



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

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Ms. Éilis Fallon,
Committee Secretariat,
Public Accounts Committee,
Leinster House,
Dublin 2.

Re: Procurement arrangements with Sec 38s & 39s (PAC32-I-1275)

Dear Ms. Fallon,

I refer to your correspondence to Ms. Anne O'Connor, Interim Director General, Health Service Executive and the request for briefing notes on two issues concerning procurement arrangements with Section 38s and 39s.

Please find below for the attention of the Public Accounts Committee members briefing notes on the two issues as requested.

If any further information is required please do not hesitate to contact me.

Yours sincerely,

Ray Mitchell
Assistant National Director
Parliamentary Affairs Division

Encl.

Briefing Note for the Public Accounts Committee

1. A note on the procurement arrangements for section 38 and 39 organisations in relation to the expenditure of public monies; and

Response:

1. A primary function of the HSE is to manage and deliver health and personal social services. It can either do this itself or enter an arrangement with a service provider to deliver the service. The legal framework available to the HSE for funding such service providers is set in sections 38 and 39 of the Health Act 2004 -

- Under Section 38, the HSE may enter into an arrangement with a body or person for the provision of health and personal social services on behalf of the HSE; the employees of such a body are public servants.
- Under Section 39, the HSE may give assistance to any person or body that provide services similar or ancillary to those provided by the HSE; the employees of such bodies are not public servants.

2. Health agencies funded by the HSE in this manner vary in scale and complexity, ranging from large acute hospitals to local community-based organisations providing personal social care services.

3. The HSE approved grants of around €3.876 billion to almost 2,300 health agencies during 2016 for the delivery of a range of services. In all cases, grant funding is disbursed in advance of service delivery with the agreement of the Department of Public Expenditure and Reform (DPER).

4. Some of the service providers have access to other funding streams such as patient charges, fundraising, other government departments and State agencies. However, many rely substantially on the Exchequer funding they receive from the HSE to fund the services they provide.

5. The services provided on behalf of the HSE by grant funded agencies normally fall under one of the following categories — acute hospital services, disability, older persons, mental health, social inclusion, palliative care, primary care, health and wellbeing services. The HSE has two types of contractual agreements with these agencies that are in the main tailored to reflect the level of funding -

- service arrangement — health agencies in receipt of funding in excess of €250,000
- grant aid agreement – health agencies in receipt of funding less than €250,000.

6. The HSE previously submitted information to the Committee on the governance and oversight arrangements that are in place to monitor the grant aid provided to section 38's and 39's, including information on the HSE's Compliance Unit. In summary grants to health agencies are administered through nine Community Health Care Organisations (CHOs) located around the country and through six hospital groups. They are responsible for the negotiation of service arrangements and grant aid agreements, payment of grants to the agencies and monitoring and oversight of the terms and conditions of the agreements.

In relation to the issue of the service level agreement with Inspire, HSE CHO 8 (Laois/Offaly, Longford/Westmeath, Louth/Meath), Mental Health Services approached three organisations who are currently involved in providing community rehabilitation initiatives in the CHO8 area - Praxis, Inspire and Hail. Following discussion with all three organisations a decision was made to proceed with Inspire based on their submission and on the advice of the HSE's rehabilitation consultant doctor involved in developing the initiative.

Inspire is a charity and social enterprise who's aim is wellbeing for all delivering mental health, learning/intellectual disability, autism, addiction and workplace wellbeing services across the island of Ireland.

2. A note on any conflict of interest that may arise in relation to any former managers of the HSE being employed by section 38 and 39 organisations.

Response:

Employees of the HSE do take up employment opportunities in Section 38 Agencies on an on-going basis, and vice versa. In general, an employee's behaviour with the HSE is governed by their contract of employment, and the HSE's Code of Standards and Behaviours. Employees of the HSE are bound by a Confidentiality Clause which is a standard term of all contracts of employment that issue from the Organisation. This clause acknowledges that employees will have access to confidential information concerning the business of the HSE. The clause provides that such records and information is strictly confidential and unless acting on the instructions of the HSE, the employee shall not discuss or disclose any information of a confidential nature except in the performance of normal duty. This duty of confidentiality continues to apply after the contract terminates.

All employees are required under the terms of their contracts of employment to return all records and property belonging to the Health Service Executive which are in their possession or under their control upon the termination of employment.

The HSE Code of Standards and Behaviour is an important element of the overall framework within which all employees are expected to work in the HSE and wider Health Services. It sets out the standards required of employees in the discharge of their duties. These standards of behaviour and values support a high quality public service, based on high levels of personal performance and responsibility. The HSE Code of Standards and Behaviour was introduced in accordance with section 25(3) of the Health Act 2004 and the Ethics in Public Office Acts and it is a contractual obligation for all employees of the HSE to abide by the Code of Standards and Behaviour.

The Code of Standards and Behaviours provides that in the performance of their duties employees must:

- a) Maintain high standards in service delivery.
- b) Observe appropriate behaviour at work.
- c) Maintain the highest standards of probity.
- d) Support and be loyal to the HSE.

Under the terms of the Code, the requirements in relation to confidentiality continue to apply upon retirement/resignation.

A copy of the Code can be accessed [here](#). This Policy is part of a suite of policies on employee behaviour and should be read in conjunction with the HSE's [Policy on Good Faith Reporting](#) and its [Policy on Fraud](#).

**Health Service Executive
February 2019**