Healthcare: the customer agenda: charting the future of the Irish market for health insurance

GUIDE TO THE NURSING HOME LEGISLATION

January 1995

GUIDE TO THE NURSING HOME LEGISLATION

Department of Health

January 1995

CONTENTS

1. INTRODUCTION

1.1 The purpose of this guide to the Nursing Home Legislation is to explain the provisions of the legislation and to offer guidance on interpreting the Act and Regulations. It is written primarily for health board staff charged with responsibility for implementing the legislation but it should also be useful to anyone affected by its provisions, in particular nursing home proprietors and staff and applicants for subventions. Those interested should also consult the Code of Practice for Nursing Homes which complements this Guide.

1.2 The main provisions of the Health (Nursing Homes) Act, 1990 in respect of nursing homes are:-

(i) to place a statutory duty on nursing home proprietors to apply for registration and on health boards to register nursing homes and their proprietors and to maintain a register of such homes;

(ii) to bring voluntary and private nursing homes under a common system of registration and inspection;

(iii) to provide for regulations to govern the standards of care in nursing homes;

(iv) to introduce new subvention arrangements for the maintenance of dependant persons in nursing homes by health boards.

The Regulations

1.3 There are three sets of Regulations concerning nursing homes made under the Act. The Nursing Homes (Care and Welfare) Regulations, 1993 are made under Section 8 of the Act and set out the standards of accommodation and care which must be provided in nursing homes. The Nursing Homes (Fees) Regulations, 1993, made under Section 8 of

the Act, set out the fees which nursing home proprietors must pay to health boards on application for registration. The Nursing Homes (Subvention) Regulations, 1993 are made under Section 7 and set out the procedures to be followed by applicants for nursing home subventions and by health boards in assessing applications. A further set of Regulations entitled the Health (In-patient Services) Regulations and made under the Health Act 1970, also affect nursing home care.

1.4 The Guide also includes recommended standards in relation to certain aspects of nursing home care which may be used in association with the Nursing Homes (Care and Welfare) Regulations to assess the standards of staffing, care or accommodation in a home. However, neither the interpretation of the legislation in this Guide nor the recommended standards for the inspection of nursing homes has legal effect. Legal advice should be sought if a legal interpretation of the Act or Regulations is required.

Other Requirements

1.5 Nursing homes are governed by other laws and regulations in addition to the Health (Nursing Homes) Act, 1990 with which nursing home proprietors are obliged to comply. Health boards are not responsible for ensuring that nursing homes comply with other laws or regulations. It is the responsibility of the registered proprietor to be familiar with the content of other legislation.

Conflict of Interest

1.6 The possibility of a conflict of interest on the part of medical, nursing or other professional staff of health boards who have a direct interest in a home, or whose spouse has a direct interest in a home may arise. Such an interest should be disclosed. Such staff should not be designated officers for inspection purposes under the Act nor should they be involved in the making of any decision affecting the home.

Discretion

1.7 Because of the divergence in size, structural layout, number of residents and other factors, some discretion is required by health boards in the application of the Nursing Homes (Care and Welfare) Regulations.

1.8 Section 10 of the Act provides a statutory basis for the boarding out of persons by health boards. However, this aspect of the legislation is not covered by the Guide as boarding out is intended as a way of caring for persons who are frail but ambulant and not in need of nursing home care. Boarding out of such persons is governed by the Boarding Out Regulations, 1993. S.I No. 225 of 1993.

2. THE HEALTH (NURSING HOMES) ACT, 1990

2.1 Definitions

2.1.1 The following terms are defined in the Health (Nursing Homes) Act, 1990, Sections 1 and 2.

Dependent Person

2.1.2 The term "dependent person" means a person who requires assistance with the activities of daily living such as dressing, eating, walking, washing and bathing by reason of physical infirmity or a physical injury, defect or disease or mental infirmity.

Nursing Home

2.1.3 A "nursing home" is an institution for the care and maintenance of more than two dependent persons. The definition excludes institutions managed by or on behalf of the Minister or a health board; acute hospitals; maternity homes; psychiatric hospitals and homes within the meaning of the Mental Treatment Acts; non-profit making homes for mentally handicapped persons grant aided by the Minister or a health board; non-profit homes for the care of the physically handicapped subject to certain conditions; homes which have made arrangements with health boards for the care of children, certain homes for the care of members of religious communities and care by a family member of another family member. The Minister for Health may include other classes of homes under the Act by regulation.

The 1964 Act

2.1.4 The 1964 Act means "the Health (Homes for Incapacitated Persons) Act, 1964".

Registered Proprietor

2.1.5 The registered proprietor refers to "the person whose name is entered in the register as the person carrying on the home".

Register

2.1.6 This term means a register of nursing homes established under Section 4 of the Act and, in relation to a particular health board, means the register so established by that board.

Regulations

2.1.7 The term "regulations" means the regulations made by the Minister for Health to ensure proper standards in nursing homes. These are the Nursing Homes (Care and Welfare) Regulations, 1993.

Person in Charge

2.1.8 The term "person in charge" is defined in the Nursing Homes (Care and Welfare) Regulations 1993 as the person in charge of the care and welfare of patients in a nursing home. With one exception, discussed below, the person in charge must be a registered nurse.

2.2 <u>Registration</u>

2.2.1 The Act places a statutory duty on a nursing home proprietor to apply for registration to the health board and on the health board in whose functional area the nursing home is located to register nursing homes which comply with the statutory requirements of the Act. Institutions excluded from the scope of the Act are listed in Section 2 of the Act. The health board must receive, consider and decide on the application for registration. All existing and new nursing homes are obliged to apply for registration. Nursing homes in existence on the 1st of September 1993, the day on which the Act was commenced, have a year in which to register with a health board. A nursing home run by a religious order which accepts residents in receipt of subvention for a health board must be registered in its entirety.

2.2.2 **Obligation to Register**

Since the 1st September 1994 it is illegal to operate an unregistered nursing home or a nursing home which is not in the process of being registered by a health board. It is expected that the delays in registering the small number of homes who have applied for registration and which are not yet registered will be resolved in the near future. Since the 1st September 1994 it is illegal to advertise a home as registered unless it is registered. A conviction on indictment of offences in relation to registration carries a fine of up to £50,000 or imprisonment for a term not exceeding two years or both.

2.2.3 The health board should supply each applicant with an application form. The recommended application form is at Appendix A. First time applicants should, in addition, be given details of the registration fee, if any, the Code of Practice for Nursing Homes and the Guide to the Legislation. Applicants should be advised that copies of the Act and of the Regulations are available from the Stationery Office, Molesworth St., Dublin 2. On receipt of the application, a health board must satisfy itself that the application has been properly completed and arrange to have the premises inspected as soon as possible. The health board should assist the applicant to understand and meet the conditions for registration. **The health board should work to establish a co-operative relationship with the registered proprietor and person in charge and inspections prior to registration should be seen as an opportunity for furthering this relationship.**

2.2.4 The following information should be supplied with the application for registration or subsequently with the agreement of the board:

(a) Copy of the nursing home brochure.

(b) Copy of the certificate of planning permission for the nursing home.

(c) Details of the work experience of the person in charge of the nursing home. In particular details of the last 6 years work experience, which should include three years in the care of the elderly.

(d) Names, numbers and grades of staff employed, including professional identification numbers of registered general nurses.

(e) A plan of the home reflecting the actual layout of the home detailing bedrooms and other rooms.

(f) Additional details of the size and layout of the kitchen.

(g) Written confirmation from a competent person with experience in fire safety design and management that all the requirements of the Care and Welfare Regulations in relation to fire safety and fire requirements have been complied with.

(h) Registration Fee, if appropriate.

Fire Safety Confirmation

2.2.5 The proprietor must provide written confirmation from a competent person - an architect or engineer - that the requirements of the regulations in relation to fire precautions and fire records have been met with the application for registration. The health board must satisfy itself that the architect is properly and suitably qualified and that the architect or engineer nominated by the proprietor has sufficient experience in fire safety design and management. It is suggested that the boards' Technical Services Officers are the persons in the best position to judge suitably qualified and experienced persons in fire safety design and management.

2.2.6 If the competent person is not in a position to give a written confirmation that the home complies with the requirements of the Regulations in relation to fire precautions or fire records, he or she may provide a health board with a statement of the measures to be taken in

order that the home can comply with the Regulations, within a time limit to be agreed by the board. It is recommended that this time unit should not exceed the three year period of registration. A health board may register a home on the basis of this statement but must ensure that the measures specified are carried out within the agreed time limit. A written confirmation should be provided by the competent person when the home complies with the Regulations. A new written confirmation is not required for subsequent registration of the home, unless structural alterations have been carried out, in which case a new written confirmation from a competent person is required.

Applications for registration from companies

2.2.7 Applications for registration under the Act may be received from companies and registered charities as well as from individuals. A company can be a registered proprietor under the Act. An application for registration from a company should be signed by a director of the company or the company secretary. The suitability of the directors of a company applying for registration will be considered by the health board in determining whether the company is to be registered.

Time Limit for Consideration of Application

2.2.8 An application for registration should be dealt with as promptly as possible by a health board and it is recommended that the health board should deal with the application within two months of receipt of all reasonable information. A health board has only two months in which to consider an application for re-registration otherwise the registration is renewed automatically.

Obligation to Register a Home

2.2.9 A health board is obliged to register a home unless it is of the opinion that the proprietor, or the proposed person in charge of the premises do not meet the requirements of the legislation. The grounds on which a board may refuse registration are set out in Section 4(6). These are that

the health board is of the opinion that:-

(i) the premises or the carrying on of the home does not comply with the regulations; or

(ii) the applicant, registered proprietor or person in charge has been convicted of an offence under the Act or the Act of 1984 or of an offence which renders the person unfit to carry on or be in charge of a home; or

(iii) the aplicant or the registered proprietor has failed or refused to furnish information to the board, requested by it, or has furnished information which is false or misleading;

(iv) the registered proprietor has not more than one year before the date from which the registration or removal from the register would take effect, contravened a condition attaching to the registration.

(v) the prescribed fee has not been paid to the board in respect of the application.

It should be noted that an offence under the 1984 Act does not automatically disqualify a person from being a registered proprietor or person in charge. It is a matter for the board to decide if the offence was of such a nature to render the person unfit to carry on or be in charge of a nursing home.

Registration Fees

2.2.10 The fee for registration of a private nursing home after the 1st September 1994 is £10 per bed. Private nursing homes which were notified to a health board under the Health (Homes for Incapacitated Persons) Act 1984, on the 1st September 1993 are exempt from a fee

for the first registration. Voluntary nursing homes are exempted from a fee on any registration.

2.2.11 The fee is payable at the time of the application for registration. It is payable to the health board in whose functional area the nursing home to which the application relates is located. It should be noted that if the fee is not paid, the health board does not have to register the home. If a health board refuses to register a home or revokes a registration of a home, it is not required to refund the fee.

Numbers to be Accommodated in Homes

2.2.12 Under article 11.1 of the Care and Welfare Regulations a health board may specify at the time of registration the maximum numbers of persons to be maintained in the home and the maximum number of persons to be accommodated in shared rooms. Such a specification is intrinsic to the registration of all homes and is not a 'condition' of registration.

Conditions

2.2.13 A health board may attach conditions to registration or re-registration of a nursing home, or at any time during the period of registration. It should be noted that the period of registration, with or without conditions, cannot be less than three years. It is recommended that in relation to first registrations that boards use the option of attaching conditions to registration to bring about improvements in the home which are necessary to comply fully with the Care and Welfare Regulations. A condition may include a deadline by which it is to be carried out. If the condition is not satisfied by the specified date, a health board has the option of renewing the condition or revoking the registration. The Act allows boards to impose new conditions of registration or to amend or revoke conditions of registration within the period for which the home is registered.

2.2.14 If a health board proposes to attach a condition to registration, or to

2.2.14 If a health board proposes to attach a condition to registration, or to attach a new condition during the period of registration or to amend a condition, the health board must inform the applicant or proprietor in writing of its intended course of action and of the reasons for it. The applicant or proprietor may then make representations to the health board within twenty one days of the receipt of the notification as to why the decision should not be made. The health board is obliged to take into consideration any representations made before reaching its decision. Such representations should be dealt with by a senior officer of the health board who has not dealt with the home in the first instance. The official should meet with the applicant or proprietor if such a meeting is requested, to discuss the representations made and to endeavour to resolve any differences which there may be between the health board proposal and the representations of the applicant or proprietor.

