Note to Caranua

Equity Issues in Access to Health Services

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A short note outlining the availability of medical cards and health services to specific groups in Ireland 2014

The availability of Medical Cards and Health (Amendment) Act Health Services

Free access to health services for all has never been an objective of Irish public policy**.** The current system of providing a part but not all of the population a Medical Card guaranteeing access to health services free or almost free at the point of consumption dates back to the years preceding the Mother and Child Scheme of the 1950s. The principle of a dual health access system was embodied in the Health Act of 1970 and remains the primary legislation to this day.

Eligibility for a Medical Card based on an income limit with a margin of discretion for cases of undue hardship or burden was written into the Health Act of 1970 in Sections 45 and 46. Over the years this margin has been bit by bit eroded by:

The exercise of the margin of discretion at local level – now centralised

The emergence of EU law on rights of EU and EEA citizens based on work/residency in Member States

The introduction of the Health Amendment Act, 1996

The State's own permission for labour market exemptions

The introduction and later withdrawal of Medical Cards for the over 70s –an age category

The proposal to introduce free health care for the under sixes – an age category

These trends are summarised in Chart 1 below and show that far from being a straightforward binary system of yes/no entitlement, an array of entitlements based on quite varying criteria has started to strangle the Health Act of 1970. The expansion of entitlement is supported by some voluntary bodies, by Members of the Oireachtas and by former Chair of the Law Reform Commission, Mr Justice John Quirke, (retired since 2012).

The numbers involved are quite small in some instances (Thalidomide survivors – 30+ persons) or life-limited (Hepatitis C,-1,700 [1] persons, Symphisiotomy- 1,500+) in others. Other entitlements are policy (unemployed) rather than statute based and the policy can be changed and yet more entitlements are relatively fixed in EU law and regulations. Other categories of persons, such as children in formal foster care, number about 4,500 and are entitled to the Medical Card while in foster care until they are eighteen years old.

[1] *National Hepatitis C Strategy 2011-2014*, HSE, p.7.

Health Amendment Act health and social services

A Health (Amendment) Act 1996 entitlement is sometimes referred to as HAA entitlement or an 'enhanced' medical card. The latter description is not strictly accurate as it is not based on the 1970 Health Act.

In contrast to a Medical Card, a HAA entitlement opens the door to social and psychological services, domiciliary services and appliances and entry (to waiting list) to a range of therapeutic services. It is usual for the HAA passport to services or enhanced services to be accompanied by structural adjustments in the form of a special Department of Health Unit or a specialist liaison nurse (Hepatitis C) or Consultant (proposed for Thalidomide survivors).

The services available under the HAA medical card include:

- GP services
- Prescriptions
- Dental services
- Ophthalmic services (e.g., eye glasses)
- Aural services (e.g., hearing aids)
- Aids and appliances (e.g., walking sticks, wheelchairs, shower rails/seats)
- Home support (e.g., for household chores, cooking and cleaning)
- Home nursing
- Counselling
- Chiropody/podiatry (e.g., treatment for foot problems)
- Physiotherapy
- Complementary therapies (e.g., massage, reflexology, acupuncture, aromatherapy, hydrotherapy)

Since a number of what may be described broadly as survivor groups are campaigning for a HAA 1996 access to health and social services, it may be useful to examine their claims very carefully. These groups are the Symphisiotomy survivors, Thalidomide survivors and Magdalene Laundry survivors. In examining their claims, it is worth exploring whether their claims are based on Tort Law. In other words is their claim for additional health and social services based on a remedy to a wrong or injury in which the State was perpetrator, the wrong ought to have been avoided and had a direct effect on their lives.

In the case of survivors of institutional abuse, the wrongs done have already been recognised by the State a redress system has been established and monetary compensation has been allowed. In this regard, their case does resemble that of Hepatitis C patients.

Costs of a Medical Card

The cost of General Practitioner and Pharmacy services per Medical Card holder per year was €1,026.28 in 2012. This amount rose to €1,422 for a Medical Card Holder aged 70 to 74 years.[2]

Outside the Jurisdiction

It is not usual to organise and provide services to persons residing outside the State. The Commission to Inquire into Child Abuse did recognise the significance of former residents outside the State and in fact travelled to interview them overseas, paid for their travel and subsistence if they wished to give witness testimony in Ireland and arranged for counselling services in both Ireland the UK. This latter is relevant since there is now a Junior Minister Post for the Diaspora and a Member of the Council of State, Cllr Sally Mulready, who works with survivor groups among the UK Diaspora.

[2] HSE PCRS - Statistical Analysis of Claims and Payments 2012 see Table 10 and pages 14 and 15 in particular. Using the HSE analysis it is possible to make proxy costings for some GMS services.

