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Support & Advocacy Service

**CONTRACTS OF CARE
FOR NURSING HOME
RESIDENTS
ISSUES FOR POLICY
AND PRACTICE**

www.sageadvocacy.ie

A DISCUSSION DOCUMENT

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SUMMARY

The move into a nursing home represents a major, and for many people, a traumatic change in their life circumstances. It is likely to be experienced as being fraught with uncertainty, and as representing a loss of independence and autonomy. For most people the decision to become a resident in a nursing home will be one that is taken reluctantly and as a last resort. The absence of realistic alternative support and care options in the community makes the decision to move into a nursing home an inevitable one rather than a choice that is made freely and happily.

Indeed, many people do not choose to go into a nursing home, but are 'put there' by concerned relatives.

The increased feelings of powerlessness, dependency and vulnerability that are likely to accompany a move into a nursing home should, in an ideal world, be lessened by the knowledge that the person's rights will be legally safeguarded and guaranteed, that their health and care needs will be met, and that their quality of life will be protected and even enhanced.

Contracts of care for nursing home residents are a crucial and important legal and practical mechanism for clarifying the responsibilities, obligations and expectations of the various parties involved in the nursing home situation. Contracts can be technically-worded and intimidating. Most people will approach the signing of any kind of contract with some degree of anxiety, and will often feel the need to take legal or specialist advice before signing on the dotted line.

There is also a suspicion, perhaps a well-founded one, that contracts are often likely to favour one party over another, and that the consumer is most often in the weaker position, especially when dealing with institutions and businesses.

As with all contracts, nursing home contracts are important legal documents that provide the basis for the relationship between the resident and the nursing home. It is therefore important that the contract is entered into with a good understanding of its content and implications. Equally, it is important that the contract deals fairly, comprehensively, and transparently with the arrangements and conditions that will now become a crucial part of the resident's living and care arrangements.

This Sage Discussion Paper focuses on contracts of care for nursing home residents and identifies some key issues in this regard.

It examines and considers how these contracts are structured at present, their content, the manner in which they are presented and entered into by the various parties concerned, and it identifies important and crucial issues connected with the contracts.

The paper draws substantially on the experience of Sage which supports and advocates on behalf of people who find themselves in or about to enter a nursing home, as well as analysing existing contracts and procedures.

Contracts can often be difficult for ordinary citizens to comprehend. Nevertheless, a large proportion of nursing home residents feel under pressure to sign contracts of care, in spite of the fact that they have only a limited appreciation of what they are signing up to.

Some people being admitted to nursing homes have reduced Decision-Making capacity, perhaps as a result of dementia or other cognitive impairment. These residents will have particular difficulty in engaging with the processes involved in agreeing to and signing a contract.

Very importantly, there appears to be a somewhat casual approach to the signing of contracts of care. Anecdotal evidence indicates that contracts are frequently signed by a relative on behalf of a nursing home resident, even when the resident clearly does not lack capacity. In other instances, contracts are signed by relatives without any proper assessment of the functional capacity of the resident to agree to the terms of the contract.

The discussion paper calls for an overhaul of both the content of contracts of care and of the manner in which residents are expected to deal with the contracts. It points to poor and possibly illegal practices with regard to the signing of contracts; the lack of provision of support, advice and guidance to residents; and the pressure placed on residents to sign contracts without giving them adequate time to consider the implications of doing so.

The paper also identifies an imbalance in contracts in that they tend to favour the nursing home's interests over those of the resident. It argues that there is a need to include new contractual clauses that will protect the rights of the resident, as well as a need to remove clauses that provide the nursing home proprietor with rights and powers that are unfair and that would not be acceptable in many other circumstances. For example, provisions in some contracts of care result in residents in private nursing homes being treated less favourably than would apply in a landlord-tenant agreement in respect of notice of termination of contract.

The lack of clarity and the unfairness of contractual terms that oblige residents to pay additional charges for services which they may not need or even be able to avail of, is another area where change is urgently required of the resident to agree to the terms of the contract .

The growing number of older people likely to require long-term care gives an urgency to the need to ensure that the current nursing home system is transparent and is inclusive of and responsive to people's long term care and support needs.

This Sage paper presents practical information and direction regarding how the present policy and practice regarding contracts of care can and should be restructured and realigned. It points to the need to actively provide vulnerable adults with advocacy and support services that can assist them in considering and coping with major life-changing experiences such as entering a nursing home.

The paper also notes the importance of the Assisted Decision-Making (Capacity) Act 2015 in setting out guiding principles that are relevant to what should be included in contracts.

Contracts of care are a crucial element in determining the quality and standard of provision for residents of nursing homes. It is hoped that this discussion paper will encourage debate on the matter, leading ultimately to a much improved, more equitable and transparent framework.

Nursing home contracts are but one aspect of long-term care and the broader issues relating to nursing home care have been set out in a Sage Report for the Forum on Long-term Care of Older People. Such issues include the way the Nursing Home Support Scheme or 'Fair Deal' operates, choice, equality of access to care in the community and to nursing home care and, most importantly, matters relating to quality of life and well-being, and best medical and nursing care practice.

INTRODUCTION

This paper sets out to examine and consider the matter of contracts of care for nursing home residents. It will consider their importance, how they are structured at present, their content, the manner in which they are presented and entered into by the various parties concerned, and will identify what are seen as important and crucial issues connected with these contracts. Recommendations will be presented regarding how present policy and practice should and can be improved. The paper draws substantially on the experience of Sage which supports and advocates on behalf of people who find themselves in or about to enter the nursing home care environment.

Contracts of care for nursing home residents are a matter of high importance for a number of reasons.

Firstly, people entering nursing homes for the first time are losing some of their independence and are entering an environment where they will be relying on others to provide the care and support that they need.

Secondly, the move to a nursing home is frequently 'forced' on a person because there is no realistic alternative support and care option available to them in the community. Indeed, many people do not choose to go into a nursing home but are 'put there' by concerned relatives.

Thirdly, contracts are by their very nature technical and legal documents, and can often be difficult to comprehend. Nevertheless, a large proportion of nursing home residents will feel obliged to sign contracts that are worded in terms that are hard to understand, despite having a limited appreciation of the implications of so doing.

Fourthly, some people being admitted to nursing homes have reduced Decision-Making capacity as a result of dementia or other cognitive impairment. These residents will have particular difficulty in engaging with the processes involved in agreeing to and signing a contract.

Finally, and very importantly, there appears to be a somewhat casual approach to the signing of contracts of care. Anecdotal evidence indicates that contracts are frequently signed by a relative on behalf of a nursing home resident, even when the latter clearly does not lack capacity or where lack of capacity is assumed without any proper functional capacity assessment.

As with all contracts, nursing home contracts are important legal documents that provide the basis for the relationship between the resident and the nursing home. It is therefore important that the contract is entered into with a good understanding of its content and implications. Equally, it is important that the contract deals fairly, comprehensively, and transparently with the arrangements and conditions that will now become a crucial part of the resident's living and care arrangements.

The most significant issues¹ relating to nursing home contracts as identified by Sage are:

1. No capacity assessment carried out prior to signing of contract by someone other than the resident
2. Contracts signed by relatives rather than by the individual concerned where a person has Decision-Making capacity
3. Language in contracts legal and technical and difficult to comprehend – there is a clear need for Plain English versions as well as audio versions

¹ These are based on feedback from Sage personnel and on a preliminary review by Sage of a sample of nursing home contracts.

4. Different practices and lack of clarity where the person may lack capacity and there is no representative
5. Inadequate time to consider a contract in detail and to get appropriate legal advice because of pressure to take up the nursing home place on offer and/or lack of access to independent legal advice
6. Additional charges not specified in contracts being implemented without any consultation with residents and without regard for their ability to pay
7. Residents sometimes not provided with details of incidental/out of the ordinary expenses in cases where the Nursing Home held and managed a resident's money

An overarching issue is that people in private nursing homes are treated less favourably than those in public nursing homes in respect of, for example, notice of termination of contract.

