



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

National Guidelines

For the

Standardised Implementation

Of the

Nursing Homes Support Scheme

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Glossary

Please note that these definitions are not a legal interpretation of the Nursing Homes Support Scheme Act 2009

The first time a term which is explained in the Glossary is used within the Guidelines it is highlighted in **bold blue** text.

“Allowable deductions” are certain items of expenditure which can be netted off against the value of a person’s means during the financial assessment (see section 5 for further information).

“Applicable person” (for the purpose of an appeal regarding hardship where transferred income or assets have been taken into account) means:

- a) the applicant,
- b) the applicant’s partner, or
- c) a child of a applicant or his/her partner where that child is less than 21 years of age.

“Applicant” means the person applying for the Care Needs Assessment, or financial support.

“Approved nursing home” is a nursing home which:

- a) is registered and subject to inspection by HIQA, and
- b) has an agreement a price for the cost of care with the National Treatment Purchase Fund, and
- c) holds a certificate under the Taxes Consolidation Act 1997.

“Assessed weekly means” means weekly assessed income + weekly assessed cash assets + assessed weekly value of non-cash assets.

“Asset disregard” (legally referred to as “general assets deductible amount”) means the amount of the applicant’s asset(s) that are not taken into account during the financial assessment. It is €36,000 for a single person or €72,000 for a couple. However, this can be changed by Regulation.

“Authorised person” means a person authorised by the HSE Board to:

- a) make Charging Orders,
- b) transmit Orders by electronic means to the Property Registration Authority , and
- c) apply to the Property Registration Authority for the cancellation of a Charging Order.

“Care services” means long-term residential care services.

“Care representative” means a person appointed by the Circuit Court in accordance with the Nursing Homes Support Scheme Act.

“Cash assets” means:

- a) money, whether held as currency or in an account with a financial institution,
- b) money lent to another person which is repayable,
- c) shares, stocks, bonds, securities, and other financial instruments, and
- d) a transferred asset which is a cash asset,

“Charging order” means a simple type of mortgage.

“Child” includes a step-child.

“Common Summary Assessment Report” means the standardised report which healthcare professionals undertaking the care needs assessment will fill out and submit to the HSE. It is commonly known as CSAR.

“Connected person” means a person who can apply for a further deferral of the Nursing Home Loan (see section 6 for further information).

“Couple” means:

- a) a married couple who are living together, or
- b) a heterosexual or same sex couple who are cohabiting as life partners for at least three years.

The couple must be living together at the date of the application or the date of either or both of them entering a nursing home. A couple shall be considered to be living together where:

- a) either/both of them resides in or enters a nursing home,
- b) either/both of them resides in or enters an institution for purposes relating to:
 - i. a physical/mental condition,
 - ii. imprisonment, or being taken into lawful custody.

References to **spouse or partner** throughout the guidelines refer to the other member of the couple as defined above.

A person who is a **widowed** is considered to be single when making an application for financial support.

“Cost of care” means either:

- a) in the case of a public/voluntary nursing home, the published cost which has been determined using the published list of cost components, or
- b) in the case of an approved private nursing home, the cost agreed with the NTPF.

“Deferred relevant event” means:

- a) the death of the applicant’s partner,
 - b) that the conditions for qualification as a connected person cease to apply,
 - c) the death of the connected person, or
 - d) the transfer of an interest in the asset concerned,
- whichever occurs first.

“Estimated market value” means the best price the asset concerned would fetch on the open market on the date on which the application for State support is made.

In the case of foreign assets (whether cash or non-cash) it means the value of the asset converted into Euro at the official conversion rate specified by the Central Bank of Ireland on the date the application for State support.

“Financial support” means State support, the Nursing Home Loan or both State support and the Nursing Home Loan.

“Further Deferral” is where the applicant’s spouse or certain connected persons can qualify to defer repayment of the Nursing Home Loan.

“Income” means:

- a) income from an employment, trade, profession or vocation,
 - b) rental income whether arising in the State or otherwise,
 - c) income from holding of an office or directorship,
 - d) income from a pension (whether under the social welfare code or otherwise),
 - e) income whether in the nature of a benefit or allowance arising from social welfare, social insurance or other sources of a similar character,
 - f) income from fees, commissions, dividends, interest, or income of a similar character,
 - g) payments under a settlement, covenant, estate or a payment in respect of maintenance,
 - h) income from royalties and annuities,
 - i) transferred income of a type described in *paragraphs (a) to (h)*, and
 - j) any form of income which is prescribed by regulation,
- whether in money or monies worth and arising within the State or otherwise.

“Interest in the transferred asset” means the value of the applicant’s interest in the transferred asset. It is determined using the following formula:

$$MV - CR$$

Where –

MV is the estimated market value of the asset concerned at the time of the transfer,

CR is the amount of the consideration received by the person or the estimated market amount of the consideration received by the person (whichever is the higher).

“Loan amount” means the weekly amount paid by the HSE on behalf of the applicant under the Nursing Home Loan.

“Long-term residential care services” are defined in the Bill as maintenance, health or personal care services, or any combination thereof, provided to a person residing in-

- (i) an approved nursing home, or
- (ii) a public or voluntary facility that is publicly designated in writing by the Executive as predominantly for the care of older people,

in which nursing care is provided on a 24 hour basis, for a period of not less than 30 consecutive days, or periods aggregating not less than 30 days within a period of 12 consecutive months.

Long-term residential care services do not include:

- medically acute care and treatment in an acute hospital,
- respite care,
- rehabilitative care for -
 - a period of less than 12 consecutive months, or
 - periods aggregating less than 12 months within a period of 24 consecutive months, or
- out-patient services made available pursuant to section 56 of the Health Act 1970.

“Minimum retained income threshold” means:

- a) for a single person, 20% of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support,
- b) for a couple, the maximum weekly amount of State pension (Non-Contributory) together with 20% of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support.
- c) For a couple, where the partner of the person is:
 - (i) receiving financial support, the weekly assessed income of the partner together with 40% of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support, or
 - (ii) habitually resident in a relevant facility or nursing home, the amount of any charge imposed on the partner in accordance with section 53(2) [*note: this will need to be changed to Section 67C on the commencement of the relevant section of the Health (Amendment) Act 2013*] of the Health Act 1970, together with 40% of the maximum weekly amount of State pension (Non-Contributory) at the date of the application for State support

“Non-cash assets” means property (whether situated in Ireland or not) and includes options and incorporeal property in which the person has a beneficial interest, including transferred assets which would have been non-cash assets if not transferred.

“Nursing home” has the meaning assigned to it by section 2 of the Health (Nursing Homes) Act 1990 and includes an institution referred to in section 2(1)(h) of that Act.

“Nursing Home Loan” (legally referred to as “Ancillary State support”) is an optional feature of the scheme. It is the financial assistance loaned to the applicant by the HSE to pay the portion of their contribution to care that is based on land and property in Ireland and is repayable after their death.

“Ordinarily resident” means that you have been living in Ireland for at least a year or that you intend to live in Ireland for at least a year.

“Principal residence” means a person’s home and includes the garden or grounds up to one acre (excluding the house).

“Proprietor” means the person who has agreed in writing with the HSE to be the proprietor of a public nursing home or the registered proprietor in the case of an approved private nursing home.

“Relative”, in relation to a person, means a parent, step-parent, child, grandchild, brother, step-brother, sister, step-sister, uncle, aunt, nephew or niece of the person.

“Relevant accountable person” means the person responsible for the repayment of the Nursing Home Loan and will be a different person depending on the circumstances. If the repayment arises because of the sale or transfer of the property during the applicant’s lifetime, the applicant and hi/her spouse/partner will be the relevant accountable persons. If the repayment arises as a result of the applicant’s death, the applicant’s personal representative will be the relevant accountable person. A person who inherits the property or any part of it can also be held accountable for repayment of the loan.

“Relevant event” means:

- a) the death of the applicant,
- b) the sale or transfer the asset (if this occurs before the applicant's death),
- c) a decision that the applicant or his/her partner is bankrupt, or
- d) a decision by the HSE that it has been given false/misleading information relating to the application for the Nursing Home Loan.

“Repayable Amount” means the total of loan amount provided under the Nursing Home Loan adjusted by the consumer price index (to take account of inflation) and adjusted to take account of any interest payable.

“Specified person” means:

- a) the Committee of a Ward of Court,
- b) a person appointed under a valid, registered enduring power of attorney who is not restricted from applying for the scheme,
- c) a care representative appointed under the Nursing Homes Support Scheme Act,
- d) the applicant's spouse or partner,
- e) a relative of the applicant who is 18 years of age or over,
- f) a next friend appointed by a court,
- g) the applicant's legal representative, or
- h) a registered medical practitioner, nurse or social worker.

The people listed at (a)-(c) have first priority over those listed at (d)-(h). This means that they have the right to act as a specified person ahead of the other categories.

“State support” means the financial assistance give to a person by the HSE to make up the difference between their contribution to care and the cost of care.

“Transferred asset” means an asset which was transferred within the 5 years prior to the date on which an application for State support is first made for a) no consideration, b) nominal consideration or c) consideration which was less than 75% of the estimated market value of the interest of the person in the asset at the time of transfer. It does not include assets which were transferred in respect of the maintenance of a child or other matrimonial proceedings.

“**Transferred income**” is any income which a person has deprived themselves of by transferring it to another person within the 5 years prior to the date on which an application for State support is first made.

Section 1- Introduction & Summary of Nursing Homes Support Scheme

<p><u>Section Contents</u></p> <p>1.1 Introduction</p> <p>1.2 Objective of the Nursing Homes Support Scheme</p> <p>1.3 Summary of the Scheme</p>

1.1 Introduction

The purpose of these Guidelines is to provide a detailed explanation of the Nursing Homes Support Scheme Act 2009 and to ensure the standardised implementation of the scheme nationally.

Nothing in the Act or in these Guidelines shall operate in a way that diminishes the overall financial position of an applicant currently in receipt of Nursing Home Subvention or who is currently in a public nursing home bed (including a ‘contract bed’).

This explanatory guide does not purport to be a legal document or to provide a legal interpretation of the Nursing Homes Support Scheme Act, 2009.

1.2 Objective of the Nursing Homes Support Scheme

The aim of the Scheme is to provide financial support to those in need of nursing home care. **Financial Support** is provided based on the overall principle of ability to pay and takes two main forms;

- Straightforward financial assistance which is referred to as **State Support**
- The option to defer part of the applicant's contribution which is termed the **Nursing Home Loan ("Ancillary State Support")**

The Scheme is **resource-capped** and the HSE may only provide financial Support from within the resources allocated to the Scheme in any given financial year by the Oireachtas.

1.3 Summary of the Scheme

The scheme will be the same for all types of **nursing home** care provided by public / voluntary and approved private nursing homes. It may be broken down into a number of basic steps:

1. Care Needs Assessment

A person ("**the applicant**"), or a **specified person** acting on their behalf, can apply for a Care Needs Assessment. The Care Needs Assessment identifies whether or not the applicant needs long-term nursing home care. It will be carried out by appropriate healthcare professionals, for example, a nurse etc., appointed by the HSE, using the **Common Summary Assessment Report (CSAR)**. If the applicant is assessed as needing long term residential care, a decision can then be made in respect of the provision of financial support under the scheme.

2. Financial Assessment

The Financial Assessment works out how much the applicant can contribute to the cost of their care by taking into account their **income** and assets. In the case of a **couple**, the applicant's means are assessed as 50% of the couple's combined income and assets. For example, if a couple's income was €600 per week, the assessment of the person needing care would be based on 50% of €600, or €300. In other words, the person needing care would be considered to have a total income of €300 per week. The assessment will not take into account the income of other relatives such as the applicant's children.

3. Contribution to Care

An applicant will contribute 80% of his/her assessable income and 7.5% of the value of any assets per annum (5% of assets if the application was made prior to the 25th July 2013). However, the first €36,000 of the applicant's assets, or €72,000 in the case of a couple, will not be counted at all in the financial assessment (this is commonly termed the “**asset disregard**”).

Where the applicant's assets include land and property, the 7.5% contribution based on such assets may be deferred. This is an optional Nursing Home Loan element of the scheme which is legally referred to as “Ancillary State support” (see below).

The applicant's **principal residence** will only be included in the financial assessment for the first 3 years of his/her time in care, including time spent in care before the commencement of the scheme. This is known as the 22.5% or ‘three year’ cap (15% if application was made prior to the 25th July 2013). This ‘three year’ cap applies regardless of whether the applicant chooses to opt for the Nursing Home Loan. The ‘three year’ cap will also extend to farms and business in certain circumstances.

