

SCHEDULE 4

Regulation 13

AGREEMENTS TO PROVIDE OUT OF HOURS SERVICES

Criteria for out of hours services

1. A provider shall only be required to provide out of hours services if, in the reasonable opinion of the provider in light of the patient's medical condition, it would not be reasonable in all the circumstances for the patient to wait for the services required until the next time at which the patient could obtain such services during core hours.

Standards for out of hours services

2. From 1st January 2005, a provider which provides out of hours services must, in the provision of such services, meet the quality standards set out from time to time in guidance which has been issued to Health Boards by NHS Quality Improvement Scotland and notified in writing to the provider by the Health Board.

Agreements to provide essential services and out of hours services

3. A provider who is required under the agreement to provide essential services and out of hours services, shall provide throughout the out of hours period the essential services which must be provided in core hours under the agreement and such additional services as are included in the agreement.

Sub-contracting out of hours service

4.—(1) A provider shall not, otherwise than in accordance with the written approval of the Health Board, sub-contract all or part of the provider's duty to provide out of hours services to any person other than those listed in sub-paragraph (2), other than on a short-term occasional basis.

(2) The persons referred to in sub-paragraph (1) are—

- (a) a person who holds a general medical services contract with a Health Board which includes the provision of the equivalent of essential services during all or part of the out of hours period;
- (b) a provider who is required to provide the equivalent of essential services to his patients during all or part of the out of hours period;
- (c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or
- (d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota arrangements.

(3) An application for approval under sub-paragraph (1) shall be made by the provider in writing to the Health Board and shall state—

- (a) the name and address of the proposed sub-contractor;
- (b) the address of any premises used for the provision of services;
- (c) the duration of the proposed sub-contract;
- (d) the services to be covered by the arrangement; and
- (e) how it is proposed that the sub-contractor will meet the provider's obligations under the agreement in respect of the services covered by the arrangement.

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(4) Within 7 days of receipt of an application under sub-paragraph (3), a Health Board may request such further information relating to the proposed arrangements as seem to it to be reasonable.

(5) Within 28 days of receipt of an application which meets the requirements specified in sub paragraph (3), the Health Board shall—

- (a) approve the application;
- (b) approve the application with conditions; or
- (c) refuse the application.

(6) The Health Board shall not refuse the application if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the provider to meet satisfactorily its obligations under the contract and will not—

- (a) put at serious risk the safety of the provider's patients;
- (b) put the Board at risk of material financial loss.

(7) The Health Board shall inform the provider by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

(8) Where a Health Board approves a sub-contract under this paragraph the Health Board and the provider shall be deemed to have agreed a variation of the agreement which has the effect of adding to the list of practice premises for the purposes of the provision of services in accordance with that application, any premises whose address was notified to it under sub-paragraph (3)(b) and paragraph 59 of Schedule 1 shall not apply.

(9) Sub-paragraphs (1) to (8) shall also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(10) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the out of hours services it has agreed with the provider to provide.

Withdrawal and variation of approval under paragraph 4

5.—(1) Without prejudice to any other remedies which it may have under the agreement, where a Health Board has approved an application made under paragraph 4 it shall, subject to paragraph 6, be entitled to serve notice on the provider withdrawing or varying that approval from a date specified in the notice if it is no longer satisfied that the proposed arrangement will enable the provider to meet satisfactorily its obligations under the agreement.

(2) The date specified in the notice shall be such as appears reasonable in all the circumstances to the Health Board.

(3) The notice referred to in sub-paragraph (1) shall take effect on whichever is the later of—

- (a) the date specified in the notice; or
- (b) (if applicable) the date of the final determination of the NHS dispute resolution procedure (or any court proceedings) relating to the notice in favour of the Health Board.

Withdrawal and variation of approval under paragraph 4

6.—(1) Without prejudice to any other remedies which it may have under the agreement, where a Health Board has approved an application made under paragraph 4(3) it shall be entitled to serve notice on the provider withdrawing or varying that approval with immediate effect if—

- (a) it is no longer satisfied that the proposed arrangement will enable the provider to meet satisfactorily its obligations under the agreement; and

(b) it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the provider's patients.

(2) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the date on which the notice referred to in that sub-paragraph is received by the provider.

Temporary arrangements for transfer of obligations and liabilities in relation to certain out of hours services

7.—(1) In this paragraph and in paragraphs 8 to 11—

“out of hours arrangement” means an arrangement under sub-paragraph (2); and

“transferee out of hours services provider” means a person referred to in sub paragraph (5) who has undertaken to carry out the obligations of a provider during all or part of the out of hours period in accordance with an out of hours arrangement referred to in sub paragraph (2).

(2) Subject to the provisions of this Schedule, where a provider is required to provide out of hours services pursuant to regulation 26, the provider may, with the approval of the Health Board, make an arrangement with a person referred to in sub paragraph (5) to transfer the provider's obligations under these Regulations.

(3) Any arrangement made pursuant to sub paragraph (2) shall cease to have effect—

(a) on the day when the transferee out of hours service provider ceases to meet any of the conditions required to provide primary medical services under these Regulations; or

(b) on 1st January 2005,

whichever is the earlier.

(4) An arrangement made in accordance with sub paragraph (2) shall, for so long as it continues, relieve the provider of—

(a) its obligations to provide out of hours services pursuant to regulation 26; and

(b) all liabilities under the agreement in respect of those services.

