



Nursing Home Contracts of Care

CONSUMER INFORMATION
BOOKLET

Background

The decision to move into a nursing home is a significant one that is often made with urgency and in stressful circumstances.

Nursing home services are by their nature expensive and for many people there are limited options to choose from and moving to another nursing home may not be feasible.

Given these specific circumstances, it is essential that residents are given all of the necessary information they need to make an informed decision before they commit to a contract.

For most residents they will be asked to commit to a standard contract of care. This means that the terms have been drafted in advance and there may be little or no opportunity for the resident to negotiate or change the terms.

Consumer protection law provides specific protections for consumers who enter standard form contracts, including for nursing home services.

These protections require that consumers be provided with their standard form terms in plain and understandable English. And importantly it ensures that consumers are not bound by unfair terms.

Contracts of care

Once you've decided on a care home, you will be required to sign a contract of care. This is an important legal document which sets out through its terms, the rights and responsibilities that both the nursing home provider and you as the resident will be bound by.

The contract of care deals with topics such as; the cost of the services, payment schedules, details of the service that will be provided and terms attached to the service such as visiting rights, liability and the circumstances in which a contract can be ended.

Before you sign it, it's essential to read the contract of care carefully and understand what you're agreeing to.



Guidelines for contracts of care in nursing homes

Nursing home providers are free to decide under what terms they wish to provide their services. Most providers use standard form contracts of care (i.e. they are drafted in advance).

Consumer protection law provides a specific set of protections to consumers who enter into standard form contracts for services, including nursing home services. These laws are called the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 – referred to in this guide as the Unfair Terms Regulations.

The CCPC's 'Guidelines for contracts of care in nursing homes' have been developed to inform nursing homes about their obligations under the Unfair Terms Regulations. The guidelines also identify examples of terms which the CCPC consider could be potentially unfair under these regulations. It should be noted that in Ireland, only the courts can declare if a term in a standard form contract is unfair.

What is the purpose of this booklet?

The purpose of this booklet is to provide information to residents about what they are entitled to expect of the terms in their contracts of care.

In this guide we set out the main principles of the Unfair Terms Regulations, how they may apply to your circumstances and what action you may take if you suspect that a term in your contract is unfair.



There are a number of legal concepts within the Unfair Terms Regulations, full details of these legal concepts are available in Section 2 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

The CCPC has created a template letter (available on ccpc.ie) to assist residents and their families who wish to challenge terms in their contracts of care which they consider to be unfair.

What are unfair terms?

Under the Unfair Terms Regulations, a term is considered unfair if it is harmful or if it puts you, the consumer, at an unfair disadvantage to the other party involved in the contract. Businesses are expected to take consumers' legitimate interests into account when drafting their contracts in advance. This is particularly the case when they involve vulnerable consumers.

The Unfair Terms Regulations are a complex set of legal rules and principles which set out requirements to act in good faith including in the information businesses provide to consumers and it also lists types of terms which could be considered unfair.

There are two important aspects to these regulations to be aware of: firstly, they do not apply to terms in contracts of care which set out the characteristics of the nursing homes' services. However, those must be provided to you in plain and intelligible language. Also, the regulations do not apply to the price charged by nursing home providers, in that they do not relate to the fees set by the nursing home. However, there are rules around the information provided relating to the price, payment types and variation which are covered in this guide.



What is excluded from the Unfair Terms Regulations?

A term is not considered under these regulations in the following cases:

- If the term was individually negotiated with you rather than drafted in advance
- If the term relates to the primary obligations of the nursing home set out in the contract
- If the issue is around value for money or price
- If the term has to be included as a legal requirement

Terms covered in this booklet

1 Understanding your rights and obligations

2 Guarantors

3 Liability - the nursing home's responsibility to you

4 Visiting rights

5 Absences

6 Changes to the contract

7 Fees

8 Penalties

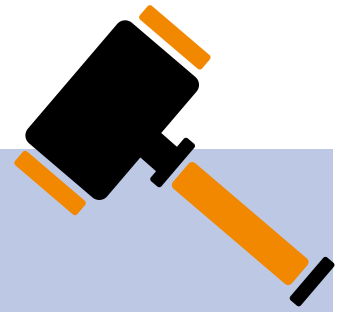
9 Ending the contract

1. Understanding your rights and obligations

Consumer protection law requires that before you commit to a contract you must be provided with all of the important information you need so that you can make an informed decision. Your contract of care should not contain terms which are unclear or lack certainty. If the contract refers to other documentation this should be provided to you at the same time.