Finally, there are important safeguards built in to the Financial Assessment which are worth noting.

- Nobody will pay more than the actual **cost of care**.
- The applicant will keep a personal allowance of 20% of his/her income or 20% of the maximum rate of the State Pension (non-Contributory), whichever is the greater.
- If there is a spouse/partner remaining at home, he/she will be left with 50% of the couple's income or the maximum rate of the State Pension (non-Contributory), whichever is the greater.
- If both members of a couple enter nursing home care, they each retain at least 20% of their income, or 20% of the maximum rate of the State Pension (Non-Contributory), whichever is the greater.

4. Nursing Home Loan (“Ancillary State Support”)

As outlined above, where the applicant's assets include land and property, the **7.5%** contribution based on such assets may be deferred. This means that the HSE will pay the

money to the nursing home on the applicant's behalf (i.e. loan the money) and it will be collected after the applicant's death.

This is an optional benefit of the scheme, the purpose of which is to ensure that the applicant doesn't have to sell assets such as his/her home during his/her lifetime. In order to apply for the Nursing Home Loan the applicant (and their spouse/partner, where applicable) must provide written consent to having a Charging Order registered against your asset. This is a simple type of mortgage which secures the money loaned by the HSE. If a person does not have the capacity to consent to the Nursing Home Loan and the Charging Order, a Care Representative will need to be appointed to act on his/her behalf (see section 7 of these guidelines).

If there is a spouse or certain **relatives** living in the principal residence, the repayment of the Loan may also be deferred for their lifetime ("**Further Deferral**").

5. Selection of a Nursing Home

The applicant can choose any public, voluntary nursing homes or approved private nursing home. However, in order for financial support to be provided:

- The home must have availability, and
- The home must be able to cater for the applicant's particular needs.

6. Financial Support

An applicant who selects a public or voluntary nursing home will pay his/her contribution to the home each week and the HSE will pay the balance. Similarly, an applicant who selects an approved private nursing home will pay his/her contribution to the private provider each week and the HSE will pay the balance.

An information leaflet for applicants, to support these guidelines, is circulated separately and is also available on www.hse.ie . (FAQs are also available on www.dohc.ie).

Section 2- Qualifying Criteria

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- 2.1 Qualifying Criteria for Applicants
- 2.2 Facilities which will qualify under the Scheme
- 2.3 Services which will fall under the scheme
- 2.4 Publicly provided services which are exempted under the Scheme
- 2.5 Charging in Acute Settings

2.1 Qualifying Criteria for Applicants

The overarching criterion for all applicants is that they must be **ordinarily resident** in the State. This is consistent with other health legislation in terms of general eligibility for health services. Within this, there are three categories of people who are eligible for financial support under the Scheme:

- Category 1: People who satisfy the care needs and financial assessments, i.e. people who are assessed as needing long-term residential care and who are assessed as needing financial assistance (i.e. State support) and/or who qualify for the Nursing Home Loan (i.e. ancillary State support).
- Category 2: People who are already in public or voluntary nursing homes (including contract beds) on the date of commencement of the scheme
- Category 3: People who are already in **approved nursing homes** on the date of commencement of the scheme

In general terms, category 1 represents all new entrants to nursing homes after the Scheme commences. Categories 2 and 3 represent existing public and approved private nursing home residents respectively. The key difference between the latter categories and category 1 is that existing residents do not have to undergo the care needs assessment in order to qualify for financial support. It should also be noted that, while people in category 2 and 3 may apply

for support under the Scheme, they may also continue with their current arrangements if they so wish.

In relation to category 3, it should be noted that existing residents whose nursing home does not reach a price agreement with NTPF before the scheme commences **will not** be eligible to apply for the scheme. Moreover, if their nursing home subsequently reaches a price agreement with NTPF or if they choose to move to an approved nursing home, they will have to apply as new entrants (i.e. Category 1), which means that they will have to qualify under the care needs assessment.

The Scheme is **not confined to those over 65** but rather is open to everyone who falls into one of the three categories above.

2.2 Facilities which will qualify under the Scheme

The Scheme will cover public and voluntary nursing homes that have been designated by the HSE as being predominantly for the care of older persons, and approved private nursing homes. In order to qualify as an approved private nursing home, a private nursing home will have to:

- ✓ be registered and subject to inspection by HIQA
- ✓ reach a written agreement with NTPF on the maximum prices that will be charged for care under the Scheme
- ✓ be tax compliant

The HSE has compiled a list of all homes (public, voluntary and private) which qualify under the scheme. Financial Support can only be paid in respect of nursing homes which are on this list.

2.3 Services which will fall under the scheme

The Scheme will only extend to **long-term residential care services** (referred to hereafter as “**care services**”). These are defined as maintenance, health and personal care services provided in public, voluntary and approved nursing homes. Within this, the specific services

which are covered under the Scheme are stipulated either in the written designation of the facility as a public or voluntary or in the “approved nursing home agreement”.

Services must be provided for a certain duration in order to qualify as long-term residential care services. Services must be provided for a period of not less than 30 consecutive days, or 30 days within 12 months. However, the HSE may make a determination that it is unlikely that the person in need of care services will ever cease to require care services during their lifetime. This may enable financial support to be paid, and contributions to be collected, from the date the person enters nursing home care.

The definition of long term residential care does not include:

- medically acute care and treatment in an acute hospital
- respite care
- rehabilitative care for a period of less than 12 consecutive months, or periods in the aggregate amounting to less than 12 months within a period of 24 consecutive months
- out-patient services made available pursuant to section 56 of the Health Act 1970.

2.4 Publicly provided services which are exempted under the Scheme

Some care recipients are explicitly excluded from the requirement to pay contributions under the Scheme in respect of care services provided by the Executive or on behalf of the Executive. These are as follows:

- A person under 18 years of age,
- A woman in respect of motherhood,
- A person detained involuntarily under the Mental Health Acts 1945 to 2001,
- A person who pursuant to Section 2 of the Health (Amendment) Act 1996, in the opinion of the Executive, has contracted Hepatitis C directly or indirectly from the use of Human Immunoglobulin Anti-D or the receipt within the State of another blood product or a blood transfusion,
- A person in respect of the treatment of diseases prescribed under Part IV of the Health Act 1947.

2.5 Charging in Acute Settings

Under the Act, a person in an acute hospital bed may be charged if:

- (a) the person's acute phase of treatment has been completed, and
- (b) the person has not applied for a care needs assessment or has applied for a care needs assessment and withdrawn the application or has received a determination in respect of their care needs assessment.

The charge is based on the average cost of public long-term residential care services.

Section 3- Applying for the Scheme

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- 3.1 Application Process- Who can apply?
- 3.2 Application Process- Information Requirements
- 3.3 Procedure for Processing with Applications by the Nursing Homes Support Office
- 3.4 Procedure for Care Needs Assessment Applications by Local Placement Fora
- 3.5 Procedure for Investigating Title and Processing Charging Orders by Central Office
- 3.6 Offences

3.1 Application Process- Who can apply?

Anyone who is ordinarily resident in the State and who may need nursing home care can apply for the scheme.

There are three steps to the application process.

Step 1 is an application for a Care Needs Assessment. The Care Needs Assessment identifies whether or not the applicant needs long-term nursing home care.

Step 2 is an application for State Support. This will be used to complete the Financial Assessment which determines the applicant's contribution and corresponding level of financial assistance ("State support").

Step 3 is an optional step which should be completed if the applicant wishes to apply for the Nursing Home Loan ("Ancillary State support").

The application should be made and signed by the person applying for nursing home care (i.e. the applicant). However, the following people may also apply on behalf of the applicant:

- In the case of the care needs assessment only (**Step 1**), a **specified person** may apply on behalf of an applicant where it appears to the specified person that the applicant may need care services and, by reason of ill health, physical disability or mental condition, is unable to make an application for a care needs assessment on their own behalf. In other words, the applicant does not necessarily have to be of diminished mental capacity in order for a specified person to apply for the care needs assessment on their behalf. However, the HSE must be satisfied that the specified person is acting in the best interests of the person.
- In the case of the application for State support (**Step 2**), a specified person may apply on behalf of an applicant only where the applicant has diminished mental capacity.
- In the case of the Nursing Home Loan (**Step 3**), only a **care representative** may apply on behalf of an applicant.

Information on the specified person and the care representative is provided in section 7.

Finally, an applicant may wish to have some help or support from a friend or relative in making the application. If this is the case, the applicant can nominate a contact person (see Part 1A of application form) and all correspondence will go to both the applicant and the contact person.*

*Note: The nominated contact is not entitled to be issued with a copy of the applicants CSAR.

3.2 Application Process- Information Requirements

A person must apply to the HSE using the application form specified by the HSE.

The person and, where applicable, their spouse, partner or representative, must supply all the information requested by the HSE in connection with the application. Where a person fails to use the specified application form or provide the requested information, the HSE has the right to refuse to consider the application.

In addition, the person undertaking the financial assessment may seek to interview or request information from (i) the applicant, (ii) their spouse or partner and/or (iii) their representative. Where this information is not provided within 40 working days from the date of request, the HSE may refuse to consider or further consider the application.

Where the HSE exercises these rights it must notify the applicant in writing of its decision not to consider or further consider the application within 10 working days of taking that decision.

There is an onus on the HSE to facilitate the applicant, in every way possible, in making an application. The applicant must always be informed in writing of any decisions made in relation to their case.

The procedure for dealing with applications is outlined below.

3.3 Procedure for Processing with Applications by the Nursing Homes Support Office

On Receipt of an Application (**within 5 working days**), the Nursing Home Support Office must:

- ✓ Date stamp the application
- ✓ Record the application on IT system to generate unique patient reference number (if IT system available)
- ✓ Check the application is fully completed and signed (Check identity of signatory and relationship to applicant)

If an application form is unsigned or incomplete, the administrative procedures outlined in the yellow boxes should be followed.

If application form not signed –

1. Start file
2. Place photocopy of form on file
3. Return form to applicant for signature
4. If additional information is required, send request for further information when returning unsigned form

If application form incomplete-

1. A letter must issue to the applicant, or their representative, acknowledging receipt of their application, detailing the information required and requesting a response to the questions, or submission of the relevant details or documentation, within 10 working days if possible (standard letter attached to guidelines)
2. If there is no response, a reminder must be sent to the applicant stating that processing of State Support application will be suspended if no response is received within a further 30 working days.
3. If there is no response, a letter must issue to the applicant within 10 working days of the date of the determination to refuse to consider the application, advising of the refusal to consider the application and of the applicant's right to appeal.
4. In the event that further contact is made with the Nursing Home Support Office by the applicant at any point after that, the application will be re-activated. There may be a need for the Nursing Home Support Office to contact the Local Placement Forum if Care Needs Assessment needs to be reviewed.

Completed applications: Once the application form is fully and correctly completed, the Nursing Home Support Office shall:

- ✓ Acknowledge receipt of the application, **within 5 working days** of its receipt.
- ✓ **Within 5 working days** request Care Needs Assessment (i.e. completed CSAR) from the appropriate Local Placement Forum as determined by primary residence / address.
- ✓ **Within 15 working days** from submission of complete financial documents and the care needs assessment, complete the financial assessment.
- ✓ If the application includes an application for the Nursing Home Loan, send details of the property/ properties to the Central Office **within 5 working days** of receipt of the application in order that they may carry out a Land Registry Title search to ensure the applicant is the rightful owner and as such entitled to apply for the Loan. (Standard letter)
- ✓ **Within 10 working days of the determination**, give notice in writing to the applicant of the decision and the reasons for the decision.

It is not necessary to await the outcome of the Care Needs Assessment prior to commencing the Financial Assessment. However, a determination regarding a financial assessment and the payment of State support or the Nursing Home Loan shall **not** be made by the Nursing Home Support Office pending the outcome of the care needs assessment.

3.4 Procedure for Care Needs Assessment Applications by Local Placement Fora

The needs assessment will be carried out by health and social care professional(s) using a COMMON SUMMARY ASSESSMENT REPORT (CSAR) in line with the Guidance document The Local Placement Forum must:

- ✓ obtain a CSAR (see letter 1.7),
- ✓ review the CSAR and make a determination on the need for care,;
- ✓ inform the Nursing Home Support Office of this determination, and
- ✓ send a letter of determination with CSAR within 10 days etc.

