An Roinn Sláinte
Department of Health

Ms. Margaret Falsey,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.

Your Ref: PAC32-I-1014

24 August 2018

Re: Information requested following Department of Health appearance before the Committee of Public Accounts

Dear Ms. Falsey,

I refer to you letter of 12 July 2018, where you requested that information be supplied on the following:

1. **A note on the expansion to 7/7 for general adult mental health services and the level of investment that would be required to provide a 24/7 service.**
2. **A note on the costs of hiring private investigators, the process and safeguards in place in relation to consultants' compliance with contracts.**
3. **A note on the reasons for the non disclosure of information in the accounts under 6.2 Legal Costs.**
4. **An explanatory note on the 3 different schemes available for treatment abroad.**
5. **As per Table 6 of the HSE Financial Statements, link the Department of Health Grant to the Appropriation Account.**
6. **An up to date note on the National Children's Hospital funding.**
7. **A note following the review of recovery of monies from insurance companies.**

We have provided in the attached appendices a note on each topic. I trust the information supplied meets the Committee Secretariat requirements.

Yours sincerely,

Greg Dempsey
Deputy Secretary
On behalf of Jim Breslin, Secretary General

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Appendix 1

PAC Request - A note on the expansion to 7/7 for general adult mental health service and the level of investment that would be required to provide a 24/7 service.

DoH response:

The HSE has recruited approximately 50% of the additional staff required to provide countrywide 7 days a week (7/7) mental health services. The HSE is now in the final stages of recruiting the remaining staff required to deliver 7/7 mental health service cover for the areas that do not currently have the service in place. The delay in recruiting the additional posts was as a result of the need to establish a new Clinical Nurse Manager 2 Nursing Panel. Interviews for the rest of the posts are to take place in August. The table attached gives a breakdown of the posts recruited as of July 2018.

The further development of 24/7 Mental Health Services will need to be considered in light of the evidence following the implementation of 7/7 services in relation to demand for out of hours services. In addition, consideration will have to be given to the type of services that can be delivered on a 24-hour basis given the difficulty that arises at present in staffing the existing level of service. It is likely that the future development of digital or remote services will form one part of enhanced out of hours access. The Department is informed by the HSE that at this point it is not possible to put an estimate on the cost involved in the provision of 24/7 services.

CNS= Clinical Nurse Specialist
SW= Social Worker
OT= Occupational Therapist
PQSW= Professionally Qualified Social Worker

CHO	Location	Posts accepted	Posts yet to be filled	National Recruitment Service campaigns status	Total posts
1	Donegal	4 CNS			4
2	Galway	1 CNS	2 CNS	CNS interviews 13/8/18	3
	Mayo	1 CNS	1 CNS	CNS interviews 13/8/18	2
3	Limerick	2 CNS	1 Snr SW	Snr SW campaign underway **	3
	Clare	0/1	1 Snr SW	Snr SW campaign underway **	1
	North Tipp	1.5 CNS	1 Snr SW	Snr SW campaign underway **	2.5
4	Cork	3 CNS			3
	Kerry	0/3	3 CNS	CNS interviews 13/8/18	3
5	Waterford	3 CNS	1 CNS	CNS interviews 13/8/18	4
6	Wicklow	0/4	2 CNS + 1 OT + 1 Snr SW	CNS interviews 13/8/18 Snr OT to be expressed to panel by 20/7/18	4
7	Dublin South	0/5	5 CNS	CNS interviews 13/8/18	5
8	Laois Offaly	2 CNS	1 Snr SW	Snr SW campaign underway **	3
	Louth Meath	2.5 CNS			2.5
9	Dublin North	4 (1 CNS, 1 OT, 2 PQSW)	2 CNS + 1 OT	CNS interviews 13/8/18 Snr OT to be expressed to panel by 20/7/18	7
		24	23		47

Appendix 2

PAC Request - A note on the costs of hiring private investigators, the process and safeguards in place in relation to consultants' compliance with contracts.

DoH response:
There are occasions when it may be appropriate to utilise the services of a private investigator in the context of court proceedings and in this instance, it arose in defending the recent High Court cases taken by consultants who held Consultant Contract 2008 in pursuit of pay increases. In the period between 2014 and 2018, approximately 700 Consultants commenced High Court legal proceedings against both the HSE and Government Departments.

