
STATUTORY INSTRUMENTS

1998 No. 693

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service (Fund-holding
Amendment Regulations 1998 Practices)**

<i>Made</i>	- - - -	<i>12th March 1998</i>
<i>Laid before Parliament</i>		<i>13th March 1998</i>
<i>Coming into force</i>		
<i>The whole Regulations except Part II</i>		<i>31st March 1998</i>
<i>Part II</i>		<i>1st April 1998</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 on them by sections 126(4) of the National Health Service Act 1977(1) and sections 14(2) and (6), 15(7), 16(1) 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:—

PART I

INTRODUCTORY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Fund-holding Practices) Amendment Regulations 1998 and shall come into force on 31st March 1998 except for Part II, which shall come into force on 1st April 1998.

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- (1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19), section 26(2) (g) and (i), for the definitions of “prescribed” and “regulations”.
- (2) 1990 c. 19. Sections 14, 15, 16 and 17 were amended by, respectively, paragraphs 73, 74, 75 and 76 of Schedule 1 to the Health Authorities Act 1995 (c. 17), and sections 14 and 15 are amended (from 1st April 1998) by paragraph 65 of Schedule 2 to the National Health Service (Primary Care) Act 1997 (c. 46). Section 14 was extended (from 1st April 1998) by section 19 of that Act.

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

PART II

AMENDMENTS CONSEQUENTIAL UPON THE NATIONAL HEALTH SERVICE (PRIMARY CARE) ACT 1997

Amendment of regulation 1 of the principal Regulations

2.—(1) Regulation 1 of the principal Regulations (citation, commencement and interpretation) is amended as follows.

(2) In paragraph (2) in the appropriate position in alphabetical order, insert—

““the 1997 Act” means the National Health Service (Primary Care) Act 1997⁽⁴⁾”;

““personal medical services” has the meaning given to it in section 1(8) of the 1997 Act”;

““pilot scheme” has the meaning given to it in section 1 of the 1997 Act”;

““pilot scheme provider” means a person, other than a Health Authority, who is a party to a pilot scheme.”.

(3) In paragraph (9), after “included” insert “or (in the case of a medical practitioner who is not included in a medical list but who performs personal medical services under a pilot scheme) to the address of the pilot scheme provider given in the pilot scheme”.

Amendment of regulation 3 of the principal Regulations

3. In regulation 3 of the principal Regulations (application for recognition as a fund-holding practice), in paragraph (10)—

(a) after the words “Health Board,” insert “or performs personal medical services under a pilot scheme to which a Health Board is a party,”; and

(b) after the the words “National Health Service (Scotland) Act 1978” insert “or, as the case may be, performing personal medical services under a pilot scheme to which a Health Board is a party”.

Amendment of regulation 9 of the principal Regulations

4. In regulation 9 of the principal Regulations (withdrawal or death of a member of a fund-holding practice), in paragraph (5)(a), after the words “Health Authority” insert “or to perform personal medical services under a pilot scheme to which the Health Authority is a party”.

Amendment of regulation 19 of the principal Regulations

5.—(1) Regulation 19 of the principal Regulations (payment for drugs, medicines and listed appliances) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) This regulation does not apply to the members of a standard fund-holding practice or community fund-holding practice who perform personal medical services under a pilot scheme, and—

⁽³⁾ S.I.1996/706, amended by S.I. 1997/747 and 1997/1678.

⁽⁴⁾ 1997 c. 46.

- (a) the pilot scheme makes provision for the cost (however calculated) of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice to be deducted from the net consideration payable under the pilot scheme to the provider, or accounted for in some other way; or
- (b) under which there are to be provided services which are not personal medical services but which are services which may be provided by virtue of section 1(3) of the 1997 Act (other than the provision of drugs, medicines or listed appliances for immediate treatment or by way of personal administration or application).”.

Amendment of regulation 22 of the principal Regulations

6. In regulation 22 of the principal Regulations (payments to staff), for paragraph (A1) substitute—

“(A1) This regulation does not apply to—

- (a) the members of a GP commissioning group; or
- (b) the members of a standard fund-holding practice or community fund-holding practice who perform personal medical services under a pilot scheme which makes provision for the cost (however calculated) of payments to staff to be included in the consideration payable under the pilot scheme to the provider.”.

