

## **Office of the Ombudsman**

### **Illustration Cases**

#### **Case One**

An elderly woman had been a patient in St James's Hospital in October 2002. On recovery she was discharged to the Caritas Convalescent Centre but, following complications she had to attend St Vincent's Hospital where she was eventually admitted as a patient. A few weeks after her admission she was ready for medical discharge. She expressed a wish to be placed in long-term care. She was put on the long term care list but no bed became available. She did not have the resources to secure a placement in a private nursing home.

Difficulties arose with regard to finding a suitable nursing home and she remained in hospital for 15 months. The Medical Social Worker in St Vincent's Hospital wrote to St James's Hospital asking that she be listed for placement in one of the public nursing homes in her local area. She was offered a "contract" bed in a private nursing home but this was not acceptable to her family as they felt it was too far from where they lived to enable them to visit. Her family expressed a preference for a "contract" bed in a private nursing home nearer them.

Efforts were made by the medical social worker in St Vincent's Hospital to source a bed in this nursing home. The question of a bed being contracted by the East Coast Area Health Board was explored as was securing an enhanced subvention to assist with the costs. However, the maximum subvention which could be paid fell below the nursing home fee. St Vincent's Hospital came to an agreement with the nursing home whereby it funded the difference between the maximum subvention and the cost of the private nursing home bed. In communication with the Ombudsman's Office, St Vincent's Hospital indicated that it would regularly facilitate discharges by making a financial contribution towards nursing home costs so as to free up an acute bed. These were always viewed as interim arrangements and that refunds would be requested from the HSE but not always pursued. While the funding arrangement was also deemed to be an interim one in this case, pending the implementation of a more satisfactory arrangement for the funding deficit, it remained in place until the woman died in August 2007.

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#### **Case Two**

An elderly man with dementia and severe mobility problems was discharged from University College Hospital, Galway (UCHG), in February 2006, under the "Winter Bed Initiative". This initiative was introduced to alleviate difficulties faced by hospitals in providing beds for patients over the winter period. The HSE provided some hospitals with a (limited) amount of funding to pay for respite care for 3-4 weeks in a private nursing home, during which time patients and their families were encouraged to source alternative arrangements. In practice, where alternative arrangements were not readily found, the "Winter Bed Initiative" was often used to extend the patient's time in the contracted bed. In this case, the bed in the private nursing home was paid

for by UCHG for 4 weeks at which point the bed was to be paid for by the patient and his family. The HSE paid a nursing home subvention but this, in addition to his State Pension, still left a shortfall to be met by the family which was extremely difficult for them. A number of them, including the people who had been caring for him prior to his admission to hospital, were themselves seriously ill and also in hospital.

A Consultant Geriatrician in the HSE wrote on the man's behalf to the manager of UCHG saying *his social circumstances are appalling* noting that he had been listed for public long-stay care and suggesting that *since the discharge plan came from UCH, I think there is an obligation to engage with trying to arrange something in the meantime....* However, despite the Consultant's intervention, the patient was not offered a public bed at the time, but continued to stay in the private nursing home for another 18 months. At this point his family were unable to cope with the mounting debt and took him home. Early in the following year, he was offered a public bed, but the family refused it as, by that time, he had become very frail. He died some time later.

*[Comment - The social circumstances of this case, where the family members involved in the man's care were themselves ill and/or living on social welfare payments should have indicated to the staff of UCHG who allowed his discharge both that he would not be in a position to return home in the near future and that the family would not be able to visit him in a nursing home outside Galway as they were dependent on public transport. The "Winter Beds Initiative" was utilised as a means to effect the discharge in this case where it might have been more appropriate to await or organise a public bed for the patient]*

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### **Case Three**

An elderly woman suffering from Alzheimer's Disease was admitted to the Mater Hospital in late 2003. A decision was made by a multi-disciplinary team within a few weeks of her stay there that, while she needed full-time nursing care, she no longer required medical care in a hospital. She went to a private nursing home, the fees for which were paid for by a combination of a subvention paid by the HSE at the maximum rate and her State Pension. Following the introduction of the Health Repayment Scheme, one of her daughters applied for a refund of the pension which she understood to have been incorrectly paid to the nursing home. However, this was refused on the basis that she occupied a private bed.

