STATUTORY INSTRUMENTS

1999 No. 696

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Pharmaceutical Services) Amendment Regulations 1999

Made - - - -	*9th March 1999*
Laid before Parliament	*10th March 1999*
Coming into force - -	*1st April 1999*

The Secretary of State for Health, in exercise of powers conferred on him by sections 41, 42, 43 and 126(4) of the National Health Service Act 1977(**1**) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Pharmaceutical Services) Amendment Regulations 1999 and shall come into force on 1st April 1999.

(2) In these Regulations, "the principal Regulations" means the National Health Service (Pharmaceutical Services) Regulations 1992(**2**).

Amendment of regulation 2 of the principal Regulations

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

(2) In paragraph (1)—

(**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 41 was amended by the Health Services Act 1980 (c. 53) ("the 1980 Act"), sections 1 and 20(1) and Schedule 1, paragraph 53 and Schedule 7, by S.I. 1985/39, article 7(13); by the 1990 Act, Schedule 9, paragraph 18(1) and Schedule 10; by the Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), section 2; by the Health Authorities Act 1995 (c. 17) ("the 1995 Act"), Schedule 1, paragraph 29; and by the National Health Service (Primary Care) Act (c.46) ("the 1997 Act"), Schedule 2, paragraph 13. Section 42 was substituted by the National Health Service (Amendment) Act 1986 (c. 66), section 3(1); extended by the Health and Medicines Act 1988 (c. 49), section 17; and amended by S.I. 1987/2202, article 4; by the 1990 Act, section 12(3); and by the 1995 Act, Schedule 1, paragraph 30. Section 43 was amended by the 1980 Act, sections 1 and 21(2) and Schedule 1, paragraph 55; by S.I. 1985/39, article 7(15); by the 1990 Act, Schedule 9, paragraph 18(2); by the 1995 Act, Schedule 1, paragraph 31; and by the 1997 Act, section 29(1) and Schedule 2, paragraph 14. Section 126(4) was amended by the 1990 Act, section 65(2).

(**2**) S.I. 1992/662; the relevant amending instruments are S.I. 1993/2451, 1994/2402, 1995/644, 1996/698, 1998/681, and 1998/2224.

(a) in the appropriate alphabetical position insert—

""Charges Regulations" means the National Health Service (Charges for Drugs and Appliances) Regulations 1989(**3**);

"directed services" means additional pharmaecutical services(**4**);

"pharmaceutical services" means pharmaceutical services other than directed services;

"Remission of Charges Regulations" means the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988(**5**);"; and

(b) for the definition of "prescription form" substitute ""prescription form" means a form provided by a Health Authority, a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(**6**), a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972(**7**), or an NHS trust, and issued by a doctor, dentist or nurse prescriber to enable a person to obtain pharmaceutical services.".

(3) In paragraph (1A)(**8**) (which describes nurse prescribers who may issue prescription forms), in each of sub-paragraphs (a)(iii) and (b)(ii), for the words "or by a pilot scheme provider in connection with the provision of" substitute the words, "or who, at that time, is assisting in the performance of".

Revocation of regulation 16 of the principal Regulations

3. Regulation 16 of the principal Regulations (supplemental services) is hereby revoked.

Amendment of regulation 17 of the principal Regulations

4. In regulation 17 of the principal Regulations (removal from pharmaceutical lists), in paragraph (2), for the words "Pharmacy Act 1954" substitute the words "section 72 of the Medicines Act 1968(**9**)".

Amendment of regulation 18 of the principal Regulations

5. In regulation 18 of the principal Regulations (standards of, and payments for, drugs and appliances), in paragraph (1)(g)(**10**) the words "and of supplemental services" are omitted.

Reward Scheme

6. After regulation 18A of the principal Regulations insert—

(**3**) S.I. 1989/419, amended by S.I. 1990/537, 1991/579, 1992/365, 1993/420, 1994/690, 1994/2402, 1995/643, 1995/2737, 1996/583, 1997/559, 1998/491, 1998/646.
(**4**) *See* sections 41A of the 1977 Act, inserted by section 27(1) of the 1977 Act.
(**5**) S.I. 1988/551, amended by S.I. 1989/394 and 517, 1990/548, 918 and 1661, 1991/557, 1992/1104, 1993/608, 1995/642 and 2352, 1996/410, 1346 and 2362, 1997/748 and 2393 and 1998/2417.
(**6**) 1978 c. 29.
(**7**) S.I. 1972/1265 (NI 14)
(**8**) Paragraph (1A) was inserted by S.I. 1994/2402, regulation 2(3), and amended by S.I. 1996/698 and 1998/681.
(**9**) 1968 c. 67, amended by the Insolvency Act 1985 (c. 65), section 236, Schedule 8, paragraph 15; the Insolvency Act 1986 (c. 45) section 439(2), Schedule 14; and the Insolvency (Northern Ireland) Order 1989, S.I. 1989/2405 (NI 19) article 381(2), Schedule 9, Part II, paragraph 24.
(**10**) Section 18(1)(g) was amended by S.I. 1993/2451.

"**Reward Scheme**

18B.—(1) A chemist who is presented with an order under paragraph 3(1) of the terms of service shall be eligible to claim a payment from the Health Authority in such manner as is specified in the Drug Tariff if—

(i) in accordance with paragraph 3(1B) of the terms of service he refused to provide the drugs or medicines or listed appliances ordered and immediately informed the Health Authority of this action; or

(ii) he provided the drugs and medicines or listed appliances pursuant to paragraph 3(1) but subsequently came to have reason to believe that the order was not a genuine order for the person named on the prescription form and informed the Health Authority of this belief within the period of 14 days beginning with the date the order was presented,

and in either case he has sent the order referred to in this paragraph to the Health Authority.