While HIQA has regularly called for improved person-centred care in nursing homes and for better protection of people's rights and dignity, typically there is only passing reference to these matters in the way contracts are drawn up. Neither is there any focus within contracts on quality of life or on providing services in accordance with the will and preferences of people. A 'one-size fits all' approach is adopted in the way contracts are formulated.

The growing number of older people likely to require long-term care, while still a minority (5%) of the older population, gives emphasis to the need to ensure that the current nursing home system is transparent and is inclusive of people's long-term care and support needs.

Obviously, nursing home contracts are but one aspect of long-term care and the broader issues relating to nursing home care have been set out in a Sage Report for the Forum on Long-term Care of Older People.² Such issues include, in particular, the way the Nursing Home Support Scheme (NHSS)/'Fair Deal' operates, choice, equality of access to care in the community and to nursing home care and, most importantly, matters relating to quality of life and well-being and best medical and nursing care practice.

² Responding to the Support and Care Needs of our Older Population: Shaping an Agenda for Future Action, http://www.thirdageireland.ie/assets/site/files/pr/Report_of_Forum_on_Long-Term_Care_for_Older_People_FINAL.pdf

NURSING HOME CONTRACTS: GENERAL CONSIDERATIONS

Contracts between residents and nursing homes: legislative provisions

Part 7 of the Health Act 2013 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2009, stipulates that the registered provider of the nursing home must agree a contract with each resident within one month of their admission. This contract must include details of the services to be provided to that resident and the fees to be charged.

The contract is a written agreement between the individual or their representative and the nursing home that sets out the terms and conditions, and rights and responsibilities of both parties. Critically, however, in the case of NHSS ('Fair Deal') recipients, the HSE is not party to such contracts which are conducted simply between the resident and the nursing home. The fee to be charged has already been negotiated and agreed between the National Treatment Purchase Fund (NTPF) and the nursing home. This effectively undermines the bargaining power of the resident.

*The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations (S.I. No. 415 of 2013)*³ include the following provisions:

The registered provider shall agree in writing with each resident, on the admission of that resident to the designated centre concerned, the terms on which that resident shall reside in that centre (24 (1)).

The agreement is to include details of:

- (a) The services to be provided, whether under the Nursing Homes Support Scheme or otherwise, to the resident concerned,
- (b) The fees, if any, to be charged for such services,
- (c) Where appropriate, the arrangements for the application for or receipt of financial support under the Nursing Homes Support Scheme, including the arrangements for the payment or refund of monies, or
- (d) Any other service of which the resident may choose to avail but which is not included in the Nursing Homes Support Scheme or to which the resident is not entitled under any other health entitlement (24(2)).

The Department of Health further clarifies this in its Guide to the Fair Deal Scheme⁴ which states that a person who avails of the Nursing Homes Support Scheme should not be charged any additional fee over their contribution (as assessed by the HSE), except where he or she chooses to obtain additional services over and above long-term residential care services, for example, hairdressing or the delivery of daily newspapers.

³ <http://www.irishstatutebook.ie/eli/2013/si/415/made/en/pdf>

⁴ See <http://health.gov.ie/wp-content/uploads/2014/04/Frequently-Asked-Questions.pdf>

Signing of Contracts

Sage has received clear evidence of nursing home contracts being signed on behalf of people whose capacity is in question but no assessment of their capacity has been carried out.

This is a matter of serious concern particularly in the context of the provisions of the Assisted Decision-Making (Capacity) Act 2015. The experience of Sage is that the practice of signing contracts is somewhat ad hoc and not governed by any explicit protocols. The practice of people signing contracts on behalf of people who actually have capacity and on behalf of those whose lack of capacity has not been appropriately determined is wrong under contract law. In such circumstances the contracts are illegal and not valid.

The Assisted Decision-Making (Capacity) Act 2015 provides a context for enabling supported decision-making. Under the Act, a person can and should be facilitated by means of a Decision Making Assistant, Co-decision Maker or in cases of a significant absence of capacity, a Decision-Making Representative. With such assistance the contract can be regarded as binding. In other words, when the Act is implemented there will be a variety of options available to achieve a validly signed contract. This is not the case at present, wardship being the only legal option.

The following correspondence on behalf of one resident, which has been made available to Sage, illustrates this issue starkly:

“Mr X has provided us with a copy of the Contract for Care, dated 8th February 2016. We attach herewith letters from Dr. A dated the 27th April 2016 and Dr. B of the 11th December 2015. Both Doctors confirm that Mr. X was capable of instructing his advisors and in making decisions regarding his legal and financial affairs. Therefore, can you please explain why it was Mr. X’s [relative] who executed the Contract for Care Agreement? Can you please provide confirmation as to why Mr. X himself was not requested to execute the Contract for Care.

While it could be argued that a nursing home contract, signed by a person who does not fully understand it, is a Contract for Necessaries⁵ and therefore binding, this is by no means clear cut. The matter requires further consideration in the context of the implementation of the assisted Decision-Making legislation and the protocols to be put in place by the Decision Support Service when established.

From evidence available to Sage it would appear that there are occasions when a person is made a Ward of Court for no other reason than to enable a contract to be signed. This is a matter which needs to be dealt with, as the cost alone of wardship, apart from other important considerations relating to wardship, can hardly be justifiable for the sole purpose of signing a nursing home contract. The cost alone of wardship suggests that it is not generally justifiable or necessary in order to have a nursing home contract signed. Provision should be made similar to those in respect of the NHSS (See Footnote 7 below).

A fundamental question arises as to why someone else would be permitted to sign a contract on behalf of a person who has Decision-Making capacity. Such practice, in circumstances for example where a family member signs the contract because the person going into the nursing home has been led to believe by their family that they are merely going in for respite but where the family’s intention is otherwise, would appear to be a breach of a person’s legal rights and certainly contrary to the provisions of the Assisted Decision-Making (Capacity) Act 2015. Furthermore this situation

5 A Contract for Necessaries can be binding on the person who signed it even if s/he did not have the legal capacity to enter into it. It is usually explained in terms of a person under 18 buying things on credit. If the “things” are food (necessaries for living), then it is a binding contract, notwithstanding legal incapacity.

creates an unfair dilemma for the nursing home in that they can unwittingly find themselves in the contradictory position of depriving a person of their liberty⁶ whilst at the same time being responsible for their care in circumstances where the person, not wishing to stay there, can contribute to the creation of a negative living environment for other residents.

The apparent lack of clarity in respect of the signing of contracts on behalf of people whose capacity is in question but no assessment of their capacity has been carried out is in marked contrast to the situation that pertains in respect of applications for needs assessment and the NHSS ('Fair Deal'). In the latter instance, there is clear provision for a 'Specified Person'⁷ to act on behalf of another party. This provision applies where a person may need support because of ill-health, a physical disability or a mental condition, or reduced ability to make decisions (that is, diminished mental capacity). There would appear to be a need for a clearly stated similar provision in relation to the signing of nursing home care contracts.

A HSE Contract of Care Template states that before signing the contract, the resident and/or his/her representative(s) should ensure that s/he has read and understood its provisions and terms and conditions. However, there is no indication or guidance contained in the template as to how this is to be provided for in practice in the case of a person who cannot do so for reasons of cognitive impairment, literacy or ability to understand the technical nature of the provisions and requirements.

There should be a clear mechanism enabling adults who may be vulnerable to consult with a legal advisor and/or independent advocate before signing a nursing home contract for care. Currently, this is simply stated as the responsibility of the nursing home resident, relative or Care Representative. The assumption appears to be that all residents would either be able to do so themselves or would have the necessary support structures to do so. This clearly is not the case in many instances.

