



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Frequently Asked Question about the Critical Illness Protocol Managerial Discretion Guidelines for the Health Service

April 2018



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1. What are the Critical Illness Provisions?

If an employee becomes seriously injured or critically ill, and has supporting medical evidence, they may be granted extended paid sick leave by their employer under the terms of the Critical Illness Protocol as follows:

- up to a maximum of 6 months (183 days) on full pay in a rolling 1 year period, followed by
- up to a maximum of 6 months (182 days) on half pay
- subject to a maximum of 1 year (365 days) in a rolling 4 year period.

2. What are the changes to the Critical illness Provisions?

1. The revised Critical Illness Protocol (CIP) itself has changed.
2. The Critical Illness Protocol Managerial Discretion Guidelines hereafter referred to as ‘the Guidelines’ have been made.
3. The CIP Protective Year has changed to begin on the **date of return to work** from the CIP absence instead of the previous way of being from the first date of absence.

3. What is new to the CIP process?

There are a number of new elements in the new CIP and process. These are as follows.

1. The Medical Criteria have been changed – For more information on new criteria see question 21:

Q21 - What are the Changes to Medical Criteria?

2. The wording of the Protocol on the ‘Decision to Award’ and what must be established by the decision maker have changed. For more information on this refer to the following questions:

Q22 - What are the Other Changes to the Protocol – Revised Wording - Changes to the advice on the decision to award?

3. The Protective Year will now commence from **the date of return to work** after an absence that was covered by the CIP. For more information on this see question 23:

Q23 - How has the Protective Year Provision changed?

4. The Occupational Physician’s Report will contain extra information than previously as a matter of course. More information on this is contained in question 13:

Q13 - What can I expect from the OHP Report?

4. Where will the changes be set out?

1. The revised Critical Illness Protocol (CIP) will be contained in a revised Sick Leave Circular for the health service that will be published on the HSE website (www.hse.ie). It will also be an Appendix to the Guidelines.

2. The Guidelines will be available to download from the HSE website and will be issued to all HR Managers in the HSE and Section 38 agencies so that information about these changes can be communicated to all staff.
3. The Change to the CIP Protective Year will also be contained in the revised Sick Leave Circular for the health service.

5. When do the Changes to the CIP come into effect?

All the new CIP Provisions come into effect on **31st March 2018**.

6. What is the Occupational Physician?

This refers to the Occupational Health Physician (OHP) appointed by the employer or the external Occupational Health Provider engaged by the organisation.

Critical Illness Protocol Managerial Discretion Guidelines FAQs

7. What are the Critical Illness Protocol Managerial Discretion Guidelines?

These guidelines are designed to enable a decision maker to reach a reasonable and fair decision that takes into account all the relevant and appropriate factors. It guides managers and decision makers through the decision making process on the basis of fair procedures and reflecting legal advice on factors that need to be taken into account. It will enable a consistent approach in the decision making process

8. Where will the Guidelines be set out?

The Guidelines will be available to download from the HSE website and will be issued to all HR Managers in the HSE and Section 38 agencies to inform staff of these changes.

9. How does a person qualify for Critical Illness Provisions?

The CIP defines eligibility criteria for the granting of extended sick leave for critical illnesses.

The decision to award CIP is made by the relevant Manager following consultation with the Occupational Physician.

1. CIP on the basis of Medical Certification

The Medical criteria which must be met for extended leave to be granted are set out in the CIP.

2. CIP on the basis of Managerial Discretion

CIP extended leave may also be granted based on management's discretion where the medical criteria are not met.

The HSE application form for CIP is available from the HSE website and this should be filled out by the applicant and given to the relevant manager. The applicant will then be referred to the Occupational Physician.

Section 38 agencies are responsible for the application and decision-making processes within their organisation and should ensure that all staff are aware of these arrangements.

10. What is the role of the decision maker in the award of CIP?

The role of the manager/decision maker is to decide whether any exceptional circumstances warrant extended paid sick leave. This is determined by the decision maker after consideration of all the circumstances as set out in the Guidelines, including any information and advice provided by the Occupational Physician. The Occupational Physician will inform the decision maker if any of the medical criteria have been met.

11. When is Managerial Discretion to be used?

The CIP sets out the medical criteria that are to be met for the award of CIP on the grounds of medical certification. If the medical criteria are not met this will be stated in the Occupational Physician's Report together with other relevant information about recovery times for the illness, injury or condition. The decision maker must then establish if there are any exceptional circumstances in relation to the illness or injury as set out in the guidelines and use discretion to decide on the award of CIP. The use of Managerial Discretion in the award of CIP was designed to allow flexibility and not strictly exclude cases that have not quite met the threshold on the basis of medical certification.

12. What are the three pillars of information to enable a reasonable Managerial Discretion Decision to be made?

When determining if there are "exceptional circumstances" which would warrant the award of CIP granted on the basis of Managerial Discretion, the Manager should consider the following three sources of information to inform the decision making process to award CIP.