Arising from the High Court proceedings taken against the State for alleged breach of contract, the Government made a decision to vigorously defend these cases. Possible non-compliance with terms of the Plaintiff's contract was part of the defence strategy in resisting the claims of the plaintiffs. The decision to use private investigators was taken by the HSE in the first instance.

The surveillance was a proportionate exercise and not indiscriminate. Three of the Lead Cases were ultimately the subject of surveillance. The HSE has advised that the cost was €117,853. Consultants outside of the lead cases were not subject to surveillance by a private investigator. The legal advice provided to the HSE and the Government Departments was that there was realistically no other way to assess whether a Consultant is engaging in unauthorised private practice, or not as their time outside the hospital is not monitored or reported.

3 of the Lead Cases were ultimately the subject of surveillance as follows:

- Consultant A – 5 days between December 2017 and January 2018
- Consultant B – 7 days between December 2017 and January 2018 and 10 days in May 2018
- Consultant C – 10 days between December 2017 and January 2018 and 10 days in May 2018.

Surveillance was confined to assessing consultant work practices in these three cases. It was clearly justified on objective grounds – pursuing the counterclaim that the HSE was directed to pursue by the State. There was prima facie evidence of non-compliance by consultants with the terms of their contracts, which was assessed prior to the decision to instruct a private investigator being taken.

There is no absolute prohibition in data protection law on an employer carrying out surveillance of employees (subject to observing data protection law, as was the case here). The surveillance was conducted in accordance with data protection rules and the investigator was required to comply with a written data processing agreement which clearly set out the parameters of the surveillance. Among other things that agreement:
a) contained an undertaking that the investigator would comply with all applicable laws and regulations, including, without limitation data protection laws and regulations;
b) required the investigator to ensure that all personnel working on the matter were appropriately trained in compliance with data protection legislation;
c) required the investigator to use appropriate security measures to ensure that information was kept secure and protected from unauthorised access, theft, hazards, accidental loss, damage or destruction;

d) required the investigator to notify the HSE on becoming aware of any unauthorised use, copying or disclosure of the information and to take any steps considered necessary by the HSE to prevent this;
e) prohibited the investigator from disclosing or revealing information to any person other than those of its employees who were reasonably required, in the course of their duties, to receive information.

Consultant Contract Compliance
The framework for the regulation of a consultant's private practice is contained in Section 20 of the 2008 Contract. It provides that the public to private practice ratio is to be implemented through the Clinical Directorate structure. It also gives consultant's employer full authority to take all necessary steps to ensure a consultant's practice shall not exceed the agreed ratio of public to private practice.

The HSE therefore has responsibility for ensuring that consultants comply with their contracts. The responsibility for overseeing and reporting individual consultant compliance was formally delegated to the Hospital Groups in 2014. The main reason for this was to ensure local accountability. However, it became apparent during preparations to defend the consultant contract legal cases that the arrangements in place were not sufficiently robust.

Following on from a period of focussed engagement between the Department and the HSE, the HSE has developed enhanced measurement arrangements to apply in 2018 and into the future. Actions include:

- the allocation of individual responsibilities for monitoring and managing the compliance of individual consultants within the framework at local, Hospital Group and national levels,
- processes for monthly reporting from Hospital Group CEOs to the National Director for Acute Hospitals with quarterly reporting to the Deputy Director General and escalation as required,
- the inclusion of consultant contract compliance in the work programme of the HSE's Audit Committee, and
- the submission of reports to the Department of the position at the end of September 2018, the end of December 2018 and annually thereafter. These are to include details of actions taken in relation to individuals deemed non-compliant.

Provisions in the Consultant Settlement Agreement on Compliance
Consultants who settle under the Consultant Settlement Agreement (reached to avert High Court action proceeding) affirm the terms of the Consultants Contract 2008. These include terms relating to the scope and extent of private practice on-site and off-site, the ratio of public to private practice, working hours, different work patterns, work scheduling, and arrangements for monitoring and audit of same.

The Agreement specifically provides for co-operation in relation to arrangements put in place to verify the delivery of the consultant's contractual commitments, in particular those relating to private practice.