Amendment of Schedule 1 to the principal Regulations

7. In Schedule 1 to the principal Regulations (conditions for obtaining recognition), after paragraph 5 add—

“**6.** In the case of members of a practice who provide or perform personal medical services under a pilot scheme—

- (a) none of them is employed by another person in accordance with the requirements of section 14(1)(5) of the 1990 Act; and
- (b) in connection with the pilot scheme each member of the practice has a list of patients and the members together do not have a single list of patients; and
- (c) the pilot scheme does not provide for persons to receive under the pilot scheme any of the goods or services specified, in the case of standard fund-holding practices in Part I, and in the case of community fund-holding practices in Part II, of the list approved from time to time by the Secretary of State for the purposes of regulation 20.”.

Amendment of Schedule 2 to the principal Regulations

8. In Schedule 2 of the principal Regulations (conditions for continuing recognition), after paragraph 14 add—

“**15.** In the case of members of a practice who provide or perform personal medical services under a pilot scheme—

- (a) none of them is employed by another person in accordance with the requirements of section 14(1) of the 1990 Act; and
- (b) in connection with the pilot scheme each member of the practice has a list of patients and the members together do not have a single list of patients; and

(5) 1990 c. 19, as amended by paragraph 73 of Schedule 1 to the Health Authorities Act 1995 (c. 17) and (from 1st April 1998) by paragraph 65(3) of Schedule 2 to the National Health Service (Primary Care) Act 1997 (c. 46).

- (c) the pilot scheme does not provide for persons to receive under the pilot scheme any of the goods or services specified, in the case of standard fund-holding practices in Part I, and in the case of community fund-holding practices in Part II, of the list approved from time to time by the Secretary of State for the purposes of regulation 20.”.

PART III

OTHER AMENDMENTS

Entry to fund-holding

9.—(1) Regulation 5 of the principal Regulations (grant of recognition as a fund-holding practice) is amended as follows.

- (2) In paragraph (2)(a)(i), for “1st April 1999” (in both places) substitute “1st April 2001”.
- (3) In paragraph (2)(a)(ii)
 - (a) for “1st April 1999” substitute “1st April 2001”;
 - (b) for “1st April 2001” substitute “1st April 2005”; and
 - (c) for “1st April 2003” substitute “1st April 2009”.

Redundancy payments

- 10.**—(1) In regulation 23 of the principal Regulations (payment for management expenses)—
- (a) in paragraph (2), after “management expenses” insert “other than on the expenses referred to in sub-paragraph (7)(j)”;
 - (b) in paragraph (7), at the end of sub-paragraph (h) omit “and”, and at the end of sub-paragraph (i) insert—
 - “; and
 - (j) the costs of redundancy payments to staff employed in connection with the management of the allotted sum (but only to the extent that such payments could be made by virtue of paragraph 52(3)(vi) of the Statement referred to in regulation 22(2)).”.
- (2) In regulation 25 of the principal Regulations (savings from the allotted sum), in paragraph (2), for “22 and 24” substitute “22, 23(7)(j) and 24”.
- (3) After regulation 25 insert—

“Redundancy payments

25A.—(1) Where the members of a fund-holding practice apply any part of the allotted sum for the purposes of paying redundancy payments under regulation 22 or 23(7)(j), they shall secure that for the purpose of making any such payment the allotted sum is applied in the following order—

- (a) first, the payment is to be met (to the extent that it is permissible to do so under regulation 23) from the available management allowance for the financial year in which the payment is made (“the current year”);
- (b) the payment is then to be met from available savings; and
- (c) only then is the payment to be met from any other part of the current year’s allotted sum.

(2) In paragraph (1), “available” means free from any binding obligation to apply for other purposes (but savings are not “available” if the Health Authority has consented in accordance with regulation 25(2) to their application for a purpose for which consent is required, even if no binding obligation to apply them for that purpose has yet been entered into).”.

Savings

11.—(1) Regulation 25 of the principal Regulations (savings from the allotted sum) is amended as provided in paragraphs (2) to (4) of this regulation.

