

Health services, 2018

Joanna O’Riordan

Institute of Public Administration, Ireland

Health review

Two immensely serious issues were prominent for the Department of Health during 2018. The major extension of abortion services following the referendum in May and the CervicalCheck scandal, which resulted in the resignation of the director general of the Health Service Executive (HSE), were issues of national significance.

Abortion

On the evening of Monday, 29 January 2018, following a cabinet meeting where the decision was taken, Taoiseach Leo Varadkar, TD, announced that the government would propose a referendum on Ireland’s constitutional abortion ban. In his announcement the Taoiseach made specific reference to the work of the Citizens’ Assembly. He also announced that, on the advice of Attorney General Séamus Woulfe, the proposed amendment would repeal and replace the Eighth Amendment of the Constitution with an enabling provision. Consequently, the government would follow the recommendation of the Citizens’ Assembly, rather than the Joint Oireachtas Committee’s recommendation of repeal simpliciter.

The government approved the wording of the referendum question on 8 March. The proposed Thirty-Sixth Amendment to the Constitution would repeal the Eighth, Thirteenth and Fourteenth Amendments, and replace them with the following wording: provision may be made by law for the regulation of termination of pregnancies.

The Referendum Bill was passed by the Dáil on 21 March by ninety-seven votes to twenty-seven, and by the Seanad on 28 March by forty votes to ten. In a press conference following the Seanad vote, Minister for Health Simon Harris, TD, and Minister for Housing Eoghan Murphy, TD, confirmed that the vote would take place on 25 May.

Turnout in the referendum was 64.13 per cent, making it the fourth-highest turnout for any referendum in the history of the state after the 1972 referendum on joining the European Economic Community (EEC), the 1992 abortion referendums, and the 1968 referendum to change the Irish electoral system. Turnout was highest in Wicklow (74.48 per cent) and lowest in Dublin Central (51.52 per cent)

The actual result of the referendum was 66.4 per cent for repeal of the Eighth Amendment to 33.6 per cent against repeal. The Yes vote was carried in thirty-nine out of forty constituencies. The highest Yes vote was recorded in Dublin Bay South (78.49 per cent), while of those constituencies that voted Yes, the lowest Yes vote was in Cavan–Monaghan (55.46 per cent). Donegal was the only constituency to vote No (51.87 per cent).

Following the referendum, Minister Harris moved quickly to bring the ensuing legislation before the government. In July the Health (Regulation of Termination of Pregnancy) Bill, 2018, received government approval. The legislation is largely based on the General Scheme of a Bill to Regulate Termination of Pregnancy that was approved in advance of the referendum.

The legislation allows for abortion up to twelve weeks without specific indication. A period of seventy-two hours is required between certification by a doctor and the termination taking place. For pregnancies beyond twelve weeks and up to the point where the baby is deemed to be viable, or capable of surviving outside of the womb without extraordinary life-sustaining measures, an abortion may take place where there is a risk to the life, or of serious harm to the physical or mental health, of the pregnant woman. However, an abortion may be carried out up to full term if a medical practitioner deems that the risk to the life, or physical or mental health, of the mother is serious and immediate, or in cases where the baby has been diagnosed with a life-limiting condition, defined as likely to result in death within twenty-eight days.

In early October Minister Harris introduced the abortion legislation to the Dáil. The Second Stage of the Bill was passed by 102 votes to 12, with 7 abstentions. Among those opposing the

legislation was Sinn Féin TD for Meath West Peadar Tóibín, who was subsequently suspended from the party. Some days later Tóibín announced his resignation from Sinn Féin. The legislation then proceeded to committee stage where amendments were considered.

Minister Harris made two amendments which were passed. One encompassed the decision to provide abortions free of charge and the provision of so-called safe-access zones where protests would not be allowed. Those opposing the legislation proposed sixteen amendments, including an amendment that the legislation would not require doctors with a conscientious objection to participating in abortions to refer a woman to a colleague who would provide the service. All amendments were defeated. Minister Harris has committed to the legislation being enacted by year end, allowing abortion to be available from January 2019.

It was also announced that Dr Peter Boylan, a former obstetrician at the National Maternity Hospital and referendum campaigner, was appointed by the HSE to assist with their preparations for the implementation of arrangements for abortion and related services.