Appendix 3
PAC Request – A note on the reasons for the non disclosure of information in the accounts under 6.2 Legal Costs.

DoH Response:
Up to and including 2014, the Department of Public Expenditure and Reform circulars outlining the requirements for Appropriation Accounts requested a breakdown between legal fees and compensation paid. This was provided by the Department in the Appropriation Account up to and including 2014.

In 2015, Section C of the Department of Public Expenditure and Reform Circular 19/2015 Section D, Requirements for Appropriation Accounts 2015 provided an illustrative Appropriation Account that included a format for the note on legal costs. The Department of Health was concerned that by providing all the requested information, the Department might prejudice the outcome of cases that were currently in progress. The Department decided it was prudent to include a total figure.

In 2016, The Department also provided a total figure along with an accompanying note stating:

"*The Department has not disclosed a breakdown of the total costs as required by DPER circular 29/2016 as the Department believes that such disclosure may prejudice the outcome of ongoing cases.*"

Following further consideration in finalising the 2017 Appropriation Account in conjunction with the Office of the Comptroller and Auditor General, including in the context of the issue being raised at the recent meeting of the Committee of Public Accounts, the Department is now in a position to report in accordance of the relevant circular.

The following table provides the detail for 2016 and outlines the information that note 6.2 will contain in the 2017 Appropriation Account.

Note 6.2 - Disclosures

Note 6.2 – Legal Costs 2016

	No. of cases	*Compensation awarded*	*Legal costs awarded*	*Legal costs paid by Department / Office*	*2016 Total*	*2015 Total*
		€'000	*€'000*	*€'000*	*€'000*	*€'000*
Claims by Employees		0	0	0	0	0
Claims by members of the public						
Awards and claim settlements	138	13,931	724	0	14,655	37,718
Total	**138**	**13,931**	**724**	**0**	**14,655**	**37,718**

Note 6.2 – Legal Costs 2017

	No. of cases	*Compensation awarded*	*Legal costs awarded*	*Legal costs paid by Department / Office*	*2017 Total*	*2016 Total*
		€'000	*€'000*	*€'000*	*€'000*	*€'000*
Claims by Employees		0	0	0	0	0
Claims by members of the public						
Awards and claim settlements	70	3,773	1,926	0	5,699	14,655
Total	**70**	**3,773**	**1,926**	**0**	**5,699**	**14,655**

Commissions and enquiries

	Year of Appointment	*Cumulative Expenditure to 31 December 2017*	*Expenditure in 2017*	*Expenditure in 2016*
		€'000	*€'000*	*€'000*
Commission of Investigation (Certain matters relative to a disability service in the South East and related matters)	2017	522	522	0
Total		**522**	**522**	**0**

Section 3 of the Commissions of Investigation Act 2004 provided for the establishment of a commission to investigate the matters specified in Article 3(a) of the Act and to make any reports required under that Act in relation to its investigation. In March 2017, a decision was taken to establish a commission of investigation in to certain matters relative to a disability service in the South East and related matters.

Appendix 4
PAC Request - An explanatory note on the 3 different schemes available for treatment abroad.

DoH Response:
There are currently three schemes available to facilitate patients accessing treatment abroad. Two of the schemes are under EU Regulation 883/2004, the Treatment Abroad Scheme (TAS) and the European Health Insurance Card (EHIC). The third option is available under the Cross-Border Directive (CBD).

The material below provides a brief description of how each of the schemes operate:

1 Treatment Abroad Scheme
Overview
The Treatment Abroad Scheme (TAS) provided for by EU Regulation 883/2004 is operated by the HSE. This scheme entitles patients to be referred to another EU/EEA country or Switzerland for a treatment that is not available in Ireland or not available in Ireland within the time normally necessary for obtaining it, taking account of the patient's current state of health and the probable course of the disease.

There are strict qualifying criteria to access this Scheme which are set out in EU Regulations and Department of Health Guidelines.

Eligibility for and treatment under the TAS is restricted to public healthcare. Private patients may not access funding under the TAS. Public patients referred abroad for treatment under the TAS may not access that treatment in the private sector abroad.

Patient Access
GPs will generally refer patients to consultants for acute care and it is the treating consultant who, having exhausted all treatment options including tertiary care within the country, refers the patient abroad under the terms of the TAS. The consultant must specify the specific treatment and in making the referral accepts clinical responsibility in relation to the physician and facility abroad where the patient will attend.