(5) The person referred to in this sub paragraph is any person who holds a general medical services contract or an agreement with the Health Board which includes the provision of out of hours services.

(6) A provider may make more than one out of hours arrangement and may do so (for example) with different general medical services contractors or providers and in respect of different patients, different times and, where the provider has a provider's list of patients, different parts of its practice area.

(7) Nothing in this paragraph prevents a provider from retaining or resuming its obligations in relation to named patients.

Application for approval of an out of hours arrangement

8.—(1) An application to the Health Board for approval of an out of hours arrangement shall be made in writing and shall state—

(a) the name and address of the proposed transferee out of hours service provider;

(b) the periods during which the provider's obligations under the agreement are to be transferred;

(c) how the proposed transferee out of hours service provider intends to meet the provider's obligations during the periods specified under paragraph (b);

(d) the arrangements for the transfer of the provider's obligations under the agreement to and from the transferee out of hours service provider at the beginning and end of the periods specified under paragraph (b); and

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- (e) how long the proposed arrangements are intended to last and the circumstances in which the provider's obligations under the agreement during the periods specified under paragraph (b) would revert to it.
- (2) The Health Board shall determine the application before the end of the period of 28 days beginning with the day on which the Health Board received it.
- (3) The Health Board shall grant approval to a proposed out of hours arrangement if it is satisfied—
 - (a) having regard to the overall provision of primary medical services provided in the out of hours period in its area, that the arrangement is reasonable and will contribute to the efficient provision of such services in the area;
 - (b) having regard, in particular, to the interests of the provider's patients, that the arrangement is reasonable;
 - (c) having regard, in particular, to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;
 - (d) that it will be clear to the provider's patients how to seek primary medical services during the out of hours period; and
 - (e) that if the arrangement comes to an end, the provider has in place proper arrangements for the immediate resumption of the provider's responsibilities,and shall not refuse to grant approval without first consulting the area medical committee for its area.
- (4) The Health Board shall give notice to the provider of its determination and, where it refuses an application, it shall send the provider a statement in writing of the reasons for its determination.
- (5) A provider which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub paragraph (4) was sent.

Effect of approval of an arrangement with a transferee out of hours service provider

9. Where the Health Board has approved an out of hours arrangement with a transferee out of hours service provider, the Health Board and the transferee out of hours service provider shall be deemed to have agreed a variation of their agreement or general medical services contract which has the effect of including in it, from the date on which the out of hours arrangement commences, and for so long as that arrangement continues, the services covered by that arrangement and paragraph 59(1) of Schedule 1 to these Regulations or paragraph 94(1) of Schedule 5 to the GMS Contracts Regulations (as the case may be) shall not apply.

Review of approval

10.—(1) Where it appears to the Health Board that it may no longer be satisfied of any of the matters referred to in paragraph 8(3), it may give notice to the provider that it proposes to review its approval of the out of hours arrangement.

(2) On any review under sub paragraph (1), the Health Board shall allow the provider a period of 30 days, beginning with the day on which it sent the notice, within which to make representations in writing to the Health Board.

(3) After considering any representations made in accordance with sub-paragraph (2), the Health Board may determine to—

- (a) continue its approval;
- (b) withdraw its approval following a period of notice; or
- (c) if it appears to it that it is necessary in the interests of the provider's patients, withdraw its approval immediately.

(4) Except in the case of an immediate withdrawal of approval, the Health Board shall not withdraw its approval without first consulting the area medical committee for its area.

(5) Where the Health Board determines to withdraw its approval immediately, it shall notify the area medical committee for its area.

(6) The Health Board shall give notice to the provider of its determination under sub paragraph (3).

(7) Where the Health Board withdraws its approval, whether immediately or on notice, it shall include with the notice a statement in writing of the reasons for its determination.

(8) A provider which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub paragraph (6) was sent.

(9) Where the Health Board determines to withdraw its approval following a period of notice, the withdrawal shall take effect at the end of the period of two months beginning with—

- (a) the date on which the notice referred to in sub paragraph (6) was sent; or
- (b) where there has been a dispute which has been referred under the NHS dispute resolution procedure and the dispute is determined in favour of withdrawal, the date on which the provider receives notice of the determination.

(10) Where the Health Board determines to withdraw its approval immediately, the withdrawal shall take effect on the day on which the notice referred to in sub paragraph (6) is received by the provider.

Immediate withdrawal of approval other than following review

11.—(1) The Health Board shall withdraw its approval of an out of hours arrangement immediately—

- (a) in the case of an arrangement with a person referred to in paragraph 7(5), if the person with whom it is made ceases to hold a general medical services contract or an agreement with the Health Board which includes the provision of out of hours services; or
- (b) where, without any review having taken place under paragraph 10, it appears to the Health Board that it is necessary in the interests of the provider's patients to withdraw its approval immediately.

(2) The Health Board shall give notice to the provider of a withdrawal of approval under sub paragraph (1)(a) or (b) and shall include with the notice a statement in writing of the reasons for its determination.

(3) An immediate withdrawal of approval under sub paragraph (1) shall take effect on the day on which the notice referred to in sub paragraph (2) is received by the provider.

(4) The Health Board shall notify the area medical committee for its area of a withdrawal of approval under sub paragraph (1)(b).

(5) A provider which wishes to refer a withdrawal of approval under sub paragraph (1)(b) in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the Health Board's notification under sub paragraph (2) was sent.