



STATUTORY INSTRUMENTS.

**S.I. No. 409 of 2009**

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NURSING HOMES SUPPORT SCHEME (ASSESSMENT OF CAPACITY  
REPORT) REGULATIONS 2009

**(Prn. A9/1414)**

S.I. No. 409 of 2009

NURSING HOMES SUPPORT SCHEME (ASSESSMENT OF CAPACITY REPORT) REGULATIONS 2009

I, MARY HARNEY, Minister for Health and Children, in exercise of the powers conferred on me by Section 36 of the Nursing Homes Support Scheme Act 2009 hereby make the following Regulations:

1. These Regulations may be cited as the Nursing Homes Support Scheme (Assessment of Capacity Report) Regulations 2009.
2. These regulations come into operation on the 5th day of October 2009.
3. The form of a report referred to in section 21(18)(a) of the Nursing Homes Support Scheme Act 2009 shall be the form prescribed in Schedule 1 of this Regulation.

**SCHEDULE 1**

**Nursing Homes Support Scheme Act 2009  
Assessment of Capacity Report**

**Full name of Person assessed:** \_\_\_\_\_

**Date of Birth of Person assessed:** \_\_\_\_\_

**Date of Assessment:** \_\_\_\_\_

**Section 1 — Identification**

1.1 Name and Professional Title of Person who undertook the assessment: \_\_\_\_\_  
(hereafter referred to as the “assessor”)

1.2 Name of Person assessed: \_\_\_\_\_  
(hereafter referred to as the “assessed person”)

1.3 Name of Person(s) who requested the assessment: \_\_\_\_\_

1.4 Relationship of Person(s)  
listed at 1.3 to Person listed at 1.2: \_\_\_\_\_

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 13th October, 2009.*

**Section 2 — Assessment of Capacity**

2.1 Subject to section 2.2, the assessment of capacity relates only to the assessed person’s ability, at the time of the assessment, to make a decision relating to matters set out in section 21 of the Nursing Homes Support Scheme Act 2009. These matters are as follows:

- (a) making an application for Ancillary State support (the “Nursing Home Loan”),
- (b) consenting to the creation of a charge (“Charging Order”) in relation to the asset concerned, and
- (c) taking necessary actions in connection with the application for Ancillary State support, the creation of the charge and the registration of the charge in the Land Registry or the Registry of Deeds.

2.2 The assessment of a person’s ability to make a decision relating to a matter referred to in section 2.1 shall be based on the person’s ability:

- (i) to understand the information relevant to the decision,
- (ii) to retain that information,
- (iii) to use or weigh that information as part of the process of making the decision, or
- (iv) to communicate their decision by any means (including by means of a third party).

2.3 State evidence and findings of the assessed person’s ability to perform each of the functions outlined at subparagraphs (i) to (iv) of paragraph 2.2 above. These should form the basis for the declaration made in section 4 of this report.

*(i) Ability to understand the information relevant to the decision*

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*(ii) Ability to retain the information relevant to the decision*

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*(iii) Ability to use or weigh that information as part of the process of making the decision*

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*(iv) Ability to communicate their decision by any means (including by means of a third party).*

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(A separate page may be affixed to this report providing further evidence and findings, or details of information provided by the assessor or by the assessed person in the course of the assessment.)

**Section 3 — Expressed Wishes of Assessed Person**

Please state details of any wishes expressed in any manner by the assessed person at the assessment or otherwise, if known:

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**Section 4 — Declaration**

I declare that I, \_\_\_\_\_, have assessed the person listed at 1.2 above strictly in accordance with section 21 of the Nursing Homes Support Scheme Act 2009 and, in particular, on the basis set out in section 21(43) of that Act.

I further declare that, on the basis of that assessment, \_\_\_\_\_ (name of assessed person):

- did not lack the capacity to make a decision to which section 21 of the Nursing Homes Support Scheme Act refers (as outlined in paragraphs 2.1 and 2.2 of this report),
- lacked the capacity to make a decision to which section 21 of the Nursing Homes Support Scheme Act refers (as outlined in paragraphs 2.1 and 2.2 of this report),

at the time of the assessment.

I confirm that the evidence supporting my assessment is set out in section 2 of this report.

Signed: \_\_\_\_\_(assessor)

Printed Name: \_\_\_\_\_

Professional Title: \_\_\_\_\_

Medical Council Registration Number: \_\_\_\_\_

Date: \_\_\_\_\_



GIVEN under my Official Seal,  
5 October 2009.

MARY HARNEY,  
Minister for Health and Children.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The effect of these Regulations is to prescribe the format of reports for submission to the Circuit Court by medical practitioners in accordance with the provisions of section 21 of the Nursing Homes Support Scheme Act 2009. Section 21 of the Act provides for the appointment of care representatives to act on behalf of persons who are assessed by two medical practitioners as lacking the capacity to make decisions in relation to Ancillary State support.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
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