People with reduced capacity understanding and signing contracts

A particular issue which has been brought to the attention of Sage, and regarding which assistance from Sage was sought, concerns how people with reduced capacity can be assisted in understanding their contracts of care. The case study presented below illustrates the issue and demonstrates how it was possible to facilitate better engagement in the contract process by people with reduced capacity.

6 Legislative provisions on deprivation of liberty are expected to be published shortly as part of the Equality/Disability Miscellaneous Provisions Bill bringing domestic legislation into compliance with UN Convention on the Rights of Persons with Disabilities

7 A specified person is: A. If you are a ward of court, your Committee; B. A person appointed under a valid, registered enduring power of attorney who is not restricted from applying for the scheme; C. A Care Representative appointed under the Nursing Homes Support Scheme Act 2009; D. Your spouse or partner; E. A relative of yours who is 18 years of age or over; F. A 'next friend' appointed by a court; G. Your legal representative, or H. A registered medical practitioner, nurse or social worker. The people listed at A-C have first priority over those listed at D-H. This means that they have the right to act as a specified person ahead of the other categories. However, the people listed at A-C may consent in writing to a person with lesser priority acting as the specified person. Where a person has reduced ability to make decisions and wishes to apply for the Nursing Home Loan, only the people listed at A-C above may make the application. A Care Representative (appointed by the Circuit Court) is only required where a person has reduced capacity to make certain decisions (that is, diminished mental capacity) and wishes to apply for the Nursing Home Loan.

The Director of Nursing of a residential service for people with disabilities contacted Sage for support following a HIQA inspection of the facility. HIQA requested that they obtain an external independent advocacy service to discuss details of contracts with seven residents, who have no representative.

The seven individuals who were referred were regarded as people who would benefit from the support of Sage with specific reference to understanding what was in their contracts of care.

Following the referral, Sage contacted the Director of Nursing to request more details. It was established that the normal practice in the service was that contracts of care were signed by the resident or next of kin. In compliance with HIQA Standards, the service provider is required to provide all information in an accessible format and provide supports so that residents can understand what is in their contracts to the best of their ability.

Sage reviewed the contracts of care for the seven individuals and determined that they were the standard contract for the organisation. The service had developed an easy to read version of the contract.

Sage met with the seven individuals and determined that the level of understanding varied from individual to individual. Where possible, Sage discussed the contract of care with the individual involved.

Sage and the service provider agreed to amend the contract of care for the individuals. The amendments included the following:

- Sage had reviewed the contract of care and deemed it to be standard one for the organisation;
- In accordance with Sage Non-Instructed Advocacy policy, the contracts as used by the service provider were reviewed from a human rights perspective;
- It was noted that Sage was not acting on behalf of the individuals involved but rather providing some independent oversight of the contracts process and, thereby, complementing the role of HIQA;
- “By signing and engaging with (Insert name)’s Contract of Care, neither the Sage Advocate or the Sage service endorse the contract of care or take responsibility to oversee the enactment of same”;

This intervention by Sage illustrates a number of ways in which contracts can be dealt with and amended in order to provide for better engagement by people with reduced capacity. This will be particularly important in the context of the implementation of the Assisted Decision-Making (Capacity) Act 2015.

- The individuals were provided with supports to understand what was in their contracts of care to the extent possible;
- The involvement by Sage in this process provided an opportunity to explore the role of independent advocacy relating to contracts where people have diminished Decision-Making capacity and do not have a representative;

- Important questions about oversight of contracts of care in such instances were highlighted;
- There is further work required to explore the potential role of Sage and other similar organisations in supporting people to understand contracts, particularly as the provisions of the Assisted Decision-Making (Capacity) Act 2015 are implemented.

Contracts of Care: HIQA requirements

HIQA National Standards for Residential Care Settings for Older People in Ireland include the following provisions:

- 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).

HIQA has reported good levels of compliance 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".⁸

There is, however, little evidence of these requirements being included in contracts of care other than in a general way. This is a particularly important concern in relation to individual care plans.

Levying of additional charges not specified in Contract

Most nursing homes have a mandatory service charge for all residents covering the services which are not covered under the Nursing Home Support Scheme (NHSS). Typically, this charge covers baseline physiotherapist assessment on admission, post falls assessment, phlebotomy services, and social programmes.

In effect, nursing homes can levy charges on residents which are additional to what is covered by the NTPF-negotiated fee. As the NTPF contract with nursing homes provides for just bed and board in nursing homes, there are extra mandatory charges in most private nursing homes for activities and other items. These are reported as being as high as €100 a week in some instances. This results in a significant additional drain on people's resources. In addition, in some instances residents are being required to pay for activities in which they do not wish to participate or in which they are unable to participate. Frequently, it is unclear what these additional charges cover and these are not usually specified in contracts.

8 HIQA Annual overview report on the regulation of designated centres for older people — 2015

In order to deal with the issue of additional charges, the 2015 Review of the NHSS recommended that nursing homes should have a published fee schedule showing all the costs associated with being a resident. It was suggested that consideration should be given to introducing a new provision under the scheme to prohibit the levying of additional charges for any service or facility from which residents cannot readily opt out without penalty while remaining as a resident of that facility, or in which they cannot participate because of the level of their dependency. The report recommended that details of what additional charges are proposed, and of the opt-out arrangements that exist for residents should be included as part of the NTPF contract.

The issue of additional charges has come to the fore in recent months. An as yet unpublished decision by the Ombudsman⁹ in 2017 found in favour of a resident facing a mandatory €200 monthly fee for social activities even though they could not participate in such activities. It is understood that the Minister for Health and Minister for Older People have directed that an examination of these additional charges be referred to a Working Group which is currently reviewing pricing under the NHSS ('Fair Deal').

HIQA Nursing Home Inspection Reports typically refer to the fact that all residents accommodated had an agreed written contract and that the contract included details of the services to be provided and the fees payable by the residents. However, reference has also been made in various reports to expenses not covered by the overall fee and incurred by residents; for example, chiropody, escort to appointments or hairdressing. The fact that the individual cost per item for additional charges was not specified has been noted by HIQA.

There is an issue for many nursing home residents where additional charges are levied which are not stipulated in the contract. The reality is that some residents have relatively little disposable income and little scope for paying additional charges. For example, 15% of NHSS recipients have no declared income other than the Non-Contributory Old Age Pension.¹⁰

Sage has identified a number of issues relating to additional charges in the context of contracts of care:

- Compulsory charges being included in contracts and people feeling that they had no choice but sign such a contract
- Failure to include a statement in the contract that charges for non-essential services are voluntary
- Increase in charges (e.g., €25/ week) without any consultation with the resident
- People being contractually obliged to pay charges for activities that they cannot avail of because of mobility or frailty or dementia
- Non-provision of a specific list of services or amenities covered by additional charges
- Lack of choice to opt in on a weekly paid basis for activities if the resident so wishes and is able to participate
- Insufficient focus on supporting people to manage their personal finances

A Template Contract for use by public nursing homes which was reviewed by Sage, in referring to additional fees, states as follows:

9 Reported in Sunday Independent <http://www.independent.ie/irish-news/health/secretive-charges-for-frail-nursing-home-residents-must-be-scrapped-35864716.html>

10 Review of the Nursing Homes Support Scheme, A Fair Deal p.19.

“We reserve the right to request you to pay Additional Fees in respect of Additional Services or additional equipment”

“We shall not be obliged to provide any Additional Services where you do not pay the Additional Fees to us”

“We shall be under no obligation to provide any equipment where we do not have available resources to do so or we do not have a statutory obligation to do so... you may be obliged to pay Additional Fees to receive such equipment”

Private Nursing Home contracts reviewed by Sage include similar provisions in one Nursing Homes Ireland document reviewed by Sage and believed to be a contract template. Reference is made to Nursing Home Services that are provided to all residents and Individual Services that a Resident may avail of “which in both cases are provided for in the indicated additional fees in Schedule 2 and Schedule 3 to this Agreement”.