One aspect of the new service that has caused difficulty is the involvement of general practitioners (GPs) in the provision of abortions up to twelve weeks. A survey of members by the National Association of General Practitioners (NAGP), a representative group for GPs, found that 85 per cent of GPs felt abortion should not be routine general practice, while only 20 per cent indicated they would be willing to induce abortion. The NAGP also said its members overwhelmingly agreed that doctors should not be forced to refer on and that doctors who wished to provide abortions should avail of an 'opt-in' system (NAGP, 2018). In November Minister Harris announced that agreement had been reached with the Irish Medical Organisation on a contract for the provision of abortions in community settings. It was agreed that the service would encompass three visits and that fees of €450 would be paid by the state to participating GPs.

The Health (Regulation of Termination of Pregnancy) Act, 2018, was enacted in late December and came into effect on 1 January 2019.

CervicalCheck

In April a court case taken by Limerick woman Vicky Phelan against the HSE and the American company Clinical Pathology Laboratories

(CPL) brought to light a scandal of misdiagnoses and non-disclosure in respect of the national CervicalCheck screening programme.

Incorrect smear test results identified in a 2014 audit had not been communicated to patients, including Ms Phelan and Emma Mhic Mhathúna, another woman who went public in respect of her cancer. The women were only told in late 2017 that the 2014 audit had identified that smear tests conducted in 2011 had been misread. By that time both women had been told that they had terminal cancer. A number of other women whose cases were included in the audit had already died.

It appears that it was the initial stated policy of CervicalCheck not to tell women about the identification of their misdiagnosis. However, subsequently the screening programme told doctors in a circular that 'as a general rule of thumb' women should be told about the results but that clinicians should 'use their judgment in selected cases where it is clear that discussion of the outcomes of the review could do more harm than good' (Carswell, 2018). However, as emerged in testimony in the Vicky Phelan case, CervicalCheck throughout 2016 and the first part of 2017 had continued to correspond with Phelan's gynaecologist as to who had responsibility for informing her of the identified misdiagnosis.

Following a review of CervicalCheck files, it was found that in the cases of 208 women diagnosed with cervical cancer, an original smear test had falsely given them the all-clear. In total, 162 of these women were not told about the 2014 revised results. Of these women, 17 are now dead.

At the end of April Dr Gráinne Flannelly, the clinical director of CervicalCheck resigned. Subsequently, the position of the director general of the HSE, Tony O'Brien, came into question. At an Oireachtas Health Committee hearing on the CervicalCheck scandal, O'Brien, during questions from opposition TDs, refused to resign, saying that he had not been informed by CervicalCheck of all the circumstances of the Phelan case and had only found out about it when RTÉ had reported on the story in April 2018. He was publicly supported by Minister Harris. However, three days later it emerged that O'Brien had known since 2016 about the failure to tell women of their misdiagnoses and had received a memo from CervicalCheck in March 2016 detailing the audit, and that discussions had taken place in respect of how to mitigate negative public and media reaction. O'Brien immediately announced his resignation.

There was considerable pressure, including from the women and families affected, for a full commission of investigation. However, in May the cabinet agreed to proceed by initially conducting a scoping inquiry into the issues in relation to the CervicalCheck Screening Programme. Dr Gabriel Scally, President of Epidemiology and Public Health of the Royal Society of Medicine, was appointed to carry out the inquiry.

Some of the main conclusions of Scally's report were leaked to the media in advance of its publication in September, causing further distress to the women involved and their families. In particular, it was leaked that Scally felt a commission of investigation would not be the best way to proceed. Scally was concerned that a prolonged investigation, while it might further elucidate matters, would absorb valuable time and resources that would be better devoted to implementing the detailed recommendations set out in his report.

Scally's comprehensive investigation adopted a patient-centred approach. In particular, he met with any woman and her family affected by the CervicalCheck issues who wished to have their experiences documented. Scally concluded that the policy of disclosure to patients in respect of the 2014 audit was deeply contradictory and unsatisfactory. However, beyond the very hurtful treatment of the women affected, Scally stated that 'the problems uncovered are redolent of a whole-system failure', and that there was a 'demonstrable deficit of clear governance' and 'serious gaps in the range of expertise of professional and managerial staff directly engaged in the operation of CervicalCheck'. In his foreword Scally concluded that 'there are many indications that this was a system doomed to fail at some point' (Scally, 2018).

In addition to a series of fifty recommendations aimed at improving the cervical screening process, Scally recommended the commissioning of a review process, including an independent review of implementation plans to be produced by each state body named in the report and thereafter further published reviews at six-monthly intervals of progress. He further advised that the women and relatives affected should play a prominent part in the oversight of these reviews.

