

## 2002 No. 99

## NATIONAL HEALTH SERVICE

## The National Health Service (General Dental Services and Dental Charges) (Scotland) Amendment Regulations 2002

*Made* 6th March 2002

*Laid before the Scottish Parliament* 8th March 2002

*Coming into force* 1st April 2002

The Scottish Ministers, in exercise of the powers conferred by sections 2(5), 25(2) and (2B), 70(1A), 71(1), 71A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (General Dental Services and Dental Charges) (Scotland) Amendment Regulations 2002 and shall come into force on 1st April 2002.

**Amendment of the National Health Service (General Dental Services) (Scotland) Regulations 1996**

2.—(1) The National Health Service (General Dental Services) (Scotland) Regulations 1996(b) are amended as follows.

(2) In regulation 22(1) (statement of dental remuneration)(c) in the table at the end of column 1 and column 2 respectively there is inserted “XI” and “Clinical audit allowances” and “XII” and “Remote area allowances”.

(3) In Schedule 1 (terms of service for dentists)—

(a) for paragraph 17 (occasional treatment)(d) there is substituted—

“17.—(1) Whether or not a patient has entered into a continuing care arrangement or capitation arrangement with another dentist, a dentist who is not acting on behalf of that dentist may provide any of the items listed in sub-paragraph (2) as occasional treatment.

(a) 1978 c.29; section 25(2) was amended by the Health and Medicines Act 1988 (c.49) (“the 1988 Act”), Schedule 2, paragraph 11 and by the National Health Service and Community Care Act 1990 (c.19), section 40(2) and Schedule 9, paragraph 19(6) and was extended by the 1988 Act, section 17; section 70(1A) and 71A were inserted by, and section 71(1) was amended by, section 11 of the 1988 Act; section 105(7) which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24, and by the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. See section 66(1) of the 1999 Act in relation to any provision of that Act being taken to be a pre-commencement enactment within the meaning of the Scotland Act 1998 (c.46). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.I. 1996/177; the relevant amending instruments are S.I. 1996/2060, 1998/1663 and 1999/724, and S.S.I. 1999/51, 2000/188, 352 and 394 and 2001/368.

(c) Regulation 22 was amended by S.S.I. 2000/352, regulation 3 and S.S.I. 2001/368, regulation 2(6).

(d) Paragraph 17 was amended by S.I. 1998/1663, regulation 6(4) and S.S.I. 2001/368, regulation 2(7).

- (2) For the purposes of sub-paragraph (1) the listed items are—
- (a) assessment of, and the giving of advice to, a patient,
  - (b) the issuing of a prescription except in connection with the items of treatment specified in paragraphs (e), (h) and (i) below,
  - (c) a radiographic examination and radiographic report except in connection with the items of treatment specified in paragraph (i) below,
  - (d) the dressing of deciduous or permanent teeth and other palliative treatment,
  - (e) the repair and refixing of inlays, crowns and bridges, including, where immediately necessary, the provision of temporary crowns,
  - (f) the extraction of deciduous or permanent teeth,
  - (g) the provision of post-operative care,
  - (h) the provision of sedation,
  - (i) the replacement, repair or alterations of dentures or other dental appliances,
  - (j) urgent treatment for acute conditions of the gingivae or oral mucosa, including treatment for pericoronitis or for ulcers and herpetic lesions, and any necessary oral hygiene instruction in connection with such treatment,
  - (k) any treatment immediately necessary as a result of trauma,
  - (l) domiciliary visits and recalled attendance,
  - (m) conservative treatment of permanent or retained deciduous teeth by way of filling or root fillings, and
  - (n) in respect of patients aged under 18, conservative treatment of no more than 2 deciduous teeth.

(3) Where the dentist, due to any cause beyond his control, is unable to complete a course of occasional treatment which he has commenced, he shall forthwith notify the Board in writing of the extent of the occasional treatment he has provided and the reason he is unable to complete the remainder of the treatment.

(4) Subject to sub-paragraphs (5) and (6), where a dentist has provided conservative treatment by way of any filling or root filling in accordance with sub-paragraph (2)(m), he shall repair or replace the filling in question at no charge to the patient.

(5) A dentist shall not be under an obligation to repair or replace any filling under sub-paragraph (2)(m) where—

- (a) within 12 months of the date on which the filling was provided—
  - (i) a dentist has provided private treatment, or
  - (ii) another dentist has provided occasional treatment otherwise than of a temporary nature,  
on the tooth in respect of which the filling was provided;
- (b) the dentist advised the patient at the time of the filling and indicated on the patient record—
  - (i) that the filling was intended to be temporary in nature, or
  - (ii) that, in his opinion, a different form of filling was more appropriate but, notwithstanding that advice, the patient insisted on the filling which was provided;
- (c) in the opinion of the dentist, the condition of the tooth in respect of which the filling was provided is such that the filling cannot satisfactorily be repaired or replaced and different treatment is now required; or
- (d) the repair or replacement is required as a result of trauma.

(6) The obligation to repair or replace any filling under sub-paragraph (2)(m) shall cease 12 months after the date on which the filling was provided.”