There is also a stipulation that “a special service or item of equipment must be the subject of a separate agreement between you and the nursing home and must be set out in the contract of care”.

Termination of Contracts

A nursing home has the right to terminate a contract, i.e. to ask a resident to leave with short notice. When this provision is compared to a tenancy agreement in a private house rental, for example, it seems that nursing home residents have lesser rights than private tenants if they are in dispute over fees/rent increases.

The right of a nursing home to terminate a contract with immediate effect in a range of circumstances as listed below is far-reaching and provides little or no protection for residents,

1. The Resident becomes disruptive and/or aggressive towards any other Resident of the Nursing Home and/or any member of staff of the Nursing Home; or
2. The Proprietor forms the opinion that the Resident’s behaviour is a risk to the health and safety of any resident of the Nursing Home and/or any member of staff of the Nursing Home; or
3. Any situation whatsoever arises whereby the Proprietor is incapable of operating the Nursing Home or is unable to provide the Services in the Nursing Home or is unable to provide Services to the Resident; or
4. The Proprietor forms the opinion that the behaviour of any member of the Resident’s family or a visitor to the Resident is disruptive or a risk to the health and safety of any resident of the Nursing Home and/or any member of staff of the Nursing Home.

The provision in one widely used contract template that “*the Resident acknowledges that the Proprietor shall have the right to exercise its right under this Clause at its sole discretion either with or without consultation with appropriate State authorities and/or the Resident’s next of kin*” effectively undermines any rights the resident may have.

It is fundamentally at odds with other accommodation contracts, e.g. in the private rented housing sector. It is fully acknowledged that many nursing homes can and do experience challenging behaviour by some residents’ relatives. However, the response to this should never be the removal of the resident.

Independent legal advice

Nursing home contracts typically require a resident to acknowledge and confirm that s/he understands the terms of the Agreement, that it is a legally binding document, and that:

1. S/he, or any person lawfully appointed to act on his/her behalf, has received independent legal advice on the duties and obligations arising under the Agreement and the Guarantee prior to their execution; or
2. S/he, or any person lawfully appointed to act on his/her behalf, having been given a reasonable opportunity to obtain independent legal advice, has waived his/her right to receive such independent legal advice on the duties and obligations arising under this Agreement and the Guarantee prior to execution.

Such a requirement fails to acknowledge the reality of some resident's situation, viz. they do not have the capacity or the social support infrastructure to fulfil the requirement.

Nursing Home Contracts: General issues identified by Sage

The following provisions in many private nursing home contracts are a cause for concern:

- The Proprietor shall not be responsible for the provision of specialist equipment
- In the case of services provided for the occupation and recreation of all residents... which may also include and involve group activities, the additional Nursing Home Service Charge will apply
- Either Party may terminate this Agreement by notice in writing, not less than four weeks prior to the date upon which such termination becomes effective
- The Proprietor shall have the right to terminate this Agreement with immediate effect in the event that (among other reasons) "the Proprietor forms the opinion that the behaviour of any member of the Resident's family or a visitor to the Resident is disruptive or a risk to the health and safety of any resident of the Nursing Home and/or any member of staff ..."
- The Resident acknowledges that the Proprietor shall have the right to exercise its right under the above Clause at its sole discretion either with or without consultation with appropriate State authorities and/or the Resident's next of kin
- One nursing home stipulates that if the contract is not returned within a three month period, it is inferred that the contract has been agreed and provisions made to record this information in the resident's file
- Contracts regularly set out unilateral nursing home rights, for example, the right to:
 - Restrict visiting
 - Move a person from his/her allocated room (decisions to re-allocate accommodation will be at the discretion of the Registered Provider and will be considered on a case by case basis)
 - Transfer a person to an alternative nursing home and/or to hospital if in the opinion of a medical practitioner "it is in your best interests to do so"
 - Review the fees payable under the terms and conditions of the Contract where necessary or in the event that Additional Services are required by the resident
 - Terminate the Contract for any reason upon notice in writing of six months

- A special service or item of equipment must be the subject of a separate agreement between the resident and the nursing home and must be set out in the contract of care
- One statement in a Contract reviewed by Sage states that “In the provision of the agreed services to the Resident, the Proprietor shall use its best endeavours to comply with the Regulations and all applicable legislative provisions governing the provision of long-term residential care to residents” – this falls short of a full commitment to provide the agreed services.

Duties of the Proprietor

There are some ‘duties of the proprietor’ set out in contracts, whose implementation is difficult to measure, for example

- Ensure that the Resident is provided with privacy, insofar as is reasonably practical
- Ensure in so far as is reasonably practical that the Resident has access to independent advocacy services

Nursing Home Contracts of Care: Typical Provisions

A contract of care sets out the terms that are to govern a resident’s care and welfare and should include details of the services to be provided and the fees to be charged. It must be provided to every resident within two months of admission to a nursing home. A nursing home contract of care typically includes:

- The names of those entering into the Agreement
- The date the Agreement is signed
- The services the resident will receive
- The fee the resident will pay
- The duties of the proprietor
- The duration and termination conditions
- The requirements of the resident
- The powers of the proprietor
- The severance clause
- Force Majeure
- Independent legal advice option
- Variation clause
- Exclusion clause
- Data protection information
- Governing law and jurisdiction

While there have been a number of significant legislative and regulatory changes during the past two decades, the provisions of the 1995 Code of Practice for Nursing Homes¹¹ remain relevant. These state that contracts should cover:

- The services to be provided to the resident
- The level of fees, time and method of payment, whether in advance or in arrears;
- A procedure for increasing fees when necessary;
- Provision for review of placement;
- The personal items that a person may bring to the home and those that the home will provide;
- Arrangements for the care of pets (where allowed);
- Extra services and appliances that are charged separately (this cannot include “essential” services);
- Terms under which the resident may vacate the accommodation temporarily (e.g., for holidays or admission to hospital)
- The circumstances in which a resident can be asked to leave
- The procedure on either side for terminating the arrangement or giving notice of changes;
- Statement of insurance cover;
- Provision for the observance of religious beliefs;
- The procedure on the death of a resident;
- The arrangement for holidays.

11 <http://www.lenus.ie/hse/bitstream/10147/46681/1/1724.pdf>

NURSING HOME CONTRACTS: CARE MATTERS

Individual Care Plans

HIQA Standards emphasise the role of Individual Care Plans in delivering effective services to nursing home residents. Residents' participation in the care planning process is regarded as central to supporting people to identify their goals, needs and preferences and what supports need to be put in place by the service to ensure that their needs are met.

“Residents can also expect that their individual care plan will change as their circumstances and/or need for support changes. The cognitive ability of residents is assessed and they receive the necessary care and supports to maintain a good quality of life”¹²

Standard 2.1 states that *“each resident has an individual care plan¹³, based on an ongoing comprehensive assessment of their needs which is implemented, evaluated and reviewed, reflects their changing needs and outlines the supports required to maximise their quality of life in accordance with their wishes”* and a number of features are listed by HIQA as evidence that this Standard is being met (see Appendix 1). There is also a HIQA requirement that specialist medical devices and equipment are made available to meet the resident's needs in accordance with their care plan (2.7.24).

Typical contracts state that the Proprietor shall ensure that the Resident's needs are at all times set out in an individual care plan which shall be developed and agreed following a comprehensive assessment by an appropriate health care professional of the health, personal and social care needs of a Resident. The Proprietor is required “as far as is reasonably practical” to meet the needs of the Resident based on such care plan. However, there is little or no contractual provision as to how this is to be achieved

While there is contractual reference to assessment of need being carried out by *‘an appropriate health care professional’*, there is no reference to who this person might be or to whether or not the resident has any say in determining who that person is. Also, while there is a general provision for regular reviews of individual care plans, there is no evidence of any contractual provision for such reviews.