3.5 Procedure for Investigating Title and Processing Charging Orders by Central Office

The Nursing Home Loan is money provided by the HSE by way of a loan based on the property or land-based assets within the State. The HSE makes an Order charging the interest in the relevant charging asset. Payment of the loan shall not be made prior to the making of a Charging Order. The Charging Order is registered with the Property Registration Authority as soon as practicable after the payment of the loan commences.

3.6 Offences

A person who recklessly or knowingly provides HSE with false or misleading information in connection with an application for State Support is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both

Section 4- Care Needs Assessment

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- 4.3 Procedure for Undertaking Care Needs Assessments

4.1 Applicants who must undergo a Care Needs Assessment

For all new applications for long term residential care, a care needs assessment shall be carried out in order to determine if long term residential care is required.

Anyone in an unapproved private nursing home on the date of commencement of the Scheme:

- (i) who wishes to move to a public, voluntary or approved private nursing home or
- (ii) whose nursing home subsequently enters into an agreement with NTPF and gains approval under the Scheme,

must also undergo the care needs assessment. In other words, existing private residents whose nursing home does not reach a price agreement prior to commencement of the Scheme will be treated like new entrants and will have to qualify under the care needs assessment. This is a necessary feature of the new scheme from a legal perspective.

In all of the above cases the applicant must be assessed as needing long-term residential care in order to be eligible for either State support or the Nursing Home Loan.

4.2 Applicants who may undergo a Care Needs Assessment

Existing residents in public, voluntary and approved private nursing homes on the date of commencement of the Scheme will not have to apply for a care needs assessment but may apply for one at any stage should they wish to do so.

4.3 Procedure for Undertaking Care Needs Assessments

On receipt of the application form for the care needs assessment (Part 2 of the Nursing Homes Support Scheme Application Form), the Nursing Home Support Office will notify the

Local Placement Forum to make arrangements for the care needs assessment to be carried out by suitably qualified healthcare professionals.

The Local Placement Forum will make arrangements for the care needs assessment to be carried out. On completion of the assessment, the healthcare professionals involved will summarise their findings in the CSAR and submit this to the Local Placement Forum.

The Local Placement Forum will consider the CSAR and make a determination as to whether the applicant requires care services and also whether the applicant is likely to require care services for the remainder of their life. The applicant and, where applicable, the specified person, must be notified in writing of the determination within 10 working days of the date of the determination. This written notification must include the reasons for the determination, information about the review and appeals process, and a copy of the care needs assessment report.

The determination will also be notified to the Nursing Homes Support Office. Where the determination is that a person does not require long term residential care, the application must not be progressed any further by the Nursing Home Support Office.

It is the responsibility of the Local Placement Forum to retain the CSAR and to notify the applicant and the Nursing Home Support Office of the determination.

Finally, the CSAR may also be provided to a public, voluntary or approved private nursing home with prior consent of the individual.

Section 5- Financial Assessment

Section Contents

- 5.1 Establishing an Applicant's Means
- 5.2 Determining Interest in Assets
- 5.3 Valuations and 'Estimated Market Value'
- 5.4 Allowable Deductions and Safeguards
- 5.5 Rules for Determining Assessable Contribution

The Financial Assessment looks at the applicant's income and assets in order to work out what their contribution to care will be. The basic administrative procedures which must be followed when undertaking the financial assessment are:

1. Establish all the income and assets in which the applicant has an interest (i.e. establish the applicant's means)
2. Establish the *interest* of the applicant in those income and assets (i.e. the proportion which they own)
3. Establish the value of applicant's interest in the income and assets
4. Deduct any **allowable deductions** which are applicable
5. Apply the asset disregard
6. Ensure the minimum income thresholds are achieved
7. Calculate applicant's contribution to care

Each of these administrative procedures is explained in detailed below. A set of simple rules for undertaking the financial assessment is contained in the yellow boxes on pages 38-42

5.1 Establishing an Applicant's Means

A financial assessment must consider an applicant's means in order to determine their ability to meet their own care costs i.e. the amount that is assessed as their contribution towards the cost of their care. Where the applicant is a member of a couple, the assessment must consider the means of both members of the couple. Broadly speaking, **an applicant's means consist of their income, their cash assets and their non-cash assets**, each of which is defined as follows:

“Income” means:

- a) income from an employment, trade, profession or vocation,
 - b) rental income whether arising in the State or otherwise,
 - c) income from holding of an office or directorship,
 - d) income from a pension (whether under the social welfare code or otherwise),
 - e) income whether in the nature of a benefit or allowance arising from social welfare, social insurance or other sources of a similar character,
 - f) income from fees, commissions, dividends, interest, or income of a similar character,
 - g) payments under a settlement, covenant, estate or a payment in respect of maintenance,
 - h) income from royalties and annuities,
 - i) transferred income of a type described in *paragraphs (a) to (h)*, and
 - j) any form of income which is prescribed by regulation,
- whether in money or monies worth and arising within the State or otherwise.

“Transferred income” is any income which a person has deprived themselves of by transferring it to another person within the 5 years prior to the date on which an application for State support is first made.

Details of the applicant’s income/transferred income, and that of their spouse/partner if applicable, is captured in Part 3A of the Application Form.

“Cash assets” means:

- a) money, whether held as currency or in an account with a financial institution,
- b) money lent to another person which is repayable,
- c) shares, stocks, bonds, securities, and other financial instruments, and
- d) a transferred asset which is a cash asset,

Details of the applicant’s cash assets, and those of their spouse/partner if applicable, are captured in Part 4A of the Application Form.

“Non-cash assets” means property (whether situated in Ireland or not) and includes options and incorporeal property in which the person has a beneficial interest, including transferred assets which would have been relevant assets if not transferred.

Details of the applicant’s non-cash assets, and those of their spouse/partner if applicable, are captured in Part 4B of the Application Form.

“Transferred asset” means an asset which was transferred within the 5 years prior to the date on which an application for State support is first made for a) no consideration, b) nominal consideration or c) consideration which was less than 75% of the estimated market value of the interest of the person in the asset at the time of transfer. It does not include assets which were transferred in respect of the maintenance of a child or other matrimonial proceedings.

Details of the applicant’s transferred assets, and those of their spouse/partner if applicable, are captured in Parts 4A and 4B of the Application Form.

5.2 Determining Interest in Assets

In establishing an applicant’s assets, the HSE is really establishing the applicant’s interest in an asset(s). This is particularly relevant where an asset is owned by more than one person (other than where the owners in question are a couple as defined in the Act and joint assessment applies). For example, an applicant may own a house jointly with their sibling. In such cases, the HSE shall presume that each person has an equal interest in the asset concerned unless the applicant satisfies the HSE that this is not the case.

In the case of transferred assets, the applicant’s **interest in the transferred asset** is the net amount which they have deprived themselves of. For the purpose of calculating the value of the applicant’s interest in a transferred asset, the following formula should apply:

$MV - CR$

Where -

MV is the **estimated market value** of the asset concerned at the time of the transfer,

CR is the amount of the consideration received by the person or the estimated market amount of the consideration received by the person (whichever is the higher);

In other words, the above formula ascertains the net transfer value of the asset or the net amount which the person has deprived themselves of. Some examples of how to establish the applicant's interest in a transferred assets are set out below. In each case, assume that the asset has been transferred within 5 years of the initial date of application under the scheme.

Example 1:

A person transferred an asset, valued at the date of transfer of €100,000, for €70,000. Firstly, the HSE must establish that whether this is a transferred asset using the definition of “transferred asset” on page 9. The asset was transferred for less than 75% of its market value ($70,000/100,000 \times 100 = 70\%$) and , therefore, qualifies as a transferred asset. Secondly, the HSE must establish the person's interest in the transferred asset. This is achieved by taking the market value at the date of transfer (€100,000) and deducting the consideration received (€70,000). The difference (€30,000) is the amount which the person has deprived themselves of and is the person's *interest* in the asset. A 7.5% contribution is payable on this €30,000. The consideration of €70,000 might still be available (e.g. lodged as savings) and would, therefore, qualify as a cash asset.

Example 2:

A person possessed an asset, valued at €100,000. The asset was disposed of for €80,000. In this example, the asset is not to be treated as a “transferred asset”. This is because reasonable consideration (i.e. over 75% of estimated market value) was received for the asset. The consideration of €80,000 would qualify as a cash asset (assuming it is unspent).

5.3 Valuations and ‘Estimated Market Value’

Once an applicant's means has been established, the next step is to value those means. An applicant must submit valuations of assets with their application form. This includes transferred assets, and assets and transferred assets in which the applicant's spouse or partner has or had an interest. However, the HSE does not have to accept a valuation submitted by an applicant and may seek its own valuation of a particular asset at its own expense.

Valuations should be based on the “**estimated market value**” as defined in the Act. The “estimated market value” of an asset means the best price the asset would fetch on the open market on the date on which the application for State Support is made.

Where a foreign based asset is included in the assessment, the estimated market value will be the value of the asset when converted to the currency of the Euro at the official conversion rate specified by the Central Bank of Ireland rate on the date on which the application for State Support is made

Finally, in the case of transferred assets, the estimated market value shall be determined on the basis of the value of the asset at the time of the transfer. Where the asset is also a foreign-based asset and valued in a currency other than the Euro, it should be assessed based on the value of the asset converted into the currency of the Euro at the date of the transfer of the asset concerned.

5.4 Allowable Deductions and Safeguards

An applicant may apply for certain items of expenditure (termed “**allowable deductions**”) to be taken into account and netted off against their means prior to the calculation of their contribution. Part 3B of the application form allows the applicant to request these allowable deductions. Please note that any requests should be cross-checked to ensure that they comply with the exact stipulations outlined below.

When determining income, the following deductions apply:

- 1: Income tax, social insurance contributions and statutory levies shall be deducted (net of allowances, reliefs and exemptions which the applicant or any other person might be entitled to claim)
- 2: Where an applicant owns their principal residence, either (a) interest on borrowings or (b) borrowings incurred to the extent that such amount has not been repaid, for the purchase, repair or improvement of the principal residence shall be deducted. Where an individual chooses to avail of (b), he or she cannot also seek to offset the same mortgage against the value of the asset concerned.

Where an applicant is a tenant, rental payments in respect of the residence shall be deducted where the applicant's spouse/partner or a child under 21 of the couple lives in the residence.

Please note that deductions in respect of interest on borrowings/unpaid borrowings and in respect of rent are mutually exclusive and may not both be made in respect of the same applicant. These allowable deductions should allow for any relief from income tax which may be claimed in respect of such payments.

- 3: Health expenses within the meaning of section 469 of the Taxes Consolidation Act 1997 shall be deducted, excluding contributions payable under the Nursing Homes Support Scheme, but such deductions shall be net of any tax relief claimed by the applicant or their spouse or relative.
- 4: Maintenance payments in respect of a child, spouse or former spouse made under a separation agreement or an order of the Court shall be deducted. Evidence of payments should be furnished by the applicant, i.e. bank statement, receipts etc.
- 5: Deductions may also be made where they are provided for in regulations.

Income Safeguards (legally known as “ Minimum retained income threshold”)

Having taken account of the deductions specified at numbers 1 to 5 above, the following income safeguards apply.

- For a single applicant they will retain 20% of the maximum rate of the State Pension (Non Contributory) at the date of application for State Support.
- With regard to couples, the spouse/partner residing at home will be left with no less than an income equivalent to the weekly maximum rate of the State Pension (Non Contributory) at the date of application for State support. The person in care will retain 20% of the weekly maximum rate of the State Pension (Non- Contributory) at the date of application for State Support.
- If both members of a couple enter nursing home care, they each retain at least 20% of their income, or 20% of the maximum rate of the State Pension (Non-Contributory), whichever is the greater.

In the case of cash assets, the following deductions are allowed:

- 1: A once-off asset disregard applies which stands at €6,000 for single applicants, and €72,000 in the case of couples. In assessing property and savings, the disregard only applies once and to whichever is most beneficial to the applicant.

- 2: Borrowings incurred specifically for the purchase of the asset and which stand to be repaid may be deducted from the total value of cash assets. However, the HSE must be satisfied that the purpose of the borrowing was for the purpose of acquiring the asset. It is important that the HSE does not permit the allowance where to do so would permit a deduction in relation to the same debt more than once. For example, if a person borrowed money to purchase stocks of €50,000 and owes €20,000 in respect of those borrowings, that person cannot claim that the value of their interest in the stocks is €30,000 (€50,000 less €20,000 owed) and also seek to claim an allowable deduction of €20,000.