Each application is reviewed individually by the HSE and a decision is made in accordance with the legislation and guidelines and on the basis of a review by clinical experts. Each application is given a formal written decision and where a decision is one of decline, the reason for that decision is clearly outlined and the option of an appeal is afforded. Previous approvals or declines are not used as an influencing factor on subsequent applications.

Applications for TAS are based on the principle of prior approval. However, in some limited circumstances prior approval is not required due to the clinical need of the patient for example in the case of organ transplantation (due to the time sensitivity of the treatment).

Costs Incurred under the Scheme
Patients do not incur a charge for treatment availed of under the TAS. Treatment availed of under the TAS is authorised and paid for by the HSE to the Member State/EEA Country where the treatment was availed of. The HSE will also cover the cost of patient's air or sea fares to the service abroad.

Additional Information
Further details on the Treatment Abroad Scheme can be found on the HSE website at: www.hse.ie/treatmentabroadscheme

2 European Health Insurance Card

Overview
Under EU Regulation 883/2004, all persons ordinarily resident in Ireland are entitled to apply for a European Health Insurance Card (EHIC). The EHIC certifies that the holder has the right to receive emergency healthcare during a temporary stay in any EU country as well as Switzerland, Liechtenstein, Norway and Iceland.

The EHIC holder has the right to receive necessary emergency treatment in the host Member State's public healthcare system on the same terms and at the same cost as nationals of the State concerned.

Patient Access
Patients can apply to the HSE online or via an application form from a local health office for their EHIC.

Patients are required to present their EHIC to access necessary treatment in other Member State or participating country. It should be noted that patients do not need an EHIC to get necessary healthcare while on a temporary visit to the UK. It is enough to show proof that he/she is ordinarily resident in Ireland – in practice, this means a driving licence, passport or similar document.

Costs Incurred under the Scheme
Medical costs are generally not reimbursed to persons with an EHIC. The patient presents the EHIC to access necessary treatment in other member state and cost of this treatment is reimbursed by the HSE to the relevant authority in the Member State that is providing treatment. In most member states the treatment is free but in some states the patient may incur a co-payment which is non-refundable.

If a person had an entitlement to the service but was unable to present EHIC at time of treatment they may claim reimbursement on return to Ireland. However, it is the responsibility of the institution where treatment was provided to determine if treatment was applicable to EU regulations and also confirm the amount to be refunded.

Additional Information
Further details on the European Health Insurance Card can be found on the HSE website at: www.hse.ie/eng/services/list/1/schemes/ehic/about/

3 Cross Border Directive

Overview

The HSE operates the Cross Border Directive (CBD) in Ireland which entitles persons ordinarily resident in Ireland who have an appropriate referral for public healthcare to opt to avail of that healthcare in another EU/EEA country or Switzerland. The CBD provides rules for the reimbursement to patients of the cost of receiving treatment abroad, where the patient would be **entitled to such treatment in their home Member State**, and supplements the rights that patients already have at EU level. However, there are some exceptions e.g. organ transplantation, long term care etc.

Patients may access the healthcare they require in either the public or private healthcare system of another Member State under the CBD. Access to healthcare abroad is based on patients following public patient pathways, i.e. they must demonstrate they have followed the equivalent public patient pathways that a patient would follow if accessing public healthcare in Ireland.

Patient Access

Referral for care under the CBD may be made by a GP, a hospital consultant and certain other clinicians. In line with practice in other EU Member States, the HSE through the National Contact Point (NCP) provides information for patients on the CBD on its website.

Prior authorisation may be required from the HSE for certain healthcare so patients intending to access care under the CBD should check with the HSE in advance of travelling. The HSE advises where a patient is in any doubt as to the need to seek prior authorization before availing of a consultation or treatment abroad to contact the NCP.

