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**AN BILLE ÁRACHAIS SLÁINTE (LEASÚ), 2012  
HEALTH INSURANCE (AMENDMENT) BILL 2012**

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**EXPLANATORY MEMORANDUM**

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*Background*

The Health Insurance Acts 1994 to 2011 provide the statutory basis for the regulation of the health insurance market in the interests of the common good. The private health insurance market in Ireland is based on a core principle of community rating, whereby all subscribers are charged the same premium for a particular plan, irrespective of risk factors such as age, gender or health status.

This system of health insurance requires “intergenerational solidarity” (and solidarity between the healthy and less healthy) whereby younger and healthier people effectively subsidise older and less healthy people, on the understanding that these younger people will themselves be subsidised by later generations when they reach old age and/or suffer ill health. In effect, older people who have been paying health insurance premiums for many years will have contributed to intergenerational solidarity when they were younger and could reasonably expect to benefit from it now.

The Risk Equalisation Scheme (RES) will, on 1 January 2013, replace the Interim Scheme of Age-Related Tax Credits/Community Rating Levy presently provided for in the Health Insurance Acts. That Age-Related Tax Credits scheme expires on 31 December 2012. Accordingly, it is essential, in the interests of both the common good and of societal and intergenerational solidarity, that on and after 1 January 2013, the RES be fully operational and functioning soundly.

*Objects of the Bill*

The main purpose of the Bill is to affirm that the purposes of the Health Insurance Acts include ensuring that access to health insurance cover is available to consumers of health services with no differentiation made between them in respect of age, sex or health status; strengthening the legislative provisions to achieve this purpose; enhancing intergenerational solidarity and community rated health insurance and providing for the implementation of related measures to achieve these objects including the establishment of a permanent scheme of risk equalisation in the private health insurance market. Risk equalisation is a process that aims to neutralise, in an equitable manner, differences in health insurers’ (registered undertakings) costs that arise due to variations in the health status of their policy holders.

## PART 1

### PRELIMINARY AND GENERAL MATTERS

*Section 1* defines the Principal Act as the Health Insurance Act 1994.

*Section 2* amends Section 1A of the Principal Act. This amendment, firstly, broadens the scope for sharing the burden of the costs of health services between insured persons by extending the cost subsidy (currently between the young and the old) to include the more healthy and the less healthy. The more healthy are less frequent users of health services and the less healthy are more frequent users of health services. Secondly, the amendment adds a further criterion to be taken into account for the purpose of achieving the Principal Objective of the Health Insurance Acts — that is, the importance of discouraging registered undertakings from engaging in practices such as market segmentation which might have the effect of favouring the coverage of the more healthy, including the young, over the coverage of the less healthy, including the old.

*Section 3* amends Section 2 of the Principal Act by defining certain words used in the Bill and inserting them into Section 2 of the Act. The definition of “net premium” is amended in respect of health insurance contracts effected on or after 1 January 2013 so as to take account of the part (if any) of the premium to be paid from the Risk Equalisation Fund (Fund) in respect of age, sex and type of insurance cover.

*Section 4* amends Section 3 of the Principal Act. This amendment provides powers for the Health Insurance Authority (HIA) to make regulations which are required for carrying out its new functions to administer the scheme. It also removes the requirement for the Minister, before making regulations, to present them in draft form to be approved by the Houses of the Oireachtas. Unlike the previous Risk Equalisation Scheme (2003), which was mainly set out in regulations, the new Scheme, including rates for risk equalisation credits and stamp duty levies, will in future be set in primary legislation.

*Section 5* substitutes a new Section for Section 4 of the Principal Act to provide for offences. It provides for conviction of persons and organisations who contravene the provisions of the Act. Such a contravention will constitute an offence and persons and organisations found guilty will be subject to a fine and/or imprisonment. Provision is also made for the HIA to bring summary proceedings where offences are committed. Provision is also included for the commencement of this Section 30 days after the passing of the Act.

*Section 6* substitutes a new Section for Section 6A of the Principal Act. It provides definitions and key terms relating to interpretation of Part II of the Bill and Schedules 3 and 4. Key definitions include “hospital bed utilisation credit”, “relevant contract (advanced cover)”, “relevant contract (non-advanced cover)”, “risk equalisation credits” and “type of cover”.

*Section 7* amends Section 7 of the Principal Act. In subsection (1)(a) the amendment extends the period of time an insurer must maintain the price of a health insurance contract to 90 days from 31 days. It also inserts a technical rewording of the provision which prevents the varying of health insurance premiums by reference to

the health risk status, age or sex of, or frequency of provision of health services to, a person.

*Section 8* amends Section 7A of the Principal Act. This is a technical amendment arising from the repeal of Section 12 of the Principal Act (*Section 20* below refers).

*Section 9* provides for the submission of new types of health insurance contracts and changes to existing contracts to the HIA. If types of health insurance contracts were allowed to change during the course of the year, they could be changed in such a way that the stamp duty and risk equalisation credits applicable to them would no longer be appropriate. The following revised notification periods will therefore apply:

- (a) a 90 day notice period where registered undertakings wish to offer new products.
- (b) Subject to a 90 day notice period, changes in the material particular (benefits) to existing products (other than premium changes) will be permitted to take effect only from 1 January of any year. Notwithstanding this, the following changes will be allowed: (1) Non advanced products can be changed insofar as there is no increase in the benefits payable in respect of private hospital accommodation in a private hospital, and (2) advanced products can be changed to increase the benefits payable.
- (c) Changes to premium payable are allowed at any time subject to 30 days notice, and the new price must be maintained for 90 days.
- (d) Where products have been maintained on the market for 90 days they can be withdrawn at any time. (Notification to withdraw a product can be given once it has been maintained for 60 days).