In addition, where the allowance listed at 2 is claimed and the borrowings are owed by more than one person, the value of the allowance shall be proportionate to the value of the person's interest in the asset. In other words, if the total amount owed by the applicant and his brother is €100,000 in respect of an asset which is in joint and equal ownership (50% each), then the allowance may only be made in respect of 50% of the value of borrowings or €50,000.

In the case of non-cash assets, the following deductions are allowed:

- 1: If the asset disregard of €36,000/€72,000 was not fully used up in the assessment of cash assets, the unused balance may be applied to the total value of non-cash assets.
- 2: As with cash assets, borrowings incurred specifically for the purchase, repair or improvement of the asset and which stand to be repaid may be deducted from the total value of non-cash assets. However, the HSE must be satisfied that the purpose of the borrowing was for the purchase, repair or improvement of the asset. Where this allowance is claimed, it is important that the HSE does not permit the allowance where to do so would permit a deduction in relation to the same debt more than once. In addition, where the borrowings concerned are owed by more than one person, the value of the allowance shall be proportionate to the value of the person's interest in the asset.
- 3: The person's principal residence will be excluded from the financial assessment following a period of 3 years in a nursing home, which period need not be continuous.

This deduction also applies to time spent in care before the commencement of the Scheme. This allowance is commonly referred to as the “3 Year Cap”.

- 4: The person’s farm or relevant business will be excluded from the financial assessment following a period of 3 years in a nursing home, which period need not be continuous, where:
- a) the applicant has suffered a sudden illness or disability which caused them to require care services, and
 - b) a substantial part of the working day of the applicant or their partner was regularly and consistently applied to the farming of the farm or carrying on of the relevant business until the onset of the sudden illness or disability, and
 - c) a family successor certifies in writing that he or she will on a consistent and regular basis apply a substantial part of his or her working day to the farming of the farm or carrying on of the relevant business.

This deduction also applies to time spent in care before the commencement of the Scheme.

The “3 Year Cap” will apply to the principal residence, farm, relevant business regardless of whether the residence, farm, relevant business also qualifies as a transferred asset or is in the ownership of the applicant.

The Act contains a number of definitions which will assist administrators in establishing whether the conditions outlined at a) to c) above apply, a number of definitions. These are outlined in the blue box below.

“family successor” means a partner or relative of the applicant, who, at the time of the application for State support regularly and consistently applies a portion of his or her working day in farming the farm or carrying on the relevant business, as the case may be.

“farm” means agricultural land, pasture and woodland, crops, trees and underwood growing thereon, farm buildings appropriate to the property and farm machinery, livestock and bloodstock thereon but excluding all residential property;

“farming” includes dairy farming, livestock production, and the cultivation of grass, tillage, and other crops, including horticultural crops whether under protected cropping conditions or in the open;

“relevant business” means—

(a) a business (see below) or an interest in a business carried on by a sole trader or by a partnership, including any land, building, machinery or plant used wholly or mainly for the purpose of the business, or

(b) the unquoted shares in or securities of a company carrying on a business in which the applicant or his or her partner has until the onset of the sudden illness or disability which caused the applicant to require care services been actively involved in carrying on the business;

“business” means a ‘for profit’ business carried on in the exercise of a trade, profession or vocation,

5.4 Rules for Determining Assessable Contribution

In essence, a person’s annual contribution is based on 80% of their income and 7.5% of the value of their assets (5% of assets if the application was made prior to the 25th July 2013), after deductions and safeguards have been applied in each case. In the case of couples, the assessment is based on the principle of each member of the couple owning 50% of the couple’s combined means. As such, a person who is a member of a couple has an annual contribution of 40% of the couple’s combined income (or 80% of half the combined income if you prefer) and 3.75% of the couple’s combined assets (or 7.5% of half the combined assets). The basis for determining the contribution in each case is set out in the yellow boxes overleaf. It should be noted that nobody may pay more than the cost of their care.

Rules for Assessing a Single Applicant

A. Assessment of Income

Assess the weekly income following the directions at steps A to E:

- A. Establish the annual income of the person using the definition of “income”.
- B. Deduct allowable deductions.
- C. Divide amount produced by step B by 52 to establish net weekly income.
- D. Take 80 per cent of amount produced by step C (net weekly income) which amount, unless step E applies, is the weekly assessed income.
- E. Where applying the rule in step C produces a result whereby 20 per cent of net weekly income is less than the minimum retained income threshold the weekly assessed income is the amount established by Step C less the minimum retained income threshold.

B. Assessment of Cash Assets (Single Applicant)

Assess the weekly value of the cash assets by following the directions at steps A to F:

- A. Establish all the cash assets of the person being assessed using the definition of “cash assets” and value each cash asset on the basis of the estimated market value.
- B. Deduct from the estimated market value of each cash asset the amount of allowable deductions relating to that cash asset to produce the net value of each cash asset, e.g. monies borrowed to purchase stocks and shares.
- C. Aggregate all net values of cash assets established under step B.
- D. Deduct general assets deductible amount from the amount produced by step C to produce annual assessed cash assets.
- E. Take 7.5 per cent of the amount produced by step D to establish the amount of the annual assessed cash assets. *(Take 5 per cent if application was made prior to 25th July 2013)*
- F. Divide amount produced by step E by 52 to produce weekly assessed cash assets.

C. Assessment of Relevant Assets (Single Applicant)

Assess the weekly value of the relevant assets by following the directions at steps A to F:

- A Establish all assets which are relevant assets using the definition of “relevant assets” of the person being assessed and value each relevant asset on the basis of the estimated market value.
- B Deduct from the estimated market value of each relevant asset the amount of allowable deductions relating to that relevant asset to produce the net value of each relevant asset.
- C Aggregate all net values of relevant assets to produce total net value of relevant assets.
- D If the general assets deductible amount has not been fully used in connection with the cash assets assessment apply unused balance by deducting the unused amount from total net value of relevant assets produced by step C.
- E Take **7.5** per cent of the amount produced by step D or, if step D does not apply, by Step C to produce the annual assessed relevant assets amount. *(Take 5 per cent if application was made prior to 25th July 2013)*
- F To establish weekly assessed relevant assets divide step E by 52.

The assessable contribution payable by a single person is the sum of the amounts produced by following the rules in the boxes A, B and C above.

Remember that income includes transferred income and that cash and non-cash assets include transferred assets.

Rules for Assessing Applicant who is a Member of a Couple

A. Assessment of Income

Assess the weekly income following the directions at steps A to F:

- A. Establish the annual income of the person and his or her partner using the definition of “income”.
- B. From the annual income of each of those persons deduct allowable deductions applicable to that person’s income to establish net annual income of each member of the couple.
- C. Aggregate the two net annual incomes established under step B.
- D. Divide amount produced by step C by 52 to establish net weekly income.
- E. Take 40 per cent of amount produced by step D and the amount established following that calculation is, unless step F applies, the weekly assessed income.
- F. Where applying the rule in step E produces a result whereby 60 per cent of net weekly income is less than the minimum retained income threshold, the weekly assessed income is the amount established by step D less the amount which is the minimum retained income threshold.

B. Assessment of Cash Assets (Applicant who is a Member of a Couple)

Assess the weekly value of the cash assets by following the directions at steps A to G:

- A. Establish all the cash assets of the person to whom the assessment relates and his or her partner using the definition of “cash assets” and value each cash asset on the basis of the estimated market value.
- B. Deduct from the estimated market value of each cash asset the amount of allowable deductions relating to that cash asset to produce net value of each cash asset, e.g. monies borrowed to purchase stocks and shares.
- C. Aggregate all net values of cash assets established under step B.
- D. Deduct general assets deductible amount from the amount produced by step C to establish total assessed cash assets.
- E. Take 7.5 per cent of the amount produced by step D to establish the amount of the annual assessed cash assets of the couple. *(Take 5 per cent if application was made prior to 25th July 2013)*
- F. Divide amount established by step E by 2 to establish the amount of the annual assessed cash assets of the person in respect of whom the financial assessment is being carried out.
- G. Divide amount established by step F by 52 to produce the assessed weekly cash assets of the person in respect of whom the financial assessment is being carried

C. Assessment of Relevant Assets (Applicant who is a Member of a Couple)

Assess the weekly value of the relevant assets by following the directions at steps A to G:

- A. Establish all assets which are relevant assets of the person in respect of whom the financial assessment is being carried out and his or her partner using the definition of “relevant assets” and value each relevant asset on the basis of estimated market value.
- B. Deduct from the estimated market value of each relevant asset the amount of allowable deductions relating to that relevant asset to produce the net value of each relevant asset.
- C. Aggregate all net values of relevant assets established under step B.
- D. If the general assets deductible amount has not been fully used in connection with the cash assets assessment then apply the unused balance by deducting the unused amount from the amount established by step C.
- E. Take 7.5 per cent of the amount established by step D or, if step D does not apply, by Step C to establish the annual assessed relevant assets amount. *(Take 5 per cent if application was made prior to 25th July 2013)*
- F. Divide amount established by step E by 2 to establish the amount of the annual assessed relevant assets of the person in respect of whom the financial assessment is being carried out.
- G. Divide the amount established by step F by 52 to produce the assessed weekly value of relevant assets of the person in respect of whom the financial assessment is being

The assessable contribution payable by a married or co-habiting applicant is the sum of the amounts produced by following the rules in the boxes A, B and C above.

Remember that income includes **transferred income** and that cash and non-cash assets include **transferred assets**.

Section 6 Nursing Home Loan (“Ancillary State Support”)

Section Contents

- 6.1 What is the Nursing Home Loan (Ancillary State Support)?
- 6.2 Who may apply for the Nursing Home Loan?
- 6.3 What must happen to avail of the Nursing Home Loan?
- 6.4 Can the Nursing Home Loan be paid if State Support is not?
- 6.5 How is the Nursing Home Loan Calculated?
- 6.6 Conditions relating to the Nursing Home Loan
- 6.7 Determination of application for the Nursing Home Loan and Repayment of the Loan

6.1 What is the Nursing Home Loan (Ancillary State Support)?

The Nursing Home Loan is an additional financial support to assist an applicant towards the cost of care in a public, voluntary or private nursing home. It is effectively a loan advanced by the State to cover the portion of the applicant’s contribution which is based on property or land-based assets within the State. Its purpose is to ensure that you don’t have to sell assets such as your house during your lifetime. The loan can be repaid at any time but will ultimately fall due for repayment upon the applicant’s death (see section 11 for further details on repayment). The legal term for the Nursing Home Loan is “Ancillary State support”.

6.2 Who may apply for the Nursing Home Loan?

An application must be made by the person requiring care (applicant). Where the applicant is a member of a couple, both members of the couple must apply for Ancillary State support and sign the application form.,

Where the applicant or their spouse/partner is of diminished mental capacity, an application for the Nursing Home Loan **must** be made by one of the following:

- A **Care Representative** appointed by the Circuit Court (see section 7 for further information)
- Where the applicant is a Ward of Court, the **Committee** of the applicant where

he/she has been authorised to do so by the President of the High Court

- A person is appointed under a valid, registered **Enduring Power of Attorney** to act on behalf of the applicant who is not restricted by the terms of the Power of Attorney from applying for the Nursing Home Loan.
- A person is already permitted by law to act on behalf of the applicant.

A specified person does not have the authority to apply on behalf of a person in the case of the Nursing Home Loan.

6.3 What must happen to avail of the Nursing Home Loan?

An application must be made on the specified application form (Part 6 of the Nursing Homes Support Scheme Application Form) and submitted to the Nursing Home Support Office. The application may be made at the date of initial application or at any other time thereafter.

The application for the Nursing Home Loan includes an acknowledgement by the applicant and their spouse/partner or representative that the provision of the Nursing Home Loan will result in the creation of a charge in favour of the HSE and that a **charging order** (i.e. a simple type of mortgage) will be registered against the asset/ assets which are the subject of the loan.

The Nursing Home Support Office will send a copy of the application for the Nursing Home Loan to the Central Office. It is the responsibility of the Central Office to create the Charging Order and to register it with the Property Registration Authority. The Charging Order must charge the applicant's interest in the particular asset with the total amount which will eventually fall due for repayment. This amount is referred to in the legislation as the "secured amount" and encompasses all amounts advanced by the HSE by way of the Nursing Home Loan as well as any future adjustment to take account of changes in the Consumer Price Index (inflation/deflation) or interest.

The procedure for processing applications for the Nursing Home Loan by the Nursing Home Support Office and by the Central Office are set out in section 3.