According to her family, they had been given to understand by the hospital that the private nursing home bed was a "contract bed" or, in other words, a public bed paid for by the State. They were aware that, as a medical card holder, she had entitlement to free medical care and had, in the past, obtained care in private nursing homes under respite care schemes and the "Winter Bed Initiative" which did not require payment of fees by the patient.

It transpired that a policy decision had been made in mid to late 2003 by the HSE in the Dublin North-East area to discontinue the arrangement whereby the HSE had "contract beds" in private nursing homes. The Mater Hospital had been involved in the negotiations which led to this decision and accordingly was aware of the policy at the time. The Nursing Home subventions

had been increased to assist people pay for private care and, in this case, the subvention payments, together with the patient's pension, met the fees charged. At some point, which the Ombudsman's Office was unable to establish, this policy was changed again and "contract" beds were reinstated as a means of making up the shortfall in publicly-funded beds available to people who needed long-term care.

*[Comment - This case brings to light one of the many policy changes instituted by the HSE in relation to in-patient care over the past few years. The decision made in 2003 to discontinue "contract beds" was made following negotiation with hospitals and other interested parties. The many changes in policy in this area have caused much confusion in the delivery of services, both among those charged with advising people of the services available and among those members of the public attempting to access the relevant information.]*

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#### **Case Four**

In June 2008 an elderly widower, who had become progressively ill with dementia, was discharged from St. Michael's Hospital, Dún Laoghaire, to a private nursing home after it was agreed by his medical team that he did not need acute care. His daughter, an only child, contended that she had been advised by the hospital, prior to his discharge, that the subvention, combined with his pension (his only income), would cover the costs. She and her father lived in an apartment owned by a relative and neither of them owned any property. The decision as to where he was to go was left to his daughter who received advice from the hospital's social workers.

A social worker put the man's name on a list for a public bed but explained to his daughter that, while he had an entitlement to a public bed, her father in all likelihood would have to wait a long time for a public bed to become available. The social worker also gave her an application form for a nursing home subvention and a list of private nursing homes. The social worker subsequently recorded in her notes that *patient likely to get max. enhanced subvention ie €763 less his income*. In an interview with the Ombudsman's Office, the social worker explained that her expectation was, at the time, based on her experience of cases in which enhanced subventions had been awarded up to then and she expected that the patient in this case would get an enhanced subvention.

When the man was discharged to the private nursing home selected by his daughter, the subvention awarded was €300 a week. The nursing home fees were then €900 a week. Payment of an enhanced (higher) subvention was subsequently refused by a HSE Appeals Officer. There was a suggestion that the higher subvention would be paid "when resources became available", but at the time of writing this report no higher payment has been made. In fact, in June 2008, the HSE stopped paying higher or "enhanced" subventions in the case of new applicants in many areas around the country. This was a policy change of far-reaching consequences for those affected but one which was not apparently notified to St. Michael's Hospital. The hospital's Social Work Department was consequently not aware of any change in the practice of awarding enhanced subventions. It was only by chance, some months later, that the hospital became aware of the change in the HSE practice and of the existence of a waiting list for enhanced subventions.

In September 2010, in response to a detailed statement of preliminary views by the Ombudsman's Office, the HSE decided to pay the higher rate of subvention retrospective to June 2008. The revised decision was stated by the HSE to have been based "*on the unique circumstances of this case*".

*[Comment - The information that enhanced subvention payments had ceased was not communicated properly by the Health Service Executive. It is quite extraordinary that a decision of this nature could be made without being circulated to all concerned prior to its implementation. There is no doubt that the social workers in this case acted in good faith in advising the patient's daughter at the time. The failure of the HSE to notify the Hospital of the change in practice has to be unacceptable.]*

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### **Case Five**

An elderly woman was admitted to Cavan General Hospital in May 2004 following a stroke. She was subsequently discharged to a private nursing home after she was deemed by the hospital to be medically fit but in need of long-term care. The policy in Cavan General Hospital was that patients who were medically fit for discharge should not remain in an acute hospital bed because these were high demand beds and delayed discharge patients reduced availability for other patients requiring acute treatment. Furthermore, there was always the potential danger of delayed discharge patients contracting infections if they remained in the hospital.

