

NURSING HOME CONTRACTS MAY BE UNLAWFULLY SIGNED

Casual approach to nursing home contracts must end, Sage report suggests

People in private nursing homes are treated less favourably than those in public nursing homes in respect of notice of termination of contract, former Law Reform Commissioner Patricia Rickard-Clarke said at the launch of a discussion document *Contracts of Care for Nursing Home Residents - Issues of Policy and Practice*, published by Sage, the Support and Advocacy Service. (Today, Thurs Oct 12, 2017)

Ms Rickard-Clarke, who is Chair of Sage, stated that “substantial anecdotal evidence indicates that contracts are frequently signed by a relative on behalf of a nursing home resident, even when the resident clearly has the capacity to make decisions.

“In other instances, relatives sign contracts without proper assessment of the functional capacity of the resident to agree to the terms. A large proportion of nursing home residents feel under pressure to sign contracts of care, despite having a limited appreciation of what they are signing up to.

“People admitted to nursing homes with reduced Decision-Making capacity, perhaps as a result of dementia or other cognitive impairment, will have particular difficulty in agreeing to and signing a contract. This requires separate attention,” she said.

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

It 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. 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 are highlighted.

The paper also identifies an imbalance in contracts favouring the nursing home’s interests over those of the resident.

Patricia Rickard-Clarke said that there appears to be a somewhat casual approach to the signing of contracts of care.

“This report 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”

Also speaking at the launch the Manager of Sage, Mervyn Taylor, stated that “The absence of realistic alternative support and care options in the community means that many people do not choose to go into a nursing home, but are ‘put there’ by concerned relatives.

Sage recently made a detailed submission to the Department of Health’s public consultation on the establishment of a statutory system for home care provision.

“While the results of the consultation have yet to be analysed or made available, Sage questions the wisdom of developing two separate statutory systems for long-term support and care.

“A single, unified statutory system would best meet the needs of older people and ensure an understanding and conjoined approach between issues related to care in the community and institutional care, Mervyn Taylor said.

ENDS