Cross-border healthcare qualifies for the purpose of reimbursement where the HSE is satisfied that:

a) the patient was entitled under the relevant Health Acts to the healthcare in question,
b) the healthcare was necessary to treat or diagnose a medical condition of the patient,
c) the healthcare was the same as, or equivalent to, healthcare that would have been made available to the patient in the State, in the particular circumstances of the patient,

Costs Incurred under the Scheme

Unlike the Treatment Abroad Scheme, patients are required to pay for treatment under the CBD and will then be reimbursed by the HSE upon his/her return to Ireland. It is important to note that reimbursement is confined to the costs of the care itself and that the rates of reimbursement cannot exceed the cost of provision of the care if it were provided in the Irish public health service.

All other costs associated with accessing care abroad under the CBD are a matter for the patient and will not be reimbursed by the HSE.

Additional Information

Further information on the Cross Border Directive can be accessed at www.hse.ie/eng/services/list/1/schemes/cbd/ and also by phone at 056 7784551.

Appendix 5

PAC Request - As per Table 6 of the HSE Financial Statements, link the Department of Health Grant to the Appropriation Account.

DoH Response:
The following tables reconcile the Annual Financial Statement to the Appropriation account:

HSE Annual Report and Financial Statements 2017	**€,000**	**€,000**
Department of Health Revenue Grant - pages 146 & 157	**14,156,207**	
Department of Health Capital Grant - pages 147 & 157	**439,914**	
Total Department of Health Grant received		**14,596,121**

Department of Health Appropriation Account 2017

	Revenue			
	SUBHEAD	**€,000**		
H	Pension lump sum payments	108,570		
I.1	HSE – Dublin Mid Leinster Region	1,523,537		
I.2	HSE – Dublin North East Region	1,362,203		
I.3	HSE – South Region	2,114,444		
I.4	HSE – West Region	2,342,474		
I.5	Grants in respect of certain other health bodies including voluntary and joint hospital boards	2,532,125		
J.1	Health agencies and similar organisations (part funded by the National Lottery)	2,700		
J.2	Payments to Special Account – Health (Repayment) Act 2006	0		
J.3	Payment to special account established under section 4 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006 – Insurance Scheme	785		
J.4	Service developments and innovative service delivery projects	30,010		
J.5	Payment to State Claims Agency	283,221		
J.6	Economic and social disadvantaged (dormant account funding)	883		
K.1	Primary care reimbursement services and community demand led schemes	2,809,033		
K.2	Long term residential care	942,522		
L.4	Information services and related services for health agencies	103,700	**14,156,207**	
	Capital			
L.2	Building, equipping and furnishing of health facilities and of higher education facilities	382,380		
L.3	Building, equipping and furnishing of health facilities (part funded by the National Lottery)	2,539		
L.4	Information services and related services for health agencies	54,995	**439,914**	
	Total Grant Paid to HSE			**14,596,121**

Appendix 6
PAC Request - An up to date note on the National Children's Hospital funding

DoH Response:
The new children's hospital is the most significant capital investment in healthcare in the history of the State. May 2017 marked the commencement of the main construction works. The site at St James's Hospital is now fully cleared and main construction works are progressing well. Also being developed are the two new Paediatric Outpatient and Urgent Care Centres at Connolly Hospital Blanchardstown and at Tallaght University Hospital. The Paediatric Outpatients & Urgent Care Centre at Connolly will open in 2019 followed by the second one at Tallaght in 2020 in advance of the opening of the main hospital in 2022.

The Children's Health Bill 2018 is currently before the Oireachtas. This Bill provides for the establishment of a new public body, Children's Health Ireland, to run the new children's hospital. Subject to enactment and commencement, this body will take over the paediatric services currently provided by Our Lady's Children's Hospital, Crumlin; by Children's University Hospital, Temple Street; and by Tallaght Hospital. These services will in due course transition to the new children's hospital on the campus shared with St. James's Hospital, and the outpatient and urgent care services at Tallaght and Connolly.

Children's Hospital Expenditure
There are broadly three constituent parts to the expenditure relating to the children's hospital group and new children's hospital:

1. The day-to-day operating costs of Crumlin, Temple Street and Tallaght Paediatric services – these are funded as Section 38 bodies and shown in Appendix 1 of the HSE's Annual Financial Statements, analysed into capital and revenue.

2. Capital funding to plan, design, build, furnish and equip the new children's hospital and associated outpatient and urgent care centres is provided from the Department of Health's Vote under Capital Services Sub Head L2 – Building, equipping, and furnishings of health facilities.