2.2.15 The health board's decision must be sent in writing to the applicant or the proprietor and must state the reasons for the decision. The person concerned must be informed that he or she may appeal the health board's decision to the District Court within twenty one days of receipt of the notification under Section 5 of the Act. A subsequent appeal on a point of law may be made to the Circuit Court or High Court.

Registration Certificate

2.2.16 Registration is valid for three years from the date of commencement. The health board will supply the proprietor with a certificate of registration. A recommended certificate is attached at Appendix B. The certificate will specify whether the home is registered or registered with conditions. It is recommended that if conditions are attached to registration that they would not be detailed on the certificate of registration but notified in writing to the proprietor separately. However, health boards may give details of conditions attached to a registration

to members of the public when requested to do so. In registering a home it should be made clear that any inaccuracy in the application may result in the revocation of registration.

Refusal of Registration

2.2.17 A health board may refuse registration provided that it has concluded that the registered proprietor, the person in charge or the premises do not meet the requirements of the Act or of the Regulations as set out in para. 2.2.6 above.

2.2.18 If a health board proposes to refuse registration, Section 4.13 of the Act requires that the applicant or the proprietor should be given notice in writing of the board's intended course of action and of the reasons for it. The applicant or the registered proprietor may then make representations to the health board within twenty one days of the receipt of the notification as to why the decision should not be made. The health board is obliged to take into consideration any representations made before reaching its decision. Such representations should be dealt with by a senior officer of the health board who has not dealt with the registration of the home in the first instance. He or she should meet with the applicant or proprietor, if such a meeting is requested, to discuss the representations made and to endeavour to resolve any differences which there may be between the health board proposal and the representations of the applicant or proprietor.

2.2.19 The health board's decision must be sent in writing to the applicant or the proprietor and must state the reasons for the decision. The person concerned must be informed that he or she may appeal the health board's decision to the District Court under Section 5 of the Act within twenty one days of receipt of the notification. A subsequent appeal on a point of law may be made to the Circuit Court or High Court.

Removal from Register

2.2.20 A health board may remove a home from the register of nursing homes on the same grounds as it may refuse registration. A board must follow the same procedure as outlined in paragraphs 2.2.18 and 2.2.19 if it proposes to remove a nursing home from the register.

2.2.21 **Registration of Part of a Premises**

Part of a complex may be registered as a nursing home. This arrangement would apply in homes where some residents are living independently in sheltered housing or a retirement unit and others are cared for in a nursing unit. A health board should be satisfied that the housing home Section of the complex is clearly identified.

Change of Registered Proprietor

2.2.22 A new application for registration will be required if there is a change in the registered proprietor during the period of registration. The health board should draw the attention of the proprietor to this issue at the time of registration.

Change of Directors

2.2.23 Where the registered proprietor is a company the health board should be informed if there is a change of director during the period of registration. A health board may satisfy itself that the new director is not an unsuitable person to be involved in the operation of a nursing home. Re-registration should not be required as the corporate body, i.e. the company, still remains the registered proprietor. The health board shall draw the attention of the company to this issue at the time of registration.

Change of Person in Charge

2.2.24 Under Article 10.4 of the Care and Welfare Regulations the registered proprietor must inform the health board of a change in the person in charge of the home within one month of the appointment. The health

board of the home must be satisfied that the appointee is not an unsuitable person to be in charge.

Extension to Nursing Home following Registration

2.2.25 Under Article 27.3 of the Nursing Homes (Care and Welfare) (Amendment) Regulations, 1994 a written confirmation provided in accordance with Article 27.2 (i) shall suffice on any subsequent registration of the nursing home except where a structural alteration to the home has been carried out, in which case, a new written confirmation in accordance with Article 27.2 (i) must be produced to the health board.

Re-registration

2.2.26 Re-registration is required at the end of the three year registration period or if there is a change in the registered proprietor. A change in the person in charge or directors does not require re-registration but the health board must be informed as mentioned above.

2.2.27 An application for re-registration must be made two months before the date on which the current registration expires. The health board has until the expiration of registration to make its decision about re-registration. If a health board fails to inform an applicant for re-registration before the expiry of registration of its refusal to re-register the home, the registration will be renewed automatically for a further three years. A health board may refuse to re-register a home on the grounds listed in paragraph 2.2.17 above. If it proposes to refuse re-registration it must follow the procedures outlined in paragraph 2.2.18 and 2.2.19.

2.3 <u>Nursing Homes Register</u>

2.3.1 The Act obliges health boards to maintain a register of nursing homes and sets out the information to be contained in the Register. The following information must be included:

(a) the name of the registered proprietor;

(b) the name of the person in charge of the home;

(c) the address of the nursing home;

(d) the maximum number of persons who can be accommodated in the home and the maximum number of persons to be accommodated in shared rooms;

(e) the date of registration;

(f) whether conditions have been attached to the registration. It is not necessary to provide details of any conditions.

The Minister may prescribe other information to be included in the register.

2.3.2 The health board must maintain the register in respect of the nursing homes in its functional area. The Register must be made available to the public, free of charge at all reasonable times. Health Boards should make available a copy of the register or a list of registered homes to community care offices, libraries and community information centres in their functional area to facilitate access to the public to information on registered homes.

2.4 Declaration of Fitness

2.4.1 A person who proposes to carry on a nursing home can apply to the health board in advance of taking over the home for a declaration that he or she is a suitable person to carry on a nursing home under Section 4(4) of the Act. The purpose of this provision is to enable a person who is not already a registered proprietor and who is considering the purchase or leasing of a nursing home to ensure that a health board will

accept him or her as a suitable person to be a proprietor of a nursing home before incurring financial commitments. A declaration of fitness is not a pre-condition for a board accepting an applicant as a registered proprietor.

2.4.2 A declaration can only be refused if a person has been convicted of an offence under the 1984 Act, the 1990 Act or any other offence so as to render the person unfit to carry on a nursing home or if he or she refuses to provide relevant information or provides false or misleading information. A health board may request a written affidavit that the applicant is not guilty of an offence that would render him or her unfit to be the proprietor of a nursing home. If a board intends to refuse a declaration, it must follow the procedure outlined in paragraph 2.2.18 and 2.2.19 above. A declaration of fitness should be in writing. The fee for such a declaration is £100.

2.4.3 When a person applies for a declaration of fitness, a health board should supply him or her with a copy of the Code of Practice, and the Guide to the Nursing Home Legislation and details of the fee payable. A health board may request the applicant to furnish information relevant to his or her application.

2.4.4 A declaration can be revoked if the person has been convicted of an offence after making the application for the declaration and the health board was not aware of the conviction when it gave the declaration. An offence would be an offence under the 1990 Act, the 1984 Act or any other offence which would render the person unfit to carry on a nursing home. If a health board proposes to revoke a declaration of fitness it must follow the procedure outlined at paragraph 2.2.18 and 2.2.19 above.

2.4.5 The person granted a declaration of fitness must apply for registration in the usual way when he or she assumes responsibility for the nursing home. Under article 4.2 of the Nursing Homes (Fees) Regulations, the health board has to abate the registration fee by the declaration fee of £100 already paid.

2.5 **Appeals**

2.5.1 Section 5 of the Act deals with appeals by proprietors in the District Court. The proprietor has twenty one days from the receipt of the health boards decision to bring an appeal. Proprietors may appeal against the following decisions by health boards

(a) to refuse to register a home
(b) to refuse a declaration of fitness
(c) to revoke a declaration of fitness
(d) to remove a home from the register
(e) to attach a condition to registration
(f) to amend a condition of registration
(g) to revoke a condition of registration

2.5.2 The District Court may confirm the decision of the health board or direct the health board to do what the appellant is seeking in regard to registration or a declaration of fitness. The Section specifies that the jurisdiction is to be exercised by the justice of the District Court in the district in which the nursing home is situated. Decisions of the court in relation to fact are final. The health board must be given notice of an appeal and is entitled to make its case before the court.

2.5.3 A nursing home whose proprietor is appealing a decision of a health board to remove the home from the register or not to renew registration and which was registered at the time of the decision, continues to be registered until the final appeal decision is reached.

2.6 **Standards of Care**

2.6.1 Section 6 of the Act empowers the Minister to make regulations to ensure proper standards in nursing homes and specifies the matters which may be included in the Regulations. The Care and Welfare Regulations, discussed in detail below, supplement this Section of the Act. These Regulations deal with all the matters mentioned in the Section, including the inspection of nursing homes by health board staff.

2.7 **Subventions**

2.7.1 Section 7 of the Act provides for the payment of subventions by health boards towards the cost of nursing home care of people who have been assessed by a board as needing such care and who cannot afford to pay the full cost. After 1st September, 1994 such subventions can only be paid towards the cost of care in a registered nursing home. The Section also permits the Minister to make regulations to prescribe the amounts which may be paid by health boards as subvention, the amount for specified degrees of dependency, means or circumstances and such other matters as the Minister considers appropriate. The Subvention Regulations are discussed in detail below.

2.8 Temporary Management of Nursing Homes by Health Boards

2.8.1 Under Section 9 of the Act, a health board may seek to take charge of and manage a nursing home with the agreement of the registered proprietor or on an order from the District Court if it appears to a health board that there is a failure to comply with the Care and Welfare Regulations. A health board may apply for such an order ex parte. A health board should only seek to assume the management of a home if there is serious risk to the life, health and well-being of the residents in the home and if normal methods of ensuring compliance with the Regulations have failed.

2.8.2 Where the health board takes over the management of the home with the consent of the registered proprietor, the duration of the period of health board management will also be agreed. If the health board intervenes as a result of a District Court order, its period of managing the home cannot exceed three months, or in the case of an ex parte application by the health board, two weeks. More than one nursing home management order may be made in relation to a particular nursing home.

2.8.3 If the health board assumes management of the home, it will appoint a person to manage the nursing home for the period during which it has responsibility for the home. During this time the registered proprietor and the person in charge may not take part in the management of the home.

2.8.4 The health board may recover from the registered proprietor the salary of the appointed manager.

2.9 Offences

2.9.1 Offences under the 1990 Act are as follows:-

(a) carrying on an unregistered nursing home;

(b) being the person in charge of an unregistered nursing home;

(c) inferring that an unregistered nursing home is registered;

(d) supplying a health board with false or misleading information concerning an application for registration or a declaration of fitness;

(e) failure to apply for registration within four weeks following a change in proprietor;

(f) contravention of a condition of registration;

(g) contravention of the Care and Welfare Regulations or obstruction of a health board officer performing functions under the Regulations;

(h) contravention of a disqualification order.

2.9.2 A conviction for carrying on an unregistered home carries a fine not exceeding £50,000 and/or imprisonment for not more than two years. All the other matters listed above carry a fine not exceeding £1,000 and/or imprisonment for not more than three months. In relation to (d), (e), (f) and (g) above, a health board may also refuse or revoke the registration of the nursing home concerned.

2.10 Prosecution of Offences

2.10.1 Section 12 permits a health board to prosecute summary proceedings under the Act against a nursing home in its functional area. Summary proceedings may be instituted within twelve months from the date of the offence. The Section provides that if an offence is committed by a corporate body such as a company, a director, manager or any other person associated with the body may be subject to prosecution under the Act. The functions of health boards under this Section are functions of the chief executive officer or the deputy chief executive officer.

Liaison Arrangements

2.11 It is recommended that arrangements be made in each health board for liaison with the proprietors of voluntary and private homes so that issues of concern to either the board or the nursing home sector in the implementation of the Act can be resolved as quickly and as informally as possible.

3. THE NURSING HOMES (CARE AND WELFARE) REGULATIONS 1993

3.2.1 The Care and Welfare Regulations set out the standards with which nursing homes must comply to be registered by a health board. They replace the Health (Homes for Incapacitated Persons) Regulations 1985 which have been repealed. Many of the provisions of the 1985 Regulations are repeated in the Care and Welfare Regulations.

DEFINITIONS

3.2.2 Definitions relevant to the Care and Welfare Regulations have been referred to in paragraphs above. Other definitions in the Regulations include:

Competent Person

A "competant person" is defined as

(i) a chartered engineer, or

(ii) a properly and suitably qualified architect,

with experience in fire safety design and management.

Designated Officers

Designated officers are defined as officers of health boards authorised by Chief Executive Officers or Deputy Chief Executive Officers of a health board to carry out functions under the Act and Regulations.

Medical Practitioner

A medical practitioner is a person registered in the general register of medical practitioners established under the Medical Practitioners Act, 1978.

Nurse

A nurse is defined as a person registered in the register of nurses established under the Nurses Act, 1985.

Record

A record is defined as any book, card, form, tape, computerised record, film or notes.

