



Health Service Medical Supplies (Costs) Act 2017

2017 CHAPTER 23

Information about medical supplies etc

8 Provision of information to Secretary of State and disclosure

After section 264 of the National Health Service Act 2006 insert—

“264A Provision of information about health service products

- (1) References in this section to a UK producer are to a person who manufactures, distributes or supplies any UK health service products.
- (2) Regulations may require any UK producer to—
 - (a) record and keep information which the Secretary of State may require for the purpose specified in subsection (3), and
 - (b) provide that information to the Secretary of State,
(subject to subsection (9)).
- (3) The purpose is that of enabling or facilitating any of the following—
 - (a) the determination of the payments to be made to any persons who provide primary medical services under Part 4;
 - (b) the determination of the remuneration to be paid to any persons who provide pharmaceutical services under Part 7;
 - (c) the consideration by the Secretary of State of whether—
 - (i) adequate supplies of English health service products are available, and
 - (ii) the terms on which those products are available represent value for money;
 - (d) the determination of the payments to be made to any persons who provide primary medical services under Part 4 of the National Health Service (Wales) Act 2006;

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- (e) the determination of the remuneration to be paid to any persons who provide pharmaceutical services under Part 7 of that Act;
 - (f) the consideration by the Welsh Ministers of whether—
 - (i) adequate supplies of Welsh health service products are available, and
 - (ii) the terms on which those products are available represent value for money;
 - (g) the determination of the payments to be made to any persons who provide primary medical services under section 2C(1) of the National Health Service (Scotland) Act 1978 (“the 1978 Act”);
 - (h) the determination of the remuneration to be paid to any persons who provide pharmaceutical care services under section 2CA(1) of the 1978 Act;
 - (i) the consideration by the Scottish Ministers of whether—
 - (i) adequate supplies of Scottish health service products are available, and
 - (ii) the terms on which those products are available represent value for money;
 - (j) the determination of the remuneration to be paid to any persons who provide primary medical services or pharmaceutical services under Part 2 or 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14));
 - (k) the consideration by a Northern Ireland department of whether—
 - (i) adequate supplies of Northern Ireland health service products are available, and
 - (ii) the terms on which those products are available represent value for money;
 - (l) the exercise by the Secretary of State of any powers under sections 260 to 264 and 265;
 - (m) the operation of a voluntary scheme.
- (4) The information which the Secretary of State may require from a UK producer by virtue of this section includes the following—
- (a) the price charged or paid by the producer for UK health service products;
 - (b) the price charged or paid by the producer for delivery or other services in connection with the manufacturing, distribution or supply of UK health service products;
 - (c) the discounts or rebates or other payments given or received by the producer in connection with the manufacturing, distribution or supply of UK health service products;
 - (d) the revenue or profits accrued to the producer in connection with the manufacturing, distribution or supply of UK health service products (including, in relation to profits, the costs incurred by the producer in connection with the manufacturing, distribution or supply of the products);
 - (e) such information about medicinal products, other medical supplies or other related products as is necessary to verify whether they are UK health service products and, if so, which of the following they are—
 - (i) English health service products;

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- (ii) Welsh health service products;
 - (iii) Scottish health service products;
 - (iv) Northern Ireland health service products.
- (5) Regulations under this section must require the Secretary of State to give a UK producer an information notice if information is required in respect of the costs incurred by the producer in connection with the manufacturing, distribution or supply of a particular UK health service product (other than costs which relate to any transaction between the producer and a UK producer for that product).
- (6) An information notice is a notice stating—
- (a) the period in relation to or for which, or intervals at which, information is required to be provided,
 - (b) the form and manner in which information is required to be provided,
 - (c) the time at which or period within which information is required to be provided, and
 - (d) that a right of appeal is conferred by virtue of section 265(5A).
- (7) Regulations under this section may require information which does not fall within subsection (5) to be provided—
- (a) in relation to or for a prescribed period or at prescribed intervals,
 - (b) in a prescribed form and manner, and
 - (c) at a prescribed time or within a prescribed period.
- (8) The provision of information by virtue of this section does not breach—
- (a) any obligation of confidence owed by the person providing it, or
 - (b) any other restriction on the provision of information (however imposed).
- (9) Regulations under this section may not do any of the following—
- (a) require any person who provides primary medical services under Part 4 of the National Health Service (Wales) Act 2006, or any person who provides pharmaceutical services under Part 7 of that Act, to record, keep or provide information relating to any Welsh health service products which are supplied by the person in providing the services in question;
 - (b) require any person who provides primary medical services under section 2C(1) of the 1978 Act, or any person who provides pharmaceutical care services under section 2CA(1) of that Act, to record, keep or provide information relating to any Scottish health service products which are supplied by the person in providing the services in question;
 - (c) require any person who provides primary medical services or pharmaceutical services under Part 2 or 6 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) to record, keep or provide information relating to Northern Ireland health service products which are supplied by the person in providing the services in question.
- (10) “English health service products” means any medicinal products used to any extent for the purposes of the health service continued under section 1(1) and

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any other medical supplies, or other related products, required for the purposes of that health service.

