition of goods and services under the scheme and that State financial support to residents approved under the Fair Deal do not encompass the reality of the health and social care costs incurred to meet the day-to-day care and living requirements of persons requiring nursing home care.

Providers are required, from a legal and more importantly from the point of view of promoting the health and wellbeing of residents, to ensure compliance with the Health Act and Regulations. Essential (and non-essential but life-enhancing) services are excluded from the fees payable to the resident under the Fair Deal scheme. As advanced by HIQA within its report *Designated Centres for Older People: An analysis of inspection findings during the first 15 months of inspections (2012)*, the failure to fund essential services leads to residents paying privately or provider incurring the costs incurred, where feasible.

*“Inadequate access to all care services, i.e. physiotherapy, chiropody, occupational therapy, or any other services as required by the resident. This reflects a wider funding and access issue in the sector and is an issue in particular for some private centres who are not able to access HSE services such as those listed above as they fall outside of the Fair Deal Scheme. Therefore, the options in these circumstances are either that the resident pays privately or the provider pays. Otherwise the resident does not receive the service,” HIQA (2012) Designated Centres for Older People: An analysis of inspection findings during the first 15 months of inspections*

This ‘disconnect’ has been highlighted within independent analysis that has encompassed the Fair Deal funding model.

*“It is untenable that the State quality regulator can assess differentiated dependency levels and in doing so impose costs on nursing homes, while the State price regulator claims it is unable to reflect the same factor in its pricing decisions,” DKM Economic Consultants (2015), Potential Measures to Encourage the Provision of Nursing Home and Community Nursing Unit Facilities*

*“Our findings would lead us to conclude that the complex and high dependency needs of PWD [Persons with Dementia] in SCUs [specialist care units] now need to be more realistically reflected in fairer resource allocation, in recognition of the skill mix of staff employed in SCUs, their training needs and the level of care expected to be delivered to residents with dementia,” Dementia Services Information & Development Centre (2015), An Irish National Survey of Dementia in Long-Term Residential Care*

*“In reviewing the current Fair Deal scheme an evidence-based cost-of-care model could be used in assessing the real cost of residential nursing home care in Ireland,” Oireachtas Health Committee (2014), Report on End-of-Life & Palliative Care in Ireland*

Appropriate charges for services provided are incurred by the resident for the provision of services as agreed in the contract for care. The nursing home must fulfil its obligations under the Care and Welfare regulations to ensure services and activities are available to promote the health and wellbeing of the resident, and provide engagement, stimulation, enjoyment and comfort.

Private and voluntary nursing homes provide care for fees that are a national average 53% below those payable to public counterparts<sup>iv</sup>. These dedicated, home-from-home healthcare settings must ensure they are financially viable, with key elements of care not funded by the State through the Fair Deal scheme for services provided.

Responding to a query from RTE in March 2014, the NTPF confirmed the following:

*“The ‘cost of care’ in private nursing homes covers services as outlined in the Nursing Homes Support Scheme Act 2009, and subsequent regulations. Such costs include bed and board, and nursing and care services as defined. Private Nursing Homes may impose additional charges for incidentals/extras such as social programmes, transport, newspapers, hairdressing etc as these costs are not included in the cost of care,” NTPF statement to RTE, 18<sup>th</sup> March 2014*

There is strong evidence available that a range of services that are excluded under the Fair Deal’s cost components, including but not limited to therapies, transport, social programmes, oxygen and specialised equipment, are being funded by the HSE for residents within their own operated nursing homes but not for those within private and voluntary homes. Furthermore, there is evidence residents in HSE nursing homes are afforded greater access to primary care and allied health services such as physiotherapy, occupational therapy, speech and language therapy, dietician services. The aforementioned HSE Quality and Patient Safety Audit 2013 confirmed this.

Residents within our Member nursing homes, private and voluntary, should retain equal access to primary care services that are essential to support their health and improve their quality of life. People within these nursing homes should not be discriminated against. They must not be denied

access to services that are readily available and accessible to people living in HSE nursing homes or are provided to them when they live at home.

