

Chapter 41

Health Service Executive Long-Stay Repayments Scheme

Long-Stay Repayments Scheme

41.1 Under 1976 regulations long-stay patients who did not have full eligibility for free inpatient services were required to contribute a proportion (based on personal circumstances) of their income to pay for their care. However, the former health boards also levied that charge on long-stay patients who either had, or would have been deemed to have had, full eligibility.

41.2 The validity of these charges came into question and in December 2004 a direction was given by the Minister for Health and Children to suspend all charges to long-stay patients (irrespective of eligibility) with immediate effect.

41.3 Following legal advice, the Government introduced legislation²⁸² to provide a legal basis for the levy of a charge on all long-stay patients (irrespective of eligibility) in respect of their maintenance in long-stay institutions. However, in February 2005, the Supreme Court found the retrospective nature of the Bill unconstitutional. The 1976 regulations were repealed and new legislation (enacted on 14 July 2005) legalised charges for long-stay patients from that date.

41.4 The Health (Repayment Scheme) Act, 2006 (the Act) was enacted in June 2006 to provide a legal basis for the repayment of long-stay charges which had been imposed on persons with full eligibility since 1976 i.e. those persons who had a medical card or who were entitled to a medical card.

Ex-Gratia Payments

Prior to the introduction of the statutory repayment scheme, living patients with full eligibility and who had paid charges prior to 9 December 2004 were entitled to an *ex-gratia* payment of up to €2,000 immediately. This was a goodwill gesture put in place by the Minister for Health and Children. A total of 11,322 *ex-gratia* payments issued amounting to €21.9 million.

41.5 The repayments scheme was introduced in August 2006 with a closing date for claims of 31 December 2007.

41.6 An entitlement to repayment arose in the case of

- residents of public long-stay facilities and public contracted beds who were alive on 9 December 2004 and had been charged at any time since August 1976
- estates of eligible persons who were charged and had died after 9 December 1998
- the spouses or children of eligible people, who paid recoverable health charges.

41.7 Repayment entitlements included recoverable health charges and an amount to take account of inflation²⁸³ but reduced by the amount of any *ex-gratia* payment received.

41.8 The Act also provided for a fund to be established by the HSE (the Repayments Scheme (Donations) Fund) into which claimants could make a donation, to fund once-off improvements in public health services for dependent older persons and persons with disabilities. The fund could

²⁸² Health (Amendment) (No.2) Bill, 2004.

²⁸³ Calculated in accordance with the Health (Interest Payable on Recoverable Health Charges) Regulations 2006 (SI 445 of 2006).

not be applied to meet expenses that would, in the ordinary course of the provision of public health services, have otherwise been expenses met by a State allocation.

Scheme Administration

41.9 A consortium comprising a firm of accountants and a firm of solicitors (the Scheme Administrator) was engaged by the HSE to design and manage the scheme with the purpose of ensuring that the repayments were made to the correct people, in the right amount and as speedily as possible. The Scheme Administrator was to

- provide information to claimants in the initial stages
- handle all claims for repayment under the legislation
- verify eligibility through the Department of Social Protection
- calculate claims and notify claimants of the status of claims.

41.10 Claimants completed and swore an application form and submitted it to the Scheme Administrator. The Scheme Administrator then established whether the person had or was entitled to a medical card. The Scheme Administrator reviewed relevant records in the various long-stay facilities determined to be within the remit of the scheme, in order to ascertain the amount of repayments due. Where records were incomplete the Scheme Administrator and the HSE agreed a set of rules to allow estimation of the repayment due, having regard to the available records and/or comparable claims from residents in other long-stay facilities.

41.11 When the Scheme Administrator had calculated the amount of charges to be repaid, deductions were made for any *ex-gratia* payment and any outstanding charges properly payable under the Health (Charges for Inpatient Services) Regulations 2005 and the result adjusted for inflation. This amount was then notified to the claimant in an offer letter. Following acceptance of the offer by the claimant the payments due were notified to the HSE for payment.

Claim Activity

41.12 Eligibility of living patients in long-stay care was established using all available information including institutional records, medical card records and Department of Social Protection data. There were 13,673 applications from living persons.

41.13 In respect of persons who died after 9 December 1998 and where probate had been extracted, the executor or administrator was entitled to make an application.