- Occupational Physician's Report
- Relevant Information from the Individual and
- Relevant HR Information

13. What can I expect from the OHP report?

The Occupational Physician should provide additional medical information they are aware of and consider relevant, within the boundaries of medical confidentiality. Examples include:

- a) Standard recovery times for the condition based on Department of Employment and Social Protection Guidelines where these exist having regard to the nature of the work
- b) The presence of medical conditions that prolong standard recovery time
- c) The presence of medical complications that prolong standard recovery time
- d) Other information relevant to assisting your employer in making a decision if appropriate e.g. length of hospital stay, or delay in establishing diagnosis.

14. Informed Consent for Disclosure of Medical Information

In the case of a CIP application, the specific details of the illness, injury or condition will not be divulged by the OHP.

It is important to note that in the case of a CIP application, the Occupational Physician can only discuss the *confidential medical aspects* of the case where the applicant has given **informed consent** for this where necessary and where the Occupational Physician considers that this is required. The applicant should be made aware that the decision

maker can only act on the information available to them and be afforded the opportunity to grant their informed consent if they so wish.

15. Examples of OHP Reports

Example 1:

A person requires a total Hip Replacement operation and works at an office based occupation. They also have well controlled Type 2 Diabetes.

The Occupational Physician's Report would be as follows:

Q: Does this person meet any of the Medical Criteria for the award of CIP?

Answer: No

Further Information¹:

- a) **Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures)?**

Answer: 10 weeks approximately

- b) **Presence of additional medical conditions where relevant that prolong recovery time?**

Answer: No

- c) **Presence of medical complications where relevant that prolong recovery time?**

Answer: No

- d) **Any other information they consider relevant to assisting management in making a decision to award extended sick pay under "Management Discretion" e.g. a hospital inpatient stay is close to the 10 day threshold?**

Answer: This person will not be fit to return to duty and perform the kind of work they are engaged in for 10 weeks and would need this extended recovery time to return to full mobility. This person has undergone elective orthopaedic joint replacement surgery.

Example 2

This person works in an office based employment and requires an elective abdominal hysterectomy. The person also has well controlled high blood pressure.

The Occupational Physician's Report would be as follows:

Q: Does this person meet any of the Medical Criteria for the award of CIP?

Answer: No

¹ This information should be contained in the OHP report which is issued on foot of the CIP referral.

Further Information:

Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures)?

Answer: 6-8 weeks approximately

a) Presence of additional medical conditions where relevant that prolong recovery time?

Answer: No this does not affect their recovery time

b) Presence of medical complications where relevant that prolong recovery time?

Answer: No

c) Any other information they consider relevant to assisting management in making a decision to award extended sick pay under Management Discretion” e.g. a hospital inpatient stay is close to the 10 day threshold?

Answer: This person has undergone elective abdominal surgery

Example 3

I have received the Occupational Physician Report but more information is needed on the recovery time, medical conditions and /or complications, or the additional information supplied, should I contact the Occupational Physician?

Consider the information supplied carefully and if there are still outstanding questions and also bearing in mind the limits of medical confidentiality, it may occasionally be helpful for the Manager to liaise directly with the Occupational Physician.

16. What Factors are Relevant and Irrelevant when making a Decision?

The Guidelines set out the relevant information that should be taken into account when making the decision to award CIP.

The relevant factors are set out in the [Sick leave Regulations](#)², (Section 12(b), Sick Leave Provision for Critical Illness or Injury) which provide that in order to grant CIP on the basis of “exceptional circumstances” the following must be established:

- a) That there are “exceptional circumstances”;**
- b) That those “exceptional circumstances” relate to the illness, injury or condition of the person and**
- c) That those “exceptional circumstances” warrant the granting of the extended paid sick leave;**

² The Scheme is set out in the Public Service Management (Sick Leave) Regulations 2014 (S.I. 124 of 2014) and the Public Service Management (Sick Leave) (Amendment) Regulations 2015 (S.I. 384 of 2015), referred to as ‘the Regulations’
<http://www.irishstatutebook.ie/eli/2014/si/124/made/en/pdf>

Other factors that are **not** relevant to the decision as they do not relate to the illness, injury or condition are set out in the Guidelines also i.e. the person's financial position or the person's performance at work.

The Manager should not consider the financial position of the employee concerned or the person's performance at work.

17. What information should I seek from the individual?

The Manager should consider whether further information may be required in relation to the individual and may wish to contact the employee to make sure that they are aware of all of the circumstances that may amount to "exceptional circumstances" such as if the medical criteria are close to being met or consider the severity of the illness, injury or condition.

18. What are the Appeals Mechanisms?

There are two appeal mechanisms to the decision on the award of CIP.

1) APPEAL OF THE MEDICAL DECISION

The advice of the OHP may be appealed to an appropriate Specialist Occupational Physician in another location/employment. This appeal will ordinarily be a file only review.

2) APPEAL OF THE MANAGEMENT DECISION

The manager's decision may be appealed in accordance with the organisation's Grievance Procedure and the timeframes should be strictly adhered to.