In terms of the ongoing operation of CervicalCheck, Scally concluded that the laboratories involved in the testing provided a quality service, based on the accuracy of their results being on a par with laboratories elsewhere. However, in October it was announced that Scally and his team would carry out a supplementary review into the effectiveness and operation of procurement and contracting by the

HSE of laboratory-based cervical cytology services. The investigation would also include the outsourcing by CPL, a former provider of laboratory screening for CervicalCheck, to other laboratories across the US. The practice of CPL in outsourcing Irish smear tests came to light in Scally's initial review. The supplementary work, which Scally has now been engaged to carry out, will examine the circumstances which led to these laboratories undertaking the examination of Irish smear tests and also the extent to which CervicalCheck and the HSE were aware of, and approved, the work being transferred to other sites. The laboratories' nature, ownership, extent of activity, quality and accreditation arrangements, governance structures and other relevant matters will also be examined.

Also in October Mr Justice Charles Meenan published a report, requested by the government in August, identifying mechanisms to avoid adversarial court proceedings for the women and families affected by the CervicalCheck issues. This was something particularly requested by Phelan in the aftermath of her court case. The judge's report proposed that a tribunal be established under legislation to hear and determine claims arising out of CervicalCheck. Mr Justice Meenan emphasised that the system must be voluntary. On receipt of the report, Minister Harris indicated that it required consideration by a number of government departments and he committed to returning to government with proposals later in the year.

Throughout the year Phelan, while battling her serious cancer, continued to be prominent in advocating for the women affected by the CervicalCheck crisis and, in particular, in lobbying the government for access to alternative and newer drugs and treatment. Ms Mhic Mhathúna died from cervical cancer in October, aged thirty-seven.

Sláintecare

In August Minister Harris published the *Sláintecare Implementation Strategy*. Sláintecare represents the government's strategy for healthcare over the next ten years. The implementation strategy will support the delivery of the Sláintecare plans for a new health service in Ireland, detailed in the report from the Oireachtas Committee on the Future of Healthcare published in May 2017. It represents the first time there has been political consensus on a health reform plan and cross-party support on delivering a universal health system in Ireland.

The main components of Sláintecare are:

- entitlement for all Irish residents to all health and social care;
- no charge to access GP, primary or hospital care, and reduced charges for drugs;
- care provided at the lowest level of complexity, often outside of hospital, in an integrated way;
- eHealth as a key tool for developing a universal health system and integrated care;
- strong focus on public health and health promotion;
- waiting times guaranteed;
- private care phased out of public hospitals;
- significant expansion of access to diagnostics in the community;
- earlier and better access to mental health services;
- an expanded workforce, including allied health professionals, nurses and doctors; the importance of addressing recruitment and retention issues of all healthcare staff and the development of integrated workforce planning is emphasised in the report;
- a new HSE board, to be established promptly;
- accountability and clinical governance to be legislated for;
- a National Health Fund set up to ring-fence funding for a transitional fund and expansion of entitlements.

It was also announced that Laura Magahy would be the executive director of the Sláintecare Programme Office. The position is at deputy secretary general level, with Magahy reporting to the Department of Health's secretary general, Jim Breslin. A Sláintecare Advisory Council has also been established. This will be chaired by Dr Tom Keane, who was previously the founding director of the National Cancer Control Programme in Ireland, which had responsibility for the implementation of the National Cancer Strategy.

Health service staffing issues

Issues of overcrowding, waiting lists, delayed admittance to hospital and staff shortages were again to the fore in 2018. In April Minister Harris launched a new action plan to reduce the number of patients waiting for hospital operations and procedures. In particular, the National Treatment Purchase Fund will be used to offer treatment to all patients waiting more than nine months for high-volume procedures such as hip and knee replacements, cataract removal and scopes.

Also in April a new workforce planning report, *A Framework for Safe Nurse Staffing and Skill Mix in General and Specialist Medical and Surgical Care Settings in Adult Hospitals in Ireland*, was launched. The framework sets out the staffing requirements and skill mix needed in hospitals. It was developed on the basis of international research and consultation with key stakeholders, and was piloted in three hospital sites: Beaumont Hospital; Our Lady of Lourdes Hospital, Drogheda; and St Colmcille's Hospital. The next step is for the HSE to develop an implementation plan.

A review by the Public Service Pay Commission on recruitment and retention in the health sector was published in September. The review was carried out under the *Public Service Stability Agreement 2018–2020*. The commission is adopting a modular approach to its work and the research carried out was in respect of medical consultants, non-consultant hospital doctors (NCHDs), and nurses and midwives. The main findings of the report are that there is no generalised recruitment and retention problem in respect of nursing and midwifery, but that some difficulties exist in meeting workforce requirements in some specific areas. In relation to NCHDs, it was concluded that promotion opportunities and training impact turnover, while there is a general difficulty in recruiting consultants, with certain locations and specialities experiencing more significant problems. Overall within the health sector, according to the commission, current pay arrangements are not, in themselves, an impediment to recruitment and retention and, where difficulties exist, the reasons are multifactorial.