*“Public nursing homes are not required, however, to enter into negotiations with the NTPF. Payments to private nursing facilities are made directly by the HSE to the proprietor at agreed prices. In Australia and in the UK greater financial incentives are given to nursing homes to admit people with dementia, which undoubtedly has implications for the cost of nursing home care. In Ireland, however, the agreed price does not vary according to the care needs of residents of nursing homes. The negotiated prices are based on a standard care package rather than on actual and often very differing care needs of residents. Indeed, the NTPF has no ‘cost of care’ model/template on which to base their negotiations,”* *Creating Excellence in Dementia Care - A Research Review for Ireland’ National Dementia Strategy (2012), Cahill, O’Shea, Pierce*

All citizens regardless of the place of residence should have equal access to primary care services and a person in a long-term residential care setting should receive the same level of services as they would if they remained in their own home.

This submission highlights difficulties for nursing home residents in accessing therapy services from the community (HSE Audit). Furthermore, ongoing and timely access to GP services is imperative for persons in nursing home care. Nursing homes are increasingly experiencing difficulties in facilitating GPs visits to residents. In many instances retainer fees, are being sought for the provision of GP services within nursing homes. NHI advances an older person - be they in their own home, within a nursing home or another health setting – must retain equal access to care entitlements. This access must be provided on a timely and consistent basis. We are of the view the ongoing review of the GP contract presents opportunity to address key resourcing concerns and ensure all persons entitled to free GP care under the GMS can avail of such care in a timely manner.

## Contract for Care

As previously outlined, under the Health Act 2007, the registered provider must agree in writing with each resident, upon admission, the terms on which that resident shall reside in the nursing. NHI advances the Contract should be presented at enquiry stage, that being the appropriate opportunity to enable the resident and, or, their next of kin to consider. NHI provides Membership with a template contract that fulfils the regulatory requirements, requiring amendment by each nursing home as appropriate.

The Act requires each registered provider to stipulate fees, if any, to be charged for services and services the resident may choose to avail of that are not included in the Fair Deal scheme or to which the resident is not entitled under any other health entitlement.

The contract must openly inform of the details of the services to be provided and the individual fees to be charged. It must also specify the goods and services covered by the fee payable under the Fair Deal scheme.

NHI and our members are committed to openness and transparency with regard to all fees and charges. Charges are clearly listed in each resident's Contract for Care. Fees charged by nursing homes will vary based on a range of factors, including costs incurred and the differing range of goods, services and activities provided. The resident's contract, detailing the fees payable for services, is presented on enquiry stage and agreed on admission to the nursing home.

Contracts are subject to independent oversight by HIQA, the independent regulator of the nursing home sector. As the Authority stipulates: "Registered providers must ensure that contracts of care are clear, unambiguous and contain full details of the services to be provided to the resident. It should also detail additional fees (if any) to be charged for these services. In essence, providers must ensure that contracts and charges reflect the requirements of the regulations and the standards and are in line with consumer protection law. This allows for greater transparency and presents undue stress for residents and their families."

HIQA's annual overview reports, assessing care provision within the nursing home sector on an annual basis, have specified good practice has been demonstrated by nursing homes with regard to contracts for care. It's 2015 report, *Annual overview report on the regulation of designated centres for older people – 2015* states:

*"Residents and relatives have always voiced a desire for clarity on the fees they are charged for the services provided. In 2015, good levels of compliance were found with the requirement to provide residents with contracts for the provision of services. This ensures that residents and their families are informed of the services provided and that, critically for residents, there is clarity and transparency on the charges they are required to pay."*

Within its most recently published overview of health and social care services, *Overview of 2016 HIQA regulation of social care and healthcare services*, HIQA states: "In 2016, we received a small number of queries and concerns from residents and their families regarding the fees that they were

being charged in nursing homes.” The overview informs: “The Designated Centres for Older People team is responsible for overseeing 580 registered nursing homes with 30,396 registered beds.”