- (11) “Medical supplies” is to be read in accordance with section 260(5).
- (12) “Northern Ireland health service products” means any medicinal products used to any extent for the purposes of health care provided by virtue of the Health and Social Care (Reform) Act (Northern Ireland) 2009 and any other medical supplies, or other related products, required for the purposes of health care provided by virtue of that Act.
- (13) “Scottish health service products” means any medicinal products used to any extent for the purposes of the health service within the meaning of the 1978 Act and any other medical supplies, or other related products, required for the purposes of that health service.
- (14) “UK health service products” means any English health service products, Welsh health service products, Scottish health service products or Northern Ireland health service products.
- (15) “Welsh health service products” means any medicinal products used to any extent for the purposes of the health service continued under section 1(1) of the National Health Service (Wales) Act 2006 and any other medical supplies, or other related products, required for the purposes of that health service.
- (16) Until the coming into force of the repeal of section 27 of the 1978 Act by schedule 3 to the Smoking, Health and Social Care (Scotland) Act 2005 the references in subsections (3)(h) and (9)(b) to pharmaceutical care services under section 2CA(1) of the 1978 Act are to be read as references to pharmaceutical services under section 27(1) of that Act.

264B Disclosure of information

- (1) Information provided by virtue of section 264A may be disclosed by the Secretary of State to any of the following persons—
- (a) the Board;
 - (b) any Special Health Authority;
 - (c) the Health and Social Care Information Centre;
 - (d) any government department;
 - (e) the Welsh Ministers;
 - (f) the Scottish Ministers;
 - (g) the Common Services Agency for the Scottish Health Service constituted under section 10 of the 1978 Act;
 - (h) a Northern Ireland department;
 - (i) the Regional Business Services Organisation established under section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
 - (j) any person who provides services to any person falling within any of paragraphs (a) to (i);
 - (k) any prescribed body appearing to the Secretary of State to represent UK producers;
 - (l) such of the following as may be prescribed—

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- (i) an NHS foundation trust;
 - (ii) any health service body within the meaning of section 9(4) (not falling within any of paragraphs (a) to (k) above).
- (2) A person to whom any confidential or commercially sensitive information is disclosed under subsection (1) may not—
 - (a) use the information for any purpose other than the purpose specified in relation to that person in subsection (3), or
 - (b) disclose the information to another person (subject to subsection (4)).
- (3) For the purposes of subsection (2)—
 - (a) in relation to a person falling within subsection (1)(a) to (c), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(a) to (c), (l) or (m);
 - (b) in relation to a person falling within subsection (1)(d), the purpose is that of—
 - (i) exercising functions connected with any of the matters specified in section 264A(3)(a) to (c), (l) or (m), or
 - (ii) preventing, detecting or investigating any unlawful activities;
 - (c) in relation to a person falling within subsection (1)(e), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(d) to (f), (l) or (m);
 - (d) in relation to a person falling within subsection (1)(f) or (g), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(g) to (i), (l) or (m);
 - (e) in relation to a person falling within subsection (1)(h) or (i), the purpose is that of exercising functions connected with any of the matters specified in section 264A(3)(j) to (m);
 - (f) in relation to a person falling within subsection (1)(j), the purpose is that of providing services in connection with any purpose specified in relation to the person for whom the services are provided in any of paragraphs (a) to (e) above;
 - (g) in relation to a person falling within subsection (1)(k) or (l), the purpose is any prescribed purpose connected with any of the matters specified in section 264A(3).
- (4) The Welsh Ministers may disclose any confidential or commercially sensitive information disclosed to them under subsection (1) to any of the following persons—
 - (a) a Local Health Board or other person appointed under section 88(3) (b) of the National Health Service (Wales) Act 2006 to exercise the functions of a determining authority under Part 7 of that Act;
 - (b) a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;
 - (c) any person who provides services to the Welsh Ministers or to any person falling within paragraph (a) or (b).
- (5) A person to whom any confidential or commercially sensitive information is disclosed under subsection (4) may not—

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- (a) use the information for any purpose other than the purpose of exercising functions connected with any of the matters specified in section 264A(3)(d) to (f), (l) or (m), or
- (b) disclose the information to another person.

264C Sections 264A and 264B: supplementary

- (1) Before making regulations under section 264A or 264B the Secretary of State must consult any body which appears to the Secretary of State appropriate to represent UK producers.
- (2) Nothing in section 264A or 264B requires information to be provided, or authorises information to be disclosed or used, in contravention of the Data Protection Act 1998.
- (3) Nothing in section 264A or 264B affects any duties, obligations or powers to require or authorise information to be provided, disclosed or used which exist apart from that section.”

Commencement Information

II S. 8 in force at 7.8.2017 by [S.I. 2017/809](#), [reg. 2\(g\)](#)

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