   Capital expenditure is provided to the National Paediatric Hospital Development Board (NPHDB) through the Health Service Executive. The HSE is the sanctioning body for the new children's hospital and urgent care centre programme and principal capital funder for the programme - which must be managed within the overall Health Capital Plan. The HSE provides funding for the new children's hospital based on approved plans submitted by the NPHDB.

   The HSE's role is to provide technical and capital expenditure oversight of the project and evaluate all claims for capital expenditure submitted by the NPHDB to ensure that capital funds (including spend on direct project, planning, consultants and design team) are spent appropriately.

   The NPHDB's role is to commission the building and equipment prior to handover to the new body being established under the Children's Health Bill 2018, which will operate the new children's hospital. The HSE grant (mostly capital) is shown in Appendix 1 of the Annual Financial Statement.

The NPHDB is audited by the Comptroller and Auditor General. Expenditure of the NPHDB is shown in their own Annual Financial Statement,

Capital Expenditure to date
2017 – €68m
2018 – €51m (end July 2018).

3. The Children's Hospital Programme is the integration project which includes the change management needed in order for the three existing paediatric hospitals to become one and the actions required to ensure the smooth, safe and efficient transition of services to the outpatient and urgent care centres and new children's hospital. The integration of three existing hospitals under one new legal entity established under statute, the extension of services to four sites on opening of the satellite centres, and the transfer of services to the new hospital at St James's represents a highly complex project in its own right. Its aim is to ensure that:
    - The three existing independently-governed hospitals are successfully integrated into one organisation.
    - The new hospital and outpatient and urgent care centres are integrated with their campus partners.
    - The new buildings are successfully commissioned and services successfully transition.
    - The ICT programme aligns with the capital and overall change management programmes.

Expenditure in relation to the Children's Hospital Programme is recorded in Children's Hospital Programme cost centres across the various pay and non-pay expenditure headings in the HSE's Annual Financial Statements.

Once the legal entity, Children's Health Ireland, is established, the programme activities outlined at 3 above will be funded by the HSE by way of an annual grant under S.38 and the expenditure will be shown in the Annual Financial Statement of Children's Health Ireland, and audited by the C&AG.

Appendix 7

PAC Request - A note following the review of recovery of monies from insurance companies

DoH Response:

Overview of the Issue

Under "direct billing" public hospitals facilitate arrangements such that where a patient has private health insurance and wishes to avail of this during a hospital stay, the financial transaction is handled directly between the hospital and the patient's insurer. In the course of 2017 and continuing in 2018, private health insurers have engaged in a number of practices that have negatively impacted on private inpatient income generation and collection in the public hospital system.

1. Insurers have sought to limit the application of private inpatient charges (under Section 55 of the Health Act 1970) to the period from when a patient signs a Private Insurance Patient (PIP) Form, a document introduced in 2014 at the behest of the insurance companies. Such forms are often not signed at the beginning of a patient's stay and in some cases several days may elapse before completion.

   In addition Insurers have instigated a look-back of claims since the introduction of the PIP form in 2014 and in cases where the PIP form was signed at a date later than the date of admission they are unilaterally "clawing back" the monies paid for any portion of a private patient's stay which was prior to the signing of the PIP form.

2. In addition to the lookback/clawback practice, health insurers have also initiated a campaign aimed at discouraging people who are admitted on foot of an Emergency Department (ED) attendance from using their private health insurance, instead encouraging them to consider remaining as public patients.

   It is important to highlight that all persons who are ordinarily resident in Ireland are entitled to access hospital services as public patients and the public hospital system has a responsibility to provide that public healthcare. However, should a patient opt to access private hospital services hospitals are required to charge for that service.

The combined impact of these actions by the Insurers has been a reduction in the level of private patient income being collected by the public health system.

Legal Advice

This issue has been the subject of extensive examination by the Department and the HSE. This has included the securing of legal advice from the Attorney General.

On foot of this process the Department and the HSE are working to address the issues which have arisen. Given that issues of a commercial and legal nature are involved, and in order to protect the interests of the State it is not possible at this point, pending further engagement with the insurers, to provide further detail in relation to how the Department and the HSE intend to address the issues that have arisen other than to state that the strategy adopted will seek to fully realise the best outcome for the State based upon the legal considerations applying.