It should be noted the preferences and care needs of individuals entering into nursing home care differ and each persons can change and vary over an ongoing, short, medium, or long-term basis. Within contracts, the range of social and activity services provided by the nursing home may be bundled into a weekly or monthly charge, with a listing provided of the full range of services available to the resident should he / she wish to avail of them on an ad-hoc or ongoing basis. The Department of Health provided clarity to NHI in such regard during early inception of the Fair Deal scheme.

*“It is appreciated that there may be small items for which administratively it would be disproportionate to collect individual fees and in such cases nursing homes could look at bundling them together as a small package of items. However, this could only be done with the consent of residents.” Services for Older People, Department of Health, Letter to NHI, 15<sup>th</sup> June 2010.*

Other items may be listed within the contract on an ‘as required’ basis, whereby the resident agrees as per the contract to pay for the specific service per use.

## Rights of the resident

All residents in nursing homes must agree a contract of care which sets out their rights and the goods, services and activities that will be provided to them. The provision of and fulfilment of such contracts ensure compliance with Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (as amended) and HIQA National Standards for Residential Care Settings for Older People in Ireland 2016.

The rights of residents in nursing home care are inherent within the Regulations. Their rights are protected through:

- A comprehensive assessment upon admission by an appropriate healthcare professional to determine the persons' health, personal and social care needs within an individual care plan
- The nursing home having regard to the sex, religious persuasion, racial origin and linguistic background and ability of each resident
- The provision of facilities for occupation and recreation and opportunities to participate in activities in accordance with their capacity
- Enabling them to exercise choice and to undertake personal activities in private
- Being enabled to communicate freely and have access to information about current affairs and local matters. Also have access to:
  - Radio, television, newspapers and other media
  - Telephone facilities that can be privately accessed
  - Voluntary groups, community resources and events
- Consultation and participation in the organisation of the nursing home
- Exercising of their civil, political and religious rights
- Access to independent advocacy services
- The facilitation of visits to the resident
- Retention of control over personal property, possessions and finances, in so far as reasonably practicable
- Ensuring the resident is offered at reasonable times wholesome, nutritious food and choice in this regard, with refreshments and snacks also offered at reasonable times.
- The appropriate resourcing of the nursing home with required staffing complement and skill mix to meet resident health and living care needs
- An accessible and effective complaints procedure that ensures all complaints are investigated properly and there is no adverse effect for any person bringing forward a concern

***The rights listed are not exhaustive.***

Of fundamental importance, nursing homes are required by legislation to address and document concerns or complaints brought to their attention, with issues regarding the contract for care included in this regard. It is important to note, under the Health Act, the nursing home must provide an accessible and effective complaints procedure and make each resident and their family aware of same. All complaints must be investigated promptly, and the complainant must be informed of outcome and appeals process, should they wish to undertake. Failing resolution with the nursing home, independent recourse is offered through the Office of the Ombudsman, which can examine complaints related to the administrative actions of nursing homes. Within its most recently published annual report for the year 2016, the Office of the Ombudsman reported one complaint it received regarding Contract for Care.

## Recommendations

The proposed guidelines to be developed by the CCPC present important opportunity to inform regarding the purpose of the contract for care. The majority of person's presenting for nursing home care are, understandably, not familiar with such contract and its purposes. It is our view it is important the guidelines provided detail regarding what nursing home care entails and informs regarding the principle parameters for persons availing of nursing home care in Ireland:

- The Nursing Home Support Scheme, which provides the statutory framework for State financial support,
- The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013) set out the parameters for the provision of clinical, health and social care services to be provided to the resident within the nursing home

We present the following recommendations to inform the proposed guidelines:

1. The move to a nursing home can present one of the most difficult experiences for a person in their life. This guidance presents opportunity to provide information, clarity and assurance for persons regarding a very important contract that will be of fundamental importance during this phase of their life. It can provide clarity, reassurance and answer important questions. It is vitally important the guidance is presented in a balanced manner and provides an understanding regarding the purpose of the contract.
2. The reader should be provided with an overview regarding what nursing home care entails. Nursing homes provide specialist care within home-from-home dedicated healthcare settings. Persons availing of nursing home care are provided with access to 24/7 clinical care and are supported by a diverse team of healthcare specialists, including nurses and carers. The care provided within nursing homes is holistic. Nursing homes meet a person's day-to-day living requirements, encompassing their dietary requirements. Activities and therapies fulfil an essential role within nursing home care in providing stimulation, therapy, improving the resident's wellbeing, and enhancing the day-to-day life of the resident.
3. The reader should be informed of the two principle legal parameters for persons availing of nursing home care in Ireland. Fair Deal is the statutory scheme that provides the framework for the State financial support to enable persons avail of nursing home care. The scheme is specific in defining the goods and services it encompasses. The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 set out the parameters for the provision of clinical, health and social care services to be provided to the resident within the nursing home.
4. The guidelines should be cognisant the preferences of individuals entering into nursing home care differ and each individuals can change and vary over an ongoing, short, medium, or long-term basis. Contracts confirm the broad range of goods, services, facilities and activities provided by the nursing home, to ensure all are available to the resident.
5. The guidelines should provide detail regarding the role of Fair Deal in supporting persons to avail of nursing home care, its definition of goods and services, and guidance regarding what the scheme does not encompass. Fair Deal's definition of goods and services is limited, and person's availing of nursing home care are not always aware of its definition of goods and

services. As noted within this submission, HIQA and the Office of the Ombudsman have expressed concerns in such regard.

6. Charges can be applied by nursing homes for goods and services that are provided to residents including those specifically excluded from the Fair Deal scheme. The nursing home is required to stipulate the fee applicable, if any, and what is to be provided for such within the contract presented to the resident / their next of kin. The right of a nursing home to charge for goods and services that provided and agreed must be presented within the guidance.
7. All nursing homes must have in place an accessible and effective complaints procedure. The nursing home must, under the Health Act, make their resident and their family aware of same. The guidelines present opportunity to inform of recourse presented to residents and, or, their next of kin who have concerns / complaints regarding contract for care.

## Conclusion

NHI is committed to ensuring nursing home residents and, or, their next of kin are assured of openness, transparency, inclusive and complete engagement during the contract for care process. We thank the CCPC for this opportunity to provide submission to inform the proposed guidelines. We are committed to working with statutory stakeholders such as the Commission and the Department of Health to address any issues arising concerning Contract for Care matters and to create awareness and support for residents and nursing home providers.

### ***NHI Guiding principles on charges for additional and goods and services for Fair Deal residents***

*NHI Member nursing homes are dedicated to providing the best possible standards of care and quality of life to residents in a person-centred, 'home from home' setting.*

*NHI Member nursing homes are committed to*

- *Engaging with prospective residents / representatives in an amicable, transparent and open manner*
- *Openness and transparency with regard to all our fees and charges*
- *Making the Contract for Care, clearly listing all Charges, available at earliest opportunity to prospective residents*
- *Clearly listing all fees and Charges in the Contract, within guidance and all information provided to residents*
- *Clearly explaining the Contract for Care, all services and Charges prior to admission and when asked by residents*
- *A 14-day cooling off period to the resident / nominated next of kin*
- *Openly addressing any concerns residents or representatives may have with regard to charges or services provided, informally or through our Complaints Process*
- *Ensure all residents who raise concerns or Complaints are treated fairly*
- *Informing all residents / representatives if an issue arising has not been satisfactorily addressed through the nursing homes complaints process, they may consider a Complaint to Office of the Ombudsman*

**< ENDS >**

<sup>i</sup> PA Consulting / Department of Health (2018), Health Service Capacity Review 2018 – Review of Health Demand and Capacity Requirements in Ireland to 2031

<sup>ii</sup> ESRI, Projections of Demand for Healthcare in Ireland, 2015 – 2030, (2017)

<sup>iii</sup> HSE Quality & Patient Safety Audit Report (January 2013)

<sup>iv</sup> HSE.ie, Cost of Care HSE nursing homes October 2016 comparison with Private / Voluntary nursing homes

<sup>v</sup> HIQA, Overview of 2016 HIQA regulation of social care and healthcare services (2017)