- (b) at the end of paragraph 31D (professional indemnity)(a) there is added—

**“Clinical audit activities**

**31E.—(1)** In the relevant period a dentist shall—

- (a) undertake at least 15 hours of clinical audit activities, and

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(a) Paragraph 31D was inserted by S.I. 1998/1663, regulation 6(5) and amended by S.S.I. 1999/51, regulation 13(a).

- (b) take reasonable steps to ensure that any assistant of his also undertakes such activities.
- (2) In this paragraph–
  - “clinical audit activities” means activities which involve the systematic and critical analysis of the quality of dental care provided by the dentist, including the processes used by him for diagnosis, intervention and treatment and his use of resources, and
  - “the relevant period” means–
    - (a) subject to paragraph (b) below, where a dentist's name is included in a dental list and he is providing general dental services–
      - (i) on 1st April 2002, the period of three years commencing on that date,
      - (ii) from a date after 1st April 2002, the period of three years commencing with that later date,and each successive period of three years thereafter;
    - (b) where a dentist's name remains included in a dental list but he does not provide general dental services during any continuous period in excess of thirteen weeks, the period specified in paragraph (a) above, to which is added any such continuous period during which he is not providing general dental services.”.

### **Amendment of the National Health Service (Dental Charges) (Scotland) Regulations 1989**

3.—(1) The National Health Service (Dental Charges) (Scotland) Regulations 1989(a) are amended as follows.

(2) In regulation 3(2)(e) (charges for other dental services) for “paragraph 7 or 13(2) (repair or replacement of restorations)” there is substituted “paragraph 7 (repair or replacement of restorations), 13(2) (treatment on referral) or 17(4) (occasional treatment)”.

(3) In regulation 4(5) (calculation of charges) for “£360” in both places where it occurs there is substituted “£366”.

### **Transitional provision**

4. Where, on or after 1st April 2002, appliances are supplied, or other general dental services are provided, in pursuance of a contract or arrangement for the provision of general dental services made before that date, the provision of regulation 4(5) of the National Health Service (Dental Charges) (Scotland) Regulations 1989 shall have effect in respect of that supply, or that other provision, as if regulation 3(3) of these Regulations had not come into force.

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
6th March 2002

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(a) S.I. 1989/363; relevant amending instruments are S.I. 1990/1772 and 1998/2258 and S.S.I. 2000/44 and 2001/69.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 1996 (“the 1996 Regulations”), which provide for the arrangements under which dentists provide general dental services as part of the National Health Service (“NHS”) in Scotland. They also amend the National Health Service (Dental Charges) (Scotland) Regulations 1989 (“the 1989 Regulations”), which provide for the making and recovery of charges for dental appliances supplied or repaired under the national health service, and for other dental treatment provided as part of NHS general dental services.

Regulation 2 amends the 1996 Regulations.

Regulation 2(2) adds two new items to the statement of dental remuneration being item XI Clinical audit allowances and item XII Remote area allowances. The Clinical audit allowances will provide the allowances payable to dentists for carrying out the clinical audit activities referred to in regulation 2(3)(b). The Remote area allowances will provide for payments to be made to dentists who operate from remote areas in recognition of the remoteness of such dentists’ practices and the inability of these dentists to build up substantial patient lists given the population densities in particular areas.

Regulation 2(3) amends Schedule 1 to the 1996 Regulations. Sub paragraph (a) substitutes a new paragraph 17 in order to remove the distinction between the treatment available to non-registered occasional patients and those occasional patients registered with a dentist elsewhere. This will enable a greater range of occasional treatment to be provided to non-registered patients. Sub paragraph (a) also provides that where a dentist provides a filling or root filling under occasional treatment, with certain exceptions, the dentist is obliged to repair or replace such a filling at no charge to the patient up to 12 months after it was provided. Sub paragraph (b) inserts a new paragraph, 31E (clinical audit activities). This requires a dentist to undertake at least 15 hours clinical audit activity, being an analysis of dental care provided, including processes used, in every period of three years commencing on 1st April 2002 or, if later, the date when the dentist’s name is included in the dental list. The dentist is also required to take reasonable steps to ensure that any assistant of the dentist also undertakes such activities.

Regulation 3 amends the 1989 Regulations.

Regulation 3(2)(e) of the 1989 Regulations requires dentists to make no charge for certain work. Paragraph 17 of Schedule 1 to the 1996 Regulations requires repair or replacement of fillings, with certain exceptions, at no extra charge to the patient. Regulation 3(2) amends regulation 3(2)(e) of the 1989 Regulations to add work carried out in accordance with paragraph 17 to the treatments for which no charge shall be made.

Regulation 3(3) amends regulation 4(5) of the 1989 Regulations to increase from £360 to £366 the maximum contribution which a patient may be required to make towards the aggregate cost of dental treatment and appliances under Part II of the National Health Service (Scotland) Act 1978. Regulation 4 is a transitional of provision which ensures that the increased amount applies only where the contract or arrangement leading to the provision of such treatment and the supply of such appliances is made on or after 1st April 2002. Where the contract or arrangement was made before that date but the supply was made on or after that date then the previous rate applies.

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