3.3 WELFARE AND WELL-BEING

3.3.1 Article 5 of the Regulations sets out in a general way the obligations on the registered proprietor and the person in charge to provide a high standard of care in a nursing house. They are obliged to provide:

(a) a level of care to maintain the welfare and well-being of persons in nursing homes, having regard to their level of dependency;

(b) a high standard of nursing care;

(c) appropriate medical care by a medical practitioner of the person's choice or acceptable to the person;

(d) facilities for the occupation and recreation of residents;

(e) opportunities for residents to participate in activities appropriate to their interests and capacities;

(f) freedom to exercise choice to the extent that such freedom does not infringe on the rights of other persons;

(g) privacy for personal activities of residents;

(h) information concerning current affairs, local matters, voluntary groups, community resources and events;

(i) adequate arrangements to facilitate a person in the practice of his or her religion.

3.3.2 Registered proprietors and persons in charge are obliged by Article 6 to encourage residents to maintain contact with persons of their choice, allow reasonable visiting times, provide for the care of the dying, ensure respect for the remains of deceased persons and make arrangements for the removal of remains.

3.3.3 The registered proprietor and person in charge must made provisions for the safe-keeping of residents' personal belongings and keep a record of valuables signed by the resident or a person acting on his or her behalf (Article 8(a)). Adequate space must also be provided for a reasonable number of personal possessions (Article 8(b)).

3.3.4 If a registered proprietor or person in charge intends discharging a dependent person, he or she must inform the resident and the person acting on his or her behalf of the date of the proposed discharge, which must be at least fourteen days from the day on which the resident was informed and must give the reasons for the discharge (Article 9).

3.4 CONTRACT OF CARE

3.4.1 Article 7.1 obliges the registered proprietor or person in charge to agree a contract of care with residents or persons acting on their behalf within two months of the registration of the nursing home. A proprietor or person in charge is also obliged to make a contract with every resident admitted to the home in the year following the commencement of the Act, whether or not the home is registered (Article 7.2). The contract must include details of the services to be provided for the residents and the fees charged. The Code of Practice for Nursing Homes recommends the additional items which should be covered by the contract of care. Specimen contracts have been drafted by the Irish Private Nursing Homes Association and the Federation of Catholic Voluntary Nursing Homes, and copies are available. Residents who may be reluctant to sign a contract should be advised that there is a legal obligation on the registered proprietor to agree a contract of care.

3.5 STAFFING

Person in Charge

3.5.1 The Regulations require that there is a person in charge of a nursing home (Article 10.1). The person in charge must be considered to be a fit person to be in that position by the health board when the home is being registered. The post must be filled on a full time basis by a nurse with a minimum of three years appropriate post registration experience within the previous six years (Article 10.2). "Full-time" in this context means a minimum of thirty nine hours a week or seventy eight hours a fortnight. The majority of these hours should be rostered during the day. The post may not be divided for the purpose of job sharing. "Appropriate post registration experience" would include three years nursing the elderly in hospital, a nursing home or in the community. The registered proprietor is required to inform the health board if the person in charge changes, and of the name of the new person in charge.

3.5.2 The only exception permitted to the requirement that the person in charge be a nurse is if the registered proprietor is a registered medical practitioner who is solely employed in the carrying on of a nursing home and has a minimum of three years experience of running a nursing home under the 1985 Regulations or as a registered proprietor under the Health (Nursing Homes) Act, 1990. However, if the registered proprietor is a registered medical practitioner there must be a nurse on duty at all times in the home who will be professionally responsible for standards of nursing care. (Article 10.3).

3.5.3 The functions of the registered proprietor and person in charge are separate, although they may be performed by the same person in a small nursing home. In a large nursing home, there may be a manager in addition to the person in charge. The health board must satisfy itself as to the arrangements for the management of the services provided in nursing homes. There needs to be a clear statement of the responsibilities of the person in charge where this person is not the

manager or registered proprietor. The person in charge is responsible for the provision of nursing care in a home, even when that person is not on duty. The registered proprietor is responsible for all other aspects of management in the home, including the proper supervision and control of any manager. When the person in charge is not on duty, his or her duties should be delegated to a nurse.

Medical and Nursing Staff

3.5.4 The registered proprietor and person in charge are required to ensure that adequate medical care is available to each resident from a doctor of his or her choice or who is acceptable to the resident and that a doctor is available to attend residents in the nursing home and to be on call for emergencies (Articles 10.5(a), (b)). Where possible, residents should be encouraged to retain their relationship with the general practitioner caring for them before they entered the home.

3.5.5 There must be a registered nurse on duty at all times and a sufficient number of competent staff on duty at all times having regard to the number and dependency of patients (Articles 10.5(c), (d)). Because the size, layout of nursing homes and the type of residents they are caring for vary, the Care and Welfare Regulations do not specify ratios of staff to residents. It is the responsibility of the registered proprietor and the person in charge to ensure that there is sufficient nursing staff on duty in the home at any time. A health board must judge whether or not the level of nurse staffing in a home is adequate. In exercising that discretion, health boards should have regard to the dependency and number of residents for whom the premises is used.

3.5.6 In addition to the number and dependency of residents accommodated, the factors which should be taken into account when determining the adequacy of staff numbers include:-

(a) the mix of skills required;

(b) access to agency nurses;

(c) the number of floors and number of residents on each floor;

(d) the overall design of the building and walking distances for staff;

(e) means of evacuation of residents in the event of fire, especially at night;

(f) the number of residents who require little or no nursing care especially at night;

(g) the requirement that a registered nurse to be on duty at all times;

(h) the extent of domestic or catering duties carried out by auxiliaries in addition to their duties associated with more direct care of residents.

3.5.7 Staffing levels should provide minimum cover at all times and be adequate to cope with demand at peak times during the day. A home in which residents are fairly independent may require little nursing time. Where the work is more demanding, either physically or in terms of residents' behaviour, minimum staffing levels should be higher. Two staff will usually be needed at any one time if residents have to be lifted.

3.5.8 Approximate minimum staffing figures should be calculated upon a full-time working week of 39 hours or 78 hours a fortnight. Where the registered proprietor or person in charge are resident and are available on call for longer periods, minimum staffing calculations may take this

into account, but the registered proprietor must always be able to show that there will be adequate cover when resident staff are absent, and that resident staff do not have excessive demands placed upon them. A resident staff member who is asleep cannot be considered to be on duty.

3.5.9 While the minimum cover is designed to cope with the type of problems which may arise at any time in the home, there are also peaks and troughs in the demand for support and help. Peaks include getting up, meal times, activities and going to bed; troughs include times when residents are out of the building and rest periods. It is important, therefore, not only that minimum cover is provided but also that staff are deployed to offer additional support at peak periods. The employment of part-time staff provides flexibility in meeting peak demands.

3.5.10 The degree of need presented by the residents and the consequent amount of staff time required is a critical factor in assessing the adequacy of staffing levels. It is possible to estimate the number of care hours required per resident and when these are totalled for a home, the number of staff needed can be worked out, once allowance is made for holidays, illness and other absences. In calculating the care time that staff can provide to residents, allowance has to be made for leave, sickness, training, staff meetings and other activities. Where senior staff are involved in the admission of residents, the recruitment of staff, and additional extraneous duties, further allowance will need to be made.

3.5.11 Other points to be noted include -

(a) residents should not be left in the sole charge of staff who are not familiar with the nursing home;

(b) staff at all levels must have an appropriate degree of knowledge, skills and experience relevant to their job;

(c) temporary agency nurses should not be left without adequate assistance unless they are familiar with the organisation of the home and individual residents;

Night Staffing

3.5.12 Night staffing requirements will depend upon the mobility and lucidity of residents on the one hand, and the type of handling problems anticipated on the other. Where residents require lifting, for example, two members of staff are required at night, regardless of the size of the home. Emergencies should be borne in mind in determining night staffing levels, such as the need to evacuate the home quickly.

Ancillary Staff

3.5.13 Ancillary staffing includes staff complementary to those managing the home or providing nursing care. The value to residents of the contact with ancillary staff or of their therapeutic role should not be under-estimated. In large homes the management of ancillary staff is likely to require experience and a different set of skills. Two important services in every home are catering and housekeeping. Catering in the nursing home should be undertaken or supervised by at least one person experienced in the preparation, cooking and handling of food. All staff engaged in food preparation should have a basic knowledge of good food hygiene practices. Housekeeping duties should be the responsibility of paid staff, although residents may be encouraged to assist with some duties.

Other Professional Services

3.5.14 Residents should have access to the services of other health professionals when required. Some of these services may be available through the health board, and the board can provide these services to

the home on an agency basis under the Regulations (Articles 31) or the registered proprietor may make other arrangements for their provision.

3.6 ACCOMMODATION AND FACILITIES

3.6.1 The Regulations set out the basic requirements which registered homes must fulfil in the maintenance of standards of care and facilities. Within this framework the health boards have discretion to determine the standard of accommodation and facilities which a particular home should meet bearing in mind the number and dependency of residents using the home. This local determination of standards allows a measure of flexibility which is necessary given the differences in the care provided by nursing homes and the level of dependency of residents. This discretion should not lead to the imposition of unnecessarily onerous or widely differing requirements. Health boards should have regard to standards prevailing generally. Relating requirements to such standards may also be of value in circumstances where the registration requirements are challenged. If a proprietor appeals against a decision to refuse or revoke registration or against a condition of registration, it will be the District Court which decides whether or not the board's decision is reasonable or not.

3.6.2 The recommended sizes for accommodation are as follows:

(a) Single Bedrooms -

Single rooms should be at least 100 sq. ft. (9.3m²) with minimum ceiling height of 8 ft. (2.4m).

(b) Shared Bedrooms -

Shared bedrooms should have a minimum of 80 sq. ft. per bed (7.4m²) with a minimum ceiling height of 8ft. (2.4m).

(c) Day Space -

There should be 25 sq. ft. (2.3m²) of day space per resident.

(d) Visitors' Reception Area -

There should be a visitor reception area. This space can be included in calculating the total day space available.

(e) Dining Area -

An area of 12 sq. ft. per resident (1.1m²) should be provided for dining in addition to day space. Account should be taken of the number of residents who will use the dining room.

(f) Kitchen and Storage Area -

The Regulations require each home to have a separate kitchen, properly equiped and to provide for the storage of food in hygienic conditions (Article 13). An area of 200 sq. ft. (18.6m²) minimum area should be provided for the kitchen in a reasonably sized nursing home.

(g) Access Ramps -

Access ramps should be 1 metre wide and have gradients not steeper than 1:12, with handrails on both sides.

(h) Office -

The office should be no smaller than 80 sq. ft. (7.5m²).

(i) A rest room/changing room for staff should also be provided.

Sanitary Facilities

3.6.3 Under Articles 14(d), 15 and 16.3 the following facilities must be provided in every nursing home:-

(a) piped hot and cold water. There must be a supply of hot and cold water to each bath, shower and wash hand basin. The maximum temperature of the water should be controlled to prevent scalding.

(b) a wash-hand basin in each bedroom. Wash-hand basins and hand drying facilities should be provided at an accessible height and residents should be able to perform their ablutions in independence and privacy.

(c) a sufficient number of toilets. There should be a minimum of 1 toilet per 8 residents. There should be at least one toilet on each floor of the nursing home. At least one toilet should allow access for residents in wheelchairs. The recommended area for a toilet with a wash hand basin for a wheelchair is 30 sq. ft. (2.8m²). One raised toilet seat and toilet aid should be available on each floor. Patients should not have to negotiate stairs to use a toilet. Locks to toilets should be of a type which allow access by staff in an emergency.

(d) a sufficient number of commodes. The use of commodes, in the interest of hygiene, should be kept to a minimum consistent with access to toilets and the dependency of patients. One commode accessible to wheel-chair users should be available on each floor.

(e) a sufficient number of baths and showers. There should not be less than one bath or shower for every fifteen patients. There should be at least one assisted bathroom in each nursing home, and ideally one assisted bathroom on each floor. The recommended area for an assisted bathroom is 80 sq. ft. (7.5m²) and a non-assisted is 50 sq. ft. (4.6m²). There should be at least one shower or bathroom on each floor of the nursing home. All baths and showers should have a non-slip base and hard grab rails. All bath and shower rooms should have a slip resistant floor furnish. Locks to bath and shower rooms should be of a type to allow access by staff in emergencies.

(f) sufficient disposable sheets and incontinence pads, if necessary.