These have not changed with the revised CIP and are provided for in HSE HR Circular 005/2014.

19. How should the person be informed of the Decision on the Award of CIP?

As per the Guidelines, the person should be informed of the decision in writing and briefly what factors were considered. The person should also be informed of their Right to Appeal under the Grievance Procedure.

Critical Illness Protocol FAQs

20. What are the Changes to the Critical Illness Protocol?

There are changes to the medical criteria that need to be met to qualify for the CIP on the basis of Medical Certification, when assessed by an Occupational Health Physician. For more information on this see question 21. What are the Changes to Medical Criteria?

There are also changes to the wording for the 'Decision to Award' for decision makers. For more information on this see question 22. What are the Other Changes to the Protocol – Revised Wording - Changes to the Advice on the Decision to Award.

21. What are the Changes to Medical Criteria?

The medical criteria are set out in the CIP and the Occupational Physician will advise if the nature of the illness have the characteristics of at least one of the criteria in a CIP application. There have been some changes to these medical criteria arising from the Review Process and these are as set out in the box below.

Revised wording of CIP Medical Criteria	Previous wording of CIP Medical Criteria
<p>ii. The nature of this medical condition has at least one of the following characteristics:</p> <ul style="list-style-type: none"> (a) Acute life threatening physical illness; (b) Chronic progressive illness, with well-established potential to reduce life expectancy; (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment; (d) In-patient or day hospital care of ten consecutive days or greater(1) . <p>Footnote</p> <p>1. In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of ten consecutive days will be reduced to two or more consecutive days of in-patient hospital / clinic care.</p>	<p>ii. The nature of this medical condition has at least one of the following characteristics:</p> <ul style="list-style-type: none"> (a) Acute life threatening physical illness; (b) Chronic progressive illness, with well-established potential to reduce life expectancy (footnote 1) (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment (d) In-patient hospital care of two consecutive weeks or greater (footnote 2). <p>Footnotes;</p> <p>1. In circumstances where there is no medical intervention.</p> <p>2. In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.</p>

- a) Previously there was a footnote that said ‘in circumstances where there is no medical intervention’ from criteria (b) ‘potential to reduce life expectancy’ and this has been removed in the revised medical criteria.
- b) The in-patient hospital care requirement has been reduced from 2 weeks to 10 consecutive days.
- c) The term ‘day hospital’ has been included to account for the fact that certain treatment facilities operate on this basis. The inclusion of term day hospital is to take account of this type of hospital care which is offered as an alternative in limited circumstances in the care of psychiatric disorders.

22. What are the Other Changes to the Protocol – Revised Wording - Changes to the Advice on the Decision to Award

Criteria for ‘3. Decision to Award’ contained in the protocol were revised to reflect the changes in the approach to the use of management discretion contained in the Guidelines.

Revised Wording	Current Wording
<p>The “Regulations” provide that in order to grant CIP on the basis of “exceptional circumstances” the following must be established:</p> <ul style="list-style-type: none"> (a) That there are “exceptional circumstances”; (b) That those "exceptional circumstances" relate to the illness, injury or condition of the person; (c) That those "exceptional circumstances" warrant the granting of the extended paid sick leave; and (d) Management should also confer with the Occupational Physician in such cases. 	<p>In this regard management should in particular consider the following:</p> <ul style="list-style-type: none"> (a) the individual’s sick leave record; the potential impact of an early return on the workplace efficiency and effectiveness; (b) it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition. (c) That ‘Management should consider the potential impact of an early return on the workplace efficiency and effectiveness’.

23. How has the Protective Year Provision Changed?

The 'protective year' was applied so that someone who had returned to work following CIP could avail of remaining CIP leave for subsequent non-critical illnesses/ injuries which occurred within one year of the **first date of absence**, due to the critical illness/injury for which CIP was granted.

This protective year period is being extended to begin **on the date of return** as this will enhance the support to those returning from a serious illness who may suffer from a routine illness in the following year.

Revised Protective Year Provision

Within the 12 month period **from the date of return to work** after an employee suffers with a critical illness/ injury they can continue to access the extended sick pay limits normally given for critical illness/injury only (i.e. 365 days), even where they are not critically ill, provided that:

- the employee has previously been absent because of a critical illness/injury; and
- the employee suffers from a non-critical illness/injury during the 12 months following the **first day of the return to work following** a critical illness/injury absence.

24. How should Chronic Critical Illnesses be treated?

Currently, the CIP is available for those who have a chronic condition or disease where the medical criteria are met and/or the characteristics of the illness are such that CIP is warranted under Management Discretion.

Managers should adopt a proactive approach and encourage prospective applicants to apply for CIP, and to do so in advance of sick pay thresholds being reached, so that eligibility can be determined as soon as possible.

The CIP works on an annual basis, the limits are 365 days and CIP would expire after this period. In the case of chronic conditions, if the CIP is awarded for a year in all and after that period if it continues to be required then the situation would need to be assessed again to see if the condition(s) that led to the granting of the CIP are still valid. A further Occupational Health Physician referral would be required at this stage.