Rights of residents

As a nursing home resident, a person has certain basic legal and protections, as follows:

- To be informed (in a language that can be understood), make one's own decisions, and have personal information kept private

¹² See Theme 2: Effective Services

¹³ This is defined as a plan, generated from the assessment, developed by the residential care setting for older people and with the resident. The individual care plan should cover all aspects of health and personal care, and show how these will be met in terms of daily living and longer-term outcomes.

- Right not to be deprived of liberty
- Exercise citizenship rights, including the right to vote
- Be treated with dignity and respect
- To make one's own schedule and choices in respect of daily living activities
- To participate in a social and activities programmes designed to meet individual needs and the needs of other residents
- Be free from discrimination
- Be free from abuse and neglect -- verbal, sexual, physical, and mental abuse, as well as abuse of personal money or property
- Right to freedom of movement and to be free from all forms of constraint – physical environmental, chemical or psychological
- Right to make a complaint and to appropriate redress
- Right to proper medical and nursing care
- Right to be fully informed about one's total health status - medical condition, drugs and supplements in a language that is understandable
- To be involved in the choice of doctor
- To participate in the decisions that affect one's care – care planning and monitoring
- To access all personal records and reports, including clinical records (medical records and reports) promptly during weekdays
- To create an Advance Healthcare Directive
- To refuse medications or treatment
- To have a nominated representative notified in the case of
 - An adverse incident
 - Significant deterioration to physical, mental, or psychosocial status
 - A life-threatening condition
 - Medical complications
 - Significant changes to treatment needs
 - Decisions about transfer or discharge
- The right to be told in writing about all nursing home services and fees before moving into the nursing home and at any time when services and fees change

One contract examined by Sage, in commenting on residents' rights, makes reference to rights set out in the HSE National Healthcare Charter and suggests that residents consult that document. This is scarcely adequate. As a minimum, a nursing home should be required to include in the contract of care a list of a person's rights, along the lines set out above.

While there are general statements in contracts in relation to, for example, ensuring that as far as is reasonably practical that the resident has access to independent advocacy services and ensuring that in all cases the dignity of the resident shall be respected, there are no specifics as to how either of these are to be achieved. References in contracts to the Residents' Information Booklet assume

capacity, literacy and English language competency.

Areas requiring more attention in care contracts are:

- The person's rights and obligations as a resident of the facility, including safeguarding of residents' rights and grievance procedures
- Itemisation of charges not included in the basic charge and how any changes to these are negotiated
- An opportunity to review the contract document at a suitable pace, get additional advice from a variety of outside sources, and compile a list of questions that can be asked and should be answered about provisions in the contract
- How changes to the contract required by the individual are to be negotiated and dealt with
- Ensuring that any aspects of the contract open to different interpretations are considered and clarified

Quality of life and Contracts of Care

Since pricing contracts are entirely a matter for agreement between the NTPF and the nursing home in question, and neither the Department of Health nor the HSE can influence the process, a crucial question that arises is who is responsible for monitoring the link between nursing home contracts and the quality of life of residents. While HIQA inspections include examining whether or not there is an appropriate contract for each resident, they do not typically involve looking at how well the provisions of the contracts are put into practice.

This is an issue which requires further attention, particularly given the problematic nature of additional charges levied and the likelihood that these are being used to 'top up' fees. A crucially important related issue is the difficulty that people with very high dependency and complex care needs may have in finding accommodation appropriate to their needs, e.g. those with severe dementia coupled with a physical/sensory disability.¹⁴ There is also an issue about some people's ability to understand what is in their contracts and their right to redress.

People's personal finances

A basic question arises as to how well provisions in contracts support and facilitate – to the greatest extent possible – people's capacity to understand and use their own money, and to experience 'ordinary' financial transactions. Feedback from Sage advocates on this matter refers to a 'one size fits all' approach to the management of residents' personal finances in some services, and indicates that engagement with residents around money matters remains underdeveloped. HSE Guidelines on the management of people's private property and the HIQA Standards in relation to people's management of their personal finances may not always be fully implemented. There is also some concern expressed by Sage advocates about the level of control which may in some instances be

¹⁴ It is noted that the Minister for Health has asked the NTPF to review NHSS pricing levels and to make proposals in relation to pricing to ensure that there is adequate provision for those needing more complex care

exercised by family members over resident's finances.

HIQA National Standards for Residential Care Settings for Older People in Ireland (Revised December 2015) stipulate that each resident's personal property and finances are managed and protected (Standard 3.6) and that the residential service has a clear policy and procedure on the management and protection of personal property and finances including pension management (3.6.1). There is little evidence in contracts as to how this is to be done and what the rights of residents are in the matter. It would be important that some reference be included in contracts as to how HIQA requirements are to be met, *viz.*

- Each resident has access to their personal property and finances and the resident's right to control their own personal property and finances is respected for as long as they wish (3.6.2)
- The residential service keeps an accurate and up-to-date record of all money, personal possessions and valuables held on behalf of each resident (3.6.3)
- Where any money or valuables belonging to the resident is handled by staff within the residential service, dated, signed records and receipts are kept and all records are signed by the resident (3.6.4)
- Where residents need support to manage their financial affairs, they are facilitated to access information, advice and support on money management (3.6.5)
- A resident does not contribute to any communal or business fund without their informed consent
- Where arrangements are in place for staff to collect social welfare payments or pensions for residents, guidelines issued by the Department of Social Protection are adhered to.

There are many instances where people are admitted to nursing homes prior to their financial position being assessed and a determination being made as to whether or not they are entitled to the 'Fair Deal'. This frequently happens where people are transferred out of an acute hospital on a temporary basis which then becomes a permanent arrangement. In such instances – particularly where a person has diminished Decision-Making capacity and/or relatives either do not know or do not wish to get involved – it can be difficult to establish accurately the resident's financial position. In instances where people's financial position is unclear and/or complex, nursing homes may have to take the initiative in resolving the matter in order to ensure that both the nursing home and the individual resident are protected. This can sometimes mean a nursing home having to take on a financial management role by default rather than by design. This can have knock-on difficulties in relation to the fee payment aspect of contracts.

It is suggested that there is a need for some reference to be included in contracts to protocols for managing the personal finances of people with reduced Decision-Making capacity with particular reference as to how to deal with situations where a person has a significant amount of money in his/her 'patient's private property account', but this money is not being drawn down to enhance the person's quality of life, e.g., to cover the costs of social outings. Reference to the HSE Patients' Private Property Guidelines¹⁵ would be useful in addressing this issue.

¹⁵ <https://www.hse.ie/eng/services/publications/corporate/Patients%E2%80%99%20Private%20Property%20Guidelines.pdf>

Separate contract between the nursing home and the HSE

One of the issues/problems with the Nursing Home Support Scheme (NHSS) ('Fair Deal') is that the resident has a separate contract with the nursing home. i.e. separate to the NHSS contract which the nursing home has with the HSE. For this reason, the HSE can be reluctant to intervene when there are issues about contracts. Nursing home residents who are frequently vulnerable would not be placed in this position.

Complaint Procedures

Registered nursing homes are obliged to provide an accessible and effective complaints procedure. However since August 2015 when the Office of the Ombudsman became entitled to examine complaints relating to the administrative actions of private nursing homes this has become a statutory duty¹⁶. This does not tend to be stated in contracts. Clearly it should be explicitly stated.

Also, since the Ombudsman normally only deals with a complaint once the individual has already gone through the complaints procedure of the private nursing home concerned, the complaints process should be made very explicit in each contract. Concerns about additional charges would thus in the first instance have to be taken up with the nursing home provider.