At the time of her intended discharge, the options and needs in respect of her long-term care were discussed with her family. According to the HSE, it would have been indicated to the family that access to publicly-funded beds would have been very limited and that, in fact, the practice in Cavan General Hospital was not to place a patient's name on the waiting list for public care unless a specific request for this is made by the patient/patient's family. Accordingly, given the position about the extremely limited availability of public nursing home beds, a bed in a private nursing home was provided under the "Winter Bed Initiative". Under this initiative, the HSE covered the cost of the bed less four-fifths of her pension while her application for a nursing home subvention was processed. In the event, there was a delay in processing the subvention application with the result that the payment for the bed under the "Winter Bed Initiative" continued over a period of six months.

While she was eventually awarded a basic and enhanced nursing home subvention, her family were finding it increasingly difficult to make up the difference between the subvention and the full nursing home charge. Their understanding was that their mother was entitled to a bed in a public institution and that she would be transferred there as soon as a bed became available. Subsequent to her son making a complaint to the Ombudsman's Office, her name was added to the public bed waiting list. However, she died in the private nursing home in October 2009.

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### **Case Six**

An elderly man was admitted to Wexford General Hospital in December 1999 suffering from pneumonia. After ten days in hospital he was discharged. Days before his discharge from the hospital, his daughter asked whether he could be kept in the hospital as renovations were in progress at his home. This request was not acceded to. On the day of his discharge his daughter advised that she had secured a bed in a private nursing home. He was subsequently admitted to this nursing home as an emergency admission.

A subvention was applied for on his behalf and was awarded from the date of admission to the nursing home. The portion of the application form reserved for official use only and completed by the South Eastern Health Board Designated Officer noted that his care needs could only be met through admission to a nursing home. There is no evidence of him being placed on the long term care list or that any enquiries were made to source a public bed for him. As the family was having difficulty in making up the difference between the nursing home fee and the subvention after his admission to the private nursing home, a top up payment was approved in November 2000. Further top up payments were also subsequently paid.

In January 2005, a public representative wrote to the South Eastern Health Board advising that the man's son was making substantial payments towards his father's maintenance in the nursing home and was finding it impossible to continue to do so. Following this intervention, an increased level of funding was made available to enable him remain in the private nursing home. In August 2006 he was allocated a publicly-funded bed in August 2006 and remained in publicly-funded care until his death in January 2009.

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### **Case Seven**

Waterford Regional Hospital (WRH) instituted a system approximately three years ago in relation to the discharge of elderly patients to nursing care, which gave rise to a number of complaints in 2008 and 2009. WRH had organised for the provision of 14 beds in three private nursing homes in Waterford. It had a long-term "contract" for these beds paid for from general hospital funds so they would be available to WRH at all times. The idea was to offer them to patients needing long-stay care for a 28 day period while they and their families looked at options for care. This meant that the bed occupied by the patient in the acute hospital would be vacated and the first 28 days of stay in the nursing home would be free to the patient.

When the system was first put in place, 28 days or so was enough for a subvention decision to come through; at that time also, the enhanced subvention along with the patient's pension was sufficient, or nearly so, to cover the costs of private care. In 2008, however, this situation changed. The HSE stopped paying enhanced or top up subventions, the fees for nursing homes went up and families could not afford them. According to one person interviewed at WRH, the subvention system "imploded" and staff there found themselves in the difficult situation of dealing with, on the one hand, the need for beds from A&E admissions and surgery and, on the other, families in dire straits who could not afford a nursing home place. At the same time, WRH continued to operate the system of offering the contracted beds in private nursing homes to

patients who had been assessed as requiring long stay nursing care and often paid for the bed for more than 28 days.

