

---

STATUTORY INSTRUMENTS

---

**1997 No. 1678**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service (Fund-holding  
Practices) Amendment (No. 2) Regulations 1997**

<i>Made</i>	- - - -	<i>10th July 1997</i>
<i>Laid before Parliament</i>		<i>10th July 1997</i>
<i>Coming into force</i>	- -	<i>31st July 1997</i>

The Secretary of State for Health, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of powers conferred by sections 13 and 126(4) of and paragraph 16 of Schedule 5 to the National Health Service Act 1977(1) and sections 14, 15(7) and 17 of the National Health Service and Community Care Act 1990(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Fund-holding Practices) Amendment (No. 2) Regulations 1997 and shall come into force on 31st July 1997.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Fund-holding Practices) Regulations 1996(3).

**Amendment of regulation 5 of the principal Regulations**

2. For paragraph (2) of regulation 5 of the principal Regulations (grant of recognition as a fund-holding practice) substitute—

“(2) Subject to paragraph (3)—

(a) in the case of a standard fund-holding practice or a community fund-holding practice, recognition which has been granted—

- 
- (1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of prescribed and regulations. Section 13 was amended by the Health Services Act 1980 (c. 53), paragraph 31 of Schedule 1; the 1990 Act, Schedule 10 and the Health Authorities Act 1995 (c. 17), paragraph 4 of Schedule 1. Section 126(4) was amended by section 65(2) of the 1990 Act.
- (2) 1990 c. 19. Sections 14, 15 and 17 were amended by, respectively, paragraphs 73, 74 and 76 of Schedule 1 to the Health Authorities Act 1995 (c. 17).
- (3) S.I. 1996/706, amended by S.I. 1997/747.

- (i) on or after 31st July 1997 but before 1st April 1999 shall take effect from 1st April 1999, and
  - (ii) on or after 1st April 1999 shall take effect from whichever date, of 1st April 2001, 1st April 2003, and so on, most closely follows the date on which recognition was granted; and
- (b) in the case of a GP commissioning group, recognition shall take effect from 1st April following the grant of recognition.”.

### **Amendment of regulation 18 of the principal Regulations**

3.—(1) Regulation 18 of the principal Regulations (determination of allotted sum) is amended as follows.

(2) After paragraph (4) insert—

“(4A) At any time after the notification referred to in paragraph (3) has been sent to the fund-holding practice, but before the Secretary of State determines an allotted sum, the Health Authority may recommend to him that the proposed allotted sum should be varied, and shall provide with any such recommendation a notice stating whether or not the members of the fund-holding practice agree with the variation proposed.

(4B) Following receipt of a recommendation under paragraph (4A), the Secretary of State may (subject to paragraph (4C)) make a variation of the proposed allotted sum (which may differ from that recommended by the Health Authority).

(4C) Where the notice provided under paragraph (4A) states that the members of the fund-holding practice do not agree with the variation proposed, the Secretary of State may make a variation only after inviting the members of the fund-holding practice to make representations to him before the end of the period of 14 days beginning with the date on which they received the invitation, and taking into account any representations he receives.”.

(3) In paragraph (5), after “representations to him”, insert “before the end of the period of 14 days beginning with the date on which they received the invitation”.

(4) After paragraph (5) insert—

“(6) Where a proposed allotted sum has been varied in accordance with paragraphs (4A) to (4C), the references in paragraph (5) to a proposed allotted sum are to the sum proposed in accordance with the latest variation.”.

### **Amendment of regulation 20 of the principal Regulations**

4. In paragraph (2A)(4) of regulation 20 of the principal Regulations (purchase of goods and services), omit “either” and “, or is referred by a doctor who is not a member of the fund-holding practice,”.

### **Amendment of regulation 25 of the principal Regulations**

5. For paragraph (3) of regulation 25 of the principal Regulations (savings from the allotted sum) substitute—

“(3) The Health Authority shall consent to the application of any part of an allotted sum for any of the purposes specified in paragraph (2)(a) to (f) or paragraph (2A) if it is satisfied—

---

(4) Paragraph (2A) was inserted by regulation 11(4) of the National Health Service (Fund-holding Practices) Amendment Regulations 1997 (S.I. 1997/747).