(2) In paragraphs (2) and (2A), for “Subject to paragraph (3),” substitute “Subject to paragraphs (3), (3B) and (3C).”.

(3) In paragraph (3)(6)—

(a) at the beginning insert “Subject to paragraphs (3B) and (3C).”;

(b) for sub-paragraph (a) substitute—

“(a) that the proposed expenditure would—

(i) provide a benefit for the patients of members of the practice, and

(ii) provide that benefit in the most reasonably economic way having regard to alternative methods of providing the same benefit, and

(iii) represent value for money; and”;

(c) after sub-paragraph (b) insert—

“; and

(c) that where the proposed expenditure is under sub-paragraph (a) or (c) of paragraph (2) and the purchase of the material or equipment, or the expenditure on premises (as the case may be), is intended to provide a benefit to the patients of the members of the practice, it could not reasonably be procured for them in an equally or a more economic way under regulation 20.”.

(4) After paragraph (3A) insert—

“(3B) The Health Authority shall not, in any one financial year, consent under paragraph (2) to the application for any of the purposes specified in paragraph (2)(a) to (f) or (2A) of a total of more than £90,000 of savings (irrespective of whether more than one consent has been sought, and whenever any such consent was sought).

(3C) The members of a fund-holding practice shall not apply savings of any amount greater than £90,000 in any one financial year for the purposes specified in paragraph (2) (a) to (f) or paragraph (2A).”.

(5) The amendments made by paragraph (3)(a) and (4) of this regulation do not affect any consent given before this regulation came into force, or the application of savings for any of the purposes specified in paragraph (2)(a) to (f) or (2A) of the principal Regulations pursuant to a consent given before this regulation came into force; and in such cases—

(a) regulation 25 of the principal Regulations shall continue to apply in relation to that consent, or to the application of those savings, as if the amendments referred to above had not been made; and

(b) the application of those savings shall not be taken into account under regulation 25(3C) of the principal Regulations.

(6) Paragraph (3) was substituted by S.I. 1997/1678.

Accelerated change of status

12.—(1) In regulation 1 of the principal Regulations (citation, commencement and interpretation), in paragraph (9), at the beginning insert “Subject to regulation 10A(2) and (6),”.

(2) After regulation 10 of the principal Regulations insert the following regulation—

“Accelerated change of status to GP commissioning group

10A.—(1) This regulation makes additional provision for a standard fund-holding practice or a community fund-holding practice to become a GP commissioning group.

(2) A standard fund-holding practice or a community fund-holding practice may apply, by sending an application to the Health Authority not later than 30th June 1998, to become a GP commissioning group, and for the purposes of this paragraph an application may be sent by fax.

(3) Subject to the provisions of this regulation such an application (if granted) shall take effect on the date when it was granted or (if later) on the date when the conditions referred to in paragraph (4) are met.

(4) Those conditions are—

(a) that the applicant fund-holding practice surrender to the Health Authority any part of the allotted sum for the financial year 1998-99 which remains in the fund-holding account which is not required for meeting liabilities of the practice arising out of obligations assumed before the application under this regulation was granted; and

(b) that the applicant fund-holding practice notify the Health Authority that they are prepared to accept the amount specified in the notice referred to in regulation 18(3) (as applied with modifications by paragraph (7) of this regulation) as their proposed allotted sum for the financial year 1998-99.

(5) As respects the liabilities referred to in paragraph (4)(a), the members of the fund-holding practice shall continue to apply that part of the allotted sum not surrendered to the Health Authority as if they had not become a GP commissioning group.

(6) Regulation 3 (except for paragraph (4)), regulation 5(1), and regulation 6 shall apply to such an application as they apply to an application for recognition as a fund-holding practice, but as if the references in those regulations—

(a) to an application were references to an application under this regulation; and

(b) to the grant or refusal of recognition were references to the grant or refusal of an application under this regulation,

and for the purposes of this regulation any notice referred to in those regulations may be sent by fax or by electronic mail.

