



Number 14 of 2001

HEALTH (MISCELLANEOUS PROVISIONS) ACT, 2001

ARRANGEMENT OF SECTIONS

Section

1. Amendment of Health Act, 1970.
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 4. Annual report to Houses of Oireachtas in relation to suicide.
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[No. 14.] *Health (Miscellaneous Provisions) Act, 2001.* [2001.]

ACTS REFERRED TO

Adoption Acts, 1952 to 1998	
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HEALTH (MISCELLANEOUS PROVISIONS) ACT, 2001

AN ACT TO AMEND THE HEALTH ACT, 1970, THE TOBACCO (HEALTH PROMOTION AND PROTECTION) ACT, 1988, AND THE HEALTH (NURSING HOMES) ACT, 1990, AND TO PROVIDE FOR THE MAKING OF ANNUAL REPORTS TO THE HOUSES OF THE OIREACHTAS IN RELATION TO SUICIDES AND TO PROVIDE FOR RELATED MATTERS. [5th June, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) The Health Act, 1970, is hereby amended—

Amendment of
Health Act, 1970.

(a) in section 45, by the insertion of the following subsection after subsection (5):

“(5A) A person who is not less than 70 years of age and is ordinarily resident in the State shall have full eligibility for the services under this Part and, notwithstanding subsection (6), references in this Part to persons with full eligibility shall be construed as including references to such persons.”,

and

(b) by substitution of the following section for section 59:

“Drugs, medicines
and appliances.

59.—(1) Subject to subsection (6), a board shall make arrangements for the supply without charge by community pharmacies to persons with full eligibility of such drugs as stand approved under subsection (7) for the purposes of this subsection.

(2) Subject to subsection (6), if a person with limited eligibility, or a person with full eligibility who does not avail himself or herself of arrangements under subsection (1), incurs, in respect of a period not exceeding such length as is specified by regulations made with the consent of the Minister for Finance, expenditure on a drug that stands approved under subsection (7) for the purposes of this subsection and it is shown to the satisfaction of the chief executive officer of the appropriate health board that the drug—

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(a) is supplied by a community pharmacy,
and

(b) is for the treatment of the person or his
or her spouse or a dependent member
of the family of the person,

the board shall make arrangements to recoup
such part (if any) or proportion (if any) of the
expenditure as may be specified by regulations
made with the consent of the Minister for
Finance.

(3) Subject to subsection (6), a board may
make arrangements for the supply without charge
by community pharmacies to such classes of per-
sons as stand specified by regulations made with
the consent of the Minister for Finance—

(a) with such diseases, or disabilities, of a
permanent or long-term nature as
stand specified by regulations, and

(b) who are persons with limited eligibility
or persons with full eligibility who do
not avail themselves of the arrange-
ments under subsection (1),

of such drugs for the treatment of those con-
ditions as stand approved under subsection (7)
for the purposes of this subsection, and different
classes of persons may be specified for the pur-
poses of this subsection in relation to different
diseases and different disabilities.

(4) (a) Subject to subsection (6), a registered
medical practitioner authorised in
that behalf by an agreement entered
into by him or her with a board
(whether before or after the passing
of this Act) may, under and in accord-
ance with the terms of the agreement
but not otherwise, supply without
charge to persons with full eligibility
such drugs as stand approved under
subsection (7) for the purposes of sub-
section (1).

(b) Any other person who stands approved
under subsection (7) for the purposes
of this subsection may also supply
such drugs (other than medicines) as
stand approved under that subsection
for the purposes of this section.

(5) Subject to subsection (6), an institution
that provides a specialist service under the direct
supervision of a medical consultant and stands
approved under subsection (7) may supply such
drugs as stand approved under that subsection for
the purposes of this section and are prescribed by
or under the direction of that consultant for the

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purposes of that service to any persons referred S.1
to in subsection (1), (2) or (3).

(6) The terms and conditions upon and subject to which and the extent (if any) to which boards may defray the cost of supplying drugs under this section shall be specified by regulations made with the consent of the Minister for Finance and, in particular, but without prejudice to the generality of the foregoing, such regulations may specify a term or condition that provides that none or a specified part or proportion only of the cost of supplying—

- (a) a particular drug or drugs, or
- (b) a particular drug or drugs, or all drugs, for the treatment of a particular condition or conditions,

may be defrayed by a board or the Board either generally or in specified circumstances, and different terms and conditions may be so specified for the purposes of each of subsections (1), (2), (3), (4) and (5).