6.4 Can the Nursing Home Loan be paid if State Support is not?

Yes, the Nursing Home Loan **may be** paid even if State support is not. However, the Nursing Home Loan **may not** be paid to an applicant who is assessed as not needing long-term residential care under the Care Needs Assessment.

6.5 How is the Nursing Home Loan Calculated?

The Nursing Home Loan is calculated on a weekly basis. However, in practice, the amounts paid to the nursing home on behalf of the applicant may be transferred on a monthly basis. The amount of the Nursing Home Loan is calculated using the following simple steps:

1. The Nursing Home Support Office must firstly undertake the financial assessment as set out in section 5 to work out a person's total contribution and the amount of State support for which they qualify.
2. Next, the Nursing Home Support Office must check that the assets specified in the application for the Nursing Home Loan are Irish land-based assets which are included in the financial assessment and which are in the ownership of the applicant and /or their spouse/partner. Only Irish land-based assets which are not transferred assets qualify for the Loan.
3. Thirdly, the Nursing Home Support Office must establish the contribution payable on the assets specified in the application form (i.e. the **“loan amount”**). This will have been already worked out in the financial assessment and is referred to as ‘weekly assessed value’ of those assets (see rules for contribution in section 4). This is the maximum loan amount payable.

Please note that a person's contribution must never exceed the cost of care. By extension, the loan amount (which is based on a portion of the contribution) plus the remainder of the person's contribution should never exceed the cost of care.

Where the Nursing Home Loan is paid in relation to different assets, the HSE must be able to identify separately, the amount advanced in respect of each asset.

Example

Ms. Smith applies for the Nursing Home Loan in respect of her principal residence which is valued at €200,000. In dealing with Ms. Smith's application, the first step is the financial assessment which may have been undertaken already. The second step is to establish that the principal residence qualifies as an Irish land-based asset and is not a transferred asset. It is clear to the administrator from the address and folio number provided on the application that this is indeed the case. The third step is to establish the loan amount payable. This is the contribution payable on the principal residence which Ms. Smith wishes to defer for the duration of her lifetime. It has already been worked out within the financial assessment and stands at €158 per week.

6.6 Conditions relating to the Nursing Home Loan

In addition to agreeing to the Charging Order, the other conditions for payment of the Nursing Home Loan are:

1. The money will not become repayable until a **relevant event** or **deferred relevant event** occurs. Of course, a person may repay such monies earlier if they so wish. An explanation of a relevant event and a deferred relevant event is provided in section 11.
2. The money is deemed to be paid to the applicant for his or her benefit. Where the applicant is a member of a couple, it is deemed to be paid to the couple and each member of the couple is liable jointly and severally, i.e. each is liable for the full amount of the loan.
3. The applicant and their spouse/partner must notify the HSE in writing within 10 working days if an asset ceases to qualify as an Irish land-based asset within the State in the ownership of the applicant and/or their spouse/partner.
4. Where the applicant notifies the HSE that an asset no longer qualifies for the Loan, i.e. where condition 3 above applies, the HSE shall cease to pay the Nursing Home Loan in respect of the asset concerned.

6.7 Determination of application for the Nursing Home Loan and Repayment of the Loan

Please note that information on the determination of an application for the Nursing Home Loan is contained in section 8, while information on the calculation and collection of monies to be repaid under the Loan is contained in section 11.

Section 7 - Specified Person and Care Representative

Section Contents

Specified Person

- 7.1 Role of a Specified Person
- 7.2 Refusal of the HSE to deal with a specified person
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Care Representative

- 7.4 Role of a Care Representative
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This section outlines the key roles and responsibilities of the Specified Person and Care Representative, and highlights the differences between them.

Specified Person

7.1 Role of a Specified Person

A specified person can act on behalf of an applicant in the circumstances outlined below.

In the case of the **care needs assessment** only, a specified person may apply on behalf of an applicant where it appears to the specified person that the applicant may need care services and, by reason of ill health, physical disability or mental condition, is unable to make an

application for a care needs assessment on their own behalf. In other words, the applicant does not necessarily have to be of diminished mental capacity in order for a specified person to apply for the care needs assessment on their behalf. However, the HSE must be satisfied that the specified person is acting in the best interests of the person.

In the case of the application for **State support**, a specified person may only apply on behalf of an applicant where the applicant has **diminished mental capacity**. In such cases, a specified person may also act in relation to any application, appeal or review and they may consent to giving a copy of the CSAR to the nursing home.

A specified person cannot apply for the Nursing Home Loan.

Please note that a care representative is a category of specified person and may do all such things that a specified person may do.

7.2 Refusal of the HSE to deal with a specified person

The HSE may refuse to deal with a person claiming to be a specified person if they do not fall within the categories of specified person (see below).

The HSE may also refuse to deal with a specified person where it is not satisfied that he/she is acting in the applicant's best interests.

In both of the situations outlined above, the HSE must notify both the specified person and the applicant, in writing within 10 working days, of its decision and the reasons for the decision.

7.3 People who may act as a Specified Person

The following categories of person may act as a specified person:

- i) the Committee of a Ward of Court,
- j) a person appointed under a valid, registered enduring power of attorney who is not restricted from applying for the scheme,
- k) a care representative appointed under the Nursing Homes Support Scheme Act,
- l) the applicant's spouse or partner,
- m) a relative of the applicant who is 18 years of age or over,

- n) a next friend appointed by a court,
- o) the applicant's legal representative, or
- p) a registered medical practitioner, nurse or social worker.

The people listed at (a)-(c) have first priority over those listed at (d)-(h). This means that they have the right to act as a specified person ahead of the other categories. However, the people listed at (a)-(c) may consent in writing to a person with lesser priority acting as the specified person. This consent should be attached to the application form.

Care Representative

Please Note – where the term “applicant” is used in this section it refers to the person applying for financial support, not to the person applying to be appointed as a Care Representative.

7.4 Role of a Care Representative

A care representative is only required where a person of diminished mental capacity wishes to apply for the Nursing Home Loan. A care representative is also required if that person's spouse/partner has diminished mental capacity because he/she must also apply for the loan.

Care Representatives are appointed by the Circuit Court. In appointing a care representative, the Court must be satisfied that such an application is in the best interests of the applicant.

The care representative's role is to act on behalf of the person in respect of the Nursing Homes Support Scheme and especially in respect of the Nursing Home Loan. The court appointing the care representative will only permit them to act on the applicant's behalf in relation to:

1. the making of an application for ancillary State support
2. consenting to the creation of a charge in relation to an interest in land in the State, and
3. taking all necessary action in connection with the application for ancillary State support.

They can also act on behalf of the person in relation to making an application for a Care Needs Assessment, State support, or any other matter relating to the scheme. In short, a care representative, unlike a specified person, can act on behalf of the applicant in relation to every aspect of the scheme.

7.5 Diminished Mental Capacity – for the purpose of an application to be appointed as a Care Representative

It is presumed, until the contrary is established, that a person has full mental capacity.

A determination by the Court that the applicant lacks capacity relates only to the application for the Nursing Home Loan and shall not otherwise affect the applicant's power to deal with his or her property and affairs.

A person is considered to be of diminished mental capacity if, in relation to a decision on applying for the Nursing Home Loan and consenting to the Charging Order, he or she is unable:

- a) to understand the information relevant to the decision,
- b) to retain that information,
- c) to use or weigh that information as part of the process of making the decision, or
- d) to communicate his or her decision (whether by talking, using sign language, communicating through a third party or any other means).

The Court shall not appoint a Care Representative unless it has received two reports from two registered medical practitioners who have examined the person and such reports confirm that the person has diminished mental capacity (as outlined above). Further information on this process can be found in the Department of Health and Children's [*Guidance Document on the Functional Assessment of Capacity*](#).

In addition, the court may hear other evidence relating to the health or circumstances of the person and the circumstances of the partner of the person.

7.6 Persons who can apply for Appointment as a Care Representative

The following persons, in order of priority, may apply to be appointed as a Care Representative once they are 18 years of age or over:

1. the applicant's spouse/partner,
2. the applicant's parent,
3. the applicant's **child**,
4. the applicant's brother or sister (whether of the whole or half blood),

5. the applicant's niece or nephew,
6. the applicant's grandchild,
7. the applicant's grandparent,
8. the applicant's aunt or uncle,
9. A person who appears to the court to have a good and sufficient interest in the applicant's welfare, other than -
 - the owner of a nursing home in which the applicant resides or are likely to reside, or
 - a medical practitioner who examined the applicant and prepared a report for the Court in relation to his/her capacity.

A person with a greater or equal priority may consent in writing to an application by and appointment of a person with a lesser priority. However, the Court does not have to be bound by this consent.

An application may be made by a person, even if those with equal or greater priority have not consented. The person making the application must give notice of the application to all those with equal or greater priority.

7.7 Persons who are precluded from being appointed as a Care Representative

The court shall not appoint a person to be a care representative if that person has been:

- a) adjudicated a bankrupt (unless the bankruptcy has been discharged or the adjudication annulled),
- b) convicted of an offence involving fraud or dishonesty, or
- c) convicted of an offence against the person or property of the person concerned.

If a person is appointed as a care representative and any of the events outlined at (a)-(c) above subsequently occurs, the person shall cease to be a care representative, and must notify the Executive and the Court by which the appointment was made within 10 working days. However, this shall not affect the validity of any actions already taken by the person in their role as care representative.

7.8 Exemptions to Requirement for Appointment as a Care Representative

A care representative is not needed in order to apply for the Nursing Home Loan in any of the following cases:

- Where the applicant is of full mental capacity.
- Where the applicant is a Ward of Court (in such cases the Committee of the applicant may apply where he/she has been authorised to do so by the President of the High Court).
- Where a person is appointed under a valid, registered Enduring Power of Attorney to act on behalf of the applicant and is not restricted by the terms of the Power of Attorney from applying for the Nursing Home Loan.
- Where another person is already permitted by law to act on behalf of the applicant.

7.9 Procedure for Appointment as a Care Representative

Please note – the responsibility for applying to be appointed as a Care Representative lies with the person making the application. The following information will enable HSE administrators to advise and assist with this process.

The application for appointment must be made to the County Registrar in any county in the Circuit in which the person requiring a care representative now lives or in which he or she has lived at any time during the past three years.

In order to make an application, the following documents must be lodged with the Circuit Court Office for the county in which the application is being made. These are as follows:

- A document called a **Notice of Motion** which must be addressed to the County Registrar
- A sworn statement called an **Affidavit** setting out the reasons for the application; the affidavit should be sworn before a Commissioner for Oaths or a practising solicitor
- The two **Medical Reports** mentioned above, which must be exhibited to (i.e. attached to) the affidavit prior to the swearing

- Any **Consents** in writing to the application received from persons with an equal or greater priority to be appointed as care representative (please see order of priority listed in the yellow box), which must also be exhibited to (i.e attached to) the affidavit prior to the swearing.

Templates of these documents are available on the Courts Service website (www.courts.ie).

Firstly, all the documents (the Notice of Motion, the Affidavit, the attached Medical Reports and Consents) should be lodged together in the Circuit Court Office and this can be done either in person or by post. The Notice of Motion and the Affidavit must be stamped in advance with the appropriate stamp duty. Information on stamp duty is available on the Courts Service website.

When the documents are received by the Circuit Court Office, the application shall be listed before the County Registrar.

Secondly, the person making the application must also serve a copy of the Notice of Motion, together with a copy of the Affidavit and the attached Medical Reports, on the person in respect of whom the application is being made as well as on every person with an equal or greater priority to apply for appointment to be the care representative. The Notice of Motion may be served personally or by registered post. Please note that you do not need to serve copies of the documents on every person with an equal or greater priority if the person has already consented in writing to the application.

Finally, the person making the application must also serve a document called a **Reply** on the person in respect of whom the application is being made. In the Reply, the person can indicate whether or not he or she objects to the appointment. The Reply should be sent to the County Registrar seven days before the date on which the matter is to be listed.

It is not necessary to obtain legal representation in order to be appointed as a Care Representative. However, anyone who wishes to seek legal advice/representation is free to do so.

7.10 Revocation of Appointment as Care Representative

The Court may revoke a person's appointment as a care representative and appoint another care representative in their place if it considers it to be in the applicant's best interests to do so. This can be done on application to the Court by any person appearing to the Court to have a good and sufficient interest in the applicant's welfare (including the HSE). Once an application is made, the Court can direct the care representative to:

- a) prepare and file with the court a report of his or her actions as Care Representative;
- b) attend before the court with such records and documents as may be specified.

