

Charges for In-Patient Services National Guidelines

Legislative Framework

The legal basis for levying a charge on a person for long stay in-patient services is:

Section 53(2)(a) of the Health Act 1970 as amended by the Health (Amendment) Act 2005.

Health (Charges for In-Patient Services) Regulations 2005 S.I. No. 276 of 2005

Health (Charges for In-Patient Services)(Amendment) Regulations 2006

Section 53(2)(a) of the Health Act 1970 as amended by the Health (Amendment) Act 2005 provides that the Minister for Health and Children 'shall, with the consent of the Minister for Finance, make regulations providing for the imposition of charges for in-patient services in specified circumstances on persons to whom the in-patient services are provided or on specified classes of such persons' and Section 53(2)(b) allows for the Ministers 'specifying the amounts of the charges or the limits to the amounts of the charges to be made'

In-Patient Services is defined at Section 51 of the Health Act 1970 as meaning 'institutional services provided for persons while maintained in a hospital, convalescent home or home for persons suffering from physical or mental disability or in accommodation ancillary thereto'

Legal opinion received by the HSE advises that the legislation and the regulations apply to all persons who are provided with in-patient services either by the HSE or by an agency/service provider on behalf of the HSE (service providers who are funded under Section 38 of the Health Act 2004) where

- (a) those persons are residing in a long stay institution, or
- (b) those persons with an intellectual, physical or mental disability are residing in community type residences where nursing or medical care is provided.

Where a person is in receipt of in-patient services, they are within the scope of Section 53 as amended, and are thus liable for a charge only in the manner identified in the Regulations. Legal advice received states that persons who are accommodated in residential settings by the HSE or by an agency/service provider acting on behalf of the HSE (service providers who are funded under Section 38 of the Health Act 2004), at which they are provided with medical or nursing care, are clearly in receipt of in-patient services and thus liable to charge.
Patients/Clients Charges

Charges

The regulations provide the statutory basis for the imposition of charges for persons in receipt of inpatient services whether or not such persons have full or limited eligibility. The regulations provide for two different classes of person on whom charges can be levied and the maximum charge which can be imposed in respect of each class. With effect from 14th July 2005, charges may be levied on persons who are in receipt of in-patient services in premises where nursing care is provided on a 24 hours basis, and in premises where nursing care is not provided on a 24 hour basis. The Regulations provide for a different level of charge in respect of each class as follows:

Class 1

Class 1 refers to people in receipt of in-patient services on premises where nursing care is provided on a 24 hour basis on those premises. In this case, a weekly charge of €175.00 can be levied or the total weekly income of that person less €33.00, whichever is the lesser.

Class 2

Class 2 refers to people in receipt of in-patient services on premises where nursing care is not provided on a 24 hour basis on those premises. In this situation, a weekly charge of €130.00 can be levied, the total weekly income of that person less €64.00, whichever is the lesser.

Nursing care means, care provided by a fully qualified and state registered nurse. It does not mean care provided by a nurse's aide, care assistant or house parent.

In relation to Class 1, nursing care means that there is a nurse physically present on those premises on a permanent basis, i.e. 24 hours basis, all day, every day.

In relation to Class 2, nursing care on these premises means that there is a nurse rostered for duty for less than 24 hours a day. Where a nurse is not rostered for duty, these regulations do not apply.

Commencement of Charges

Under Section 4(b)(6) of the Health (Amendment) Act 2005 a person shall be charged where in-patient services have been provided to that person for a period of not less than 30 days or for periods aggregating not less than 30 days within the previous 12 months from the commencement of the regulations i.e. 14th June 2005. As a result, charges can only recommence from 14th July 2005.

When the patient has been receiving in-patient services for more than 30 days continuously, the charge may be imposed. However if the patient has not been in receipt of in-patient services for more than 30 days continuously, a check should be carried out to establish whether the patient has received in-patient services for an aggregate of 30 days in the previous 12 months. If so, a charge can be raised. Where a patient has left in-patient care for a period of more than 12 months, then no charge can be imposed for the first 30 days of the next period of in-patient care.