(g) Provide a separate well ventilated facility for sluicing and for the storage of dirty linen. The recommended size of the sluice room is 50 sq. ft. (4.8m²). On each floor with resident accommodation there should be facilities for the disposal of faecal matter and for the cleansing and sterilising, if necessary, of soiled articles including bed pans, commodes and urinals.

(h) Fresh drinking water facilities to be provided on each floor.

Nature of Building

3.6.4 The premises must be in a sound structural condition and in a good state of repair internally and externally and should be so maintained. There should be adequate parking for visitors.

3.6.5 It is important that care is taken in the selection of flooring which is suitable for the area concerned. Where carpet is laid it should be easy to clean particularly where there is likely to be spillage or incontinence. Sufficient protection should be given at entrances to prevent dirt and grit from entering the building.

3.6.6 The premises themselves and the rooms within them used by or for residents should be accessible to stretchers and wheelchairs. Where there are dependent residents accommodated above the first floor, the health board has discretion to require registered proprietors to provide a lift.

Heating

3.6.7 All parts of the premises used by residents and staff must be adquately heated. A full central heating system is advisable.

The Care and Welfare Regulations specify minimum heating requiremants of 65°F (18°C) in bedroom areas and 70°F (21°C) in day

areas. It is also important that the maximum surface temperature of heating devices should not exceed 110°F (43°C) when the heating system is running at maximum design output. If surface temperatures in heaters exceed this, burns can be quickly caused to elderly people if they come into direct contact with a heater. Some storage heaters may be in this category.

It should be borne in mind that residents subject to hypothermia will require higher temperatures, while others may be uncomfortable with too much heat.

3.6.8 Individual heaters should be adequately guarded, conform to the appropriate standard and be of a type approved by the statutory fire authority for its present use. Such appliances should be permanently fixed and connected to an electricity or gas supply. Gas appliances should be properly ventilated and be fitted with flame failure devices. Portable heating appliances should not be used except in an emergency. Flexible gas piping and loose electric leads should not be used.

3.6.9 Lighting

All rooms used by residents and staff should have good natural light. Electric lighting must be provided throughout the premises at a level adequate for the use of each part of the accommodation and sufficiently bright to allow reading without difficulty. An individual bed light should be provided for each resident with an accessible switch. Permanent night lighting capable of being dimmed for night use should be provided. Corridors and stairs used by residents and staff should be well lit. The needs of people with impaired vision should be given special consideration.

3.6.10 **Ventilation**

All parts of the premises must have sufficient natural or mechanical ventilation to maintain a fresh atmosphere without localised temperature variations or draughts causing discomfort to residents. Residents should be able to regulate the ventilation in each room. Sanitary accommodation which has ineffective ventilation to outside air should have a mechanical ventilation system.

3.6.11 **Telephone**

The premises must be connected to a public telephone service and staff on call should be able to be contacted by telephone. A telephone should be available for the private use of residents. If possible a mobile pay phone should be provided.

Rooms

3.6.12 The number and type of residents will determine the nature of the accommodation required in a nursing home. The Regulations require reasonable accommodation and space by day and night including that for social and occupational activities. All homes should have communal rooms and wherever possible, separate rooms for residents to follow their own hobbies or chosen activities. Flexible use of communal rooms should be encouraged. Facilities should be provided for residents to meet in private their relatives, financial advisers, social workers, and staff, either in residents' own rooms or in another suitable setting. The following are the main considerations in determing the nature and adequacy of accommodation:-

(a) the size and shape of the rooms, including the position of windows, doors and fixtures;

(b) the degree of dependency of the residents and the extent of nursing activities and resident ambulation in the bed area;

(c) ease of movement by frail or disabled residents, observation of residents at risk by nursing staff, quick movement in case of fire or other emergency.

(d) space in rooms, corridors, and door openings for staff to use mechanical aids for lifting and other aids;

(e) quality of the environment in relation to the needs of the resident, particularly those staying for a long time.

Furniture

3.6.13 Furniture in resident areas should be appropriate to the type of resident - comfortable, robust and safe in construction. Hygienic design and easily cleaned materials are essential considerations. In day rooms and recreation areas comfort and a domestic atmosphere are important. Flame-retardant and non-toxic materials should be selected, particularly for window and bed curtaining, bed covers and upholstered furniture in day rooms. It is most important that all bed materials should be fire-retardant. Fire-retardant materials should be substituted when existing bedding is being replaced.

3.6.14 Beds may be of a hospital or domestic type depending upon the type of resident and should be at least 1m. (3 ft.) wide. The main criteria are comfort and height so that residents can maintain their independence by getting into and out of bed safely without assistance. Residents sitting on their beds should be able to rest their feet firmly and comfortably on the floor. An important secondary criterion where a significant number of nursing activities take place (such as for bedridden elderly residents) is a bed height to allow nursing care and bed making with ease. Beds with variable heights are best in these circumstances.

3.6.15 The furnishing fabrics and floor coverings should be made of low absorption material to avoiding retention of odour and staining and to allow easy cleaning and maintenance. Where carpet is provided it should not be frayed and it should cover the whole floor area from wall to wall so that there is no danger from uneven surfaces.

3.6.16 All surfaces in a nursing home should be suitable for easy and effective cleaning. Where a soft floor covering is chosen, it should have an impervious backing, a non-absorbent cut pile and be of an appropriate colour even if the surface allows for a high shine but is not in fact slippy.

3.6.17 Each resident should have a bedside locker or a chest of drawers and a wardrobe for personal possessions and clothing, a bed-table with an adjustable height tray if meals are taken in bed and access to a mirror. A table for multi-purpose use is recommended. Privacy during personal toilet and nursing procedures should be ensured in multi-bed rooms by means of bed curtains or screens.

3.6.18 Armchairs should be chosen for comfort combined with ease of rising to a standing position for residents who are elderly, frail or recuperating from surgery. Residents able to take meals in a dining room need chairs and tables of a convenient height.

3.6.19 Nurse call systems should be installed in recreational areas, at each bed and also in each bathroom, shower and toilet.

Equipment

3.6.20 The range and type of equipment needed depends upon the category of resident and the treatment offered. Basic equipment includes ripple or other suitable mattresses, hoists, walking aids, wheelchairs, special eating utensils, oxygen, occupational therapy and physiotherapy

equipment. There should be a sufficient number of adjustable height beds.

Food and Kitchen Facilities

3.6.21 Articles 13 and 16 of the Regulations require the registered proprietor and person in charge of the home to provide adequate facilities for the storage, cooking and serving of food and to supply adequate food for every resident. All nursing homes have to conform with the Food Hygiene Regulations 1950 to 1989. Authorised environmental health officers have the right to inspect the kitchens in nursing homes under these Regulations.

3.6.22 The following are some basic principles for the guidance of inspection staff:

(a) the kitchen and its equipment should be adequate for the number of residents authorised for the home and should be maintained to a high level of cleanliness at all times;

(b) kitchen, food stores and preparation areas should be separate from residents' or staff sanitary facilities, accommodation or other facilities which may entail a risk of infection to food;

(c) the kitchen should not be a thoroughfare and access should be limited to personnel directly associated with catering;

(d) room surfaces, especially floors, walls and working surfaces should be of a material which is impermeable and capable of being easily maintained in a hygienic condition.

(e) staff working in food service areas should maintain high standards of personal hygiene;

(f) smoking is not to be allowed in food preparation areas;

(g) a first aid kit should be readily available in the kitchen area;

(h) adequate space for dry and perishable foodstuffs. Stores should be adequately ventilated. Raw and cooked food should be stored seperately;

(i) there should be a method of rotating stock in refrigerators and other stores;

(j) food waste should be regularly and frequently removed from the kitchen and properly disposed of;

(k) Wash-hand basins should be separate from the kitchen sink, and accessible to staff.

Linen and Laundry

3.6.23 The requirement to provide adequate bedding is contained in Article 12.1(g) of the Regulations and to arrange appropriate laundering facilities in Article 14(c). There should be an adequate supply of bed and other linen, which should be regularly changed, properly laundered and aired before re-use. Fouled or infected linen should be separately treated by established and safe procedures. Blankets and other linen should be made of an accepted fire-retardant material. Duvets should be fire retardant and there should be sufficient covers to allow for laundering at necessary intervals.

3.6.24 For laundering of linen in any size of nursing home, washing machines should be robust and able to withstand frequent usage. If laundry facilities are provided on site these should be separate from residents accommodation, food service areas and other areas which might give rise to cross infection.

Disposal of Waste and Infected Materials

3.6.25 Under Article 15(g) of the Regulations, the registered proprietor and the person in charge must make adequate arrangements for the disposal of waste materials of all kinds. Disposal includes collection, storage and destruction or removal for destruction elsewhere. Particular attention should be paid to dangerous or infected articles.

3.6.26 All staff should be trained in the proper segregation of waste and it is important that items such as aerosol containers are not placed with waste which is to be incinerated.

3.6.27 Discarded items such as surgical blades, needles or syringes should be placed in protective containers and properly labelled. It may be possible for the registered proprietor and the health board to come to an arrangement for the disposal of these items.

3.6.28 Collection from source should be regular and frequent and any storage prior to destruction or removal should be for a minimum period and in a location and manner which will not cause any offence or risk of infection to users of the premises. It is important that waste containers are washed and dried both inside and out frequently and that lids fit well to deter pests.

3.7 CONTROL OF INFECTION AND INFESTATION

3.7.1 Article 14(b) requires the registered proprietor and person in charge to take adequate precautions against infection, infestation, toxic conditions, or spread of infection and infestation in the home. The health board will need to be satisfied that nursing and other procedures in operation do not cause or spread infection or infestation and that any instance of infection or infestation is properly controlled. If a resident on admission or subsequently is found to have, or to have acquired, an infectious condition or an infestation, procedures should exist to cover

this contingency, particularly procedures to avoid any spread of infection or infestation. It is the duty of the person in charge to notify the environmental health officer or the medical officer of health of any food borne infection. Domestic staff should be instructed in methods of cleaning which aid the control of infection. Cleaning procedures should provide for regular cleaning of all accommodation. Separate cleaning equipment should be provided for rooms in which food is prepared and eaten and for sanitary facilities.

3.8 INSPECTIONS

3.8.1 The Health (Nursing Homes) Act, 1990 assigns responsibility for the inspection of nursing homes to health boards. Articles 23.1 to 25.3 of the Care and Welfare Regulations deal with inspection of nursing homes and premises believed to be nursing homes.

3.8.2 Only officers designated by the chief executive officer or the deputy chief executive officer of a health board may inspect nursing homes. The Regulations require the health boards to inspect all homes at least once every six months. The boards may visit at more frequent intervals where this is felt necessary. It is for the board to determine the timing of the inspection - whether it should be during or outside normal working hours. In most cases, good relations with homes should enable inspections to be carried out with respect for the operations of the home and the residents' welfare but to guard against any possible misunderstanding, officers carrying out inspections should carry written authorisation. Any member of staff of a nursing home is entitled to ask to see evidence that the inspector is a designated officer.

3.8.3 In order to obtain a rounded and comprehensive view of a nursing home and the standard of care, the home will have to be inspected by professionals of various disciplines such as a public health nurse, medical officer and an environmental health officer. It is recommended that where possible inspections should be carried out by two officers to avoid later difficulties over what was found or recommended. Such

inspections are particularly important where the health board is concerned about the standards of care or accommodation in a home.

3.8.4 An inspection should involve a systematic review of facilities, services and the care provided to ensure continuing compliance with the statutory requirements and with the conditions for registration. The Regulations provide that a designated officer may inspect and obtain copies of any registers or records required to be kept by the nursing home (Article 23.1(b)). A resident's medical record may be inspected only by a medical officer of a health board who is designated for the purposes of the Act. A designated officer may interview in private any resident or any member of the staff where the officer has reasonable cause to believe that a person in the nursing home is or has not been receiving proper care (Article 23.1(c)).

3.8.5 After each inspection a comprehensive report should be prepared. The registered proprietor should be informed in writing as soon as possible of the outcome of the inspection. If a designated officer has found evidence of non-compliance with the Act or Regulations each instance of non-compliance and the date by which compliance is required should be given. The consequences of continuing non-compliance, such as prosecution for breach of the Regulations and/or a recommendation to the health board to refuse registration, to attach a condition to registration or to the removal of the home from the register should be referred to.

3.8.6 In carrying out inspections of nursing homes the designated officer must recognise the religious beliefs or principles of the residents and the religious ethos of the home and give due regard to these factors in making requirements of the home where these religious beliefs or principles have a bearing on the matter (Article 23.4). A designated officer is also required to act with due courtesy towards dependent persons and staff in the home during an inspection (Article 23.5).