The typical nursing home contract obliges the nursing home to investigate any bona fide complaint made by or on behalf of the resident and communicate the result of such investigation to the complainant in accordance with established complaints policies and procedures. Typically, there is no reference in contracts as to where these policies and procedures are to be found and what they contain.

¹⁶ Section 4A of the 1980 Ombudsman Act 1980 inserted by the Ombudsman (Amendment) Act 2012. Information on the right to appeal must include information on the right to appeal to the Ombudsman

NURSING HOME CONTRACTS: RECOMMENDATIONS

Based on the points raised earlier in the discussion document, this section sets out some key considerations relating to nursing home contracts and general issues considered by Sage to be relevant to what should and should not be included in contracts.

General Issues to be Considered Before Any Contract Is Signed

1. Resident's Right to Sign Contract

No person has legal authority to sign a contract "on behalf of" a resident except an attorney or attorneys appointed under a registered Enduring Power of Attorney where that document includes the right of the Attorneys to make personal care decisions. Next of kin of a resident have no legal entitlement to do so.

2. Resident's Ability to Understand and Sign Contract

Any assessment of the capacity of a resident to sign a contract must be carried out functionally, which means that the assessment must relate specifically to the single issue of their ability to understand the contract. The assessment should be done in accordance with the provisions of Section 3 of the Assisted Decision Making (Capacity) Act 2015 (ADM Act), which requires that the resident be facilitated to understand the contract by having it explained to them in a manner which is appropriate to them and to their particular circumstances.

3. Protocol for Signature by Others

A protocol should exist of the procedure to be followed if the resident is considered not to be able to understand the provisions of the contract for him/herself. This could, for example, allow for calling in an independent advocate to act on a non-instructed human rights basis in accordance with Sage Operational Guidelines or, post the coming into force of the ADM Act, giving the resident an opportunity to appoint a Decision Making Assistant or Co-Decision Maker.

After the coming into force of the ADM Act an advocate or other interested person will be able to, if necessary, refer the matter to the Decision Support Service for advice or make an application to the Circuit Court for the appointment of a Decision Representative to sign the contract.

Where a resident has however completed an Enduring Power of Attorney the protocol should provide for a copy of it to be produced to ensure that it contains the necessary authority for the attorney/s to sign the contract as well as evidence that it has been registered.

4. Easy to Read Versions of Contract

Copies of the contract should be made available to the resident in "plain English" versions and audio versions and every effort should be made to make the clauses of the contract more easily understandable

5. Time to Allow Consideration

Time should be made available for the resident to consider the contract before signing it. They should be advised that they may wish to take the opportunity to avail of the services of an independent advocate and/or legal adviser to advise them on the terms of the contract.

6. “Updating” Contracts

A resident who has signed a contract at the time of admission should not be asked to sign a further version unilaterally provided by the nursing home as an “updated” contract unless all differences between the original and the new contract have been highlighted, negotiated and approved by both the nursing home and the resident (see further below).

Suggested Clauses for All Contracts

1. Resident’s Human Rights

All contracts should contain an acknowledgment by the proprietor that the resident has basic legal and human rights and protections including the following:

- the right to self-determine and make one’s own decisions
- the right to participate in all matters concerning them
- the right not to be deprived of liberty
- the right to be treated with dignity and respect at all times by everyone
- the right to be informed (in language that can be understood) about the right to make their own decisions
- the right to personal privacy in so far as that is reasonably practicable
- the right to have their personal information kept private
- the right to exercise citizenship rights, including the right to vote
- the right to create their own schedule e.g., when to go to bed, rise in the morning, and meal times (the latter as far as is practicable)
- the right to participate in a social and activities programmes designed to meet their needs and the needs of the other residents or the right not to participate in such activities
- the right to be free from discrimination
- the right to be free from abuse and neglect -- verbal, sexual, physical, environmental, and mental abuse, as well as abuse of their money or property
- the right to freedom of movement and to be free from all forms of constraint – physical, chemical or psychological
- the right to make a complaint and to receive appropriate redress
- the right to proper medical and nursing care
- the right to be fully informed about their own health status, including any medical condition, drugs and supplements all in a language that is understandable to them

- the right to be allowed their own choice of doctor
- the right to participate in the decisions that affect their care e.g. preparation of their Individualised Care Plan and any reviews of it
- the right to be allowed prompt access to all personal records and reports, including clinical records (medical records and reports) during administration working hours
- if a resident's pension or other money is being managed by the nursing home, the right to have such money kept in their name in a client account, separate from the nursing home's own money, and to receive monthly statements of their own client account
- the right to be assisted to create an Advance Healthcare Directive if desired
- the right to refuse medications or treatment
- the right to religious observance
- the right to bring into the nursing home items of personal belongings
- the right to consult an independent advocate, any decision supporter lawfully appointed under the Assisted Decision-Making Act, or any other personal advisor
- the right to have a nominated representative notified in the case of
 - an adverse incident
 - significant deterioration in their physical, mental, or psychosocial status
 - a life-threatening condition
 - medical complications
 - significant changes to treatment needs
 - decisions about transfer or discharge
- The right to be told in writing about all nursing home services and fees (see further below).

2. Resident's Individual Care Plan (see Appendix One)

To comply with HIQA standards all contracts should provide as follows:

- for the resident themselves to be involved in the preparation of their own Individualised Care Plan (ICP) so as to ensure that their own personal and social care needs, goals, will and preferences are discussed with them and reflected in the plan
- that the ICP will set out the timing of reviews of the ICP itself
- that the ICP will provide for how and by which health care professional (who may be nominated by the resident) an assessment of the effectiveness of the ICP should be assessed,
- that a change in the resident's circumstances or need for further support will trigger an automatic review of their ICP, to ensure the resident maintains a good quality of life
- that a record of engagements of the resident in their own ICP will be kept
- that where a resident's personal involvement in their own ICP or a review of it is not possible, where possible, an independent advocate will be engaged

3. Nursing Home Charges

In accordance with The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations (S.I. No. 415 of 2013)¹⁷ the contract should include the following:

- details of the services to be provided as a part of the “basic bed and board charge”
- whether or not the services are being provided under the Nursing Homes Support Scheme or any other health entitlement
- details of any additional services/amenities being provided which are not covered under the Nursing Homes Support Scheme or any other health entitlement
- differentiate between which of those additional services/amenities are regarded as essential (and therefore payment for them is compulsory) and which are regarded as non-essential (where payment is voluntary)
- the fees, if any, to be charged for each such additional service/amenity both essential and non-essential
- a statement that non-essential services/amenities are voluntary and detailing how the resident may opt out of them
- the arrangements for the receipt of financial support under the Nursing Homes Support Scheme, including the arrangements for the payment or refund of monies

4. Termination

Contracts should provide for the circumstances under which a resident may be asked to leave (e.g. if the nursing home is closing) and specify a sufficient notice period to enable the resident to find alternative suitable accommodation e.g. a minimum period of 6 months or such shorter period as the resident shall decide.

5. Duties of Proprietor

The contract should explicitly state that:

- the Proprietor shall comply with all Regulations and legislative provisions governing the provision of long term residential care to residents
- acknowledge the right of the resident to be involved in all matters concerning them
- acknowledge the resident’s basic legal and human rights and protections, including rights set out in paragraph 1 above and agree to honour them
- permit, encourage and facilitate the person to avail of the supported Decision-Making mechanisms contained in the Assisted Decision-Making Act
- acknowledge that in making any decision about the resident’s care or health or affairs in which the resident is unable by reason of illness or inability to take part, the Proprietor will at all times act in accordance with the Guiding Principles set out in Section 8 of the ADM Act and included as Appendix 3 to this document whether or not that Act has yet been brought into force.