(7) (a) The Minister may, subject to and in accordance with any regulations, grant an approval for the purposes of subsection (1), (2), (3), (4)(b) or (5) ('an approval') and may, subject to and in accordance with any regulations, withdraw an approval for stated reasons.

(b) An approval may be such as to limit the use of a drug to treatment of a particular condition or conditions or to treatment of a particular class or classes of person and in this section 'approved' and cognate words shall be construed accordingly.

(c) Without prejudice to the generality of subsection (8), regulations shall—

(i) specify the reasons for which an approval may be withdrawn under paragraph (a), and

(ii) provide for the notification (unless the person who applied for the approval consents to the withdrawal)—

(I) in the case of the withdrawal of an approval of a drug manufactured in the State, of the manufacturer or the person on whose behalf the drug is manufactured,

(II) in the case of the withdrawal of an approval of an imported drug, of the importer or distributor or

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the person on whose behalf the drug is imported or distributed, and

(III) in the case of the withdrawal of an approval for the purposes of subsection (4)(b) or (5), of the person concerned,

of a proposal to withdraw an approval, of the rights, under the regulations, in relation to the proposal of those notified as aforesaid and of the reasons for the withdrawal,

and

(iii) provide for the making by those so notified of representations to the Minister in relation to such a proposal and for the consideration by the Minister, before he or she decides whether to implement the proposal, of any such representations.

(d) Without prejudice to the generality of subsection (8) and notwithstanding paragraph (c), regulations may provide that, where the Minister is satisfied that it is necessary to withdraw an approval immediately or urgently—

(i) he or she may do so without compliance by him or her with regulations for the purposes of paragraph (c)(ii), and

(ii) if he or she does so, for the notification, unless the person who applied for the approval consents to the withdrawal, of the appropriate person specified in clause (I), (II) or (III) of paragraph (c)(ii) of the withdrawal, of his or her rights under the regulations in relation to the withdrawal, of the reasons for the withdrawal and for the making by the person notified under the regulations of representations to the Minister in relation to the withdrawal and for the consideration by the Minister of any such representations.

(8) The Minister may make regulations for the purposes of this section and such regulations may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

(9) Without prejudice to the generality of subsection (8), regulations may—

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- (a) provide for the manner in which payments by boards or the Board to community pharmacies and persons referred to in subsections (4) and (5) in respect of drugs supplied by such pharmacies and persons under this section and in respect of fees charged by such pharmacies and persons for services provided by them in connection with such supply are to be made and, subject to subsection (6), for the manner in which or the matters by reference to which the amounts of such payments are to be determined by boards or the Board, S.1
- (b) provide for the furnishing by community pharmacies and persons referred to in subsections (4) and (5) to a board or the Board, if so requested by it, of such information as it may reasonably require for the purposes of its functions under this Act, including such proof as it may reasonably require of—
- (i) the quantities and kinds of drugs supplied under subsections (1) to (5) by community pharmacies and persons referred to in subsections (4) and (5),
 - (ii) the services referred to in paragraph (a) and the provision of such services,
 - (iii) the cost to community pharmacies and persons referred to in subsections (4) and (5) of drugs supplied, and services provided, by them as aforesaid, and
 - (iv) the dates on which or periods during which drugs or specified drugs were so supplied and such services or specified such services were so provided,
- (c) provide for the furnishing by suppliers to a board or the Board, if so requested by it, of such information as it may reasonably require for the purposes of its functions under this Act, including such proof as it may reasonably require of—
- (i) the quantities and kinds of drugs supplied by them to community pharmacies and persons referred to in subsections (4) and (5) or classes of such pharmacies or persons or particular such pharmacies or persons for the purposes of those subsections and subsections (1), (2) and (3),

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- (ii) the cost of such drugs, and
- (iii) the dates on which or periods during which such drugs or specified such drugs were so supplied,

and

- (d) provide that a board or the Board may refuse to make a payment referred to in paragraph (a) if the community pharmacy, or person referred to in subsection (4) or, as the case may be, (5), concerned fails or refuses to comply with a request pursuant to regulations under paragraph (b),

and different provision may be made in respect of different classes of community pharmacies and persons referred to in subsections (4) and (5) and different classes of drugs.