3.8.7 It is an offence for any staff member to obstruct the designated officer on production of authorisation from entering and inspecting the nursing home (Article 23.1(a)).

3.8.8 As a matter of courtesy the health board should circulate to registered proprietors a list of the officers designated by the chief executive officer of the health board to inspect or visit nursing homes. The list should be kept up to date. Health board inspections outside normal hours should also respect the need for security in the home and that staff may not be authorised to admit persons to the home without the permission of the proprietor or person in charge.

Inspection of Premises believed to be Nursing Homes

3.8.9 Health boards are empowered to designate officers to enter and inspect any premises which they have reason to believe is being used as a nursing home. It is an offence under the Act for any person to obstruct the designated officer(s) from entering and inspecting the premises.

3.9 RECORDS

3.9.1 The Regulations require that certain records must be kept by a registered nursing home (Articles 18.1 - 19.1). These records are subject to inspection by the designated officer(s) of Health Boards. The records which must be kept are listed below.

3.9.2 The following records should be kept for all residents in a home in the form of a bound register in chronological order:-

(a) the name, address, the date of birth, marital status and religious denomination of each resident;

(b) the name and address and telephone number of the resident's relative or the person authorised by the resident to act on his or her behalf as a person to be notified in the event of a change in the resident's health or circumstances;

(c) the name, address and telephone number of the resident's medical practitioner;

(d) the latest date on which the resident entered the home;

(e) if the resident has left the home, the date on which he or she left and a forwarding address;

(f) if the resident is admitted to hospital, the date of and the reasons for the admission and the name of the hospital to which the resident was admitted, and

(g) if the resident died in the home, the date, time and cause of death.

3.9.3 In the case of all residents the following particulars should be kept as a record:

(a) where a health board subvention is paid, a summary of the assessment of the resident's level of dependency on admission and on review;

(b) a medical and nursing report at the time of the resident's admission;

(c) an adequate nursing record of the resident's health and condition and treatment given, completed on a daily basis and signed by the nurse on duty;

(d) a medical record with details of investigations made, diagnosis and treatment given, and a record of all drugs and medicines prescribed, signed by a medical practitioner;

(e) a record of drugs and medicines administered giving the date of the prescription, dosage, name of the drug or medicine, method of administration and signed by a medical practitioner and the nurse administering the drugs and medicines;

(f) a record of any accident or fall involving a resident, and

(g) a record of any complaint made by the resident or a person acting on his or her behalf and of the outcome of the investigation.

3.9.4 A register must be maintained containing the full names and qualifications and grade of the nursing and ancillary staff employed in the home and a copy of the certificate of current registration of each member of the nursing staff. A duty roster should be maintained and available to the nurses employed and to the designated officers of the health board on inspection.

3.9.5 Records must be kept of the procedure to be followed in the event of fire, of all fire practices, all fire alarm tests, results of such tests and consequential action and the number, type and maintenance record of all fire fighting equipment.

3.9.6 The Regulations state that records must be kept for five years after the resident to whom they relate ceases to be resident in the home. Consideration should be given to retaining registers and records for longer periods in case they are required as evidence in legal actions or for other purposes.

3.10 DEATHS

3.10.1 The procedures following the death of a resident are not a matter for the health board other than the requirement under Article 22 of the

Regulations that the Medical Officer of Health be notified of the death of a resident within 48 hours of the death. Nursing homes should have procedures for contacting relatives, for making funeral arrangements and for disposing of resident's property taking account of the individual's wishes and religious beliefs. The registered proprietor should be familiar with procedures for the registration of deaths, including any residual responsibilities in the absence of the resident's next of kin or any person authorised to act on the residents' behalf.

3.11 ACCIDENT PREVENTION

3.11.1 Article 12(a) of the Regulations requires the registered proprietor and the person in charge to take precautions against the risk of accident. Falls are a particular hazard for the elderly. Lighting should be sufficiently bright to assist the visually impaired. Steps and stairs should have handrails and be safely constructed and carpeted. Ramps should be provided and have a slip resistant finish. Grab rails should be provided in bath, shower and toilet areas. Medical and nursing equipment should be regularly maintained to ensure that accidents due to faulty equipment are avoided.

3.11.2 Article 19.1(g) requires that accidents, however caused, which occur in the nursing home involving residents be recorded in writing. The record should include a description of the circumstances, a signed statement from any witness and any medical report following the incident. Accident records must be retained for inspection by a designated officer of the health board and it is desirable that in the case of an accident resulting in the serious injury or death of a resident that it should be reported at the earliest practicable time to the health board.

3.12 **FIRE PRECAUTIONS**

3.12.1 Article 27 of the Regulations requires all nursing home proprietors to take adequate precautions against the risk of fire and to make adequate arrangements for giving warnings and for the evacuation of all persons in the event of fire. Bedding and furnishings in the home must have adequate fire retardancy properties and emergency lighting must be provided. Under Article 28 the registered proprietor must keep a record of all fire practices, all fire alarm tests, together with the result of any such test and the action taken to remedy defects. He or she must also display the procedure to be followed in the event of a fire in a prominent place.

3.12.2 The procedures in relation to confirmation of fire safety in relation to registration of a nursing home are discussed above at paragraph 2.2.5. The fire safety requirements in the Care and Welfare Regulations are in addition to any measures required by the statutory fire authorities. Inspections of homes should include monitoring of the fire precautions and fire records in the home as the board must be satisfied that the home continues to comply with the requirements of the Regulations.

3.12.3 It is the responsibility of the registered proprietor and person in charge of a nursing home to see that all fire safety equipment is properly maintained. This is essential to prevent an outbreak of fire and limiting the effects of fire should it occur. For maintenance to be effective it should either be carried out by the registered proprietor or person in charge or be delegated to a nominated member of the staff, and checked periodically.

3.12.4 The following are some of the more important points to be taken into account in assessing the adequacy of to fire precautions and means of escape. These notes are not comprehensive:-

(a) a means of escape from every room and floor should be available and should be free of obstruction at all times. The

purpose is to maintain a clear means of escape and reduce the risk of fire originating in corridors and on stairways;

(b) notices indicating fire exits and escape routes should be properly illuminated, clearly visible and unobstructed;

(c) emergency lighting systems and alarm systems should be functioning correctly;

(d) fire fighting equipment should be in good working order. The responsibility for maintaining equipment should be assigned to one individual member of staff. A record must be kept of all fire alarm tests carried out in the home, the result of such tests and the action taken to remedy any defect.

(e) there should be simple procedures for action in the event of a fire displayed in a prominent place in the home. Staff should be aware of these procedures. Regular fire drills for staff (including night staff) and mobile residents should be held at least one every six months. Records must be kept of all fire practices carried out in the home;

(f) regular training of staff, including night staff, in fire safety should be undertaken;

(g) areas of the premises which are not continuously staffed should be checked at night;

(h) furniture and furnishings should be of limited flammability and toxicity;

(i) electrical equipment and installations should be installed, maintained and tested at regular intervals by a qualified

electrical engineer. Portable appliances should be avoided if possible, but in any event flexible leads should be short and in good condition;

(j) all fire retention doors should be of an approved standard and there should be adequate compartmentalisation of escape routes within the home;

(k) special attention to fire safety should be given to locations where flammable materials or liquids are used or stored and to domestic hot water and central heating boilers and incinerators;

(l) waste materials should be stored in non-combustible containers and should not be allowed to accumulate in a manner likely to start a fire or cause it to spread;

(m) free standing appliances, such as paraffin heaters, should not be used. Open fires should always have well secured guards.

3.13 **DRUGS AND MEDICINES**

3.13.1 Article 29 of the Regulations requires that the registered proprietor and the person in charge make adequate arrangements for the recording, safe keeping, administering and disposal of drugs. The legislation applying to drugs and medicines includes the Misuse of Drugs Act 1977, the Misuse of Drugs Act 1984, the Misuse of Drugs Regulations, 1988 and the Misuse of Drugs (Safe Custody) Regulations, 1982. The Guidelines for the Administration of Medical Preparations produced by An Bord Altranais and the Guidelines for policy-making on the administration of medicines and controlled drugs by nurses are recommended for use by inspection staff. The registered proprietor and the person in charge should be familiar with and observe the statutory requirements concerning controlled drugs and other medicines, held and administered in the nursing home.

Storage of Medicines

3.13.2 All medicines should be stored following the manufacturer's guidelines under the control of the person in charge of the home. They should be stored in locked cupboards, trolleys or rooms which should be kept locked. If medicines are stored in a locked trolley, it should be securely fastened to a wall when not in use. The keys for all cupboards used for the storage of medicines must be the personal responsibility of the person in charge and be in the possession of the nurse on duty. Controlled drugs must be stored in a suitably locked cabinet which complies with the Misuse of Drugs (Safe Custody) Regulations, 1982. The recommended procedure of An Bord Altranais for the giving of controlled drugs by a medical practitioner or by two members of staff, one of whom must be a registered nurse, must be followed. In the case of controlled drugs, a record must be kept in an appropriate record book reserved specially for recording the receipt and administration of controlled drugs.

Administration of Medicines

3.13.3 The registered proprietor and person in charge are required by Article 29(a) to ensure that the treatment and medication prescribed by the medical practitioner is correctly administered and recorded. Medicines, other than "domestic remedies", should be administered to a resident only in accordance with the directions of a doctor. It is recommended that no medicines should be administered to a resident without a written prescription, which has been signed by a doctor, unless administered by a doctor personally.

3.14 **TRAINING**

3.14.1 Continuing training and education is an important factor in maintaining professional standards of nursing care. Training is particularly important for the staff in smaller homes, who have perhaps less opportunity than those in the larger homes to meet professional colleagues and keep abreast of new ideas and nursing practices. Regular participation in

training and personal development activities will help to maintain professional standards among staff. This will avoid professional isolation and promote awareness of new techniques. In-service training for nursing auxiliaries, domestic and catering staff should be encouraged.

3.14.2 A health board may provide training facilities for the staff of a nursing home by arrangement with the registered proprietor or the person in charge upon such terms and conditions as the board may agree.

3.15 **COMPLAINTS**

3.15.1 The Regulations (Article 26) require that a complaint about conditions in a nursing home shall be investigated by the health board and Article 19.1(i) requires that the complaint and details of the outcome of the investigation be recorded by the nursing home. It may be helpful to record all complaints by any one resident in a separate file.

3.15.2 It may be necessary from time to time for a health board to visit a home to investigate complaints about the standards of care or facilities provided in a registered home. The responsibility of the health boards with regard to such complaints extends to all matters coming within the scope of the Health (Nursing Homes) Act, 1990. If complaints relate to such matters as misappropriation of residents' monies or possessions it may be necessary for the board to refer the complaint to the Gardai.

3.15.3 If, after consideration and investigation, a complaint is upheld by the health board and a direction issued by it to a registered proprietor has not been complied with, then the health board may take this into account when considering an application for re-registration of the particular nursing home. If the failure to comply with a direction issued by the health board results in a conviction in the District Court, then the health board may decide to remove the nursing home from the register.

3.15.4 A complaint about a medical practitioner or other health professional may also be directed to the appropriate professional body.

3.15.5 The Act makes provision for residents in nursing homes to be interviewed in private for the purpose of investigating complaints as to treatment or lack of proper care. Under Article 24.1(c), the registered proprietor and any member of staff is required to provide adequate facilities for any designated officer to interview in private any person in a nursing home.

3.16 BROCHURE

3.16.1 Article 17 requires that a brochure is available with information about the nursing home. The purpose of the brochure is to enable prospective residents and their families to make an appraisal of the services offered and to form a realistic view of what the quality of life in a nursing home is likely to be.

3.16.2 Information in the brochure should include -

(a) the philosophy of care at the home;

(b) the type of resident catered for and those not catered for;

(c) what services are and are not included in the basic charge of the home;

(d) the type of care offered, convalescent, respite, intensive nursing, terminal, and care of the elderly with dementia;

(e) the level of staffing;

(f) the type of accommodation offered;

(g) facilities and amenities -

- meals
- heating
- safety
- telephone
- bathrooms
- toilets
- television;

(h) any restrictions regarding age, sex, religion etc;

(i) provisions to facilitate contact between residents and families, relatives and friends;

(j) involvement of voluntary organisations;

(k) recreational and therapeutic facilities;

(l) terms and conditions of residency and contracts of care;

3.17 **INSURANCE**

3.17.1 The registered proprietor of a nursing home is obliged under Article 34 of the Regulations to ensure that residents are adequately insured against injury while being maintained in the home. Adequate cover would be cover in the region of £1m for normal activities by residents while contractually maintained in the nursing home.