Exemptions

Under Section 4(b)(3) of the Health (Amendment) Act 2005 a charge is not payable where in-patient services concerned are provided to:

- A person under 18 years of age
- A woman in respect of motherhood
- A person detained involuntarily under the Mental Health Acts 1945 to 2001
- A person who is in hospital for the care and treatment of patients with acute ailments (including psychiatric ailment) and requires medically acute care and treatment in respect of any such ailment
- A person who in the opinion of the HSE has contracted Hepatitis C directly or indirectly from the use of Human Immunoglobulin Anti-D or the receipt within the State of another blood product or a blood transfusion.

Under the Health (Charges for In-Patient Services)(Amendment) Regulations 2006, any person receiving services for the diagnosis and treatment of infectious diseases as prescribed under Part IV of the Health Act 1947 are excluded from charges under Health (Charges for In-Patient Services) Regulations 2005.

Reduction or Waivering of a Charge

Section 4(b)(4) of the Health (Amendment) Act 2005, provides that the HSE may reduce or waive a charge imposed on a person if it is of the opinion that, having regard to the financial circumstances of that person, it is necessary to do so in order to avoid undue financial hardship in relation to that person.

A person or their representative may make a request to the Authorised Officer as designated by senior management, to reduce or waive the charge for maintenance on financial hardship grounds. Financial Hardship needs to be demonstrated to the satisfaction of the Authorised

Officer that the money remaining with the person having taken the charge into account is insufficient to meet their reasonable needs.

Calculation of Charges

All new patients/clients who commenced receiving in-patient services from 14th July 2005, should be financially assessed in order to establish their ability to pay maintenance charges. In this regard an Assessment Form (Appendix A) should be completed and submitted to the Authorised Officer as designated by senior management, for the determination of the relevant charge to be raised. The patient/client or next of kin where appropriate should be advised of the charge determined for in-patient services.

All patients/clients that were receiving in-patient services as at 14th July 2005, should be identified and their ability to pay charges should be reviewed immediately. Where there is sufficient information on file at anytime from 2004 to carry out this review, patients/clients may not be requested to complete the Assessment Form. In such cases the HSE may arrange same. In cases, where it is established that the patients/clients sole source of income is a Department of Social and Family Affairs (DSFA) payment, the current rate of this payment may be used to carry out an assessment regardless of whether the information on file predates 2004. However, where the patient/client has a separate source of income and same needs to be verified, an assessment form should be completed by the patient/client or their next of kin for a decision on the relevant charge. Assessment Forms should be filed on each patient's/client's file. The patient/client or next of kin where appropriate should be advised of the revised charge for in-patient services.

If a person is an in-patient for five out of seven days then the charge should be made pro-rata. The Authorised Officer should calculate the weekly charge as usual and then take the proportional amount e.g. 5/7

Long Stay Facilities (All Care Groups)

The following criteria may be used to establish the patient's/client's charge:

Single/Widowed Person.

In the case of a single/widowed person:

calculate total weekly income
less
minimum allowance of €33 (or €64 for Class 2) per week
less
allowable expenses (See below).

Where the amount calculated is greater than €175 (or €130 for Class 2), the weekly charge will be €175 (or €130 for Class 2). Where the amount calculated is less than the maximum charge payable, the charge will be the amount calculated.

Married /Cohabiting

In the case of a married/cohabiting couple - only income which can be attributed to the patient/client should be assessed. According to legal opinion, if the total income of the married/cohabiting couple is solely in the spouse's name and no income can be attributed to the patient/client - no charge can be applied.

According to legal advice received - if the patient is a 'qualified adult' on their spouse's DSFA pension, no charge should be raised in respect of this income unless the 'qualified adult' proportion is paid directly and on a regular basis to the patient (not the spouse). If the patient has other income in addition to the 'Qualified Adult' allowance, such income should be

included in the assessment for the purposes of determining the charge for in-patient services.

If the patient is the holder of the Department of Social and Family Affairs' pension but his/her spouse is a qualified adult on the pension – the patient's income can be assessed based on total income less an amount equivalent to the single rate of the State Pension (Non-Contributory).

If both husband and wife are in long term care – an assessment should be carried out separately for the husband and wife based on the income that they have in their own name. If there is a qualified adult allowance, it should be assigned to the person who is in receipt of the payment from the DSFA.

(a) Patients with their own Income

For patients/clients with their own income, the following assessment should be applied:

calculate total weekly income of the patient/client
less
minimum allowance of €33 (€64 for class 2) per week
less
allowable expenses

Where the amount calculated is greater than €175 (or €130 for Class 2), the weekly charge will be €175 (or €130 for Class 2). Where the amount calculated is less than the maximum charge payable, the charge will be the amount calculated.

