

STATUTORY INSTRUMENTS

S.I. No. 652 of 2006

HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006

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HEALTH ACT 2004 (COMPLAINTS) REGULATIONS 2006

S.I. No. 652 of 2006.

I, Mary Harney, T.D., Minister for Health and Children, in exercise of the powers conferred on me by sections 53 and 78 of the Health Act 2004 (No. 42 of 2004) hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Health Act 2004 (Complaints) Regulations 2006.

(2) These Regulations come into operation on 1 January 2007.

Interpretation

2. (1) In these Regulations-

“the Act” means the Health Act 2004 (No.42 of 2004);

“confidential information”

has the meaning assigned to it by section 26(3) of the Act;

“excluded matter” means any of the matters referred to in section 48(1) of the Act subject to subsection (2) of that section;

“investigation” includes a preliminary investigation as referred to in section 50(2) of the Act; and

“review officer” means a person appointed to carry out a review under section 49.

(2) In these Regulations-

(a) a reference to a regulation is a reference to a regulation in these Regulations;

(b) a paragraph or sub-paragraph which is not otherwise identified is a reference to a paragraph or sub-paragraph in the regulation in which the reference occurs;

(c) a reference to a section in an Act which is not otherwise identified is a reference to the Act.

Assignment of review functions by the Executive

3. (1) The Executive may assign its functions under section 49(4) either generally or in relation to specified complaints.

(2) Any such assignment shall be in writing and shall include any such information, conditions and requirements as appear to the Executive to be appropriate.

(3) The Executive may, at any time, revoke any assignment made under Paragraph (1) or amend the information, conditions and requirements imposed under Paragraph (2).

(4) Any body to whom or person to which the Executive has assigned its functions under Paragraph (1) shall provide to the Executive on request-

(a) such information as may be requested by the Executive, and in such manner as may be indicated, and

(b) the information specified in section 55(3).

Requirements to be complied with by persons making a complaint

4. (1) A complaint shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or service providers in accordance with section 49 (1)(a) and for the purposes of these Regulations a complaint is treated as being made on the date on which it is received by the Executive or service provider, as appropriate.

(2) A person making a complaint may be required by the complaints officer, either at the time the complaint is made or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:

(a) satisfy himself or herself of the identity of the person concerned and, where the person making the complaint is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,

(b) carry out a proper investigation of the complaint made.

Complaints officers and review officers

5. (1) The Executive and service providers shall appoint such and so many persons, as considered appropriate, as complaints officers.

(2) The Executive or any body to whom or person to which it has assigned its functions under section 49(4) shall appoint such and so many persons, as appropriate, as review officers.

(3) A person appointed under Paragraph (1) or Paragraph (2) shall be independent in the exercise of his or her functions under these Regulations.

Functions of complaints officers

6. (1) A complaints officer shall investigate, subject to section 50(2), all complaints received or assigned to him or her for investigation after having satisfied himself or herself that the complaint falls within the provisions of Part 9 of the Act.

(2) Having concluded his or her investigation, the complaints officer shall make a finding as to whether the complaint is-

(a) upheld in whole or in part, or

(b) not upheld

and on the basis of that finding he or she may make such a recommendation, subject to section 51(1), that he or she is satisfied is fair and reasonable having regard to all the facts and circumstances of the complaint.

(3) A complaints officer shall prepare a report on the investigation-

(a) at the conclusion of the investigation, and

(b) at any time during the investigation, if requested by the Executive or service provider, as appropriate.

(4) A complainant may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the complaints officer.

Acknowledgement of complaints

7. (1) Upon a complaint being received by or assigned to the complaints officer (including a referral under section 48(2)), he or she shall notify, within 5 working days, the complainant, in writing, that the complaint has been so received or assigned and outline the steps that he or she proposes to take in investigating the complaint and the time limits for the completion of the investigation.

(2) Where a complaints officer decides that a complaint is not one to which Regulation 6(1) applies, he or she shall notify, in writing, the person concerned, within 5 working days, of his or her decision and the reasons for it.

(3) Where the reason for the decision under Paragraph (2) is that the complaint relates to an excluded matter, the notification under that Paragraph shall, where appropriate and to the extent possible, advise the person where the complaint might more properly be referred.

(4) Where a complaint made relates only in part to an excluded matter, the complaints officer shall investigate, in the normal way, that part of the complaint that is not so excluded and his or her notification to the complainant under Paragraph (2) shall so advise.

(5) Where, under section 47(3), a complaints officer extends or determines not to extend the time limit for making a complaint he or she shall notify, in writing, the parties to the complaint of his or her decision and the reasons relating thereto within 5 working days of the decision having been made.

Procedure to be followed in investigating complaints

8. (1) Subject to these Regulations, the complaints officer shall investigate the complaint.

(2) (a) Notwithstanding Paragraph (1) above, the complaints officer shall consider whether it would be practicable, having regard to the nature and circumstances of the complaint, to seek the consent of the complainant and any other person to whom the complaint relates to finding a resolution to the complaint by the parties concerned and where such consent is forthcoming such an approach shall be used.