3.18 ENFORCEMENT

3.18.1 The enforcement and execution of the Nursing Homes (Care and Welfare) Regulations, 1993 is the responsibility of the chief executive officer or deputy chief executive officer of a health board. Chief Executive Officers, or their deputies will designate officers of the health board to inspect nursing homes or premises believed to be nursing homes. A decision to prosecute a registered proprietor or person in charge of a nursing home or a person carrying on a premises believed to be a nursing home is the responsibility of the chief executive officer or deputy chief executive officer.

4. NURSING HOMES (SUBVENTION) REGULATIONS 1993

4.1 Purpose of Subvention Regulations

1. The purpose of the Subvention Regulations, 1993 is to provide a new framework for the support of people in need of nursing home care and without the means to pay for it. The procedures outlined in the Subvention Regulations replace those previously in operation under Sections 52 and 54 of the Health Act, 1970. However, people in receipt of payments under these Sections on the 1st September,1993 are entitled to continue to receive them as long as they are in a nursing home. The new Regulations provide for a system of subvention based on a professional assessment of the applicant's need for nursing home care and an assessment of his or her ability to pay for that care. An applicant must satisfy these two criteria to qualify for a nursing home subvention.

4.2 Application for Subvention

4.2.1 Article 4.1 of the Regulations obliges applicants, with some exceptions, to apply for a nursing home subvention before admission to a nursing home. This provision is to ensure that health boards can assess the dependency of an applicant prior to entering a home. A board may be able to arrange for a less intensive service to be provided for the person concerned to enable them to maintain their independence in the community.

4.2.2 The remaining Articles in this Section of the Regulations provide for exceptions to the rule that applicants must apply for a subvention before entering a nursing home. Article 4.2 enables those people who were in nursing homes prior to or on the 1st September, 1993 to apply for a subvention. Article 4.3 recognises that genuine hardship may arise for people in nursing homes whose care is funded privately. A chief executive officer has discretion to accept an application for subvention from a person who entered a nursing home after the 1st September, 1993 and who has not been more than two years in the nursing home. Article 4.4 recognises that some people are admitted to nursing homes

in emergency circumstances. The Article enables a health board to accept an application for subvention from a person admitted in such circumstances provided it is satisfied that the admission was a genuine emergency.

Article 4.5 obliges health boards to make arrangements for the carrying out of an assessment of the dependency and the means and circumstances of a person making an application for subvention.

4.2.3 **Information**

Article 5.1 places an onus on the applicant for a subvention to furnish all relevant information to the health board. Article 5.2 allows a health board to refuse to consider an application for subvention unless the relevant information has been supplied. The information required is as set out in the application form for subvention circulated to health boards.

4.2.4 **Criteria for Qualification for Subvention**

Article 6.1 states that a person will not qualify for a subvention unless the health board is of the opinion that the person is sufficiently dependent to require maintenance in a nursing home and is unable to pay any or part of the cost of maintenance in a nursing home. It is a matter for each board to decide whether the assessment of dependency or of means should come first or take place simultaneously.

4.3 <u>Assessment of Dependency</u>

4.3.1 Article 7.1 obliges a health board to assess the dependency of an applicant in accordance with the procedures set out in the First Schedule to the Regulations. The purpose of the assessment is to establish whether the applicant is in need of nursing home care, and if so, whether the level of dependency of the person is medium, high or maximum. The First Schedule provides for a professional assessment of dependency by a designated officer who must either be a registered medical practitioner, a registered nurse, an occupational therapist or a chartered physiotherapist. The designated officer is obliged to assess

the applicant's ability to carry out the tasks of daily living, the level of social support available to the person, and the medical condition of the person being assessed. The assessment must also include consideration of whether the need for care of the person being assessed can be met otherwise than by admission to a nursing home. The person carrying out the assessment should consult with the person caring for the applicant or, in the case of persons being assessed in nursing homes, with the person in charge. The report and recommendations of the designated officer must be considered by an assessment team which decides whether the person qualifies on the basis of his or her dependency for a nursing home subvention. If the person qualifies, the assessment team may recommend that the person be offered accommodation in one of the health board's institutions. In making an offer of accommodation in a health board institution, a health board must have regard to the general welfare and religious affiliation of the person concerned and the general welfare of his or her spouse and child or children, if any. If the assessment team decides that a person qualifies for a nursing home subvention and does not decide to offer the person accommodation in a health board institution, the team must recommend whether the level of dependency of the person assessed is medium, high or maximum. These three levels of dependency are defined in the first schedule. The level of dependency recommended by the assessment team will determine the maximum level of subvention per week to which a person may be entitled.

4.3.2 Article 7.2 of the Regulations gives the designated officers of health boards authority to request information, conduct interviews and carry out an examination of the person. Articles 7.3 and 7.4 protect the confidentiality of medical records and specify the professionals who may carry out an examination of an applicant.

4.3.3 It is recommended that health boards provide a second opinion on an assessment of dependency where the initial assessment is challenged by the applicant or the person acting on his or her behalf.

4.4 ASSESSMENT OF MEANS

4.4.1 Article 8.1 obliges a health board to follow the procedures set out in the Second Schedule to the Regulations when assessing the means of a person who has applied for a nursing home subvention. The Second schedule defines income to include wages, salary, pension, allowances, payments of part time and seasonal work, income from rentals, investments and savings and all contributions from a seperated spouse or other person. Income from all sources in the twelve months proceeding the date of application may be taken into account. The income of a married person is defined as half the combined income and imputed income of the couple. The objective is to estrblish the weekly disposable income of the person seeking a subvention. However, where a husband and wife or co-habiting couple apply simultaneously for subvention it is recommended that the combined income be calculated in a way which is most favourable to the applicant. Income tax payments, mortgage repayments, pay-related social insurance payments and other statutory contributions should be deducted from the gross income in arriving at the net amount. The health board may take into account any income which a person claiming subvention has deprived himself or herself of in order to quality for a subvention.

ASSESSMENT OF ASSETS

4.4.2 Any asset belonging to the person seeking subvention may be taken into account in assessing a person's capacity to pay for nursing care. Paregraph 8 of the Second Schedule gives a list of the assets which would normally be taken into account which include stocks and shares, savings and capital assets, including property and land. The principal residence of the person is a special asset and is dealt with in pargraph 4.4.5. The basic principle is that the value of assets is considered as a direct source of funding to pay for nursing care, less £5,000 which is alowed to the person as a source of personal funds (paregraph 9).

Assets which have been transferred by the person within five years preceding the date of application for a subvention can be taken into

account - this is to prevent abuse by means of transferring of assets in order to qualify for a subvention (paragraph 10). Assets belonging to a spouse may not be assessed by a health board, though half of the value of assets owned jointly by both spouses may be taken into account.

4.4.3 The capital value of the person's assets, excluding the principal residence, is considered to be available to pay for the costs of nursing care and their value should be spread over a year by dividing the total value by fifty two weeks. This gives the weekly contribution towards the cost of nursing care which is available from the assets. If the value exceeds the yearly equivalent of the maximum subvention rate then a subvention would not be paid, but could be paid when the value of assets falls below that figure. If the value of the assets is assessed as falling below the yearly equivalent of the maximum subvention rate, a subvention may be paid.

4.4.4 For example a person with stocks and shares worth £9,000 would have £6,000 disregarded, leaving £3,000 available to pay for nursing care. Assets of £3,000 over a year, divided by fifty two weeks, gives a value of £57.70 per week. This amount would be added to the income of the person in calculating the total income of the person in excess of the old age pension. Assuming a net income of £100 per week and net assets of £3,000, the gross income would be £100 + £57.70 = £157.70 per week. Deducting the old age pension from £157.70 gives £98.50 per week. This amount would be deducted from the maximum subvention amount, £120, if the person was assessed as in the maximum dependency category, giving £21.50 per week as the subvention payable in this case. At the end of the year the case would be reviewed and as the person would have used up £3,000 of their capital at this stage, the subvention would be revised upwards based on the person's income - £100 in this case - giving a new subvention payment of £79.20 per week.

Principal Residence

4.4.5 The principal residence of the person seeking a subvention is treated as a special asset and is not taken into account in certain circumstances.

The value of the principal residence is not taken into account if it is occupied by the spouse of the person seeking a subvention or by a son or daughter less than twenty one years of age or in full time education or by a relative in receipt of the old age non-contributory pension or one of the disability type allowances listed in paragraph 12. The purpose of this rule is to avoid causing undue hardship where the home of a person going into nursing care is occupied by a dependent relative. If the principal residence was not occupied by a relative in one of the listed categories then an annual amount of 5 per cent of the estimated capital value of the house is attributed to it. For example if the principal residence is worth £50,000, and is not occupied by one of the persons specified in paragraph 12, then 5 per cent of £50,000 or £2,500 per annum is attributed to the house. This is added to the person's income in deciding the persons means and how much subvention to pay to the person. If there is an outstanding mortgage on a principal residence, the amount is deducted from the capital value, and 5 per cent is applied to the remaining value. For example if there is a £10,000 mortgage outstanding on a house valued at £50,000, 5 per cent of £40,000 or £2,000 per annum is attributed to the house.

4.4.6 The Second Schedule also provides for the assessment of income from farms and businesses. In the case of a farm it is not the asset value which is taken into account. The farm is treated as a business and the income or notional income from the farm should be used in the assessment of means.

Members of Religious Orders

4.4.7 Land may be treated as an asset under paragraph 8 or a farm under paragraph 16, depending on the circumstances. Note that in assessing the means of a member of a religious order a health board must confine its enquiries to the income and assets personally owned by the applicant. This means that the assets of the religious order are not taken into account in the assessment of the individual applicant.

Exclusions

4.4.8 A health board may refuse to pay a subvention to a person whose assets, excluding the principal residence and the first £6,000, of assets which are excluded, exceed £20,000, or in certain circumstances where the principal residence is valued at £75,000 or more and the persons income is more than £5,000 per annum.

4.4.9 If the value of assets owned by the person (as listed in paragraph 8) excluding the principal residence, exceeds £26,000 (£6,000 for personal use plus £20,000 upper limit, then a health board may refuse to pay a subvention as this capital can be used to pay for nursing care. If the assets of the person are above £6,000 but below £26,000 in total the case can be examined to see if a subvention should be paid. The advice in relation to the assessment of assets given above should be followed in these cases.

4.4.10 A health board may also refuse to pay a subvention to a person if his or her residence is valued at £75,000 or more and it is not occupied by a spouse, a son or a daughter aged less than twenty one years or in full time education, or a relative in receipt of the Disabled Persons Maintenance Allowance, Blind Persons Pension, Disability Benefit, Invalidity Pension, or Old-Age Non-Contributory Pension and the person's income is greater than £5,000 per annum.

4.4.11 **One-fifth of Old Age Pension**

Article 8.2 of the Regulations obliges a board, in assessing the means of an applicant, to disregard income equivalent to one fifth of the weekly rate of the Old Age Non-Contributory Pension.

4.4.12 Article 8.3 enables a designated officer of a health board to request information and conduct interviews with the person and of his or her spouse and child or children if any for the purpose of establishing the means and circumstances of the person.

4.5 ASSESSMENT OF CIRCUMSTANCES

4.5.1 Having determined that a person qualifies for a nursing home subvention on the basis of his or her dependency and inability to pay, Article 9.1 enables a health board to enquire into the circumstances of the person in accordance with the provisions of the Third Schedule. Such enquiries should be made in writing and the applicant should be informed that such enquiries are being made. It is advisable that such enquiries should only be made once the board has qualified the applicant. Circumstances are defined in the Regulations as "the capacity of a son and/or daughter, aged 21 years and over residing in the jurisdiction, of a person who has qualified for a subvention to contribute towards the cost of nursing home care of his or her parent".

4.5.2 A health board may reduce the amount of subvention payable to a person qualifying for a subvention if, in accordance with the Third Schedule to the Subvention Regulations, adult sons and daughters are assessed as being in a position to contribute towards the cost of care of a parent in a nursing home.

4.5.3 A health board may only have regard to the personal income of a son or daughter in the assessment of circumstances. The income of a son-in-law or daughter-in-law may not be taken into account. A health board may take into account income from all sources in the twelve months preceding the date of the application, but the current income of the person is of most relevance in determining a person's capacity to contribute towards nursing home fees. The Third Schedule lists the allowances which must be deducted from the income of a son or daughter in calculating his or her capacity to contribute towards the cost of nursing home care for a parent. A board must also disallow income for a personal allowance, for a dependant spouse and children in full time education or other dependant persons residing with the son or daughter. A dependent spouse is normally a spouse who is not employed. Other dependant persons residing with the son or daughter could include aunts or uncles who are over sixty five years of age. The example in Appendix C may help to illustrate the procedure to be

followed.