7.11 Replacing a Care Representative

A person, appearing to the Court to have a good and sufficient interest in the applicant's welfare, can apply to the Court for a care representative to be replaced where:

- the care representative previously appointed has died or is no longer of full capacity,
- the existing care representative wishes to resign, or
- the Court has revoked that appointment.

7.12 Joint Care Representatives

The Court may appoint more than one person to be the applicant's care representative. Unless the court specifies to the contrary, the care representatives shall act jointly.

Where the Court appoints more than one care representative, any of them may apply to the Court for directions. However, notice must be given to the other care representatives.

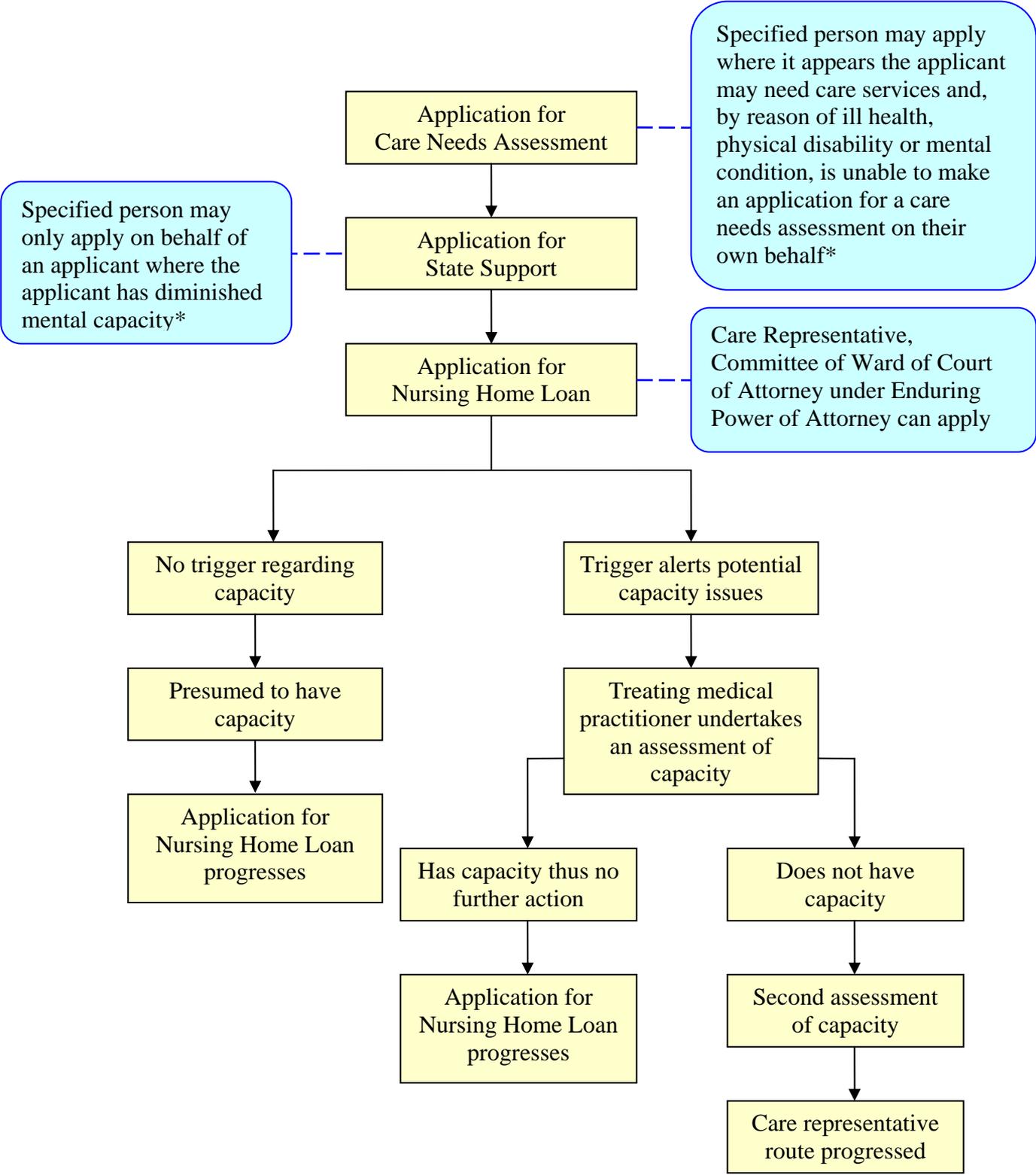
7.13 Appointment as Care Representative for a Couple

The court may appoint a person to be a care representative of both members of a couple where it considers it to be in their best interests to do so.

7.14 Legal Advice

A person does not need to obtain legal representation in order to be appointed as a care representative. However, anyone who wishes to seek legal advice/representation is free to do so.

Flow Chart for Representative Process



*Please note that this includes a Care Representative, Committee of a Ward of Court or Attorney appointed under an Enduring Power of Attorney.

Section 8 Determination of Application and Provision of Financial Support

Section Contents

- 8.1 Determination of Application for State Support & the Nursing Home Loan
- 8.2 Notification of Determination
- 8.3 Date of Payment of State Support & Ancillary State Support
- 8.4 Provision of State Support & the Nursing Home Loan
- 8.5 Transfer to Another Facility
- 8.6 Misleading Information

8.1 Determination of Application for State Support & the Nursing Home Loan

In determining an application for State support and the Nursing Home Loan, the HSE must consider the following:

- ✓ The person must have been assessed as needing long-term residential care under the care needs assessment. This will not apply to applicants who fall into categories 2 and 3 in section 2, i.e. existing residents in public, voluntary and approved nursing homes.
- ✓ The HSE must have regard to the resources committed to the scheme and remain within the overall annual budget for the Scheme.
- ✓ In the case of State support, the HSE must consider the financial assessment report prepared in relation to the person (section 11(1)) and determine the application in accordance with the formula:

$S = T - M$, where

S is the weekly amount of State support

T is the total weekly cost of the care services provided to the applicant

M is the assessed contribution of the person.

- ✓ In the case of the Nursing Home Loan, the loan amount should be determined in accordance with the steps outlined in section 6.

8.2 Notification of Determination

Where it has been determined that care is required and a decision has been made in relation to a State support application, it should be communicated by letter to the applicant or representative, outlining the reasons for the decision, and including the financial calculations, date from which payment will be made, as well as clearly outlining the review and appeals process. The letter should issue no later than 10 working days after determination in relation to State support.

While it is envisaged that most people will apply for the Nursing Home Loan at the date of application for State support, the scheme allows for an application to be made at any stage. Where a decision has been made in relation to an application for the Nursing Home Loan, it should be communicated by letter to the applicant or representative, outlining the reasons for the decision, and including the financial calculations, as well as clearly outlining the review and appeals process. The letter should issue no later than 10 working days after the determination in relation to the Nursing Home Loan.

8.3 Date of Payment of State Support & Ancillary State Support

State Support & the Nursing Home Loan should be paid in respect of qualified applicants as follows:

a) Applications received by the HSE prior to 1st October 2011

State Support and Ancillary State Support should be paid from either the date that the application was made, or date of admission to the nursing home whichever is the **later**.

b) Applications received by the HSE from the 1st October 2011

State Support and Ancillary State Support should be paid from either the date that the application is approved, or date of admission to the nursing home whichever is the **later**.

However, there are a number of important exceptions to the above which must be noted:

- The provision of State Support and Ancillary State Support shall not be paid prior to the determination of the care needs assessment, unless the applicant is resident in a designated public, voluntary or approved private nursing home at the date of commencement of the Scheme.
- Where a person is resident in an approved nursing home at the date of commencement of the scheme and they make an application for financial support on or before the 23rd July 2013, such approval will be with effect from the date of commencement of the scheme, i.e. 27th October 2009. Any such approval shall take into account the amount of subvention that has already been paid in respect of that person for periods after the State Support and/or Nursing Home Loan is payable.

If the client is discharged, State Support and/or Nursing Home Loan will cease. The client must apply for State Support/Nursing Home Loan to be re-activated and the application will be treated as a review. The applicant may have to be placed on a waiting/placement list for release of funding following review.

Finally, the HSE shall not be obliged to pay or continue to pay State support and/or Ancillary State Support unless the care services chosen by the applicant have been identified by the Local Placement Forum as being appropriate to the applicant's care needs.

8.4 Provision of State Support & the Nursing Home Loan

Following notification of admission to a public, voluntary or approved nursing home, the agreed payment should be set up. (Use form 3.2, which indicates confirmation that pre-admission assessment has been conducted and that provider can meet care needs of applicant). Payment shall not issue without the Confirmation of Admission document being received by the HSE from the approved facility.

Payment of invoices in respect of financial support to approved private nursing homes will continue to be made one month in arrears. Such payments will issue via the Central Office.

Applicants will pay their contributions directly to the public, voluntary or approved private nursing home. As such, the payment of invoices by Central Office will encompass only financial support (i.e. it is exclusive rather than inclusive of applicant's contributions).

8.5 Transfer to Another Facility

If an applicant in receipt of State Support or the Nursing Home Loan wishes to transfer to another public, voluntary or approved private nursing home, the financial support may be transferred. A review of the person's application for State Support or Ancillary State Support shall take place and requires prior approval by the Nursing Home Support Office before the applicant transfers to the new facility. Should the cost of care between the two facilities increase, the increased rate may be approved by the Nursing Home Support Office subject to overall budgetary constraints.

Where such an application is approved by the Nursing Home Support Office, State Support and/or Ancillary State Support must be transferred to the new facility. Where this takes place,

- A confirmation of discharge form should be completed and submitted by the former nursing home to the Nursing Home Support Office dealing with the current application
- A confirmation of admission form should be completed and submitted by the new nursing home to the Nursing Home Support Office. (Use form 3.2, which indicates confirmation that pre-admission assessment has been conducted and that provider can meet care needs of applicant).

8.6 Misleading Information

The HSE can reduce, cease or recoup from the applicant, the amount of State support paid and Nursing Home Loan amounts paid where it is discovered that information provided in relation to the provision of such support was false or misleading.

Section 9 Reviews and Appeals

Section Contents

- 9.1 Review of Care Needs Assessment where Applicant is found not to need nursing home care
- 9.2 Review of Applicants in receipt of Care Services
- 9.3 Who will carry out the Review and Basis for the Review
- 9.4 Date of Effect of Change following Review
- 9.5 Appeals
- 9.6 Who will carry out the Appeals and Basis for the Appeal
- 9.7 Further Appeal on a Point of Law
- 9.8 Appeals against Inclusion of Transferred Items (Note: time-limited)
- 9.9 Offences

9.1 Review of Care Needs Assessment where Applicant is found not to need nursing home care

Where the HSE decides that a person does not require care services, an application may be made for a review of the applicant's care needs.

Such application may be made:

- a) after six months has elapsed, or
- b) within six months of the original decision if:
 - the person can satisfy the HSE that there has been a material change to their health or circumstances which warrants the application being made, or
 - the application is accompanied by a certificate in the specified form from a registered medical practitioner stating that in his/her opinion there has been a

material change in the person's health or circumstances which warrants the application being made. The medical practitioner must have seen the person's most recent care needs assessment and examined the person since their last care needs assessment.

9.2 Review of Applicants in receipt of Care Services

9.3 Where an applicant is being provided with care services under the scheme, the HSE may either at its own initiative or at the request of the applicant carry out a review in respect of:

- a care needs of the applicant,
- the State support provided to the applicant or
- the payment of the Nursing Home Loan to the applicant.

A person's financial assessment can only be reviewed, at their request, if 12 months have passed since the initial financial assessment or most recent review of the financial assessment or the HSE is satisfied that there has been a material change to the person's financial assessment since the initial financial assessment or most recent review of the financial assessment. The HSE may review a financial assessment at any stage.

9.3 Who will carry out the Review and Basis for the Review

Reviews shall be carried out by a suitable person and on the same basis (i.e. following the same procedures and within the same parameters) as the original assessment.

The suitable person who carries out the review must prepare a report and provide it to the HSE. If the HSE, having considered the report, believes that the original decision or matter under review should be altered, it may determine that the matter under review be altered accordingly. HSE must notify the applicant of its decision, in writing, within 10 working days of taking the decision. The written notification must include the reasons for the decision and a copy of the report provided by the suitable person.

9.4 Date of Effect of Change following Review

Any change shall have effect from the date the determination is made, unless the HSE decides otherwise, e.g. where the original decision was made in contravention of the Act.