(b) Where an approach under (a) is used and found to be-

(i) successful, the complaint shall be regarded as resolved,

(ii) unsuccessful, the complaint shall be investigated in accordance with Paragraphs 3 to 10 by the complaints officer who has been involved in dealing with the complaint unless the complainant objects to his or her further involvement.

(c) The resolution of the complaint under this Paragraph shall not include the payment by any person who is a party to the complaint of any financial compensation.

(3) A complaint shall be investigated and concluded within 30 working days of it being acknowledged by the complaints officer but where the complaints officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or service provider, as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion

(4) A person who has made a complaint and who is requested to provide information or assistance by a complaints officer shall be advised at the time the request is made of any time limit set by the complaints officer for compliance and that failure to comply by the due date may, subject to the decision of the complaints officer, invalidate the complaint.

(5) An investigation by a complaints officer shall be conducted in private.

(6) A complaints officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the investigation of the complaint.

(7) All information obtained by a complaints officer in the course of investigating a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper investigation of a complaint or otherwise provided for in these Regulations or required by law.

(8) A complaints officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.

(9) Upon conclusion of an investigation, a complaints officer shall, as soon as practicable, prepare a signed and dated report (referred to in Regulation 6(3)(a)) which shall include-

- (a) his or her findings,
- (b) any recommendation which he or she considers appropriate,
- (c) the reasons for such findings and recommendations,

and forward it, as soon as practicable, to the complainant, the Executive and service provider, as appropriate.

(10) The report forwarded to the complainant under Paragraph (9) shall also advise that he or she may request that the recommendation made be reviewed and provide such information as is necessary to assist with requesting a review.

Implementation of recommendations made by complaints officers

9. (1) Subject to Paragraph (2), the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as practicable and to the greatest extent practicable to any recommendation of the complaints officer, provided that he or she is satisfied that it is within the functional remit of the Executive or service provider, as appropriate, to do so.

(2) The Executive or service provider, as appropriate, shall, within 30 working days, of receipt of the report referred to in Regulation 8(9) notify, in writing, the complainant and complaints officer of the steps being taken to implement any recommendation made. Where it is proposed, under section 51(2) or otherwise, to amend or reject the recommendation or take alternative measures the reasons for this decision should be set out.

(3) Where, pending the outcome of a review, a relevant person suspends the implementation of a recommendation by a complaints officer, he or she shall, within 5 working days, so notify the complainant, in writing, of that suspension.

Time limit for requesting a review

10. (1) Subject to Paragraph (2), a complainant who is dissatisfied with a recommendation made by a complaints officer may apply for a review of that recommendation and this shall be done within 30 working days of the date on which the report was signed and dated by the complaints officer.

(2) Where a request for a review is received beyond the period specified in Paragraph (1), the Executive or the body to whom or person to which it has assigned its functions under section 49(4), as appropriate, may extend the time limit for requesting a review if it determines that special circumstances make it appropriate to do so.

(3) Where a decision is taken under Paragraph (2) to extend or not extend the time limit for requesting a review, the complainant shall be so notified, in writing, of the decision and the reasons relating thereto within five working days of the decision having been made and recorded.

Requirements to be complied with by persons requesting a review

11. (1) A request for a review shall be made in writing or electronically or otherwise as set out in procedures established by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) and for the purposes of these Regulations a request for a review is treated as being made on the date on which it is received by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.

(2) A person requesting a review may be required by the review officer, either at the time the review is requested or subsequently, to provide him or her with such information and assistance as he or she may reasonably require in order to:

(a) satisfy himself or herself of the identity of the person concerned and, where the person requesting the review is not the complainant, satisfy himself or herself that the person is entitled to do so under section 46(3) or (4), as appropriate,

(b) carry out a proper review.

Appointment of review officer to carry out review

12. Upon an application for review being made, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4) shall assign a review officer to review the recommendation made and shall notify, in writing, the complainant of the person appointed within 5 working days of the application for review being received.

Functions of review officers

13. (1) A review officer shall determine the appropriateness of a recommendation made having regard to all aspects of the complaint and its investigation and in so doing he or she shall not vary the original recommendation or make another unless he or she deems it appropriate to so do.

(2) A review officer shall prepare a report on the review-

(a) at the conclusion of the review, and

(b) at any time during the review, if requested by the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate.

(3) A complainant who has requested a review may, if he or she so wishes, make written representations in support of his or her complaint and such representations shall be considered by the review officer.

Procedure to be followed in reviewing complaints

14. (1) Subject to these Regulations, the review officer shall determine the procedure to be followed in conducting a review.

(2) A review shall be conducted and concluded within 20 working days of the request being received but where the review officer is unable to conclude his or her investigation within that period he or she shall notify, in writing, the Executive or the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and the complainant of that fact and indicate the additional time that he or she considers necessary for completion.

(3) A person who has applied for a review and who is requested to provide information or assistance by a review officer shall be advised at the time the request is made of any time limit set by the review officer for compliance and that failure to comply by the due date may, subject to the decision of the review officer, invalidate the complaint.