Important information that should be provided to you includes:

- Details of the specific services that will be provided
- Details of how much you will pay for the service, and how this will be paid
- All details relating to additional charges and fees, including those that may arise if you miss a payment, or the contract is broken for whatever reason
- Any specific policies around visitors or absences from the home
- The circumstances under which you might be asked to leave
- The circumstances under which changes to the contract will apply and the processes by which those changes will be agreed
- Details on the specific cancellation policies



Nursing homes must use simple and clear language in their contracts of care, so that you can assess the consequences of what each term means and the extent of the obligations that you are committing to. You shouldn't be provided with a contract of care which contains unexplained legal jargon, or where there are legal/technical words or phrases which are not explained.

For more details please see page 8 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

2. Guarantors



It may be the case that a nursing home requires not only you, but also a guarantor to sign the contract of care, either separately or jointly. A guarantor is a third party who agrees to pay a resident's fees if they are unable to continue paying it themselves.

Agreeing to such a financial responsibility is a considerable commitment. It is essential that if you are going to be a guarantor that you are provided with all of the information you need to understand and assess the practical implications for you, especially how much you could end up paying.

Your role and responsibilities as guarantor should be clearly explained to you before you agree, including:

- In what situations you will be expected to pay
- Exactly what fees you will be liable for
- Or, if this isn't available how it will be calculated

If this information is not explained clearly, or you are required to sign a contract of care where you will be liable for all costs without the above details being provided to you, you have a basis to challenge the nursing home provider about the fairness of these term(s).

For more details please see page 9 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

3. Liability - the nursing home's responsibility to you

Nursing homes have responsibilities and duties to safeguard resident's safety and you are entitled to have the assurance that when you sign a contract of care these duties are not limited to your detriment. The wording used in your contract of care shouldn't be vague or contain uncertain wording.

This means for example; a nursing home should not exclude or restrict their responsibility to a resident, if they were to be injured because of the nursing home's negligence. In the case of personal belongings, you should not be bound by terms which exclude the nursing home's liability if your belongings were stolen as a result of the nursing home not taking reasonable security precautions.

For more details please see page 10 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

4. Visiting rights

If you are a resident of a nursing home you should be given the opportunity to have visitors come see you. If there are restrictions around visiting hours they should be detailed in your contract of care. The circumstances in which visitors are not allowed should be very limited and the policy should be clearly set out and transparent. If you are unhappy with the policy, you should be provided with a process in which you can appeal the decision.



For more details please see page 11 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

5. Absences

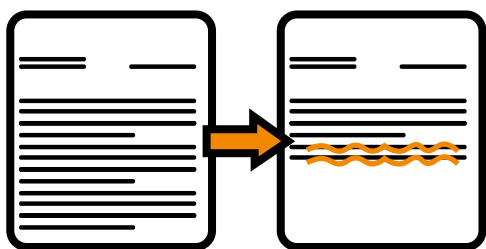
Sometimes you may be absent from a nursing home due to unforeseen circumstances (e.g. a hospital stay) or for a planned break (e.g. to stay with family). Your contract of care should clearly outline what happens in relation to fees for longer absences.

If as a result of your absence a nursing home is able to reduce its costs (e.g. on food, medicine or social activities) then you should receive a discount on your fees. And, if you are required to give notice of an absence so that your fees can be discounted this should clearly be stated in your contract.

For more details please see page 13 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

6. Changes to your contract of care

You are entitled to receive what you signed up to for the duration of the contract. There may be legitimate times that a nursing home may be required to make changes to your contract of care, for example to improve the care you are receiving or so that the nursing home can comply with legal requirements. Any changes should be agreed with you in advance and in a way that you understand the impact of those changes.



Your contract of care should clearly state the exact circumstances which could lead to changes in your contract. It should also state the notice periods you will receive and you should be allowed to end the contract if you are not happy with what is proposed. Your contract of care should not contain terms which allow the nursing home to unilaterally alter the terms of your contract after you have signed it.