4.5.4 Based on its assessment of the disposable income of the son or daughter, the health board must inform the son or daughter whether in the opinion of the board he or she has the capacity to contribute towards the cost of the parent in a nursing home and the amount by which the board will abate the amount of subvention appropriate to the parents level of dependency and means in respect of the son or daughter's contribution. A son or daughter should be informed that under Section 12 of the Finance Act, 1967 he or she can claim income tax relief in respect of health expenses paid for a dependant parent/relative resident in a registered nursing home. In cases where the capacity of the adult sons and daughters of a person to contribute towards the costs of care exceeds the subvention which would be payable to that person, the health board has discretion in cases of hardship to make a smaller subvention payment towards the cost of nursing home fees.

4.5.5 Article 9.2 enables a designated officer of a health board to request information and conduct interviews to establish the circumstances of a son or daughter.

4.5.6 It should be noted that the operation of these provisions depends on the co-operation of the sons and/or daughters of the person qualifying for a subvention. If a son or daughter refuses to co-operate, a health board cannot force a disclosure of information, it can however use its discretion to offer a place in one of its own homes or hospitals under articles 17.1 and 17.2 of the Subvention Regulations to a person who has been assessed as sufficiently dependent to require nursing home care. A health board can also use its discretion in deciding whether it should assess the income of a son or daughter in cases where relations have broken down between a son or daughter and the person applying for subvention. It should be noted that in relation to persons in nursing homes on the 1st September, 1993, the health board is entitled to take into account any contributions paid by a son or daughter outside the

jurisdiction or contribution from members of the extended family in deciding whether or not to pay a subvention.

4.5.7 In some cases, assessment of dependency, means and circumstances may not have been completed before the applicant dies. In cases where the applicant was in a nursing home, prior to 1st September, 1993, the health board may, if the person qualifies, pay a subvention in respect of the person from the date of application to that of the person's death.

4.6 RATE AND AMOUNT OF SUBVENTION

4.6.1 Articles 10.1 to 10.10 set out the method to be used by health boards in calculating the amount of subvention to be paid to a person qualifying for a nursing home subvention. The maximum rates of subvention for each of the three levels of dependency are set out in the Fourth Schedule to the Regulations. The maximum amount which a qualified person may be paid depends on whether they have been assessed as medium, high or maximum dependency according to the procedures in the First Schedule to the Regulations. A person who has no other means apart from the Old Age Non-Contributory Pension qualifies for the maximum rate of subvention for his or her category of dependency. The extra allowance in addition to the standard rate of the Old Age Non-Contributory Pension for people aged 80 years or over or the living alone allowance for people aged 66 years or over should be considered as the weekly rate payable of the Old Age Non-Contributory Pension for such persons. Those in receipt of these supplements, without any other income or assets, should qualify for the maximum rate of subvention applicable to their level of dependency. If a person's means and circumstances are assessed by a health board as greater than the Old Age Pension, a health board shall abate the maximum rate of subvention appropriate to his or her level of dependency by the amount by which the person's means exceeds the Non-Contributory Old Age Pension.

4.6.2 Article 10.5 provides that where a person was resident in a nursing home on the 1st September, 1993, the health board may reduce the

amount of subvention payable by reference to the actual payments payable by or on behalf of the person to the nursing home on the 1st September, 1993, or on the day the application was made. In some cases the payments made to a nursing home prior to the introduction of the new subvention scheme may have been causing genuine hardship, especially to families or relatives of the person applying for subvention. A health board can use its discretion in such cases in reducing the contributions which it is expected will continue to be made on behalf of the person applying for subvention.

4.6.3 In certain cases the person's income will be less than the weekly rate of the Old Age Pension. In these cases, Article 10.6 allows a health board to pay an amount not exceeding the weekly rate of the Old Age Pension in addition to the maximum amount payable in respect of the person's level of dependency. In such cases, the Board should pay to the person concerned a sum equivalent to one fifth of the weekly rate of the Old Age Pension from the subvention approved to be used by the person for his or her personal use.

4.6.4 Article 10.8 enables the Minister to adjust the rate of subvention from time to time taking into account the general movement in prices or other relevant factors and allows him or her to alter the maximum payable rate in respect of the levels of dependency. Article 10.9 enables the Minister to vary the rules for the assessment of means. Article 10.10 specifies that the amount of the subvention to be paid by a health board in respect of a person shall be calculated on a daily basis.

7 Decision on Payment of Subvention

4.6.5 Article 11.1 obliges a health board to inform an applicant in writing within eight weeks of the receipt of the application of its decision whether or not to pay a subvention and the amount of any subvention to be paid. This time limit may be extended if the relevant information is not supplied by the applicant.

4.6.6 Article 11.2 obliges a health board to inform an applicant of the grounds for any decision that a person does not qualify for a subvention or does not qualify for the maximum rate appropriate to that person's level of dependency. Article 11.3 obliges a health board to inform an applicant of his or her right to appeal a decision of a health board under the Regulations.

4.7 CHOICE OF NURSING HOMES

4.7 Article 12.1 obliges a health board to pay a nursing home subvention to the nursing home of the applicant's choice or, if the applicant is unable to exercise a choice, to the nursing home which is the choice of the person acting on his or her behalf. The provisions of this Article are qualified to some extent by the provisions of Article 22.1 which are discussed below. Article 12.2 specifies that a health board may not pay a nursing home subvention to a nursing home if the registered proprietor or person in charge has not agreed to the admission of that person to the home. Article 12.3 provides for the transfer of subvention payments from one nursing home to another.

4.8 PAYMENT OF SUBVENTION BY HEALTH BOARDS

4.8.1 Article 13.1 obliges a health board which has agreed to pay a nursing home subvention to pay that subvention from the date the person qualifies for a subvention or if the person was residing in a nursing home on the 1st September, 1993, from the date the person applied for the subvention. 'Qualifies' in this context means prior to the assessment of circumstances of the applicant. The subvention must be paid until the person is discharged from the nursing home or dies or until the health board withdraws the subvention following a review as provided under Articles 14.1 and 14.2 below. If a health board agrees to pay a subvention for a specified period of convalescent or respite care, it should inform the applicant of the duration of the subvention payments and the registered proprietor of the nursing home chosen by the applicant. The subvention payment is to be paid on the person's behalf to the registered proprietor of the nursing home. It is recommended that health boards would inform registered proprietors of the level of

dependency of the successful applicant. Article 13.3 enables the health board to pay a subvention to a nursing home in its own functional area or in the functional area of another health board. A health board may also pay a subvention to in respect of a person who qualifies and who is admitted to a registered nursing home in Northern Ireland.

4.8.2 Article 13.5 provides that a person who qualifies for a subvention who previously was in receipt of a payment under Section 54 of the Health Act, 1970 will cease to receive such payments once he or she is in receipt of a nursing home subvention under these Regulations. It should be made clear to any person transferring from a Section 54 payment to a subvention under the Nursing Homes Act that the subvention may be subject to review at six monthly intervals.

4.9 REVIEW

4.9.1 Article 14.1 enables a health board to review the dependency, means and circumstances of a person in receipt of a nursing home subvention at six monthly intervals from the date on which a subvention was first paid. Article 14.2 obliges a health board to carry out such a review if requested to do so by the person in receipt of the subvention, the person acting on his or her behalf or the person in charge of the home. Article 14.3 allows for a review at less than six months from the date in which a subvention was first paid if the person has been admitted to the nursing home for convalescent or respite care. Article 14.4 enables a health board to initiate a review sooner than six months if it is of the opinion that a major change has occurred in the dependency, means or circumstances of the person in receipt of a subvention. If it wishes to carry out such a review, it must inform the person concerned or the registered proprietor of the nursing home. Article 14.5 obliges a health board in carrying out a review of the dependency of a person and/or a review of the means and/or the circumstances of the person to do so in accordance with the procedures for the initial assessment of the person as specified in the relevant Articles of the Regulations. The person in charge must be consulted when a review is being carried out by a board. It is recommended that the person responsible should also be consulted.

4.9.2 Article 14.6 enables a health board to increase, decrease or withdraw the subvention payable to the person if it has determined in the review that the dependency and/or means and/or circumstances of the person have changed. A health board may offer the person a place in a health board home or other institution, but in doing so it must have regard to the general welfare and religious affiliation of the person qualifying for a subvention and the general welfare of his or her spouse and child or children, if any. The board may also make arrangements for the care of the person in his or her own home following the review. Article 14.7 provides that a health board shall continue to pay the same amount of subvention to the person while the review is taking place.
Article 14.8 obliges a health board to continue to pay the same amount of subvention unless a review is carried out. Article 14.9 obliges a health board which has carried out a review to inform the person, or the person acting on his or her behalf, of its decision and of the grounds of its decision where there is a change in the amount of subvention payable following a review. Article 14.10 obliges a person who qualifies for a subvention, or a person acting on his or her behalf, to inform the health board if there is a change in the means and/or circumstances of the person.

4.9.3 When a health board, following a review, determines that a person no longer qualifies for a subvention or qualifies for a lower rate of subvention, Article 14.11 obliges the health board to inform the person, or a person acting on his or her behalf, of the right to appeal the decision within twenty eight days of the date on which the health board notified the person of its decision. Article 14.12 obliges a health board to pay the existing rate of subvention to a person for twenty eight days after it has informed the person of its decision to change the rate of subvention payable following a review. In cases where a person appeals a decision of a health board to discontinue a subvention or to pay a lower rate of subvention following a review, and succeeds in that appeal, Article 14.13 obliges a health board to pay the person an amount equivalent to the total amount of subvention which that person

would have been paid if the health board had not discounted the subvention or paid a lower rate of subvention.

4.10 Death or discharge of subvented person

4.10.1 Articles 15.1 - 15.5 provide for the situation arising from the death on discharge of a person in receipt of a subvention from a nursing home. An onus is placed on the registered proprietor or person in charge of a nursing home to notify the health board of the death or discharge. Article 15.5 enables a health board to continue to pay a subvention towards the cost of a person in the nursing home during a temporary absence of the person provided the health board has been informed in advance and approves of the temporary absence. This is to enable persons in receipt of nursing home subventions to be admitted to general hospitals for short periods without loss of their subventions.

4.11 Services covered by subvention

14.11.1 Articles 16.1 - 16.4 define the services which must be provided for a person in receipt of a nursing home subvention. The services are defined as services essential to the maintenance of a person in a nursing home and common practice in most nursing homes. They include bed and board, nursing care appropriate to the level of dependency of the person, incontinence wear and bedding, laundry service and aids and appliances necessary to assist a dependant person with the activities of daily living. Article 16.3 prohibits discrimination by a proprietor or person in charge against a person in a nursing home in receipt of subvention in favour of a person not in receipt of such subvention. Article 16.4 provides that where a special service or item of equipment is required by a subvented person in a nursing home, that there will be a separate agreement between the health board and the registered proprietor or person in charge of the home about the supply of that service or item of equipment.

4.12 Provision of Alternative Care By a Health Board

4.12.1 Article 17.1 enables a health board, which has decided that a person qualifies for a nursing home subvention, to offer that person

accommodation in one of its own nursing institutions. Instead of paying the subvention. Article 17.2 requires the health board to have regard to the general welfare and religious affiliation of the person qualifying for the subvention and of his or her spouse or children when making this decision. This gives a board the option of offering a place in one of its homes or institutions to persons who have qualified for a subvention where this would not be detrimental to the person's general welfare or religious affiliation.

4.13 **Misleading Information**

4.13.1 Article 18 enables a health board to refuse to pay a subvention or withdraw or reduce a subvention if it becomes aware that misleading information has been given in respect of any application for a subvention.

4.14 **Appeals**

4.14.1 Article 19.1 provides for an appeal to an Appeals Officer designated by the Minister against a decision of a health board not to pay a subvention, to pay a lower amount of subvention than the maximum rate, to withdraw a subvention or to reduce a subvention. The Minister has designated Appeals Officers for decisions under the Health (Nursing Homes) Act, 1990 in each health board. An appeal can be made against decisions arising from the assessment of means and circumstances or by reference to contributions being made towards the cost of care before 1 September, 1993. There is no appeal against the assessment of dependency which is a clinical assessment carried out by health professionals. However, it is recommended that health boards should make arrangements to review assessments of dependency by a third party where problems are raised. Article 19.2 puts a time limit of 28 days on decision on the appeal following receipt of the appeal and Article 19.3 requires the appellant to provide information to process the appeal. Under Article 19.4 a decision of the Appeals Officer is final and conclusive.