41.14 In cases where a grant of probate had not issued in respect of the estate, a person could request a certificate of entitlement from the Scheme Administrator. When the Scheme Administrator was satisfied that the requester was entitled to make the claim, a certificate of entitlement was issued enabling that person to submit an application. There were 18,543 such requests resulting in 11,778 applications. In total, 21,693 applications were received in respect of deceased persons.

41.15 The number of applications received under the scheme as at 14 May 2010 was 35,366. Of these 21,301 were accepted as valid and 14,038 were rejected while a decision had yet to be reached on the remaining 27 cases. In addition, there are instances in which certificates of entitlement have been issued but no application has been made. This could yet result in up to 165 follow-on applications.

41.16 The outturn of the processing of applications to 14 May 2010 is set out in Figure 193.

Figure 193 Application Activity from Scheme Commencement to 14 May 2010

	Living Patients	Deceased Patients	Total
Total Applications	13,673	21,693	35,366
Yet to be Processed	(5)	(22)	(27)
Applications Processed	13,668	21,671	35,339
Rejections	(5,850)	(8,188)	(14,038)
Valid Applications^a	7,818	13,483	21,301

Source: HSE

Note:

- a 4,582 offers were made to living patients whose applications were submitted by the HSE on their behalf where the patient did not have the capacity to claim themselves and where there was no legally appointed person who could claim on their behalf.

41.17 The 21,301 valid applications received include instances in which, due to the death of the claimant, an application had to be re-submitted by another person. Because of this overlap, the HSE has estimated that the final number of claims that will result in a repayment will be in the order of 20,000.

41.18 215 valid applications did not result in a payment to the claimant as the gross repayment including inflation adjustment, less charges due (if any) was less than the value of the *ex-gratia* payment already paid to the claimant.

41.19 As the proportion of applications rejected seemed high at 40% I asked the Accounting Officer to summarise the reasons for rejected claims. Figure 194 outlines those reasons.

Figure 194 Reasons for Rejection of Claims

Reason	Number of Claims
Institution outside the scheme	5,136
No recoverable charges paid	2,161
Withdrawn due to death of patient	1,946
Duplicate claim	1,638
Date of death pre 9 December 1998	812
Withdrawn by claimant	387
Date of admission after 10 December 2004	285
Other ^a	1,673
	14,038

Source: HSE

Note:

- a This covers approximately 20 further reasons for claim rejection.

Uptake of Scheme

41.20 Originally the HSE estimated that between 15,000 to 20,000 people who were still alive and a further 40,000 to 50,000 estates would be eligible for the scheme at a total cost of approximately €1 billion. The estimate for the living cohort, which was based on numbers at 9 December 2004, was considered by the HSE to be fairly accurate. The figures for estates were less reliable given the varying quality of institutions' records over a 30-year period.

41.21 A total of 129,156 application forms were issued through Post Offices, HSE centres and on foot of requests to call centres.

41.22 The Accounting Officer informed me that it was not possible to be definitive about the reasons for the low uptake as no specific survey had been undertaken but the following factors seemed to play a part

- patients and their relatives were satisfied with the care received and did not seek a repayment
- taxation and Revenue Commissioners issues may have arisen
- in some cases there were no next of kin
- the level of documentation required may have inhibited claims.

Chapter Focus

The chapter reports the result of a review to ascertain

- the cost of the repayments under the scheme to 31 December 2009 and the projected final cost of repayments
- the cost of administering the scheme to 31 December 2009 and the projected final administration cost
- the status of appeals and legal actions arising from the scheme
- the application by the HSE of donations made to the Donations Fund.

Repayments

41.23 Expenditure to end 2009 came to approximately €446.9 million. Expenditure on the scheme over the years 2006 to 2009 is set out in Figure 195.

Figure 195 Health Repayments Expenditure to 31 December 2009

	2006	2007	2008	2009	Total
	€	€	€	€	€
Payments to Claimants	13,382,473	119,804,063	214,928,756	73,138,689	421,253,981
Administration Costs	2,966,464	4,890,425	12,851,682	4,901,445	25,610,016
Total	16,348,937	124,694,488	227,780,438	78,040,134	446,863,997

Source: Special Account for the purposes of the Health (Repayments Scheme) Act, 2006.

41.24 A further €10 million in payments issued to claimants up to 30 June 2010. Of the total €31 million paid to claimants up to mid-2010, €35 million relates to repayments and €6 million relates to the inflation adjustment.