- (a) that the proposed expenditure would be for the benefit of the patients of the members of the practice and would represent value for money; and
  - (b) that the financial position of the members of the practice in relation to the allotted sum is such that, if the proposed expenditure were incurred, the savings then left to them would not be less than the total amount of any overspends which it is reasonable to predict for the relevant financial years.
- (3A) In paragraph (3)—
- “overspend” means any amount by which the liabilities incurred by the members of a fund-holding practice in any financial year other than for purposes for which Health Authority consent is required under this regulation exceed the proposed allotted sum for that practice for that financial year (or, where the proposed allotted sum has been varied in accordance with regulation 18, the latest variation); and
- “relevant financial years” means—
- (i) the financial year in which Health Authority consent to the proposed expenditure is sought; and
  - (ii) where the accounts for the previous financial year have not yet been audited as mentioned in paragraph (2), that financial year (except where that year is the year beginning on 1st April 1996).”.

#### **Amendment of regulation 27 of the principal Regulations**

6. In regulation 27 of the principal Regulations (transfer of functions), after “18(1)” insert “and (4A)”.

#### **Outstanding applications**

7.—(1) Where, by 31st July 1997, the Secretary of State has neither granted nor refused recognition in respect of any outstanding application for recognition as a standard fund-holding practice or as a community fund-holding practice, that application is (unless the members of the practice notify the Secretary of State to the contrary before 1st April 1998, and subject to paragraphs (2) to (4)) to be treated as an application for recognition to take effect from 1st April 1999.

(2) The members of the practice shall give notice to the Secretary of State by 31st July 1998 of any material change to the particulars of their application which has taken place by that date (including in particular any change in the membership of the practice), and the notice shall be signed by each member of the practice.

(3) Where the members of the practice give notice to the Secretary of State under paragraph (2), the Secretary of State may require the Health Authority to provide him with the notice specified in regulation 3(6) of the principal Regulations, revised to take account of the change to the application; and if he requires such a notice, regulation 3(7), (8) and (9) of the principal Regulations apply in relation to the revised notice as they apply to the original notice.

(4) Where, on 31st July 1998, at least one of the members of a practice is also on the medical list of a Health Board, and more patients on the lists of members of the practice reside in Scotland than in England, the application shall lapse.

(5) In this regulation, “practice” and “members of the practice” shall be construed in accordance with regulation 1(2) of the principal Regulations.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

Signed by authority of the Secretary of State for Health

10th July 1997

*Alan Milburn*  
Minister of State,  
Department of Health

10th July 1997

*Win Griffiths*  
Parliamentary Under Secretary of State, Welsh  
Office

---

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (Fund-holding Practices) Regulations 1996 (“the principal Regulations”), which provide for the recognition and operation of fund-holding practices.

Regulation 2 amends regulation 5 of the principal Regulations (grant of recognition as a fund-holding practice) so that recognition of standard and community fund-holding practices is to take effect biennially, rather than (as previously) annually. Regulation 7 makes a provision consequential on this change relating to applications outstanding on 31st July 1997.

Regulation 3 amends regulation 18 of the principal Regulations (determination of allotted sum) to provide for variations of proposed allotted sums for fund-holding practices, and regulation 6 makes a consequential amendment.

Regulation 4 amends regulation 20 of the principal Regulations (purchase of goods and services), so that it is the function of a fund-holding practice to purchase care resulting from a referral of one of its patients by a doctor who is not a member of that practice.

Regulation 5 amends regulation 25 of the principal Regulations (savings from the allotted sum) to specify an additional condition for Health Authority consent for the use of savings on matters such as premises refurbishments: the Health Authority must be satisfied that, if such expenditure were incurred, the members of the fund-holding practice would retain sufficient savings to meet any predictable overspend in the current and (in some cases) previous financial years.