(10) Without prejudice to the generality of subsection (8), regulations, in relation to agreements between the proprietors of pharmacies and boards pursuant to which community pharmacies supply drugs for the purposes of this section ('agreements'), may make provision—

- (a) as to the procedures to be followed by persons wishing to enter into agreements and the furnishing by them of specified information to boards and any other information that boards may reasonably require for the purposes of their functions under this section,
- (b) as to the matters in relation to which boards must be satisfied before entering into agreements, including the need for community pharmacies or additional community pharmacies in the localities concerned,
- (c) as to the procedures for the making by boards of determinations in relation to the matters aforesaid and the criteria by reference to which such determinations are to be made,
- (d) for appeals by persons referred to in paragraph (a) against such determinations as aforesaid to a body (whose membership shall consist of or include a person who is a barrister or solicitor) established by the regulations and for its constitution and composition, the terms and conditions of service of its member or members and its powers (including power to compel the attendance before it of

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witnesses and the sending or production to it of documents and power to order the payment by any party to proceedings before it of the costs of another party to such proceedings),

- (e) as to the suitability of the premises concerned and their locations, equipment, facilities and staff,
 - (f) as to the viability and permanence of the pharmacies concerned in their locations,
 - (g) requiring the engagement of a supervising pharmacist in each community pharmacy and the non-engagement of the same supervising pharmacist in more than one such pharmacy,
 - (h) as to the qualifications, competence and experience of the supervising pharmacists engaged in the pharmacies including a requirement that supervising pharmacists should have a knowledge of the English language that is adequate for the performance of their duties in the pharmacies, and
 - (i) for the inclusion of specified provisions in agreements.
- (11) (a) Where a supplier fails or refuses to comply with a request under regulations pursuant to subsection (9)(c), the supplier shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,500.
- (b) Where an offence under this subsection is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of any person, being a director, manager, secretary or any other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(12) In this section, unless the context otherwise requires—

‘a board’ means a health board, the Eastern Regional Health Authority or an Area Health Board (within the meaning of the Health (Eastern Regional Health Authority) Act, 1999) and the reference in subsection (2) of this section

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to the chief executive officer of the appropriate health board includes, in the case of the Eastern Regional Health Authority, a reference to the Regional Chief Executive and, in the case of any of the Area Health Boards aforesaid, a reference

to the area chief executive of that Board; 'the Board' means the General Medical Services (Payments) Board or any other board established under section 11 of this Act that performs the functions of that Board;

'community pharmacy' means a pharmacy the proprietor of which has entered into an agreement (whether before or after the passing of this Act) with a board that is in force for the supply by the pharmacy of drugs for the purposes of this section or any provision thereof;

'dependent member of the family', in relation to a person, means any child—

- (a) of the person and his or her spouse or adopted by both of them under the Adoption Acts, 1952 to 1998, or in relation to whom both of them are *in loco parentis* under an arrangement of a permanent nature,
- (b) of the person or his or her spouse or adopted by either of them under those Acts, or in relation to whom either of them is *in loco parentis* under an arrangement of a permanent nature where the other person, being aware that he or she is not the parent of the child, has treated the child as a member of the family, or
- (c) of whom the person or his or her spouse is a foster parent (within the meaning of the Child Care Act, 1991),

who is under the age of 18 years and is not a person with full eligibility or, if the child has attained that age and is living in the home of the person—

- (i) is or will be receiving full-time education or instruction at any university, college, school or other educational establishment and is under the age of 23 years, or
- (ii) has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully and is not a person with full eligibility;

'drugs' means drugs that are prescribed by a registered medical practitioner or a registered dentist and includes medicines, and medical and surgical appliances, that are so prescribed;

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‘institution’ means a hospital, nursing home or clinic that is maintained wholly or mainly out of funds provided by the Minister, a board or a charity or by voluntary subscription;

‘medical consultant’ means a registered medical practitioner in hospital practice who, by reason of his or her training, skill and experience in a particular speciality, is consulted by registered medical practitioners in relation to that speciality;

‘pharmacy’ means a shop lawfully kept open for the purposes of the dispensing and compounding of medical prescriptions in accordance with the Pharmacy Acts, 1875 to 1977;

‘registered dentist’ has the meaning assigned to it by the Dentists Act, 1985;

‘registered medical practitioner’ has the meaning assigned to it by the Medical Practitioners Act, 1978;

‘regulations’ means regulations under subsection (8);

‘spouse’, in relation to a person, includes a person with whom the person is living as husband or wife;

‘supervising pharmacist’ means a person who, pursuant to subsection (1) of section 2 of the Pharmacy Act, 1962, is responsible for carrying out the personal supervision specified in that subsection;

‘supplier’ means a person who supplies drugs to community pharmacies or a person referred to in subsection (4) or (5) for the purposes of this section.”.