For more details please see page 14 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

7. Fees

You should be informed of all fees, whether mandatory or optional, before you agree to your contract of care. If there are additional fees which are optional, then you should be told that they are optional and you should be provided with an opportunity to agree or not to the service on offer.

In your contract of care you should be provided with details as to the circumstances around when your fees may be changed. Changes to your fees should only be in limited circumstances where it is absolutely necessary in order to meet your needs. An example of this might be if the level of care you need significantly increases, but there should be an evident and significant change to justify a change in fees. And you should be provided with details on how any such changes may be calculated.

Your contract of care should not allow the nursing home to have an unlimited right to increase or add fees after the initial costs are agreed with you.

For more details please see page 15 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

A note about fees following the death of a resident: the contract of care should set out clearly the arrangements in these circumstances. This includes the arrangements regarding a resident's fees, in particular where fees have been paid in advance, how any refunds will be calculated and repaid.

For more details please see page 14 of the CCPC's 'Guidelines for contracts of care in nursing homes'.



8. Penalties

Your contract may have terms dealing with breaches of contract. If for whatever reason you breach the terms of your contract of care, although the nursing home is entitled to recover what is due, you should not be unfairly penalised. Section 9 deals with if a nursing home wishes to end your contract because you have failed to fulfil your obligations under the contract.

Any payment for breach of contract should be reasonable and proportionate. It should not be for a fixed amount or more than how much the nursing home lost because of the breach.

For more details please see page 11 of the CCPC's 'Guidelines for contracts of care in nursing homes'.



9. Ending the contract

There are serious implications to having your contract of care with a nursing home cancelled. Before signing the contract it should be fully explained to you all of the circumstances which would lead to the ending of it. A nursing home should not have the right (through the contract of care) to simply end your contract at their own discretion. The circumstances in which the nursing home can terminate your contract of care should be limited and specific, for example;

- The nursing home, following a review of your needs, is no longer able to provide the care that you need,
- The nursing home is closing down
- Fees have been consistently unpaid with no efforts to resolve the situation
- Or where there is a significant risk of harm to staff or residents due to your actions

If any of the above circumstances genuinely occur, then the nursing home should evidence their reasoning for seeking termination and you should be informed and provided with an opportunity to rectify the issue. Even in

extreme cases involving physical harm to staff or others, where possible notice should be given to you to enable you to make alternative arrangements.

For more details please see page 12 of the CCPC's 'Guidelines for contracts of care in nursing homes'.

Complaints process

If you believe a term or several terms within your contract of care could be unfair there is a process that can help you, your family or representative address this.

1

Check the relevant section of the CCPC's 'Guidelines for contracts of care in nursing homes' to see if there is information that will assist in supporting your complaint. Page 22 of the guidelines provides a flow diagram that might help you.



2

If you have sufficient information and you would like to challenge terms in the contract of care the next step is to go to our website, ccpc.ie and download or print our template letter for contracts of care. Make sure to provide as much information as possible but remember it is up to the nursing home to address your concerns. Make sure to email or send the document by post and retain a copy for your records.



3

Most consumer complaints can be settled without the need for legal action. However, if you are not satisfied and you wish to claim back a sum of less than €2,000, which you believe was the result of an unfair term in your contract of care, you could consider taking the matter further through the small claims procedure.



4

If you wish to claim for amounts over €2,000 which you believe was the result of an unfair term within your contract then you will need to contact a solicitor who will be able to provide you with advice based on your specific circumstances.



5

After going through the complaints procedure, if you are still not satisfied you may be able to have your issue looked at by the Ombudsman who deals with all complaints independently and impartially.



6

If you are concerned about unfair terms in your contract of care and your concerns have not been addressed by your nursing home, you may consider legal advice to help you progress your complaint. We would also ask that you bring it to our attention through our website ccpc.ie or by calling our helpline 01 402 5555. Although we will not be able to negotiate an outcome for your individual case, the CCPC will be monitoring nursing home providers' compliance with the Unfair Terms Regulations. Information provided by residents, their families or representatives in relation to unfair terms in their contracts of care will help inform our compliance monitoring work.



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