In November 2007 an elderly man suffering from Parkinson's disease was transferred to a "contract" bed in one of the private nursing homes with which WRH had an arrangement before a decision was made on the subvention application. The period for which WRH paid his nursing home fees ended two months later, following which the nursing home billed the patient's wife (who was eighty-five at the time) for his fees. She appealed the decision straightaway as she could not afford the charges, her only income being the State Pension. She was distressed and reluctant to move her husband as he had settled in the nursing home. The family felt it was most unfair of WRH to transfer a patient to a private nursing home and then, when the period of the "contract" expired, to place the onus on the family either to continue with that nursing home and try to meet its charges or move the patient for a third time in as many months.

The HSE confirmed that the patient was listed as requiring long-term care following admission to WRH but no public bed was available nor did one become available between then and his death in August 2008. He stayed in the private nursing home to which WRH had transferred him. However, in the event, his family did not have to meet the shortfall in nursing home fees because the HSE Appeals Officer who dealt with the subvention appeal from the man's wife decided to award a discretionary top-up payment which met the arrears owed.

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### **Case Eight**

In March 2008 a very elderly woman (99 years) was discharged, with her family's agreement, to one of the nursing homes with which Waterford Regional Hospital (WRH) had a contract. The hospital envisaged the period for which it would pay for her bed as 14 days. Her son signed an agreement, drawn up by WRH, which stated *at the end of this period she will be required to move from this bed*. However, when the family discovered that there would be a significant shortfall between the subvention awarded by the HSE and the nursing home fees, they refused to arrange for her to move. Their circumstances were poor, as her son was himself an pensioner while her daughter's only income was also a social welfare payment.

The family felt that WRH put them under pressure to move their mother and said that they received several telephone calls from WRH on the matter. However, as there was no public bed available they could not arrange for their mother's discharge from the private nursing home while at the same time they could not afford it. The woman continued to live in the nursing home until she became seriously ill and returned to WRH where she died.

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### **Case Nine**

In November 2007 an elderly widow suffering from Alzheimer's disease was judged by Waterford Regional Hospital (WRH) to be medically fit for discharge from the acute services. According to WRH, *a discharge plan was put in place which required that she transfer to a WRH contract bed while she awaited the result of her subvention application. This was necessary to alleviate pressure on acute hospital beds, to ensure the availability of beds for emergency admissions and to facilitate the accommodation of patients from waiting lists.....[The family] was informed that the contract bed was a temporary arrangement .* The woman spent a month in a "contract" bed following which she moved to a private bed in another nursing home chosen by her family.

The woman had no children. Her brother, an old-age pensioner, complained that WRH had arranged the transfer of the patient to the first nursing home on a temporary basis but, as it was too expensive for them, it was left to them to find a place elsewhere. Although the patient had been placed on a list for a public bed, there were no public beds available and neither the HSE nor WRH assisted in finding a place for the patient. The family arranged for the patient to move to the least expensive nursing home they could find but there was still a shortfall between the maximum HSE subvention and the nursing home fees. Her brother also said that the patient's full pension was going towards the fees which he believed to be wrong.

*[Comment - This case highlights the extraordinary difficulties for elderly people in need of nursing home care who are not provided with a public bed, but are instead channelled into the private system which they cannot afford, leaving them with few personal comforts while involving their often elderly relatives with low incomes in distressing negotiations with the authorities.]*

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### **Case Ten**

In May 2009 an elderly man was admitted to Waterford Regional Hospital (WRH) from a geriatric hospital following a fall. He had previously been assessed as being in need of full-time care and his daughter requested the HSE to provide a long-term public bed for him. She was told that no public beds were available but was given a nursing home subvention application form and advised to complete it on her father's behalf *as this process can be very long.*

The application form was completed and the man was approved for a subvention of €430.17. However, his daughter felt that this amount together with her father's weekly income of €219.83 was insufficient to meet the costs of a private nursing home. She insisted that her father should be allocated a public bed and in the meantime he continued to occupy a bed in WRH. She was told that a "contract" bed could be provided for her father but only for a period of 28 days and that subvention was available to cover future costs after that date. She insisted that she was not in a position to place her father in a private nursing home and that he was entitled to a public bed or a HSE funded long term "contract" bed. In November 2009, he was moved from WRH to a "contract" bed in a private nursing home pending an application for funding under the Nursing Homes Support Scheme Act 2009.