(b) Married/Cohabiting Couple – Spouse at Home has no Income

In the case of a married/cohabiting couple where the spouse at home has no income or a weekly income of less than the current State Pension (Non-Contributory) rate – the following assessment should be applied:

calculate total weekly income of the patient/client
Less
SP (NC) rate (to allow for spouse at home)
Less
minimum allowance of €33 (€64 for class 2) per week
Less
allowable expenses

(c) Child Dependants of Patient

Where there is a child dependent of the patient an amount equivalent to the Adult Dependent Allowance for the State Pension Non-Contributory) should be allowed against the assessed income to cover the cost of the child's maintenance. If the spouse at home has an income in excess of the SP (NC) rate – this allowance can be divided in two.

Community Type Residences (All Care Groups)

Under the Health (Charges for In-Patient Services) Regulations 2005, individuals living in community type residences where there is nursing care provided are liable for in-patient charges. Community Type Residences include mental health/disability hostels. Residents of these hostels live largely independent lifestyles, assisted by appropriate supports, with an objective of realising their maximum potential to integrate with the local community.

In light of the above and the additional expenses incurred as a result of this independent lifestyle, the following criteria may be used to establish the patient's/client's charge:

calculate total weekly income of the client/patient less

SP (NC) rate (to allow for spouse at home, where applicable)

less

minimum allowance of €33 (or €64 for Class 2) per week

less

*Socialisation/Care Plan Expenses

less

allowable expenses (See below).

Where the amount calculated is greater than €175 (or €130 for Class 2), the weekly charge will be €175 (or €130 for Class 2). Where the amount calculated is less than the maximum charge payable, the charge will be the amount calculated.

The charge calculated includes any 'Contribution to Weekly Running Costs' of the hostel (e.g. the 'kitty' system). The 'Contribution to Weekly Running Costs' would normally include such outgoings such as food, heat, light, refuse charges etc. In some cases, this contribution may have been paid through a 'kitty' system or directly to service provider.

The charge is now set at a maximum of €175 per week for Class 1 institutions and €130 for Class 2 institutions, However, for administration purposes, the relevant proportion of the charge which relates to 'Contribution to Weekly Running Costs' can be calculated and used in accordance with the old 'kitty' system to ensure that the independence of the clients is not compromised.

*Socialisation/Care Plan Expenses relates to additional expenses incurred as a result of greater independence and integration into the community.

Definition of Total Weekly Income

Total Weekly Income includes income such as DSFA Payments, Occupational Pension, Overseas Pension, Salary, Income from Property and Rent and Income from Savings and Investments.

For a married couple, only income which can be attributed to the patient/client can be assessed.

Earnings from employment of a rehabilitative nature, up to a maximum of €120.00 per week, should be disregarded for the purpose of assessment for in-patient charges.

Any monies received by way of Training Allowance from an Organisation while undergoing a course of rehabilitation training should be disregarded for the purpose of assessment for charges for in-patient services.

According to legal advice received, there is no provision under the Health (Charges for In-Patient Services) Regulations 2005 to assess assets in calculating a charge. The advice further states that non-income producing assets cannot be taken into consideration in determining whether a charge can be levied. However, if assets are actually generating income then they can be taken into consideration – such as house rental etc. For example in relation to savings, it is only the actual interest on these savings that can be taken into account when raising a charge.

For married/cohabiting couples – only income generated from savings/investments which are in the patient's name can be assessed.

In the case of a joint savings/investment account with spouse/other parties – half (or relevant proportion if more than two parties) of the total interest generated on these savings can be assessed.

Where all of the savings/investments are in the spouse's name solely – the interest generated on these savings/investments should not be included in the assessment for charges for in-patient services. Please note that if the patient is a ward of court, the appreciated value on the roll over fund from investments by the Courts Service on behalf of the Ward should not be taken into account when determining a charge for in-patient services. If the Ward of Court is in receipt of other income such as a pension, rental income etc., a charge can be raised on this income.