In December the Irish Nurses and Midwives Organisation (INMO) indicated that 95 per cent of its members had voted in favour of strike action over issues related to recruitment and retention, in particular over what the INMO regard as inadequate staffing levels in public health services. A series of 24-hour work stoppages scheduled for spring 2019 were subsequently announced with the exception of life-saving care and emergency response teams.

Home-care services

In June Minister of State for Older People Jim Daly, TD, launched a report, prepared by the Institute of Public Health in Ireland, on the findings of the Department of Health's public consultation on home-care services. The consultation was undertaken during 2017 to support the development of a statutory scheme and system of regulation of home-care services. Over 2,600 responses were received from

individuals and stakeholder organisations. The public consultation on home care is part of a broader programme of consultation by the department to support the development of a statutory scheme.

Grace Commission

In May it was announced that Minister Harris had granted a twelve-month extension to the Farrelly Commission of Investigation into certain matters relative to a disability service in the south-east. The commission's request for an extension is on the basis of the enormous volume of documentation disclosed to it from a wide range of public bodies, organisations and individuals, and also issues relating to witnesses.

Regulation of counsellor and psychotherapist professions

In May Minister Harris signed regulations to designate counsellors and psychotherapists as professions to be regulated under the Health and Social Care Professionals Act, 2005.

The regulation of these professions ensures greater protection of the public and compliancy with a code of professional conduct and ethics, and those registered will be subject to fitness-to-practice tests.

Only those registered will be entitled to use the title or titles protected under the Act. Registrants will be subject to a range of sanctions (including suspension or cancellation of registration) in the case of a substantiated complaint of professional misconduct or poor professional performance.

Sugar tax

Ireland's 'sugar tax' commenced on 1 May. With one in four children on the island of Ireland either overweight or obese, this tax is one of a range of measures that can help change parents' and children's behaviour. There is no nutritional value in sugar-sweetened drinks and it has been proven that the intake of these beverages, particularly in children, leads to weight gain and tooth decay.

The tax was estimated to yield in the region of €40 million in a full year; however, it is expected that, as industry reformulates and consumers opt for healthier options, this figure will reduce over time.

National Children's Hospital budget

In December it was confirmed by the government that the new children's hospital would cost more than the envisaged €1.433 billion. It was noted that the government will take €50 million from the 2019 health capital budget and €50 million from central government expenditure to make up the shortfall. There will be a reallocation of capital envelopes for other departments as a consequence. Overall, the cost of the hospital is now predicted to be €450 million more than was envisaged at the outset of the project in 2017.

Operational and management changes

Following the decision in early May of the director general of the HSE, Tony O'Brien, to resign, it was announced that John Connaghan would carry out the functions of director general in an acting capacity pending a recruitment process to be carried out by the Public Appointments Service. Connaghan joined the HSE in 2017 as deputy director general having previously worked for NHS Scotland. Connaghan subsequently left the post in December. Anne O'Connor, deputy director general, was asked by Minister Harris to take over the position of acting director general while the recruitment process for a permanent director general continues.

In order to strengthen the management, governance and accountability of the HSE, the Sláintecare report recommended that a new, independent, non-executive board be established for the HSE. In May Minister Harris received government approval for the drafting of legislation to allow for this. Under the proposed legislation, the board will become the governing body of the HSE and will be accountable to the minister for the performance of its functions, while the director general of the HSE – who will become known as the CEO – will be accountable to the board. In September, following a Public Appointments Service campaign, it was announced that Ciarán Devane, a former member of the board of the NHS in England, is the Minister for Health's designated chairperson for the board.

In July the Department of Health moved from its long-term home in Hawkins House in Dublin city centre to new premises at the former Bank of Ireland headquarters on Baggot Street.

References

- Carswell, S. (2018). *CervicalCheck scandal: What is it all about?* Retrieved from <https://www.irishtimes.com> [20 January 2019].
- NAGP. (2018). *NAGP welcome the announcement that abortion services will be on an opt in basis.* Retrieved from <https://nagp.ie/services-will-be-on-an-opt-in-basis/> [20 January 2019].
- Scally, G. (2018). *Scoping inquiry into the CervicalCheck Screening Programme. Final report.* Retrieved from https://health.gov.ie/wp-content/uploads/2018/09/Scoping-Inquiry-into-CervicalCheck-Final_Report.pdf [20 January 2019].