

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES SECTION 17C AGREEMENTS) (SCOTLAND) AMENDMENT REGULATIONS 2010

SSI 2010/395

1. The above instrument was made in exercise of the powers conferred by sections 9(6), 17CA, 17E, 28(1), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978 (“the Act”). The instrument is subject to negative resolution procedure.

Background

2. The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (“the 2004 Agreements Regulations”) set out the framework for the provision of Primary Medical Services under agreements between Health Boards and providers. Part 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”) introduces new eligibility criteria for persons contracting with Health Boards to provide primary medical services.

Policy Objectives

3. The purpose of the instrument is to amend the 2004 Agreements Regulations to reflect the changes introduced by Part 2 of the 2010 Act. These changes are the new eligibility criteria, which set out the details of who is eligible to be a party to a primary medical services agreement. The new eligibility criteria include a requirement that all the providers must have sufficient involvement in patient care. The main involvement requirement is that all contracting parties must regularly perform or be engaged in the provision of primary medical services. The instrument sets out the details of what this requirement means and regulation 3A provides that the involvement criteria require that a person performs or is engaged, or will perform or be engaged, in the provision of primary medical services for at least 10 hours in each week for the duration of the agreement, but certain periods of time such as sick leave and maternity leave are disregarded for the purpose of this requirement. The Regulations will not be retrospective so will not affect those who already provide primary medical services under existing contracts.
4. The instrument also provides for any sub-contractor to meet the same eligibility and involvement criteria.

Consultation

5. There was a wide consultation undertaken on these amendment regulations with all relevant stakeholders including the Scottish General Practitioners Committee (SGPC) of the British Medical Association, the Royal College of General Practitioners Scotland, voluntary bodies, Health Boards, CoSLA, CBI and the academic sector. Comments were received from SGPC and most of these have been incorporated.

Financial Effects

6. The amendments will have no appreciable financial effects.

FRANK STRANG
Scottish Government Health Department
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BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title

Implementation via the National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2010 and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2010 (“the amending regulations”) to changes to eligibility criteria for providers of primary medical services as set out in Part 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”).

Purpose and Intended Effect

Objective

The amending regulations amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004, to specify those who are eligible to hold a general medical services or Section 17C agreement with a Health Board, and to specify the requirements to satisfy the involvement in patient care criteria set out in Part 2 of the 2010 Act. The amending regulations are intended to be in force by 22 December 2010 when Part 2 of the 2010 Act is commenced.

Background

The National Health Service (Scotland) Act 1978 (“the 1978 Act”) was amended by the 2010 Act which makes provision for the new eligibility criteria for persons contracting with Health Boards to provide primary medical services. The 2010 Act sets out the persons eligible to be a party to such a contract or agreement as the case may be, and in addition requires all contractors to have sufficient involvement in patient care. The amending regulations specify the detail of what is meant by sufficient involvement in patient care. The main requirement to satisfy the involvement criteria is that contract/agreement holders must perform or be engaged in the provision of primary medical services for at least 10 hours in every week for the duration of the contract or agreement. Periods of time to be disregarded in relation to this requirement include maternity, paternity and adoption leave; sick leave and study leave; periods of service in the armed forces or under an MoD contract; and periods of suspension by a regulatory body. In addition, following the date of retirement of a contractor, a maximum period of 2 years is allowed during which the contractor may continue to provide primary medical services without necessarily satisfying the involvement criteria.

The amending Regulations will not be retrospective so will not affect those who already provide primary medical services under existing contracts.

Rationale for Government Intervention

The amending regulations are required in order to set out the detail of the provisions introduced by the 2010 Act.

Consultation

A public consultation exercise has been undertaken on the draft amending regulations, covering a wide range of organisations and individuals including the Scottish General Practitioners Committee (SGPC) of the British Medical Association, the Royal College of General Practitioners Scotland, CoSLA, Health Boards, the voluntary sector, academics and the CBI. Comments were received from SGPC and most of these have been adopted in the amending regulations.

Costs and benefits

Sectors and groups affected

1. Health Boards – they would have to satisfy themselves that contractors will meet the involvement criteria before entering into the contract or agreement. We have discussed with Board representatives and have concluded that this can be monitored via the annual contract review process which Boards currently undertake.
2. General practitioners – as contract holders under any new contract, GPs will be required to satisfy the involvement criteria. This will not, in practice, affect a large number of general practitioners. Most who are contract holders at present already have an involvement in patient care of at least one day per week.
3. Voluntary organisations such as a provident or friendly society will be unlikely to meet the proposed eligibility and involvement criteria. We are not aware that any practices are at present run on such a basis or that there is a great interest from the sector in becoming involved in holding primary medical services contracts, and we have consulted specifically on these issues with the sector which has not raised any particular issues.

The proposals will not affect any contracts for the provision of primary care services entered into prior to the legislative provisions coming into force.

Benefits

The main benefit will be to clarify what exactly is meant by sufficient involvement in patient care, as provided for in the 2010 Act.

Costs

There is not expected to be any appreciable costs associated with this.

Small/Micro firms impact test

Most of the 1,000 GP practices in Scotland are run on the traditional model of GP led partnerships. There will be no impact on them under their existing contractual arrangements. However, any new sub-contracting arrangements will be subject to the new involvement criteria. The proposals will not be retrospective and they will ensure that existing practices will continue under the contract arrangements which have applied since 2004 and which were very similar previously.

Legal Aid Impact Test

The proposals will not create any new procedure or right of appeal to a court or tribunal, any change in such a procedure or right of appeal or any change which might lead people to consult a solicitor.

Implementation and delivery plan

For any new contract or agreement for primary medical services, Health Boards will be required to satisfy themselves that the contractor or provider is eligible, and is also able to demonstrate an involvement in patient care as set out in the amending regulations. This will be monitored via the annual contract review which is currently carried out by Boards as the contracting body.

Post implementation review

The Department has regular review meetings with those in the Scottish Health Boards who oversee the delivery of primary medical services. These cover all aspects of such services and will provide the opportunity for review of the new arrangements and any Board feedback.

Summary

To implement amendment regulations which will set out the detail of the involvement criteria provided for in the 2010 Act to clarify the detail of what is required of those who hold contracts or agreements for the provision of primary medical services. The proposals will not affect any contracts or agreements entered into prior to the amendments taking effect.