Allowable Expenses

Charges may be reduced or waived in order to avoid undue financial hardship having regard to the patient's/client's financial circumstances. The following expenses may be allowable when calculating the appropriate charge:

- Dependant child
- Life Assurance
- Medical Insurance
- Medical Costs (including prescription costs)
- Rent/Mortgage Allowances
- Loans/Repayments
- Maintenance Payments
- Travel Costs
- Rehabilitative Employment Allowance
- Other Outgoings

Dependant Child: For the purposes of assessment, the charge may be waived if the person, who has been assessed for a charge, has a child dependant. When completing the Assessment Form in a case where there is one child dependent, a personal allowance may be deducted of the current adult dependent rate. For each additional child dependent, a further allowance of the current adult dependent rate may be allowed when completing the financial assessment.

Please note that where the spouse is aged less than 66 years, it is possible that the spouse will qualify for a SP (NC) pension when he/she reaches 66 years. The financial assessment may be reviewed at this stage. If a waiver is made on the basis of a child dependent, a review should be carried out as necessary.

The Social Welfare (Consolidation) Act 1993 defined dependants as follows:

'Child dependant' means in relation to a beneficiary any child not being an adult dependant who is dependant on that beneficiary for support and who is under the age of 18 years or is over the age of 18 years and is regarded as attending a course of study' (up to the age of 22 years when pursuing a course of study)

For the purpose of these guidelines, the above interpretation may be used when deciding whether to reduce or waive a charge due to a person having a child dependent.

Life Assurance: Where the patient has a life insurance policy, then an allowance may be made for the cost of this policy, provided the sum assured represents an appropriate level of cover to fund the cost of funeral expenses.

Where the sum assured is for a figure which is in excess of the reasonable cost of funeral expenses, the premium payable may be apportioned to cover the allowable expenses. The allowance under this heading is provided only for the patient/client. No allowance may be

provided for other members of the family. Documentary evidence of the premium should be submitted by the person or their representative.

Medical Insurance: Where a person has a current medical insurance policy, allowance may be made for a reduction of the charge where necessary to facilitate the continued payment of premium. Documentary evidence of the premium should be submitted by the person or their representative.

Medical Costs (including prescription costs): An allowance may be made for exceptional medical costs incurred by the patient/client and/or their dependent spouse or children. In cases where the patient/client has full eligibility, allowable expenses may only include public medical costs which are not covered by the medical card scheme. Exceptional medical costs may be allowable to patients/clients who do not have full eligibility, where such costs are incurred as part of treatment provided under the public health system or where costs are being incurred under the drugs payment scheme. Documentary evidence should be sought to support the application.

Rent/Mortgage: The cost of rent/mortgage of the patient's/client's home is an allowable expense in order to provide for and facilitate the security of tenure on his/her home. However, it is not allowable in cases where there is a person residing in the patient's/client's home who is not a dependent of the patient/client. The Authorised Officer should seek documentary evidence to support the application.

In Community Type Residences, allowance should be made for any outgoings on rent payable by the client.

Loans/Repayments: Allowance may be made to reduce the charge imposed where the person has bank/credit union loans/debts which need to be repaid. If savings/assets exist which could be used to reduce or repay the debt, this option should be exercised before any allowance is made. Part allowance may be made where a loan in the name of the partner/spouse was taken out for the benefit of both parties. Documentary evidence should be sought to support the application.

Maintenance Payments: Where a court order exists for maintenance payments to a spouse, this may be taken into account when calculating the charge due to ensure undue hardship does not exist. Documentary evidence should be sought to support the application.

Travel Costs: Where the person's dependent spouse or child has to rely on public transport to visit the patient, a claim for an allowance may be considered as an exceptional expense but it is envisaged that this allowance would only be approved in very exceptional cases. Petrol costs are not allowable under this heading. Documentary evidence should be sought to support the application.

In Community Type Residences, clients may have personal travel expenses that could be considered.

Earnings of a Rehabilitative Nature: Earnings from employment of a rehabilitative nature, up to a maximum of €120 per week, should be disregarded for the purpose of the assessment.

Other Outgoings: Other exceptional outgoings may be considered based on its merits. The Authorised Officer may only allow such costs in very exceptional cases. Documentary evidence should be sought to support the application.

Where expenses are being allowed as part of the assessment process, documentary evidence should be obtained and attached to the assessment file.

Appeals

In cases where the patient/client or their next of kin as appropriate, are dissatisfied with the Authorised Officer's decision regarding the amount of the charge, they may appeal the decision to the relevant Appeals Officer. The patient/client or the next of kin where appropriate, should be advised of the appeals process on being notified of the charge.

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