Chart 1

Category of person	Entitlement rationale	Legal Basis if any for award of Medical Card
Thalidomide	Due to source or nature of health or disabling or long-standing health condition	Not a statutory scheme according to CIB
Symphisiotomy	Due to source or nature of health or disabling or long-standing health condition	Not a statutory scheme according to CIB
Pregnant mothers and new born babies	Nature of medical condition	Health Act 1970
Infectious/Communicable Diseases	Nature of medical condition	Health Act No.28 1947 Allows Minister to take in charge the costs of treatment and other services of persons with infectious diseases. S.I. No. 452/2011 - Infectious Diseases (Amendment) Regulations 2011
Children in foster care	Due to social status	Health Act, 1970
Certain persons in long-term care	Due to social status	Health Act, 1970
Magdalene Laundry Survivors	Due to social status	Not clear what is legislative basis
Otherwise would cause undue hardship Or burden	Due to social status	Health Act, 1970 HSE Medical Card/GP Card Assessment Guidelines, January 2014
Migrants from EU and EEA	Employment status under EU law	(EC) 1408/71, EU Regulations 883/2004 and 987/2009. The broad principle of the rules is that, if you move from one country to another, you are entitled to avail of health services in your new country on the same basis as if you were living in your home country (see CIB).
Visitors from EU and EEA	Employment status under EU law	
Posted workers from EU and EEA	Employment status under EU law	
Dependents from EU and EEA	Employment status under EU law	
Pensioners from EU and EEA	Employment status under EU law	
Long-term unemployed workers returning to work or participants on schemes	Employment status under Irish provisions	Currently retain a Medical Card for three years after employment Budget 2014 envisaged GP Visit Card instead. No clear legal basis yet
Specific health condition arising from State wrong	Hepatitis C/HIV contracted from HIG/Anti D products	Health (Amendment) Act 1996

Medical Cards1970 and Health (Amendment) Act 1996

Entitlement to a medical card although over the income limits due to source or nature of health or disabling or long-standing health condition

- Thalidomide see Appendix 1
- Symphsiotomy see Appendix 2

Entitlement to free medical treatment although over the income limits

- Infectious/Communicable Diseases see Appendix 3
- Pregnant mothers
- New born babies

Entitlement to a medical card although over the income limits due to social status

- Children in foster care
- Certain persons in long-term care
- Magdalene Laundry Survivors see Appendix 4 and 5
- Otherwise would cause undue hardship or burden

Entitlement to a medical card through employment status under EU law

- Migrants
- Visitors
- Posted workers
- Dependents
- Pensioners

Entitlement to retention of a medical card through employment status under Irish provisions

- Unemployed workers returning to work

Entitlement to a Health (Amendment) Act 1996 card although over the income limits due to a specific health condition

- Hepatitis C

Appendix 1

Thalidomide

Associations of Thalidomide Survivors had lobbied the then Minister for Health, Mary Harney TD in 2010 following a Report by the State Claims Agency.[3] The SCA proposed:

The appointment of a suitably-qualified expert to assess those Thalidomide survivors who, on account of the severity of their disability, require access to specialised treatment and services similar to those available to persons entitled to a Health Amendment Act Card. Thereafter, that a special care package be devised and provided to address these survivors' particular needs, to include, for example, the need for home help and/or personal assistants. p.26.

Ms Harney proposed:[4]

- *provision for special care packages for thalidomide survivors living in Ireland, to be provided following individual assessments of need carried out by an independent expert to be appointed by the Minister. Dr. Paul O'Connell, Consultant Rheumatologist, Beaumont Hospital has agreed to conduct multi-disciplinary assessments for this purpose;*

- *the designation of a senior manager in the HSE to act as liaison with regard to the ongoing health and personal social services needs of the Irish survivors. Ms Carmel Buckley, a senior nursing official in the HSE will act as liaison for this purpose;*

The above was rejected by survivors associations.

The then Minister for Health (James Reilly) spoke of the position between the Government and the survivors of Thalidomide in April 2013 in the Dial:

'The Programme for Government includes a commitment to reopen discussions with Irish survivors of thalidomide. I met with both representative organisations in July 2011 and have been in correspondence since.

Given the challenges that persist for each individual, this Government's aim is to address the health and personal social care needs of thalidomide survivors living in Ireland. I have stated that I am willing to enter into discussions about a health care package on a non-statutory basis; an ex-gratia payment having regard to current financial circumstances; and a statement to the Dáil recognising the challenges faced by survivors.

The Irish Thalidomide Association announced publicly in 2012 that it had ceased talks with the Government. The Association's legal advisor has initiated personal injuries claims against the manufacturer and distributors of the Thalidomide drug and the State.

[3] SCA (2010) State Claims Agency Compensation for Thalidomide Survivors April 2010

[4] Harney, M. (2010) Minister Harney Announces New Supports For Survivors of Thalidomide 27 April 2010 Department of Health.