17 <http://www.irishstatutebook.ie/eli/2013/si/415/made/en/pdf>

6. Grievance Procedure

Regulations provide that Nursing Homes should have an accessible and effective complaints procedure. Since August 2015 the Office of the Ombudsman can examine complaints relating to administrative actions of private nursing homes but only after the complainant has gone through the nursing homes own internal complaints procedure.

Every contract therefore should contain details of the nursing homes' own complaints or grievance procedure, for example

- the complaint should be made in writing and there should be provision for a complaint to be made orally in situations where a person is clearly unable to do so in writing
- the complaint can be made by or on behalf of a resident with the resident's consent to the Director of Nursing (DON) or where the subject of the complaint is the DON to the Proprietor
- where the resident does not have the ability to give consent the complaint can be made on their behalf by an interested party or independent advocate
- receipt of the complaint shall be acknowledged within 7 days and an internal investigation undertaken by the Person in Charge within a further 14 days
- the result of the investigation of the complaint shall be given in writing to the resident and/or the person who made the complaint on their behalf
- Nothing in the contract should bind the resident to have to accept the result of the complaint or prohibit the resident from appealing the result to the Office of the Ombudsman or other appropriate authority
- The contract should contain a guarantee that a formal complaint by a resident will not in any way affect the resident's ongoing care and rights.

7. Variation in Terms of Contract

The contract should state that all or any variations in its terms shall be the subject of full negotiation between the parties to the contract or their lawfully appointed representatives (e.g. Co-Decision Maker or Decision Representative (once the ADM Act is in force) or Attorneys under a registered Enduring Power of Attorney or an independent advocate acting in a non-instructed advocacy role to protect the basic human rights of a resident. All variations should be presented for review with all differences between the "original" contract and the "new" contract highlighted and the reasons for them fully explained in a manner capable of being understood.

There should be provision for contracts to be revised on a regular basis.

8. Resident's Temporary Absence

The contract should provide for what is to happen if a resident is temporarily absent from the nursing home, whether voluntarily e.g. for a holiday or a trial period at home or involuntarily e.g. while in hospital. That procedure should cover charges during that time, how long a bed will be kept available for the absent resident, safety and storage of their personal belongings etc.

Clauses Which Should Not Appear in Contracts:

1. Termination

The right of the Proprietor to terminate the contract without good and reasonable stated reason due to circumstances which are not within the control of the resident, or without consultation with the resident

2. Alter Terms

The right of the Proprietor to alter the terms of the contract or charges without consultation with the resident.

3. Vary Terms

The right of the Proprietor to vary the terms of the contract or charges without consultation with the resident.

4. Waiver or Presumption of Legal Advice

Any statement that the resident shall be assumed to have obtained independent legal advice on the contract or has waived their right to do so.

5. Restriction on Visitors

The right of the Proprietor to restrict visitors, except in exceptional circumstances e.g. where there is a risk of infection and where the restriction is also being applied to other residents.

6. Moving a Resident

The right to move a resident from their allocated room or another nursing home or hospital without their specific consent.

7. Changes to Fees or Charges or Services

The right to the nursing home to review fees and or services save in accordance with a set procedure which is clearly set out in the contract.

8. "Best Endeavours"

That the Proprietor shall use their "best endeavours" to comply with all Regulations and legislative provisions governing the provision of long term residential care to residents. This is not sufficient (see above under heading "Duties of Proprietor")

APPENDICES

APPENDIX ONE

Features of a service meeting the HIQA Individual Care Plan Standard (2.1)

- 2.1.1 Individual assessments are completed before the person comes to live in the residential service.
- 2.1.2 Individual care plans informed by comprehensive assessments are developed with each resident as soon as practicable after their admission.
- 2.1.3 Each resident is consulted with, and participates in, the development of their individual care plan with the multidisciplinary team. The written individual care plan is kept on their case file and is signed by the resident where practicable.
- 2.1.4 Each resident has a care plan that takes account of all aspects of their physical and mental health, personal and social care needs and any supports required to meet those needs, as identified in ongoing assessment.
- 2.1.5 Referral arrangements are in place to obtain rehabilitative services from health and social care services including: physiotherapy, occupational therapy, specialist nursing, speech and language therapy and other services as required by the resident to help them achieve optimal physical function and independence.
- 2.1.6 Each resident has access to a copy of their individual care plan in an accessible format.
- 2.1.7 Each resident's care plan is formally reviewed in accordance with the regulations or more frequently if there is a change in needs or circumstances. The review of the individual care plan is multidisciplinary and is conducted in a manner that ensures the maximum participation of each resident and is agreed with the resident. Issues raised by the resident during the care plan review are followed up by staff and feedback is provided to the resident.
- 2.1.8 The review of the individual care plan assesses its effectiveness and takes into account changes in circumstances, new developments and outcomes achieved. It names those responsible for pursuing objectives in the plan within agreed timescales. The review process is recorded and the rationale for any changes documented.
- 2.1.9 Where a resident declines to engage in the individual care planning process, the person in charge ensures that arrangements are made to address their assessed needs and to include their aspirations and wishes insofar as these can be ascertained. A record is kept of all attempts to engage with the resident in the planning process.

APPENDIX TWO

Support from Independent Advocacy Service

A healthcare company where there had been issues with the contract of care in the past requested support from Sage following a HIQA inspection in 2016. HIQA found that residents were being charged more than was stated in the contracts of care. Sage agreed a simple protocol with the healthcare company.

Step 1

Ask the following questions:

- Is contract of care provided in an accessible format?
- Has the nursing home supported the resident, with the use of communication aids where required, to understand the contract of care to the best of their ability?

Step 2

Contract of Care reviewed by Sage Representative to confirm it is the standard contract for the organisation.

Step 3

Sage meets with residents and staff to introduce Sage and explain the role of an independent advocate and how to contact Sage if there are any issues around the signing or interpretation of the contract

Step 4

Sage asks the service provider to nominate an internal 'advocacy champion' (staff member or service user) to promote advocacy within the organisation and help people to monitor the implementation of their Contract of Care.

Step 5

Sage arranges for a trained volunteer to act as an observer and raise questions from a human rights perspective and a safeguarding of vulnerable adults perspective.

Protocol Notes

- Sage recognises that people without a next of kin can be especially vulnerable. Sage is collaborating with X Healthcare to best support such individuals with their Contract of Care.
- This Contract of Care has been provided in an accessible format and service users have been supported by X Healthcare to understand it to the best of the service user's ability
- A Sage Representative has met with service users to discuss their contract of care and explained to the service users and support staff that they can request the support of an independent advocate if required.
- Support staff are often in the best position to advocate on behalf of a person but there are occasions when an independent advocate is required. An independent advocate is someone who is free of any conflicts of interest and is independent of family, service provider or systems interests.
- By signing and engaging with your Contract of Care Sage and its representatives are not endorsing the Contract of Care or taking responsibility to oversee how it is implemented.
- Should an independent advocate be required in the future the service user of X Healthcare can request one through the usual referral process to Sage.

Resident's Name & Signature :

And/Or

Sage Representative's Name & Signature:

Staff member's signature:

Date: / /

APPENDIX THREE

Abstract from Private Nursing Home Contract Template¹⁸

Schedule 2

Part 1

2. The Proprietor and the Resident agree that the Proprietor will provide the following Nursing Home Services to the Resident for the further additional remuneration as the Nursing Home Service Charge specified in Part 2 of Schedule 2:

- (a) (Social programmes);¹
- (b) Any other service that may be agreed between the Parties.²

Proprietor may add further services ³

* The Parties to this Agreement understand that the Services referred to in Paragraph (a) above will be provided to the Resident by the Proprietor and/or any third party service provider with whom the Proprietor has a contractual relationship in accordance with: (i) all applicable legislative and regulatory requirements; and (ii) the fee/cost paying arrangement set out in Part 2 of Schedule 2.