(2) Regulations made under section 59 of the Health Act, 1970, before the passing of this Act and in force immediately before such passing shall continue in force after such passing, and may be amended or revoked, as if made under section 59 of that Act as inserted by this section.

2.—The Tobacco (Health Promotion and Protection) Act, 1988, is hereby amended by the substitution of the following section for section 3:

Amendment of Tobacco (Health Promotion and Protection) Act, 1988.

“Restriction on sale of tobacco products.

3.—(1) Any person who sells, offers to sell, or makes available in relation to the sale of any other product, any tobacco products to a person under the age of 18 years, whether for his or her own use or otherwise, or who sells to any person, acting on behalf of a person under the age of 18 years, any tobacco products, shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £2,000.

(2) The owner, or other person in charge, of any machine for the sale of tobacco products who

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permits the machine to be used for the sale of such products to a person under the age of 18 years shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,000.

(3) Whenever a person is prosecuted for an offence under this section, it shall be a defence for him or her to establish that he or she had taken all reasonable steps to assure himself or herself that the person to whom the tobacco products were sold, offered for sale or made available had attained the age of 18 years.

(4) Where, in a prosecution of an offence under this section, it is alleged that the person in respect of whom the offence was committed is under the age of 18 years, and such person appears to the court to have been, at the date of the commission of the alleged offence, under the age of 18 years, such person shall for the purposes of this section be presumed, until the contrary is proved, to have been at that date under that age.”.

Amendment of Health (Nursing Homes) Act, 1990.

3.—The Health (Nursing Homes) Act, 1990, is hereby amended—

(a) in section 6, by the insertion of the following subsection after subsection (6):

“(7) Regulations under this section may—

- (a) make different provision for different classes of nursing homes, and
- (b) prescribe different requirements for different classes of nursing homes.”,

and

(b) in section 7, by the substitution of the following subsection for subsection (2):

“(2) (a) The Minister may by regulations specify the amounts that may be paid by health boards under this section and such amounts may be specified by reference to specified degrees of dependency, specified means or circumstances of dependent persons or such other matters as the Minister considers appropriate.

(b) Without prejudice to the generality of paragraph (a), regulations under this section may make provision in relation to—

- (i) the making of applications to health boards for payments under this section,
- (ii) the particulars to be contained in applications for such payments and the procedure for and in relation to such applications,

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- (iii) the furnishing by applicants for payments under this section of information specified or requested by health boards in relation to the means and dependency of persons in respect of whom the payments are being sought and the holding of interviews by officers of health boards with such persons or persons acting on their behalf for the purposes of obtaining such information, S.3
- (iv) the assessment by health boards of the degree of dependency and the means and circumstances of persons in respect of whom payments are being sought,
- (v) the periodic review by each health board of payments made by it under this section and the procedure for and in relation to such reviews,
- (vi) the specification of the conditions and circumstances for the making of payments under this section and for their reduction, withdrawal or discontinuance,
- (vii) the furnishing by registered proprietors or persons in charge of nursing homes of information in regard to the death or discharge of persons in receipt of payments under this section,
- (viii) the specification of the conditions and circumstances for the recovery by health boards of payments made by them under this section,
- (ix) the specification of the forms of maintenance for which payments can be made by health boards, and
- (x) appeals to an officer of a health board against a decision of the health board to refuse, withdraw or discontinue a payment under this section and the procedure for and in relation to such appeals.

- (c) In paragraph (b), references to a health board include references to the Eastern Regional Health Authority and an Area Health Board (within the meaning of the Health (Eastern Regional Health Authority) Act, 1999).”,

and

- (c) by the substitution of the following section for section 14:

“Laying of regulations in draft before Houses of Oireachtas.

14.—Whenever a regulation is proposed to be made under this Act a draft of the regulation shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.”.

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Annual report to Houses of Oireachtas in relation to suicide.

4.—The Minister for Health and Children shall, not later than 9 months after the end of each year beginning with the year 2002, make a report to each House of the Oireachtas on the measures taken by health boards during the preceding year to prevent suicides.

Short title, collective citation and commencement.

5.—(1) This Act may be cited as the Health (Miscellaneous Provisions) Act, 2001.

(2) The Health Acts, 1947 to 1999, and this Act, except in so far as it relates to the Tobacco (Health Promotion and Protection) Act, 1988, may be cited together as the Health Acts, 1947 to 2001.

(3) The Tobacco (Health Promotion and Protection) Act, 1988, and this Act, in so far as it relates to that Act, may be cited together as the Tobacco (Health Promotion and Protection) Acts, 1988 and 2001.

(4) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Health and Children under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.