The Irish Thalidomide Survivors Society is seeking, amongst other things, an independent agency with ring fenced funding to provide for a statutory package to provide for their needs including health and personal services, housing adaptations, heating, transport and clothing. I am not in a position to meet the demands of the Society. I would also point out that each Irish thalidomide survivor has a medical card and it is open to each individual to apply for the numerous public supports available to people with a disability provided by other Departments such as housing adaptation grants, disabled drivers tax concessions and disability allowance. However, I have asked the Society to consider, in good faith, proceeding with a Health Care Protocol which envisaged appointing and training a multi-disciplinary team, arranging a multi-disciplinary health evaluation, identifying and documenting their healthcare needs/issues and developing plans to address those needs. The Society are unwilling to proceed on that basis.

There are currently 32 Irish Thalidomide survivors. Each survivor received lump sum payments from a German Foundation and the Irish Government in the early 1970s. In 1975 the lump-sums paid by the Irish Government ranged from €6,400 to €21,000. In addition, each survivor receives on-going monthly payments from both the German Foundation and the Irish Government. Combining the Irish and German payments, most individuals receive over €2,500 per month, or €575 per week tax free.'

The Thalidomide Survivors considered this proposal inadequate to meet their exceptional medical needs which they described. They stated that they had the following problems:

'*The Society is adamant that the current medical card entitlement of its members does not adequately meet their particularised medical requirements. The Society is firmly of the view that a special medical card should be made available to all Thalidomide survivors.*[5]*This new medical card, as envisaged by the Society, would entitle Thalidomide survivors to receive services directed at their particular medical/dental problems which they outlined as follows:*

- *Dental problems comprising discolouration and coating of teeth, caused by the taking of tablets.*
- *Neuropathic pain.*
- *Arthritis and swelling of joints and mouth.*
- *Sinus under-development.*
- *Excessive sweating.*
- *Weight issues/diabetes.*
- *Hearing aids/hearing problems.*
- *Depression - need for psychological support.*
- *Stomach/oesophagus problems – reflux etc.*
- *The need for hip replacement and associated back problems.*
- *Kidney and bladder problems.*
- *Skin irritation problems.'*

[5] Irish Thalidomide Survivors Submissions for Further Compensation.p.17

Appendix 2

Symphysiotomy

Minister for Health (Deputy James Reilly)[6]

'I am conscious of the distress that symphysiotomy has caused to a number of women and recognise the pain that this issue has caused to those affected by it. The Government is committed to dealing with it sensitively, so that if at all possible, closure can be brought to those affected by it. This practice has resulted in long-term distress and pain, problems with urinary continence, problems with bowel function and difficulty walking to perform day to day duties within the home. It has had a serious effect on a number of women who have had the procedure performed.

My first priority is to make sure that the health needs of those who have had a symphysiotomy are met quickly and effectively. With this in mind, I am committed to ensuring that the greatest possible supports and services are made available to women who continue to suffer effects of having undergone this procedure. The women concerned continue to receive attention and care through a number of services which have been put in place including the provision of medical cards to all who requested them; the nomination of a liaison officer for a patients' group comprised of women who underwent a symphysiotomy procedure; the availability of independent clinical advice for former patients; the organisation of individual pathways of care and the arrangement of appropriate follow-up for women, including medical assessment, gynaecological assessment, orthopaedic assessment, counselling, physiotherapy, reflexology, home help, acupuncture, osteopathy and fast tracked hospital appointments; the refund of medical expenses related to symphysiotomy in respect of medication and private treatments; the establishment of a triple assessment service for patients at Cappagh Hospital, Dublin, in January 2005; and a support group facilitated by a counsellor which was set up in 2004 in Dundalk and Drogheda for women living in the north-east region.

The provision of these necessary support services for women is monitored and overseen by the Health Service Executive which is committed to being proactive in seeking out and offering help to women who underwent a symphysiotomy and who may wish to avail of the services offered by the HSE.'

[6] Dáil Eireann Debate, vol 759 No. 3. 15 March 2012.

Appendix 3

Infectious Diseases

Infectious Diseases are carefully designated and listed by the National Diseases Surveillance Centre. There are about 100 communicable diseases. Health staff are obliged to notify specific infectious diseases. There are surveillance, reporting and research on their prevalence and related factors, including prevention programmes, vaccination and treatments.

The Health Act No.28 1947 Allows Minister to take in charge the costs of treatment and other services of persons with infectious diseases.