In respect of 1 January 2013 only, the notification period of 90 days is reduced to 75 days for new and changed existing products, (i.e. notified on or before 17 October 2012). Insurers were notified of these interim arrangements on 14 September, 2012.

*Section 10* amends Section 7AC of the Principal Act. This is a technical amendment to the Act.

*Section 11* amends Section 7C of the Principal Act. This is a consequential technical amendment arising from new Section 11C and relates to the gathering of certain information by insurers in respect of insured persons.

*Section 12* amends Section 7D of the Principal Act. This is a technical amendment.

*Section 13* amends Section 7E of the Principal Act. The current legislation already provides for the evaluation and analysis of data provided by health insurers. This amendment provides for changes to the specific elements the HIA must have regard to in carrying out its evaluation and analysis. These specific elements will now include: average insurance claim costs in respect of sub-groups to include age, gender, level of cover.

The HIA will make recommendations to the Minister on the applicable rates for risk equalisation credits both in respect of hospital bed utilisation and in respect of classes of insured persons

based on age, sex and type of health insurance cover. The HIA will have regard to: the Principal Objective of the Health Insurance Acts; the aim of avoiding overcompensation of registered undertakings or former undertakings; the aim of maintaining the sustainability of the market; the aim of having fair and open competition in the health insurance market; and the aim of avoiding the Fund sustaining surpluses or deficits from year to year (based on approved accounting standards).

The risk equalisation credits provided for under this RES will replace the tax credits available under the Interim Scheme of Age-related Tax Credits that were set by the Minister for Finance on foot of recommendations of the Minister for Health. The Minister of Health will propose the rates for the risk equalisation credits (Schedules 3 and 4) and continue to make recommendations to the Minister for Finance in relation to the rates of stamp duty to apply. In considering the rates for risk equalisation credits, the Minister will have regard to: the Principal Objective; any reports furnished to him; the aim of avoiding overcompensation of registered undertakings or former undertakings; the aim of maintaining the sustainability of the market; the aim of having fair and open competition in the health insurance market; and the aim of avoiding the Fund having a surplus or deficit from year to year (based on approved accounting standards). He will then consult with the Minister for Finance before proposing rates to be given effect through primary legislation. As part of this process he will also make recommendations to the Minister for Finance on the applicable stamp duty rates.

*Section 14* amends Section 7F of the Principal Act. The current legislation provides for the repayment of any overcompensation made to an insurer to the Exchequer. This Section provides that any such overpayment to insurers is repaid to the Fund. The timeframe used for the overcompensation test carried out by the HIA on registered undertakings will be over a three year rolling basis.

*Section 15* is an amendment to the Principal Act and inserts new Sections 11A to 11F. Section 11A provides for a Risk Equalisation Scheme for the purposes of assisting in the achievement of the Principal Objective. Section 11B sets out to whom the Scheme will and will not apply. Section 11C includes provision (taken in conjunction with Schedules 3 and 4) to make payments from the Fund of credits in respect of (a) a hospital bed utilisation charge and (b) the amount of premium to be paid from the Fund in respect of age, sex and type of cover. The rate of risk equalisation credit for 2013 to apply in respect of the hospital bed utilisation credit will be inserted into Schedule 3 at Dáil Committee Stage. The rate of risk equalisation credits for 2013 to apply in respect of the amount of premium to be paid from the Fund in respect of age, sex and type of cover will also be inserted into Schedule 4 at Dáil Committee Stage. Section 11D empowers the HIA to establish a Fund as well as setting out what will be paid into and paid out of the Fund. It also provides that for the purpose of maintaining a sufficient amount of moneys, the Minister for Finance may advance funding to the HIA through a “Special Account”. Section 11E requires the HIA to categorise each type of health insurance contract to allow for appropriate risk equalisation credits and stamp duty payments which will apply in respect of advanced and non advanced level types of contracts. The HIA will make regulations accordingly and enter the particulars in The Register of Health Insurance Contracts. Section 11F provides that the Minister will make regulations relating to the making of claims for risk equalisation credits under the Scheme.

*Section 16* amends Section 17 of the Principal Act. This is technical amendment to subsection 4 as a consequence of the repeal of Section 12 of the Principal Act at Section 20.

*Section 17* amends the Principal Act by inserting a new Section 18E to provide for the appointment of authorised officers of the HIA. Section 18F gives powers to authorised officers to secure the enforcement of the provisions of the Act and to assist the Minister and the HIA in carrying out their respective functions. Section 18G provides for dealing with privileged legal material.

*Section 18* amends Section 21 of the Principal Act. This amendment expands the functions of the HIA by requiring it to manage and administer the Risk Equalisation Scheme.

*Section 19* amends Section 32 of the Principal Act. This is a technical amendment.

*Section 20* repeals Sections 12, 12A and 33A of the Principal Act which refer to the previous Risk Equalisation Scheme (2003).

*Section 21* substitutes a new Schedule for Schedule 2 and also inserts new Schedules 3 and 4 to the Principal Act. The revised Schedule replaces the existing Framework (2005/C 297/04). This revised Framework is entitled — Communication from the Commission — European Union Framework for State Aid in the form of Public Service Compensation (2012/C8/03). The purpose of the Framework is to spell out the conditions under which State Aid can be found compatible with the common market pursuant to Article 86(2) of the EC Treaty.

Schedules 3 and 4 provide for the applicable rates for risk equalisation credits for 2013. Following the required evaluation and analysis of market data by the HIA and consultation with the Minister for Finance, the Minister will propose the applicable rates at Committee Stage in the Oireachtas.

*Section 22* provides the title, collective citation and construction of the Bill.

*Department of Health,  
October, 2012.*