4.15 **Limit on Expenditure**

4.15.1 Article 20 permits the Minister to limit the amount of expenditure by a health board on subventions under these regulations in any financial year. Under this Article a health board could pay subvention amounts to persons qualifying for subvention below the rates they would be paid under the normal rules of these regulations. This would only apply to persons qualifying for subvention after the date on which a limitation on expenditure was specified.

4.16 **Recoupment of Subvention**

4.16.1 Article 21.1 and 21.2 provide for recoupment by health boards of subvention payments if they become aware that a person did not disclose in full his or her means or circumstances at the time of application for subvention or on review. The recoupment may be from the person, if alive, or his or her estate, if deceased. A health board can recoup the difference between the amount of subvention the person was paid and the amount of subvention the person would have been entitled to if the persons means and circumstances had been fully disclosed at the time of application or review.

4.17 <u>Arrangements on Commencement of Act</u>

4.17.1 Article 22.1 provides that where a health board had entered into an arrangement with a nursing home prior to the commencement of the Act (1st September, 1993) to provide in-patient services in a nursing home under Section 52 of the Health Act, 1970, such an arrangement shall be considered to be in accordance with the provisions of the Nursing Homes (Subvention) Regulations, provided that the provisions of the Subvention Regulations are observed, with the exception of Articles 10.1, 10.3 and 12.1. [Article 10.1 limits the maximum subvention rates payable to those set out in the Fourth Schedule to the Subvention Regulations. Article 10.3 specifies that a person whose sole means is equivalent to or lower than the Old Age Non-Contributory Pension shall qualify for the maximum amount of subvention per week set out in the fourth schedule which is appropriate to the persons level of dependency.

Article 12.1 allows a person to be paid a subvention in a nursing home of his or her choice. This allows a health board to waive the requirements under these Articles in respect of contract arrangements made with nursing homes prior to 1st September, 1993. Contract arrangements would not include arrangements whereby homes were paid Section 54 payments in respect of certain residents. These arrangements generally consisted of contracted beds in nursing homes in the EHB area in respect of dependent persons for whom the EHB paid most of the costs of care. Article 22.2 specifies that the continuation of an arrangement of this kind after the 1st September, 1997 shall require the approval of the Minister. The intention is that the new subvention scheme would gradually replace such arrangements by 1st September, 1997.

4.18 Enforcement

4.18.1 Article 21 provides for the enforcement and execution in the functional area or each health board of the Regulations by the chief executive officer or the deputy chief executive officer of the health board.

5. THE HEALTH (IN-PATIENT SERVICES) REGULATIONS, 1993

5.1 The Health (In-patient) Services) Regulations, 1993 were made under Section 52 of the Health Act, 1970. That Section enables the Minister to make regulations in relation to the administration of services under the Act. The Health (In-patient Services) Regulations, 1993 obliges health boards in making available in-patient services under Section 52 of the Health Act, 1970 in a nursing home to do so in accordance with the provisions of the Health (Nursing Homes) Act, 1990 and the Regulations made under that Act.

The Regulation formalises a distinction which had grown in practice between a health board's obligation to provide acute hospital services and the obligation to provide services for those whose primary need is for nursing home care.

6. THE NURSING HOMES (FEES) REGULATIONS, 1993

6.1 These Regulations set out the fees to be paid for a declaration and for the registration of nursing homes under Section 4 of the Health (Nursing Homes) Act, 1990. The Regulations exempt voluntary nursing homes from registration fees and existing private nursing homes registering for the first time.

Eastern Health Board

Application For Nursing Home Registration

To Be Completed in BLOCK CAPITALS throughout and boxes should be ticked where appropriate

Applicant's name

Proprietor's name

Person in charge

Professional reg. no. of person in charge

NURSING HOME

Name

Address

Telephone number

Fax number

Date established

Number of persons who can be accommodated in the premises.

Indicate the dependency category of patients for which you intend to provide care.

Maximum ☐ High ☐ Medium ☐ Low ☐

Have you any restrictions on the type of residents you will care for in the home?

Yes ☐ No ☐

If yes, please specify

Date of previous registration, if any.

Please include a copy of the nursing home's brochure.

REGISTER AND RECORDS

Do you have a bound register with records of all dependent persons in the home?

Yes ☐ No ☐

STAFFING

Is the person in charge of the home a registered nurse?

Yes ☐ No ☐

If yes, is he/she solely employed as the person in charge?

Yes ☐ No ☐

Has he/she at least 3 years experience in nursing the elderly in the previous six years?

Yes ☐ No ☐

Please attach schedules to this application giving:

1. Details of the work experience of the person in charge and in particular details of the last 6 years work experience.
2. Full particulars of staff employed (including all medical, nursing and other professional, technical, administrative and ancillary staff). This schedule must contain full names, qualifications and grades of staff.

You must also indicate the number of hours per week each person is or will be required to work.

MEDICAL SERVICES

What is the policy of the home in relation to the provision of medical services?

Are your medical provisions in accordance with article 19.5, paragraphs (a) and (b) of The Nursing Homes (Care and Welfare) Regulations 1993?

Yes ☐ No ☐

TREATMENT/SERVICES

Please indicate how the following services are provided (please tick).

Service	Provided by the home		Provided by arrangement with Health Board
	Within the fee	In addition to fee	
General Practitioner	☐	☐	☐
Chiropody	☐	☐	☐
Dental Care	☐	☐	☐
Optician	☐	☐	☐
Physiotherapy	☐	☐	☐
Occupational Therapy	☐	☐	☐
Speech Therapy	☐	☐	☐

Other services provided (please give full details).

MEDICAL PREPARATIONS

What are the arrangements for the recording, safekeeping, administering and disposal of drugs and medicines?

PATIENT ACCOMMODATION FACILITIES

Accommodation type	Number on basement level	Number on ground floor	Number on 1st floor	Number on 2nd floor	Number on 3rd floor
Bathrooms					
Wheelchair assisted bathrooms					
Separate WC's					
Wheelchair assisted separate WC's					
Showers					
Wheelchair assisted showers					
Single bedrooms					
Double bedrooms					
Bedrooms for 3-5					
Bedrooms for 6+					
Lounge and sitting					
Dining					

Does every bedroom have a wash hand basin with hot and cold running water?

Yes ☐ No ☐

Other accommodation accessible to residents of the home (please tick).

- ☐ Office
- ☐ Rehabilitation Room
- ☐ Games Room
- ☐ Day Room
- ☐ Medical Treatment Room
- ☐ Guest Room
- ☐ Interview Room
- ☐ Staff Common Room
- ☐ Chapel
- ☐ Utility Room
- ☐ Visitor Room
- ☐ Other

Is there a garden accessible to residents of the home?

Yes ☐ No ☐

Please include a plan of the home showing the actual/proposed layout of the home detailing bedrooms and other rooms and a copy of the certificate of planning permission for the home.

KITCHEN FACILITIES

Does the home have a separate kitchen?

Yes ☐ No ☐

Details of the size and layout of kitchen (use an additional sheet if necessary)

SANITARY FACILITIES

What are the arrangements for the disposal of soiled incontinence wear?

What are the arrangements for the disposal of waste, mixed dressings, instruments - including disposable syringes and sharps - and similar substances and materials?

DESIGN

Are hand rails provided in circulation areas and both sides of the stairwell?

Yes ☐ No ☐

Are grab rails provided in bathrooms and shower areas?

Yes ☐ No ☐

Does the home have a lift/chairlift?

Yes ☐ No ☐

PERSONAL POSSESSIONS

Please give details of the existing arrangements in the home for the safe keeping of residents' personal possessions.

NUTRITION

Is fresh drinking water available on each floor of the home?

Yes ☐ No ☐

FIRE RECORDS AND FIRE PRECAUTIONS

Does your home have a written record as required by article 28.1 of The Nursing Homes (Care and Welfare) Regulations, 1988?

Yes ☐ No ☐

Is the procedure to be followed in the event of a fire displayed in a prominent position in the home?

Yes ☐ No ☐

How frequently are fire drills held in the home?

Please include confirmation from a chartered engineer with experience in fire safety engineering and management that all the requirements of the statutory fire authority have been complied with.

INSURANCE

Name and address of insurance company providing cover for our home.

Details of the insurance cover arrangements for the home.

Are the patients' own clothes covered by the policy?

Yes ☐ No ☐

DECLARATIONS

I hereby declare that neither I the applicant, the proprietor, the person in charge or any other person to be employed in any capacity in the home has been convicted of an offence under the Health (Nursing Homes) Act, 1990 or The Health (Homes for Incapacitated Persons) Act, 1964 or been convicted of any other offence that would render us unfit to be associated with a nursing home.

Signature of applicant

Date

If the proprietor is a corporate body, have any of the directors been convicted of an offence under The Health (Nursing Homes) Act, 1990 or The Health (Homes for Incapacitated Persons) Act, 1964?

Yes ☐ No ☐

Note: The Health Board may request a sworn affidavit that the above information is correct.

I, the applicant, hereby declare that the information given by me in this application is correct to the best of my knowledge.

Signature of applicant

Date

A proprietor of a private nursing home which commences business after 1st September 1993 must pay a registration fee of £10 per bed with this application form.

FOR OFFICIAL USE ONLY

Date of last inspection

Does the home comply with The Health (Nursing Homes) Regulations, 1993?

Yes ☐ No ☐

If no, should the home be registered with conditions?

Yes ☐ No ☐

If no, give reasons why home should not be registered.

If yes, give condition or conditions which should be specified on the Certificate of Registration.

Date of issue of registration

Date on which next registration will fall due

Application For Nursing Home Registration

Please read carefully before completion.

1. All questions must be answered as appropriate. Forms with unanswered questions will be returned for completion. This will cause unnecessary delays so please ensure that all questions are answered.

2. The following must be enclosed together with this application:
   - Copy of the nursing home brochure.
   - Copy of the certificate of planning permission for the nursing home.
   - Details of the work experience of the person in charge of the nursing home in particular details of the last 6 years work experience.
   - Full particulars of all staff employed.
   - A plan of the home reflecting the actual/proposed layout of the home detailing bedrooms and other rooms.
   - Additional details of the size and layout of the kitchen, if necessary.
   - Written confirmation from a chartered engineer with experience in fire safety engineering and management that all the requirements of the statutory fire authority have been complied with.
   - Registration Fee, if appropriate.

3. All information given will be treated in the strictest confidence.

4. This form should be returned with all the necessary documentation listed at No. 2 above to:

Nursing Homes Section

Eastern Health Board

Dr. Steevens' Hospital,
Dublin 8.

Tel: (01) 6790700.

APPENDIX B

HEALTH BOARD LOGO REFERENCE

CERTIFICATE OF REGISTRATION

under the Health (Nursing Homes) Act, 1990

Date of Registration :

Expiry date of Registration :

Name of Registered Proprietor :

Name of Person in Charge :

Name of Nursing Home :

Address of Nursing Home :

Number of patients who can be accommodated in the home :

This is to certify that _____ _____ Nursing Home of _____ _____ has been inspected by the Health Board and is registered/registered with conditions* as a nursing home under the Health (Nursing Homes) Act, 1990 and Regulations made thereunder for the period specified above.

_____

FOR HEALTH BOARD

HEALTH BOARD STAMP

THIS NOTICE MUST BE DISPLAYED IN A CONSPICUOUS PLACE IN THE NURSING HOME.

APPENDIX C

Application of Rules to assess circumstances

CASE STUDY 1

	£	£
Son's Income		10,062.84
Less Outgoings		
Tax and P.R.S.I.	2,715.46	
Personal Allowance	5,000.00	
Rent	873.60	
		8,589.06
		28.34pw

Son can contribute £28.34 per week

CASE STUDY 2

	£	£
Son's Income		18,002.40
Less Outgoings		
Tax	4,302.48	
P.R.S.I.	601.64	
Insurance	190.84	
Life Assurance	336.00	
Personal Allowance	5,000.00	
Wife Allowance	3,000.00	
Children Allowance	1,000.00	
		14,776.36
		3,226.16
		62.04pw

Son can contribute £62.04 per week.

ex.#15.88

CASE STUDY 3

	£	£
Daughters Income		31,022.69
Less Outgoing		
Tax	11,157.57	
P.R.S.I.	355.34	
Personal Allowance	5,000.00	
V.H.I.	358.00	
Mortgage	6,510.93	
		23,381.83
		7,740.86
		148.86pw

Daughter can contribute £148.86 per week.