



An Bille um Dhliteanas Sibhialta (Leasú) (Uimh. 3), 2018
Civil Liability (Amendment) (No. 3) Bill 2018

Meabhrán Mínitheach agus Airgeadais
Explanatory and Financial Memorandum



**AN BILLE UM DHLITEANAS SIBHIALTA (LEASÚ) (UIMH. 3),
2018
CIVIL LIABILITY (AMENDMENT) (NO. 3) BILL 2018**

**FINANCIAL AND
EXPLANATORY MEMORANDUM**

Background

Open Disclosure is an open, honest, and consistent approach to communicating with patients and their families when things go wrong in healthcare.

This includes expressing regret for what has happened, keeping the patient informed, providing feedback on investigations and the steps taken to prevent a recurrence of the adverse event.

Open Disclosure is important for building patient and public trust in the health system.

Unfortunately, the voluntary nature of the current system of open disclosure in the Irish health system has significant limitations. Due to the current open disclosure system being voluntary there is no legal obligation for patients or their families to be informed when something goes wrong and this perpetuates a culture of silence.

In order for open disclosure to work it must be mandatory with legal underpinnings. This Bill addresses the problems surrounding the current system and amends the Civil Liability Act 2017 to provide for a mandatory system of open disclosure in our health system.

Purpose of the Bill

The law concerning the open disclosure of a patient safety incident is set out in Part 4 of the Civil Liability (Amendment) Act 2017. Under section 12 of the 2017 Act, an open disclosure of a patient safety incident can be made on a voluntary basis.

The purpose of this Bill is to change the open disclosure requirement from being voluntary to mandatory. It also changes from voluntary to mandatory the requirement that the patient be provided with any additional information concerning them which later becomes available.

Provisions of the Bill

Section 1 defines the term “2017 Act” which is used in the Bill to refer to the Civil Liability (Amendment) Act 2017.

Section 2 amends the definition of “incident” which is contained in section 8(2) of the 2017 Act so as to provide that the term “incident” includes a patient safety incident that has occurred within the previous five years.

Section 3 amends section 12 of the 2017 Act. Section 12 of the 2017 Act is a key provision in that it provides the mechanism under which the open disclosure of a patient safety incident is made.

Section 12 of the 2017 Act is amended by replacing “may” with “shall” so that the initial wording of section 12 concerning open disclosure of a patient safety incident would instead read:

“Where a patient safety incident occurs in the course of the provision by a health services provider of a health service to a patient, the health services provider shall make, in accordance with this Part, an open disclosure of the patient safety incident to ...”.

The newly inserted word is underlined in the text above.

It is also intended that the marginal note accompanying section 12 of the 2017 Act would be revised to reflect the change being proposed under section 3 of this Bill, so that it instead reads: “Mandatory open disclosure of patient safety incident”.

Section 4 of the Bill amends section 18(1) of the 2017 Act. Section 18(1) provides for the voluntary disclosure of additional information concerning a patient safety incident to the patient at any time after the initial disclosure has taken place. Section 4 of the Bill seeks to amend section 18(1) of the 2017 Act in two ways. Firstly by changing from voluntary to mandatory the requirement to disclose additional information to the patient where it becomes available. Secondly by requiring that the additional information must be made available to the patient “as is reasonably practicable”, rather than it merely being made available to the patient “at any time”.

Section 5 of the Bill sets out the short title of the Bill which is the Civil Liability (Amendment) (No. 3) Bill 2018.

Financial Implications

It is envisaged that this Bill will not incur any significant costs to the exchequer.

Senators Maire Devine, Pádraig Mac Lochlainn, Fintan Warfield
June, 2018.

