

Capacity

James O. Martin to: Conan D. McKenna
Cc: Deirdre M. Reidy

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Conan

Please see Recommendation 10 and chapter 6 of the attached report by Judge Quirke and the initial observations of the Department of Health.

I am chairing an inter-departmental group which is report back to Government in 4-6 weekd on this and many other issues. In the light of the recommendation and the views of Health, this Department may have to address the issue. In that context I need to have a discussion with your experts on the matter. Can you arrange for them to contact me please.

Jimmy



Appendix 1 Quirke Report.pdf

Observations of Department of Health

It is not clear what is intended by the reference to sections 38 and 39 of the Health Act 2004 as this relates to arrangements with groups and organisations for service delivery rather than individuals.

As regards the Nursing Homes Support Scheme Act 2009, while it may be possible to designate a person or persons in the HSE NHSS area to look after applications from Magdalen women it is not clear how this would give rise to an amendment of the 2009 Act. Magdalen women would still have to meet the same fundamental criteria as any other applicant. It may be worth considering the Assisted Decision Making (Capacity) Bill might be a better vehicle for what the Judge is trying to achieve.

The notion of an "enhanced" medical card is unclear. However, health legislation could be prepared to deem a person that has received a cash payment relating to her stay in a Magdalene laundry from the Minister of Justice and Equality to have full eligibility regardless of her means/income. Full eligibility entitles a person resident in Ireland to a range of public health and the public acute hospital services. The cost of this would be in the region of €3m. per year. If the legislation was changed for the Magdalen women there will be an expectation by other groups (e.g. symphysiotomy, thalidomide, narcolepsy etc. who are receiving medical card type services through the HSE that a similar legislative provision would apply to them. This precedent would require further detailed analysis.

The Minister for Justice and Equality would propose that these detailed points be addressed by the Interdepartmental Group