However, where the determination results in either a) the applicant's weekly means increasing (i.e. State support reducing) or, b) the applicant's Nursing Home Loan payment

reducing, the determination shall not take effect until 40 working days from the date on which notice is given.

9.5 Appeals

Where a person is aggrieved by a decision of the HSE, they may appeal that decision no later than 40 working days after notice of the original decision was given. An appeal must be made in a form specified by the HSE and must state the reasons for the appeal.

An applicant has 40 working days to lodge an appeal. However, the appeals officer may not begin to consider an appeal until after the expiration of the 40 days, particularly if it was only received on the 40th day. An appeal may be made in respect of a determination made under the following sections:

- The outcome of a care needs assessment, Section 7(8)
- A refusal by the HSE to consider or further consider an application for State support where it is not made in the specified form or where the applicant or their partner does not provide information that is requested in order to make a determination, Section 9(3)
- A refusal by the HSE to further consider an application for State support on the grounds that information requested is not furnished to the HSE within 40 working days from the date of request, Section 10(7)
- A determination of an application for State support, Section 11(1)
- A determination of an application for the Nursing Home Loan, Section 16
- The outcome of a review by the HSE, Section 30(4)
- A refusal by the HSE to consider an application under section 31(1) on the grounds that the application does not meet the requirements of section 31(1) or the person fails to provide information requested by the HSE, Section 31(2) (note- this relates to an application to have a transferred item excluded from the financial assessment)
- A determination of an application under Section 31(5), (i.e. a decision as to whether to exclude a transferred item from the financial assessment).

9.6 Who will carry out the Appeals and Basis for the Appeal

The HSE will appoint a panel of suitable persons to consider appeals and this panel must be approved by the Minister. Individual appeal will be considered by a suitable person from this panel. The suitable person shall:

- be independent in the performance of their functions,
- not be confined to the grounds on which the decision was based and decide the matter afresh (i.e. as if it were being considered for the first time)
- comply with guidelines issued by the HSE in respect of the procedure to be followed for appeals,
- consider any written or oral objections made by the appellant in support of the appeal,
- make a decision in writing determining the appeal,
- send a copy of the decision to the appellant and the HSE together with the reasons for the decision,
- give the HSE such directions as the person thinks appropriate.

The suitable person may decide to uphold the decision which was the subject of the appeal, revoke the decision and replace with such other decision as the person thinks appropriate or refer to matter back to the HSE for reconsideration in accordance with such directions as the person thinks appropriate.

When the HSE has reconsidered a decision in accordance with the directions given by the suitable person or has complied with the directions given by the suitable person, it shall notify the appellant in writing.

9.7 Further Appeal on a Point of Law

If the appellant or the HSE is dissatisfied with the outcome of the appeal, an appeal may be taken to the High Court on a point of law. Such appeal will be held otherwise than in public at the appellant's (i.e. the person who made the original appeal) request.

9.8 Appeals against Inclusion of Transferred Items (Note: time-limited)

An applicant may appeal to the HSE to have a transferred item or items excluded from their financial assessment on the basis that including the asset would cause undue financial hardship to an **applicable person**. Such an appeal can only be made if the asset was transferred prior to 9th October 2008.

- “**transferred item**” is defined as transferred income or a transferred asset

- “**applicable person**” means:

- a) the applicant,
- b) the spouse or partner of the applicant,
- c) a child under the age of 21 of the applicant or their spouse/partner

The HSE may refuse to consider an application to have a transferred item excluded from the financial assessment if the application does not comply with section 30(1), e.g. if the item in question was transferred after 9th October 2008, or if the person does not provide it with the necessary information to allow it to make a decision (section 30(2)). The HSE must notify the person, in writing, within 10 working days if it refuses to consider an application and it must outline the reasons for the decision. It should also notify the applicant of their right to further appeal.

If the HSE decides that a recalculation (excluding one or more transferred items) of a person’s means is necessary in order to avoid undue financial hardship to an applicable person, it shall carry out the recalculation and adjust the amount of the assessed contribution of the person accordingly. If the HSE decides that a recalculation is not necessary, it shall refuse the application. The person must be notified, in writing, of the decision and the reasons for the decision within 10 working days.

9.9 Offences

A person who recklessly or knowingly provides the HSE with false or misleading information in connection with an application to have transferred assets excluded from the

financial assessment is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both.

Section 10- Notification of Matters

Section Contents

- 10.1 Responsibilities of Nursing Homes
- 10.2 Responsibilities of the HSE
- 10.3 Responsibilities of Applicants and their Spouse/Partner)
- 10.4 Responsibilities of Connected Persons
- 10.5 Responsibilities of Personal Representatives

Under the Act, various people and bodies are legally required to give notification in relation to certain matters. This section sets out the responsibilities of each person/body.

10.1 Responsibilities of Nursing Homes

Notification of Deaths / Discharges/Departures

The **proprietor** of a nursing home (public, private, voluntary) must advise the HSE in writing within 3 working days of the death, discharge or other departure of an applicant, using the form supplied for this purpose.

The notice shall include the name of the applicant, the name and address of the applicant's nominated contact or next of kin, if known and the date of the applicant's death, discharge or other departure as the case may be.

Where the proprietor of an approved facility wishes to discharge an applicant they shall at least 10 working days before the event notify the HSE of its intentions and reasons for discharge.

The proprietor of an approved facility who without reasonable excuse, fails to notify the HSE of the death or discharge or other departure as the case may be is liable on summary conviction to a fine not exceeding €1,000.

In the case of a public or voluntary nursing home, the proprietor is defined as the person who has agreed in writing with the HSE to perform the functions imposed on a proprietor under the Act (i.e. the functions outlined above). In the case of an approved private nursing home, proprietor is defined as the registered proprietor.

Notification of Temporary Absences of Residents in respect of whom Financial Support is being paid

The proprietor shall advise the HSE of any temporary absences or discharges of applicants from their nursing home. The HSE can continue to pay Financial support to cover temporary absences up to one month. If a period of absence continues for more than one month, payment of Financial support will cease, except in exceptional circumstances as determined by the HSE.

Where arrangements have been made between the HSE and an approved facility in relation to an approved temporary absence of a person, payment should be reviewed on a monthly basis at a minimum.

The HSE can recoup over-payments of State Support, which arise by reason of the death, discharge or departure of an applicant, from the nursing home after the person has deceased or has been discharged.

10.2 Responsibilities of the HSE (Nursing Home Support Office?)

Notification of Changes in Financial Support

Where a person maintained in an approved nursing home, starts to be provided with Financial support, or, with an altered level of Financial support, or ceases to be provided with Financial support, the HSE shall, not later than 10 working days after that start or cessation, as the case may be, give notice in writing to the proprietor of the nursing home.

As already stated in section 9, an applicant must also be notified of any determination in relation to an application or review of Financial support within 10 working days of the date of the determination.

Procedure where Applicant is Discharged and the Nursing Home Loan is in payment:

Where an applicant in receipt of the Nursing Home Loan is discharged, the following procedure shall apply:

1. Nursing Homes Support Office to calculate amount of Nursing Home Loan paid to client.
2. Nursing Home Support Office to advise Central Office of amount due and nature of change in circumstances, i.e. discharge details – date, location, etc.
3. Central Office to update records.
4. Central Office to write to applicant/representative to advise of (i) option to voluntarily repay amount due, under Section 16(10)(b), (ii) right to defer repayment until a relevant event (or possible deferred relevant event) and (iii) implication of annual inflationary adjustment on eventual repayment.
5. Central Office to record details if unpaid, adjust under Schedule 2 and review clients circumstances on an annual basis to confirm that relevant event has not occurred.
6. Central Office to continue Charging Order against property.
7. Nursing Home Support Office to notify Central Office if client is readmitted.

Sections 16 (10) (a), 19 (1), 19 (4)

10.3 Responsibilities of Applicants and their Spouse/Partner

Notification of Sale or Transfer of Asset

Where a non-cash asset is sold or transferred (i.e. ceases to qualify for the Nursing Home Loan and triggers a relevant or deferred relevant event) it is the responsibility of the applicant, their spouse/partner (where applicable) or their representative to notify the HSE within 10 working days.

Notification of material change in circumstances (*Section 24*)

The applicant or their care representative (if any) shall give notice in writing to the HSE of any material change in circumstances not later than 10 working days after the change comes to their knowledge. A material change means any change in the circumstances of the person or a child of the person less than 21 years of age, or if the person is a member of a couple, the partner of the person or their child less than 21 years of age, where it may result in financial support not being provided, being reduced or ceasing to be provided.

Failure by an applicant or their care representative to notify the HSE of a material change in circumstances is an offence and subject, on summary conviction, to a fine not exceeding €1,000. Furthermore, anyone who knowingly or recklessly provides the HSE with false or misleading information when notifying the latter of a material change in circumstances is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both.

Where the applicant's spouse or partner is granted a **further deferral** of repayment of monies advanced under the Nursing Home Loan (under Section 20) and the conditions for that deferral cease (i.e. the asset is no longer the spouse/partner's principal residence), the spouse/partner or their representative must notify the HSE within 20 working days.

A spouse/partner or their representative who without reasonable excuse, fails to notify the HSE of the conditions for deferral ceasing to apply death or discharge or other departure as the case may be is liable on summary conviction to a fine not exceeding €1,000.

10.4 Responsibilities of Connected Persons

Notification of change of circumstances of connected persons (*Section 25*)

Where the HSE has granted a connected person a **further deferral** of repayment of monies advanced under the Nursing Home Loan (under Section 20) and the conditions for that deferral no longer apply (i.e. the person no longer qualifies under the conditions set down for a connected person in section 20), the connected person or his/her representative must notify the executive within 20 working days of the occurrence of such change.

A connected person or their representative who without reasonable excuse, fails to notify the HSE of the conditions for deferral ceasing to apply death or discharge or other departure as the case may be is liable on summary conviction to a fine not exceeding €1,000.

10.5 Responsibilities of Personal Representatives

Personal Representative of the Applicant

Where a partner or a connected person of a person in receipt of ancillary State support dies, the personal representative of the deceased should notify the HSE as soon as is practicable,

but in any event, no later than 20 working days following the issue of a grant of representation in respect of the deceased's estate.

The personal representative shall, submit a schedule of assets to the NHSO, no later than 3 months before the distribution of the assets of the estate.

In addition, if requested to do so, must notify the HSE in writing, that the assets of the estate that are retained are sufficient to cover the debt.

Section 11- Cessation of Financial Support & Repayment of the Nursing Home Loan (“Ancillary State Support”)

Section Contents

- 11.1 Cessation of State Support
- 11.2 Cessation of Nursing Home Loan Payments
- 11.3 Repayment of the Nursing Home Loan
- 11.4 Procedure by Nursing Home Support Office following a Relevant Event
- 11.5 Procedure by Central Office following a Relevant Event
- 11.6 Collection of the Repayable Amount by Revenue
- 11.7 Release of Charging Order

11.1 Cessation of State Support;

The payment of **State Support** will end on the occurrence of one of the following events:

1. The death of the applicant.
2. If the applicant leaves the nursing home or moves to an unapproved nursing home.
3. If the applicant no longer is financially entitled to state support.

Payment of state support may also cease if the care services in relation to which the person is seeking payment are not appropriate to the person’s care needs.

11.2 Cessation of the Nursing Home Loan Payments

The payment of the Nursing Home Loan will end on the occurrence of one of the following events:

1. The death of the applicant.
2. If the applicant leaves the nursing home or moves to an unapproved nursing home.
3. The transfer of the asset on which the Loan is based.
4. The bankruptcy of the person or their partner.
5. A determination by the HSE that information provided is false or misleading.

11.3 Repayment of the Nursing Home Loan

The Nursing Home Loan shall become due and repayable on the occurrence of a **relevant event**. A relevant event is:

1. The death of the applicant.
2. The transfer of the asset on which the Loan is based.
3. The bankruptcy of the person or their partner.
4. A determination by the HSE that information provided is false or misleading.

It may be noted that the departure of an applicant from a nursing home or their transfer to an unapproved nursing home will cause the payment of the Nursing Home Loan to cease but will not cause its repayment (i.e. it is not a relevant event).

It should also be noted that the Nursing Home Loan may be voluntarily repaid to the HSE prior to the occurrence of a relevant event.

Where ancillary state support is paid to a person or paid in respect of a person who is a member of a couple both members of the couple are liable in relation to such payment.