Part 2

Where the Resident is a person who has been approved to receive State Support in accordance with the Act, in addition to the fees payable by the Resident to the Proprietor under Part 2 of Schedule 1, the Parties agree that the Resident shall also pay to the Proprietor the following fee for those goods/services provided by the Proprietor to the Resident as more particularly specified in Part 1 of Schedule 2:

[SPECIFY ADDITIONAL SUM CLEARLY]

- 1 Include detail of these
- 2 If any, include detail of these
- 3 Need to detail services provided under Nursing Home Service Charge – requirement under regulations and HIQA standards including judgment and assessment framework

¹⁸ It is noted that changes to this Template are currently being considered.

Schedule 3

Part 1

The Proprietor and the Resident may also agree that the Proprietor shall provide any or all of the following additional services* to the Resident for such further remuneration specified in Part 2 of Schedule 3:

[IDENTIFY CLEARLY FROM THE REPRESENTATIVE LIST BELOW WHICH ACTUAL ADDITIONAL SERVICES/GOODS ARE TO BE PROVIDED BY THE PROPRIETOR TO THE RESIDENT] 4

- (a) All therapies;
- (b) Incontinence wear;
- (c) Chiropody;
- (d) Dry cleaning and/or specialised laundry service;
- (e) Ophthalmic and Dental Services;
- (f) Transport (including care assistant costs);
- (g) Specialist wheelchairs;
- (h) Hairdressing and other similar services;
- (i) Social programmes;
- (j) Daily delivery of newspapers;
- (k) Specialist beds;
- (l) Specialist mattresses;
- (m) Specialist equipment; and
- (n) Any other service that may be agreed between the Parties.

An additional charge/fee may apply for any of the above services/goods

For more details please see the NHI "Standard Fee Provisions" document which will be provided to you separately.

4 Need to identify and list services provided here

* The Parties to this Agreement understand that the Services referred to in Paragraph (a) to (n) inclusive above may be provided to the Resident by the Proprietor and/or any third party service provider with whom the Proprietor has a contractual relationship in accordance with: (i) all applicable legislative and regulatory requirements; and (ii) the fee/cost paying arrangement set out in Part 2 of Schedule 3.

In all cases where the Resident is a private patient of a medical practitioner, the supply of drugs and medication will also be private and the appropriate charge will be made.

Charges may also be made for items not included on the GMS or Hardship Schemes including for example specialist dressings.

Part 2

Where the Resident is a person who has been approved to receive State Support in accordance with the Act, in addition to the fees payable by the Resident to the Proprietor under Part 2 of Schedule

1 and Part 2 of Schedule 2, the Parties agree that the Resident shall also pay to the Proprietor the following fees for those goods/services provided by the Proprietor to the Resident as more particularly specified in Part 1 of Schedule 3:

[SPECIFY ADDITIONAL SUMS CLEARLY]

Schedule 4

Part 1

Where the Resident is a person other than a person who has been approved to receive State Support in accordance with the Act:

1. The Proprietor and Resident may agree that the Proprietor shall provide any or all of the following services:
 - (a) Bed and board;
 - (b) Nursing and personal care (which does not include specialist equipment) appropriate to the level of care needs of the Resident;
 - (c) Bedding;
 - (d) Laundry Service;
 - (e) Basic aids and appliances necessary to assist the Resident with the activities of daily living;
 - (f) All therapies;
 - (g) Incontinence wear;
 - (h) Chiropody;
 - (i) Dry cleaning;
 - (j) Ophthalmic and Dental Services;
 - (k) Transport (including care assistant costs);
 - (l) Specialist Equipment;
 - (m) Specialist wheelchairs;
 - (n) Specialist beds;
 - (o) Specialist mattresses;
 - (q) Hairdressing and other similar services;
 - (r) Social programmes;
 - (s) Daily delivery of newspapers; and
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 - (t) Any other service that may be agreed between the Parties.

* The Parties to this Agreement understand that the Services referred to in Paragraph (a) to (t) inclusive may be provided to the Resident by the Proprietor and/or any third party service provider with whom the Proprietor has a contractual relationship in accordance with:

- (i) all applicable legislative and regulatory requirements; and
- (ii) the fee/cost paying arrangement set out in Part 2 of Schedule 4.

In all cases where the Resident is a private patient of a medical practitioner, the supply of drugs and medication will also be private and the appropriate charge will be made.

Charges may also be made for items not included on the GMS or Hardship Schemes including for example specialist dressings.

Part 2

Where the Resident is a person other than a person who has been approved to receive State Support in accordance with the Act, the fees payable by the Resident for the Services specified in Part 1 of Schedule 4 are as follows:

[Insert Appropriate Fee]

APPENDIX FOUR

Assisted Decision-Making (Capacity) Act: Guiding Principles

Section 8

- (1) The principles set out in subsections (2) to (10) shall apply for the purposes of an intervention in respect of a relevant person, and the intervener shall give effect to those principles accordingly.
- (2) It shall be presumed that a relevant person who falls within paragraph (a) of the definition of “relevant person” in section 2(1) has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act.
- (3) A relevant person who falls within paragraph (a) of the definition of “relevant person” in section 2(1) shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so.
- (4) A relevant person who falls within paragraph (a) of the definition of “relevant person” in section 2(1) shall not be considered as unable to make a decision in respect of the matter concerned merely by reason of making, having made, or being likely to make, an unwise decision.
- (5) There shall be no intervention in respect of a relevant person unless it is necessary to do so having regard to the individual circumstances of the relevant person.
- (6) An intervention in respect of a relevant person shall—
 - (a) be made in a manner that minimises—
 - (i) the restriction of the relevant person’s rights, and
 - (ii) the restriction of the relevant person’s freedom of action,
 - (b) have due regard to the need to respect the right of the relevant person to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property,
 - (c) be proportionate to the significance and urgency of the matter the subject of the intervention, and
 - (d) be as limited in duration in so far as is practicable after taking into account the particular circumstances of the matter the subject of the intervention.
- (7) The intervener, in making an intervention in respect of a relevant person, shall—
 - (a) permit, encourage and facilitate, in so far as is practicable, the relevant person to participate, or to improve his or her ability to participate, as fully as possible, in the intervention,
 - (b) give effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable,
 - (c) take into account—
 - (i) the beliefs and values of the relevant person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and
 - (ii) any other factors which the relevant person would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,

- (d) unless the intervener reasonably considers that it is not appropriate or practicable to do so, consider the views of—
 - (i) any person named by the relevant person as a person to be consulted on the matter concerned or any similar matter, and
 - (ii) any Decision-Making assistant, co-decision-maker, Decision-Making representative or attorney for the relevant person,
 - (e) act at all times in good faith and for the benefit of the relevant person, and
 - (f) consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant.
- (8) The intervener, in making an intervention in respect of a relevant person, may consider the views of—
- (a) any person engaged in caring for the relevant person,
 - (b) any person who has a bona fide interest in the welfare of the relevant person, or
 - (c) healthcare professionals.
- (9) In the case of an intervention in respect of a person who lacks capacity, regard shall be had to—
- (a) the likelihood of the recovery of the relevant person's capacity in respect of the matter concerned, and
 - (b) the urgency of making the intervention prior to such recovery.
- (10) The intervener, in making an intervention in respect of a relevant person—
- (a) shall not attempt to obtain relevant information that is not reasonably required for making a relevant decision,
 - (b) shall not use relevant information for a purpose other than in relation to a relevant decision, and
 - (c) shall take reasonable steps to ensure that relevant information—
 - (i) is kept secure from unauthorised access, use or disclosure, and
 - (ii) is safely disposed of when he or she believes it is no longer required.