(4) A review shall be conducted in private.

(5) A review officer may request such documents and communicate with such persons as he or she reasonably believes can assist with the review of the complaint.

(6) All information obtained by a review officer in the course of reviewing a complaint shall be deemed to be confidential information and he or she may not discuss, communicate or disclose it except as is necessary for the proper review of a complaint or otherwise provided for in these Regulations or required by law.

(7) A review officer shall not make a finding or criticism in his or her proposed report, adverse to a person, without first having afforded the person concerned the opportunity to consider the finding or criticism and to make representations, which shall be considered, in relation to it.

(8) Upon conclusion of a review, the review officer shall, as soon as practicable, prepare a signed and dated report on the review and forward it, as soon as practicable, to the complainant, the complaints officer who investigated the complaint, the Executive and the body to whom or person to which the Executive has assigned its functions under section 49(4), as appropriate, and where the review related to a service provider the report shall be forwarded to the service provider concerned at the same time as it is forwarded to the other parties mentioned in this paragraph.

Making of recommendations by review officers

15. (1) On the basis of the review, the review officer shall, as he or she considers appropriate-

- (a) uphold the original recommendation,
- (b) vary it or make a new recommendation,

subject to the proviso that in no case shall the implementation of the varied or new recommendation require or cause either of the matters referred to in section 51(1)(a) or (b).

(2) The reason for the decision under Paragraph (1) shall be set out by the review officer in the report referred to in Regulation 13(8).

Implementation of upheld, varied or new recommendations made by review officers

16. (1) Subject to these Regulations, the Executive or service provider, as appropriate, shall take such steps as are reasonable to give effect as soon as possible and to the greatest practicable extent to any upheld, varied or new recommendation made by the review officer, provided that he or she is satisfied that it is within the remit of and appropriate for the Executive or service provider to so do.

(2) The Executive or service provider, as appropriate, shall, within 30 working days of receipt of the report from the review officer, notify, in writing, the complainant, complaints officer and review officer of the steps being taken or proposed to be taken or not to be taken to implement the recommendation and where it is proposed not to implement some or all of the recommendation the reasons for this decision should be set out.

Ombudsman and Ombudsman for Children

17. Any notification, under these Regulations (other than one under Regulation 7(1) or 12), or reports forwarded to a person who has made a complaint shall advise that nothing in Part 9 of the Act prohibits or prevents any person who is dissatisfied with a recommendation made or step taken in response to a complaint or a review that the matter may be referred by him or her to the Ombudsman or the Ombudsman for Children, as appropriate.

Records

18. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall establish and keep, in such format as is most appropriate, such records as are necessary to enable them to meet their requirements under these Regulations and section 55.

Public awareness of complaints procedures

19. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4) shall make publicly available information on their complaints and review procedures, as appropriate, including-

- (i) the names and contact details of all complaints officers,
- (ii) the names of all review officers
- (iii) the procedures, if any, available under Regulation 8 (2), and
- (iv) advice on all matters relevant to making a complaint or seeking a review.

Assistance to persons making a complaint

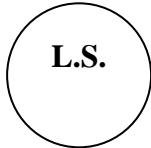
20. The Executive, service providers and bodies to whom or persons to which the Executive has assigned its functions under section 49(4)-

(a) shall offer or otherwise arrange for such practical assistance to a complainant, as is necessary, for the person to-

- (i) make a complaint, in the required way,
- (ii) request a review in a case where he or she is dissatisfied with a recommendation made, or
- (iii) refer the matter to the Ombudsman, or where appropriate, the Ombudsman for Children under section 54(1); and

(b) may, where appropriate, assist a person making or seeking to make a complaint, subject to his or her agreement, to identify another person who could assist with the making of the complaint.

GIVEN under my Official Seal,
this 15 day of December, 2006.



MARY HARNEY T.D.,
Minister for Health and Children

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations, made under Part 9 of the Health Act 2004 (No.42 of 2004), make provision for complaints by persons to the Health Service Executive and service providers and require the establishment and operation of procedures and arrangements intended to achieve a fair and reasonable resolution of such complaints.

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S.I. No. 651 of 2006

HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006

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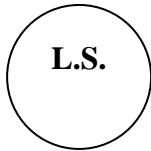
S.I. No. 651 of 2006.

HEALTH ACT 2004 (COMMENCEMENT) ORDER 2006

I, MARY HARNEY, T.D., Minister for Health and Children, in exercise of the powers conferred on me by section 3 of the Health Act 2004 (No. 42 of 2004), hereby order as follows:

1. This Order may be cited as the Health Act 2004 (Commencement) Order 2006.
2. The 1st day of January 2007 is appointed as the day on which Part 9 of the Health Act 2004 (No. 42 of 2004) comes into operation.

GIVEN under my Official Seal,
this 15 day of December, 2006.



MARY HARNEY T.D.,
Minister for Health and Children

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order brings Part 9 of the Health Act, 2004 into operation on and from 1 January 2007