S.I. No. 452/2011 - Infectious Diseases (Amendment) Regulations 2011

Appendix 4

Magdalene Laundry Survivors

In his report on an ex-gratia scheme for survivors of Magdalene Laundries, Mr. Justice Quirke was clear that they should be entitled to a Health Amendment Act card. He realized this would require legislation and had a Bill drafted to this effect and appendixed to his Report.[7] The legislation fell to the Department of Justice to initiate and a Bill for provisions for the Survivors was signalled for the Programme of Government for the Spring-Summer term of 2014.

The matter arose in the Dáil in March 2014 and Minister James Reilly, TD gave the following reply:

Legislation relating to taxation issues has already been addressed. It has been agreed that my Department would coordinate legislation to implement Judge Quirke's other recommendations where legislation is required. The necessary legislation is included on the priority list of the Government Legislation Programme for the Spring/Summer 2014. One aspect to be dealt with by this Bill is Judge Quirke's recommendations that legislation should be introduced to give effect to his recommendation with regard to the provision of medical services to the women who were admitted to and worked in the relevant institutions. Details of exactly what services will be provided, how they will be provided and where they will be provided is being determined by the Department of Health. My officials are working with that Department in finalising the drafting of the necessary legislative provisions as quickly as possible.[8]

Minister Shatter, then Minister for Justice, expressed the following view:

With regard to the provision of medical services, Judge Quirke does not state that the women should receive private health care. He recommended they should have access to the same range of services as enjoyed by holders of the Health (Amendment) Act 1996 card. The necessary legislation is included on the priority list of the Government Legislation Programme for the spring/summer 2014. Details of exactly what services will be provided, and where and how they will be provided is being determined by the Department of Health. [9]

In the event, the legislation was not enacted. However ex gratia payments were offered to successful applicants. [10] The Justice for Magdalenes Research group published a Guide to the Ex Gratia Scheme and observed that access to enhanced medical services would only be available to those who accepted the ex-gratia scheme and only when the necessary legislation was enacted.

[7] Quirke, J. (2013) Report of Mr. Justice John Quirke On the establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries.
[8] Dáil Questions March 5 2014, Minister James Reilly, TD.
[9] Alan Shatter Letter to *Irish Times* February 13 2014.
[10] Survivor Guide to the Magdalene Restorative Justice Scheme JFMR

Access to Medical Services

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Applicants who are determined to be eligible under the scheme and who have accepted the offer made to them and signed the Acceptance Form and statutory declaration will be granted access to a range of public health services within the State once the necessary legislation is in place.

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The range of public health services offered will (subject to Oireachtas approval) depend on the needs of the Applicant and may include general practitioner services, prescribed drugs and medicines (subject to the prescription charge), all in-patient public hospital services in public wards including consultants services, all out-patient public hospital services including consultants services, dental, ophthalmic and aural services and appliances.

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Legislation is required to provide this benefit. As a result this benefit will not become available until after the legislation is enacted and commenced.

Extract from letter of offer to Magdalene Survivors and republished by JFMR 2014.

Appendix 5

Draft Heads of Bill prepared by Mr. Justice John Quirke in relation to survivors of Magdalene Laundries and attached to his final Report as Appendix E.

APPENDIX E DRAFT HEADS OF HEALTH (AMENDMENT) BILL

CONTENTS

ACTS REFERRED TO

Health Act 1970 1970, No. 1

Health Acts 1970 to 1996

Medical Practitioners Act 2007 2007, No.25

DRAFT HEADS OF HEALTH (AMENDMENT) BILL

Head 1: Short title, collective citation, construction and commencement

Provide that:

(1) This Act may be cited as the Health (Amendment) Act 2013.

(2) The Health Acts 1970 to 1996, and this Act may be cited together as the Health Acts 1970 to 2013, and

shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister for Health may appoint by order.

Head 2: Provision of health services without charge to participants in Magdalen Scheme

Provide that:

(1) The Health Service Executive ("the Executive") shall make available without charge to persons who are participants in the Magdalen Scheme—

(a) general practitioner medical and surgical services, in relation to all medical conditions, provided by registered medical practitioners (within the meaning of the Medical Practitioners Act 2007) chosen by the persons, 78

(b) drugs, medicines and medical and surgical appliances,

(c) the nursing service specified in section 60 of the Act of 1970,

(d) the service specified in section 61 of the Act of 1970,

(e) dental, ophthalmic and aural treatment and dental, optical and aural appliances,

(f) counselling services in respect of time spent by the person in a Magdalen laundry,

(g) hospital services1 and

1 Note: eligibility for hospital services was not included in the Health (Amendment) Act 1996 but forms part of the benefits of a HAA Card.

(h) such other services as may be prescribed.

(2) In this head "the Act of 1970" means the Health Act 1970.

(3) In this head, "the Magdalen Scheme" means the Scheme established on [INSERT DATE] for the benefit of those women who were admitted to and worked in a Magdalen Laundry and in the Laundry operated in the Training Centre at Stanhope Street Dublin. 79