

Pre-Legislative Scrutiny of the General Scheme for a Health (Amendment) Bill

Opening Statement Joint Committee on Health

23 November 2022

Good morning, Chairman and members. Thank you for the invitation to meet today to discuss this General Scheme for a Health (Amendment) Bill 2022. My name is Laura Casey, I'm a Principal Officer in the Social Care Division in the Department of Health and I am joined by my colleague, Nuala O'Reilly, Assistant Principal.

Background

Today, I would like to outline the background to and rationale for this draft legislation, before briefly addressing its main provisions.

The purpose of the Bill is to introduce legislation to amend the Health Act 2007, to enhance aspects of the regulatory framework for designated centres regulated under the Act. This includes residential centres for older persons, people with disabilities and children. The ultimate objective of these proposals is to drive improvements for people living in these centres.

By way of background - the Health Act 2007 established the Health Information and Quality Authority (HIQA) and the Office of the Chief Inspector of Social Services. It also provides for a scheme of registration and inspection of the aforementioned residential services and for the making of regulations and the setting of standards on safety and quality in respect of these residential services. The Chief Inspector of Social Services monitors compliance with these regulations and standards.

A key driver for this legislation is the COVID-19 Nursing Homes Expert Panel report. As the Committee will be aware, the Expert Panel made a series of recommendations, not only in relation to the response to COVID-19, but also in relation to reform across the nursing home sector. This legislation addresses two areas of recommendations - (1) the requirement to modernise and enhance the regulatory framework governing nursing homes and (2) the need for mandatory reporting of data by nursing home providers. The need for reform of the regulatory framework has also been identified in a number of reports from HIQA.

It has been agreed that a programme of regulatory reform in the nursing home sector will be pursued on a phased basis, with initial enhancements provided for in this legislation. The intention is that these initial enhancements will span two thematic areas: firstly, providing for a broader suite of enforcement tools available to the Chief Inspector of Social Services and secondly, the collection, sharing and publication of key data on designated centres.

As part of a second phase of work, the Department will undertake a further, more comprehensive review of the regulatory framework in the coming year.

Enforcement Powers

Regarding the first thematic area, enforcement, the intention is to introduce new enforcement powers for the Chief Inspector to issue advance notices, non-compliance notices and if necessary, obtain urgent orders through the courts. The main provisions for this are set out under Head 6 with related or consequential amendments under Heads 7, 12 and 15.

The intention of these proposals is twofold. Firstly, the introduction of advance notices and non-compliance notices will establish a more proportionate set of powers and tools for the Chief Inspector focused on bringing a provider into compliance and driving service improvement as opposed to current powers which are limited to attaching restrictive conditions to a registration or cancelling registration.

Secondly, the introduction of urgent orders will provide the Chief Inspector with a means to react more quickly and effectively to urgent issues where it is believed that there is an immediate, material, adverse impact on the health, welfare, care or safety of a resident. Head 15 will introduce a number of offences carrying a proportionate range of targeted penalties to ensure the effective operation of the advance notices, non-compliance notices and urgent orders.

In addition to the introduction of these new enforcement tools, a number of enhancements and clarifications to existing enforcements provisions are also provided.

Head 8 provides the Chief Inspector with the express power to remove a condition attached to a registration, removing the need for the registered provider to make an application.

Heads 9, 10 and 11 provide for an alignment in the timelines for registered providers to make representations in relation to a proposed decision by the Chief Inspector under Sections 50, 51, and 52 or to appeal a decision to the

District Court under Section 55 with court rules. These sections relate to decisions to impose or vary conditions on registration or to cancel a registration.

Head 14 provides a definitive, clear legal basis for the Chief Inspector to enter a premises which is unregistered, to inspect it where he or she has reasonable grounds to believe that the business of a designated centre is being carried out on that premises. This will ensure the protections afforded to residents of registered designated centres are extended to those who are in centres which have not been included in the registration and accompanying inspection regime.

Collection, Sharing and Publication of Key Data

Turning now to the second thematic area; the collection, sharing and publication of key data. Given the nature of the nursing home sector in particular, with over 570 separate, registered entities, and the majority in private ownership, regular collation of key data on a voluntary basis, in a timely manner, is challenging. Access to good quality data is crucial to support national policy-making and service planning. It is also the case that the publication of data can improve transparency, drive service quality improvement and support prospective residents and their families to make an informed choice regarding their nursing home care.

The intention of Head 4 is to provide for a new function for the Chief Inspector to establish and maintain a reporting mechanism for the collection of key data in relation to designated centres. Once collected and then pseudonymised, this data will be shared with relevant Ministers and relevant State agencies including HIQA, HSE and Tusla. This Head also provides for publication of prescribed data

relating to designated centres for older people to improve service user choice and transparency in the sector.

As set out under Head 17, the operation of this reporting mechanism, including the data that will be collected, shared and published, will be determined by Regulations made by the Minister for Health or Minister for Children, Equality, Disability, Integration and Youth as appropriate. Given that responsibility for the designated centres concerned rests with two separate Ministers, two similar but separate sets of provisions are set out in this Head.

It should be noted that while the enabling provisions under Head 4 will provide for the reporting of data for all designated centres within the scope of the Health Act 2007, they will not apply until regulations are made for each type of designated centre by the appropriate Minister.

A small number of additional enhancements and clarifications are provided for in the draft legislation. Head 5 will provide an express provision for the sharing of information by the Chief Inspector with HIQA. Heads 13 and 15 will provide that it is an offence to provide false or misleading information to the Chief Inspector. Head 16 provides that in any proceedings for an offence under the Act, the burden of proof shall be on a registered provider who is relying on the defence of reasonable excuse.

Finally, while the impetus for the proposed regulatory changes has arisen in relation to nursing homes in particular, it is intended that the proposed amendments, in the main, will apply to all designated centres covered by the Act.

In concluding, it is important to reiterate that the ultimate objectives of these provisions are to enhance service provision and to improve the protections for residents. We are also aware that any new provisions must be proportionate, and the draft legislation has been informed by stakeholder engagement and developed with this principle in mind.

Again, I wish to thank the committee for giving its time today and we look forward to this opportunity to discuss the proposals.