11.4 Procedure by Nursing Home Support Office following a Relevant Event

Where the NHSO is notified of a relevant event in connection with a person in receipt of the Nursing Home Loan, it will notify the Central Office of the event within two working days of that notification at the latest. It will provide the Central Office with details of the loan amount and any other relevant information. The Central Office will then initiate proceedings to recoup the **repayable amount**. The Central Office will deal with all further proceedings in relation to the collection of the charge including an application for further deferral.

11.4.1 Procedure for the Central Office following the notification of a relevant event

From receipt of notification of the relevant event, all further correspondence shall be issued by the HSE (Central Office) to the applicant and or their partner, personal representative.

Firstly, the Central Office must calculate the **repayable amount**. This is the sum of the amounts loaned (the loan amount) adjusted by the Consumer Price Index (CPI) (it may also be further adjusted to take account of any interest charged by Revenue due to late repayment). Such adjustment for interest will be made in line with the appropriate All Items CPI number. This amount may be further adjusted by the Revenue Commissioners (who collect the repayable amount on behalf of the HSE) if the repayable amount is not repaid within the relevant timeframe. Such adjustment for interest will be made in line with the appropriate Regulations as made by the Minister for Health and Children. The method for calculation is outlined in Schedule 2 of the Nursing Homes Support Scheme Act 2009.

11.5 Procedure for the Central Office following the notification of a relevant event

From receipt of notification of the relevant event, all further correspondence shall be issued by the Central Office to the applicant and or their spouse/partner, personal representative.

Firstly, the Central Office must calculate the **repayable amount**. This is the sum of the amounts loaned (the loan amount) adjusted by the Consumer price index (it may also be further adjusted to take account of any interest charged by Revenue due to late repayment). Such adjustment for interest will be made in line with the appropriate All Items consumer price index number. The method for calculation is outlined in Schedule 2 of the Nursing Homes Support Scheme Act 2009.

Adjustment for Inflation

At the time of repayment, the amounts advanced by the HSE as the Nursing Home Loan (“Ancillary State Support”) will be adjusted to take account of inflation. The mechanism for doing this is the All Items Consumer Price Index. The procedure is as follows:

1. The HSE aggregates the loan amounts provided in the first calendar year of care and applies the CPI figure for December of that year as the base figure for that amount.

2. In subsequent calendar years, HSE again aggregates the loan amounts provided in each year and applies the CPI figure for December of each subsequent year to each amount.
3. Where a relevant event occurs, the HSE aggregates the loan amounts provided in that year and applies the CPI figure for the month preceding the month in which the relevant event occurred. This is referred to as the final CPI figure.
4. The HSE takes the final CPI figure and divides it by the CPI figure for each of the previous years. This gives you the percentage change in price over the period concerned. In each case, HSE multiplies the resulting figure by the aggregate of the loan amounts provided in each year.
5. The amounts produced by the procedure specified in 4 above are added together (including the amount provided in the final year) to give the total amount due for repayment.

The following examples will help to illustrate this procedure. Examples are set in previous years so that actual CPI figures can be used.

Example:

A person begins to receive the Nursing Home Loan (“Ancillary State Support”) in June 2002. It is paid until the person’s death in March 2004 when the amount falls due for payment.

- Take the amount paid from June 2002 to Dec 2002= €6,000
- Get the CPI figure for December 2002 = 105
- Take the amount paid from Jan 2003 to Dec 2003 = €15,600
- Get the CPI figure for December 2003 = 107
- Take the amount paid from Jan 2004 to Mar 2004 = €3,000
- Get the CPI figure for February 2004 = 107.4 (Final CPI Figure)
- Divide the Final CPI figure by the Dec 2002 figure ($107.4 / 105 = 1.029$)
- Then multiply this figure by the 2002 amount paid ($€6,000 \times 1.029 = €6,174$)
- This is repeated for each subsequent year as follows:
- Divide the final CPI figure by the Dec 2003 figure ($107.4 / 107 = 1.004$)
- Then multiply this figure by the 2003 amount ($€15,600 \times 1.004 = €15,662.40$)
- Divide the final CPI figure by the Feb 2004 figure ($107.4 / 107.4 = 1.00$)
- Then multiply this figure by the 2004 amount paid ($€3000 \times 1.00 = €3,000.00$)

The total debt due and payable is the sum of the adjusted amounts and the amount paid in the year of the relevant event:

€6,174 (2002) + €15,662.40 (2003) + 3,000 (2004) = €24,836.40

Notification of Repayment to Relevant Accountable Person

Write to the person(s) responsible for repayment (or, where this may be unclear, to the persons most likely to be responsible for repayment), termed the “**relevant accountable person**” of the applicant informing them that:

1. The debt is due for repayment and the amount of the debt
2. The possibility and conditions for further deferral. (Section 20)

The letter must also ask the person to confirm whether they wish to defer payment, i.e. apply for further deferral. If the answer is no, the person will have to confirm this and provide the name and address of the personal representative (it is likely to be one of the people to whom the HSE has written). If the answer is yes, they will have to fill out a short application form. The letter should also include a repayment slip to enable payment of the repayable amount to the Revenue Commissioners.

The proposed timeframe for this notification by the HSE is to write to the partner/ personal representative within 20 working days.

Notification of Repayment to Revenue

Details of the debt and how it is calculated, of the person/ persons involved (if a member of a couple) and of the assets involved will be given to the Revenue Commissioners by the HSE along with any other information reasonably required by them. (Section 26 of the Act refers)

The Revenue Commissioners should be notified within:

- 3 months of the relevant event or
- 3 months after the HSE becomes aware of the relevant event.

This is a statutory requirement. However, in practice, the HSE should notify Revenue as soon as possible, i.e. as soon as it has established whether the repayable amount is due for collection or whether a further deferral applies.

11.6 Collection of the Repayable Amount by Revenue

Collection of the repayable amount is the responsibility of the Revenue Commissioners. Interest in respect of overdue payments may accrue until the repayable amount is paid to the Revenue Commissioners.

Monies cannot be recovered after 12 years following a relevant event (Statute of Limitation applies).

11.7 Release of Charging Orders

On receipt of the repayable amount, Revenue will notify the Central Office in writing. The Central Office will then proceed to:

- release the Charging Order registered against the property (this must be done by an authorised person),
- notify the relevant accountable person in writing of the release of the Charging Order,
- and record the repayment and release.

12 - Further Deferral

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- 12.3 Conditions for Further Deferral
- 12.4 Repayment of the Nursing Home Loan

12.1 Further Deferral

Where the loan becomes repayable on the applicant's death, the repayment of loan amounts based on the principal residence only can be further deferred or postponed in certain cases. This is called 'Further Deferral'. Its purpose is to ensure that certain individuals, for whom the asset is their principal residence, will not need to worry about selling or re-mortgaging the asset in order to repay the Nursing Home Loan. Instead, such individuals can defer repayment of the Loan for the duration of their lifetime.

12.2 Application for Further Deferral

A person wishing to apply for a further deferral, or a representative acting on their behalf, must apply for such a deferral, not later than 3 months after the death of the applicant. In compelling circumstances, an application may be made up until 6 months after the death of the applicant. The application should be made on the form specified by the HSE. The people who may qualify for further deferral, and the qualifying conditions are set out below.

If the HSE (Central Office) is satisfied that a further deferral may be made they must inform the applicant of that decision in writing within 10 working days of making that determination.

12.3 Conditions for Further Deferral

The people who may qualify for a further deferral are:

- The spouse or partner of the applicant, where the asset concerned is their principal residence, and
- A **connected person** who meets the qualifying conditions set out below.

A connected person is:

- A child of the applicant or their spouse/partner under 21 years of age
- A child of the applicant or their spouse/partner over 21 years of age whose assets do not exceed the asset disregard
- A sibling of the applicant whose assets don't exceed the asset disregard.
- A relative of the applicant who is in receipt of:
 - Disability Allowance or similar.
 - Blind Persons Pension.
 - Non-Contributory State Pension.
 - A pension from outside of the state similar to any of the above.
 - Persons whose total income is not more than the maximum rate of the State Pension (contributory)
- A person who is in receipt of Carers Allowance, Carers Benefit or the Respite Care Grant, in respect of care for the applicant, at any time during the period of 12 months prior to the applicant entering into long stay care where such care was provided for a continuous period of not less than 6 months.
- A relative of the person who is the owner of a building to which the principal residence is attached (eg. "granny flat").

The connected person must also satisfy the following **three conditions**:

- The asset in question must be their only residence, and
- They must have lived there for not less than 3 years preceding the original application for the Nursing Home Loan, and
- They must not have an interest in any other property.

In conclusion, the conditions for Further Deferral may be summarised as follows:

1. The Loan must have referred to the Principal Private Residence (PR), and
2. The recipient of The Loan must have died, and
3. The asset is the PR of the surviving partner, or,
4. The asset is the PR of a connected person and the connected person;
 - Has no other residence
 - Does not have an interest in another property

- Has ordinarily resided in the property for at least 3 years preceding the date of making the request for payment of the Nursing Home Loan

12.4 Repayment of Nursing Home Loan

Where a further deferral has been granted, the loan will fall due for repayment on the occurrence of a deferred relevant event. A deferred relevant event is

- The death of the applicant's spouse or partner
- The asset no longer qualifying as the applicant's spouse/partner principal residence
- The death of the connected person
- The qualifying conditions for a connected person ceasing to apply
- A connected person ceasing to qualify under the definition of connected person
- The transfer of the asset

On the occurrence of a deferred relevant event the procedures outlined in sections 11.4 to 11.7 of these guidelines should be followed with the following modifications.

Firstly, the legislation only provides for **one deferral** (i.e. one further deferral). Therefore, the loan falls due for repayment on the occurrence of a deferred relevant event and there is no need for the HSE to consider the issue of further deferral.

Secondly, where a further deferral is granted, the debt due continues to be adjusted in accordance with the consumer price index (CPI) for the duration of the deferral (i.e. until the deferred relevant event). The procedure for calculating this and a simple example are provided below.

Procedure for Calculating CPI

On the death of the applicant no further loan amounts are paid. As such, the granting of a further deferral effectively freezes the debt due, apart from the continuing application of the CPI. On the occurrence of a deferred relevant event, the HSE takes the CPI figure for the month preceding the month in which the deferred relevant event occurred, i.e. the same procedures as applies on the occurrence of a relevant event. It will divide this figure by the final CPI figure from the previous calculations. It will then take the resulting figure and

multiply it by the frozen debt. This is the final amount due. The example below illustrates this.

Example

Assume that the person referred to in the example in section 11 has a spouse who seeks a further deferral. The spouse then dies in December 2006 (deferred relevant event) and the amount must finally be repaid.

Take the frozen debt and the final CPI figure. In the example used, these are €24,836.40 and 107.4 respectively.

- Get the figure for the month preceding the deferred relevant event, in this case November 2006 which is 117.6.
- Divide 117.6 by 107.4 = 1.09
- Multiply the frozen debt by this figure ($€24,836.40 \times 1.095$) = **€27,195.86**

This is the amount due and payable.

Section 13 - Existing Residents

A commitment has been made that anyone who is in a nursing home before the Nursing Homes Support Scheme starts cannot be made worse off by the scheme.

- If the applicant is in a public or voluntary nursing home or in a contracted bed in a private nursing home before the start of the scheme, they can continue with your existing arrangements.
- If the applicant is in an approved private nursing home before the start of the scheme, they can choose to transfer to the Nursing Homes Support Scheme or they can retain their current subvention arrangements. If they apply for the scheme and have been in the nursing home for three years or more, the financial assessment will only be based on income and assets other than the principal residence (and a farm/business in certain circumstances), i.e. the 'three year' cap will apply.
- If the applicant is in an approved private nursing home before the start of the scheme and has been paying the full cost of care, they may apply for the scheme or they can continue to fund the complete cost of care. If they apply for the scheme and have been in the nursing home for three years or more, the financial assessment will only be based on income and assets other than the principal residence (and a farm/business in certain circumstances), i.e. the 'three year' cap will apply.
- If the applicant is in a private nursing home which is not approved for the purpose of the scheme, they can retain your current subvention arrangements or they can opt to apply for the scheme and change to a nursing home on the list.
- Finally, if the applicant is in an approved private nursing home before the start of the new scheme, they do not need to apply for a Care Needs Assessment. They can commence the process by applying for the Financial Assessment.

Should a person in long term care who has been assessed under the inpatient service charges regulation wish to transfer they can do so but will need to apply under Scheme to avail of financial support for that transfer.