Charges after 9 December 2004

41.25 While most institutions followed the Minister's direction to suspend charges with effect from December 2004, some institutions did not. The HSE has identified approximately 600 patients who were charged after that date.

41.26 The Scheme Administrator has only processed repayments based on data from the HSE up to December 2004 and accordingly most repayments under the scheme to date have only included charges levied up to December 2004. The Act provides for repayment of amounts charged to relevant persons with full eligibility under the Regulations in force at any time before July 2005.

41.27 HSE policy is to process repayments only in respect of persons who claimed and it is rechecking to ensure that all charges in the period up to July 2005 have been refunded. It has no plans to refund persons or estates where a claim for repayment has not been received.

Cost of Scheme Administration

41.28 The payments made by the HSE to administer the scheme over the period to end 2009 are set out in Figure 196.

Figure 196 Administration Cost to 31 December 2009

Administration Costs^a	2006	2007	2008	2009	Total
	€	€	€	€	€
Scheme Administrator Costs ^b	1,202,901	2,284,119	10,058,972	2,981,748	16,527,740
HSE Pay Costs	312,002	962,846	1,256,912	1,197,371	3,729,131
Advertising	823,909	452,998	70,858	-	1,347,765
Legal and Professional Fees	485,725	749,601	1,189,208	608,646	3,033,180
Office Expenses	141,927	440,861	275,732	113,680	972,200
Totals	2,966,464	4,890,425	12,851,682	4,901,445	25,610,016

Source: Special Account for the purposes of the Health (Repayments Scheme) Act, 2006.

Notes:

a Includes €1.2 million in respect of the independent Appeals Office payroll costs.

b The VAT exclusive element of the €16.5 million figure above is €13.04 million.

41.29 The terms of the contract between the HSE and the Scheme Administrator limit the total cost to €15 million (excluding VAT) regardless of the number of claims processed or the date of completion of the last claim processed.

41.30 The Accounting Officer informed me that the limit of €15 million, under the contract will not be exceeded since the terms of the contract compel the Scheme Administrator to complete the processing of all claims. He also informed me that, as there were only a small number of outstanding claims at 30 June 2010, it was expected that the Scheme Administrator would

complete the processing of these claims and all outstanding work under the contract in 2011²⁸⁴. There is also an obligation on the Scheme Administrator to complete the processing of claims where the Appeals Office overturns the original decision of the Scheme Administrator.

Appeals Process

41.31 The legislation provided for an independent Appeals Office. If a claim is rejected by the Scheme Administrator or if a claimant is not satisfied with the amount offered, an appeal can be lodged within 28 days.

41.32 The appellant has the option of having the appeal determined on the basis of documentary evidence or having an oral hearing before the Appeals Office. Up to the end of December 2009 1,729, or 42% of all appeal cases finalised involved an oral hearing.

41.33 The number and status of appeals taken at 2 July 2010 is set out in Figure 197.

Figure 197 Appeals Office Activity to July 2010

	2007	2008	2009	To July 2010
Carried over from previous year	-	1,679	2,644	1,708
Appeals notified in year	2,131	3,902	754	83
Notified and withdrawn	(43)	(702)	(226)	(126)
Decisions taken	(409)	(2,235)	(1,464)	(515)
Appeals yet to be determined at end of period	1,679	2,644	1,708	1,150

Source: Appeals Office Annual Reports.

41.34 The Appeals Office informed me that a final decision on 514 of 1,150 appeals awaiting determination will remain on hold pending the outcome of proceedings before the High Court at present. The Appeals Office expects to have completed the balance of these cases by April 2011.

41.35 4,623 decisions were taken by the Appeals Office to 2 July 2010. The results of the appeals process was as follows

- In the 1,391 cases where the amount of the award was challenged, the Appeals Office upheld the offer made by the Scheme Administrator in 51% of cases. In 45% of cases the offer made was increased and in the remaining 4% the offer was reduced.
- In the 3,232 cases where the claim was rejected by the Scheme Administrator, the Appeals Office upheld the decision in 87% and overturned the decision in 13% of cases.

41.36 In total therefore, 76% of Appeals Office decisions confirmed the decision of the Scheme Administrator.

41.37 The Appeals Office informed me that the vast majority of decisions where it has agreed with the decision of the Scheme Administrator to reject a claim are based upon the fact that the scope of the scheme does not extend to charges incurred in privately-contracted care or in community-based long-stay care.

