



# Health Act 1999

## 1999 CHAPTER 8

### PART I

#### THE NATIONAL HEALTH SERVICE

##### *Evasion of charges, fraud etc.*

### 39 Evasion of charges etc

(1) After section 122 of the 1977 Act there is inserted—

#### **“122A Recovery of other charges and payments**

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,
- the amount mentioned in subsection (2) below is recoverable summarily as a civil debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a) above, is the amount of the charge or (where it has been reduced) reduction,
  - (b) in a case within subsection (1)(b) above, is the amount of the payment.
- (3) Where two or more persons are liable under section 122(1) above or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

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- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description,
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it,
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 122B below, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 122(1) above in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,
  - (c) in a case within subsection (1)(b) above, the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,
  - (b) the functions of any responsible authority under this section and section 122B below,
- to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act,
  - (b) drugs and medicines provided in pursuance of this Act,
  - (c) the testing of sight,
  - (d) optical appliances,
  - (e) any other appliances provided in pursuance of this Act.

### **122B Penalties**

- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 122(1) above in respect of the provision of goods or services to which section 122A above applies, or
  - (b) any amount recoverable from him under section 122A above,
- a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

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- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
  - (a) £100,
  - (b) the amount referred to in subsection (1)(a) or (b) above multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) above to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b) above) may be recovered by the responsible authority summarily as a civil debt.
- (7) But a person is not liable by virtue of a penalty notice—
  - (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) above for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) In spite of section 126(1) below, no order is to be made under subsection (3) above unless a draft has been laid before, and approved by resolution of, each House of Parliament.

### **122C Offences**

- (1) A person is guilty of an offence if he does any act mentioned in subsection (2) below with a view to securing for himself or another—
  - (a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 122A above applies,
  - (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment,
  - (c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.
- (2) The acts referred to in subsection (1) above are—

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- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or
  - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.
- (5) Proceedings for an offence under this section may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge,
  - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of subsection (5) above, a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge is conclusive evidence of that date.
- (7) Where, in respect of any charge or payment under this Act—
- (a) a person is convicted of an offence under this section, or
  - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under section 122B above,
- he shall not, in a case within paragraph (a) above, be liable to pay any such penalty charge or further sum by way of penalty or, in a case within paragraph (b) above, be convicted of such an offence.
- (8) Subsection (4) of section 122A above applies for the purposes of this section as it applies for the purposes of that.”
- (2) Any power conferred by section 37 of the 1977 Act or section 17 of the National Health Service (Primary Care) Act 1997 to confer functions on the Dental Practice Board includes, in particular, power to confer functions relating to the prosecution of offences concerning charges for the provision of dental treatment and appliances.
- (3) Sections 122A to 122C of the 1977 Act apply to charges which may be made and recovered under section 20 of the National Health Service (Primary Care) Act 1997 as they apply to charges under the 1977 Act which may be recovered under section 122(1) of that Act; and the reference in section 122A(7)(a) to the 1977 Act includes a reference to a pilot scheme (within the meaning of the 1997 Act).