(7) The allotted sum for the financial year 1998-99 of a GP commissioning group resulting from a successful application under this regulation shall be determined anew in accordance with regulation 18, but as if—

(a) the references in that regulation to a fund-holding practice or a recognised fund-holding practice were to a practice whose application under this regulation had been granted; and

(b) the words “, by 28th February in any year,” were omitted from paragraph (2).”.

(3) In regulation 18 (determination of allotted sum), in paragraph (1), at the beginning insert “Subject to regulation 10A,”.

Amendment of regulation 12 of the principal Regulations

13. In regulation 12 of the principal Regulations (consequences of renunciation of recognition), at the end of paragraph (3) insert—

“(and for this purpose regulation 25(2) shall apply as if the reference there to regulation 23(7)(j) were to regulation 23, and regulation 23(2) shall not apply).”.

Amendment of regulation 7 of National Health Services (Fund-holding Practices) Amendment (No. 2) Regulations 1997

14.—(1) Regulation 7 of the National Health Service (Fund-holding Practices) Amendment (No. 2) Regulations 1997(7) (outstanding applications) is amended as follows.

(2) In paragraph (1)—

- (a) for “31st July 1997” substitute “31st March 1998”;
- (b) for “1st April 1988” substitute “1st April 2000”;
- (c) for “1st April 1999” substitute “1st April 2001”; and
- (d) for “to the contrary” substitute “to the contrary”.

(3) In each of paragraphs (2) and (4), for “31st July 1998” substitute “31st July 2000”.

(4) In paragraph (4), after the words “Health Board”, insert “or, as the case may be, performing personal medical services under a pilot scheme to which a Health Board is a party,”.

Signed by authority of the Secretary of State for Health

12th March 1998

Alan Milburn
Minister of State (*Department of Health*)

12th March 1998

Win Griffiths
Parliamentary Under Secretary of State (*Welsh Office*)

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

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.

The Regulations incorporate amendments in connection with the coming into force on 1st April 1998 of certain provisions of the National Health Service (Primary Care) Act 1997 (“the 1997 Act”). In particular, regulation 5 amends regulation 19 of the principal Regulations (payment for drugs, medicines and listed appliances) so that it does not apply to standard fund-holding practices or community fund-holding practices who are party to a pilot scheme under the 1997 Act which provides for the Health Authority to recoup the costs of drugs, medicines and listed appliances prescribed by members of the practice, or for services other than personal medical services. Regulation 6 amends regulation 22 of the principal Regulations (payments to staff) so that it does not apply to standard or community fund-holding practices who are party to a pilot scheme which provides for payments to staff. Regulations 7 and 8 amend Schedules 1 and 2 to the principal Regulations (conditions for obtaining and continuing recognition) to include requirements that members of fund-holding practices providing or performing personal medical services under a pilot scheme under the 1997 Act must not be employed by another person, must each maintain a list of patients and in the case of a standard or community fund-holding practice, must not provide under the pilot scheme any of the goods or services that may be purchased from the list approved by the Secretary of State (in accordance with regulation 20).

The Regulations also make further amendments to the principal Regulations:

- Regulation 9 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 every four years, rather than (as previously) biennially. Regulation 14 makes a consequential amendment to regulation 7 of the National Health Service (Fund-holding Practices) Amendment (No. 2) Regulations 1997 relating to applications outstanding on 31 July 1997.
- Regulation 10 amends regulation 23 of the principal Regulations (payment of management expenses to provide that the management allowance may be used to pay redundancy costs for staff employed in connection with the management of the allotted sum. Regulation 25 (savings from the allotted sum) is also amended to allow savings to be spent on redundancy costs under regulation 23. A new regulation 25A is inserted into the principal Regulations, which requires that redundancy payments must be met firstly from the management allowance, then from savings and finally from the remainder of the allotted sum.
- Regulation 11 amends regulation 25 of the principal Regulations (savings from the allotted sum) to specify additional conditions for Health Authority consent for the use of savings. It also provides a limit of £90,000 upon the amount of savings that may be spent in a financial year where Health Authority consent is required.
- Regulation 12 inserts a new regulation 10A into the principal Regulations. This regulation enables an application to be made on or before 30 June 1998 by a standard or community fund-holding practice for an accelerated change of status to a GP commissioning group.