²⁸⁴ This timescale may be affected by the outcome of appeals.

41.38 Furthermore, the vast majority of decisions where it has disagreed with the decision of the Scheme Administrator to reject a claim are based either upon an incorrect identification of a patient as not having full eligibility, or upon an incorrect identification of a publicly-contracted bed as a privately-contracted one (and the patient having had recoverable health charges imposed upon him/her while occupying that publicly-contracted bed).

Legal Actions

41.39 There are a number of legal actions that may have implications for the close out and ultimate cost of this scheme.

41.40 The Appeals Office issued decisions in three sample cases. The decisions reversed the Scheme Administrator's rejection of applications in respect of three voluntary organisations that had submitted applications on behalf of their clients. The rejection of the applications by the Scheme Administrator was on grounds that the

- clients were in a private nursing home or community residence and thus outside the scope of the Scheme and
- charges paid by them did not meet the definition of "*recoverable health charges*" as defined by the Act.

41.41 The HSE and the Minister for Health and Children have appealed these decisions of the Appeals Office to the High Court on a point of law²⁸⁵. This has potential implications for a further 511 claims on appeal.

41.42 The Appeals Office has yet to resolve appeals from three other voluntary organisations (approximately 250).

41.43 In addition, there is one judicial review, and three appeals before the High Court. The Accounting Officer of the Department of Health and Children stated that the judicial review before the courts is essentially a challenge to the terms of the Repayment Scheme and raises the issue of the exclusion of certain categories of institution from the scheme. The three appeals to the High Court were taken by those who applied for a repayment under the scheme but had their application declined by the Scheme Administrator and their appeal dismissed by the Appeals Office (the Appeals Office is the Respondent, the HSE and the Department of Health and Children are notice parties). The circumstances of the cases vary, but the issues raised include the exclusion of private nursing homes/community residences from the Repayments Scheme and/or the miscalculation of repayments.

41.44 The Scheme received some applications relating to patients in private nursing homes which were turned down on the basis that they were not contemplated within the scope of the Scheme. Proceedings have been instituted in 306 cases, involving patients who spent time in private nursing home facilities. None of the cases have yet proceeded to a hearing.

²⁸⁵ Under Section 16(6) Repayments Scheme 2006 Act.

Donations Account

41.45 The value of donations received to the end of 2009 related to the Long-Stay Repayments Scheme is €344,343. Some claimants who have expressed an interest in making a donation have indicated that they would make their donation directly to their local institution. Donations made to the Fund and grants paid from the Fund are set out in Figure 198. €335,584 was held in the Fund at 31 December 2009.

Figure 198 Repayments Scheme (Donations) Fund^a

	2007	2008	2009
	€	€	€
Opening balance	-	73,593	279,373
Donations	73,613	210,101	60,629
Bank interest	<u>(20)</u>	<u>679</u>	<u>28</u>
Available proceeds	73,593	284,373	340,030
Grants made	-	(5,000)	(4,446)
Closing balance^b	73,593	279,373	335,584

Source: Health Repayments Scheme (Donations) Fund Account

Note:

- a There were no transactions in 2006.
- b To end July 2010, a further €98,554 had been transferred from the fund on foot of approved applications received from the relevant locations and applications to the value of €82,000 were being evaluated.

41.46 The Accounting Officer has informed me that the HSE, having considered the provisions of the Act, has decided that the following specific items can be met from the fund

- patient holidays/breaks
- provision of therapy facilities
- personal comforts
- provision of Music in Care, Arts and Crafts
- assisted visitation.

Conclusion

The final outturn for the scheme is likely to be somewhat less than half the original projection. This is due to the low uptake of the scheme. Only half the estimated number of people entitled to claim did so and only one in four application forms that issued resulted in claim submission.

Administration costs, including HSE expenses amounted to €25.6 million to end 2009. The scheme was managed by an administrator whose costs are capped at €15 million (excluding VAT).

Donations to the Repayments Scheme (Donations) Fund amounted to €344,343 by December 2009. Substantive spending out of the Fund only commenced in 2010.

There are a number of legal matters before the Courts that may take some time to resolve. This could impact on the final cost and timely close out of the scheme.

Following the enactment of the Health (Amendment) Act 2005, charges now apply to long-stay inpatient services. In 2009, the HSE levied charges of €87.8 million in respect of those services.