(2) The Health Authority shall in respect of any claim under paragraph (1) make such payment as is due to the chemist calculated in the manner specified in the Drug Tariff.

(3) In this paragraph "order" includes a purported order.".

Amendment of regulation 20 of the principal Regulations

7. In regulation 20 of the principal Regulations (arrangements for the provision of pharmaceutical services by doctors), in paragraph (6)(b), for the words "paragraph (8)" substitute the words "paragraph (7)".

Amendment of Schedule 2 to the principal Regulations

8.—(1) Part II of Schedule 2 to the principal Regulations (terms of service for chemists), is amended as follows.

(2) After paragraph 2 insert the following new paragraph—

"**Directed services**

2A. A chemist with whom a Health Authority makes an arrangement for the provision of any directed service shall comply with the terms and conditions of the arrangement.".

(3) In paragraph 3 (provision of pharmaceutical services)—

(a) after sub-paragraph (1A)(**11**) insert the following new sub-paragraphs—

"(1B) Where a chemist reasonably believes that a form presented to him as a prescription form in accordance with paragraph 3(1) is not a genuine order for the person named on the form (for example because he reasonably believes the form has been stolen or forged), he may refuse to provide the drugs or medicines or listed appliances specified on the form presented.

(1C) Before providing the drugs or medicines or listed appliances ordered on a prescription form as specified in paragraph 3(1)—

(a) the chemist shall ask any person who makes a declaration on the prescription form that the person named on the prescription form does not have to pay the charges specified in regulation 3(1) of the Charges Regulations by virtue of either—

(**11**) Sub-paragraph (1A) was inserted by S.I. 1996/698.

(i) entitlement to exemption under any of sub-paragraphs (d) to (g) of regulation 6(1) of the Charges Regulations; or

(ii) entitlement to remission of such charges under regulation 3 of the Remission of Charges Regulations,

to produce satisfactory evidence of such entitlement unless the declaration is in respect of entitlement to exemption by virtue of sub-paragraph (d), (e) or (f) of regulation 6(1) of the Charges Regulations, and at the time of the declaration the chemist already has such evidence available to him; and

(b) if no satisfactory evidence is produced to the chemist (and, where it is relevant, none is already available to him as mentioned in sub-paragraph (a)) the chemist shall endorse the prescription form to that effect.".

(b) in sub-paragraph (4), for the words "sub-paragraph (3)" substitute the words "sub-paragraph 5)"; and

(c) in sub-paragraph (5), for the words "sub-paragraph (3)" substitute the words "sub-paragraph (4)".

(4) In paragraph 4 (premises and hours), for sub-paragraph (26)(**12**) substitute the following sub-paragraphs—

"(26) If the Health Authority has been directed under section 41A(1)(a) or (b) of the Act that it must, or may, make arrangements for a pharmacist to be available to any person in the Health Authority's area for consultation outside the hours referred to in sub-paragraph (25) no direction shall be given under sub-paragraph (25), unless the requirements of sub-paragraph (26A) have been complied with.

(26A) The requirements referred to in sub-paragraph (26) are that—

(a) the Health Authority must have offered to make such arrangements with the chemist; and

(b) the arrangements offered must have been such that under them a pharmacist would have been available as mentioned in sub-paragraph (26) at the revised times which the Health Authority proposes to require in its direction under sub-paragraph (25),

but it is immaterial whether or not the chemist has accepted the offer of such arrangements.

(26B) If the Health Authority has not been directed (under section 41A(1)(a) or (b) of the Act) in the manner referred to in sub-paragraph (26) no direction shall be given under sub-paragraph (25) unless a fee, allowance or other remuneration to be paid to any chemist so directed is included in the Drug Tariff or has been determined by the Health Authority by virtue of regulation 18(1A) (as the case may be).".

(5) In paragraph 10A(**13**) (complaints); in sub-paragraph (8), the words from "and where" to the end are omitted.

9.—(1) Part III of Schedule 2 to the principal Regulations (terms of service for doctors who provide pharmaceutical services) is amended as follows.

(2) After paragraph 11A(**14**) insert the following new paragraph—

"**11B.** Before providing the drugs or listed appliances recorded on a prescription form in accordance with paragraph 11(a), or the listed drugs or medicines or listed appliances ordered on a prescription form signed by a nurse prescriber in accordance with paragraph

(**12**) Paragraph 4(26) was inserted by S.I. 1995/644.
(**13**) Paragraph 10A was inserted by S.I. 1996/698.
(**14**) Paragraph 11A was inserted by S.I. 1994/2402, regulation 5 and amended by S.I. 1995/644, regulation 8.

11A(2), a doctor who is authorised or required by the Health Authority under regulation 20 to provide drugs and appliances to a patient shall—

(a) ask any person who makes a declaration on the prescription form that the patient does not have to pay the charges specified in regulation 3(1) of the Charges Regulations by virtue of either—

(i) entitlement to exemption under any of sub-paragraphs (d) to (g) of regulation 6(1) of the Charges Regulations, or

(ii) entitlement to remission of such charges under regulation 3 of the Remission of Charges Regulations,

to produce satisfactory evidence of such entitlement unless the declaration is in respect of entitlement to exemption by virtue of sub-paragraph (d), (e) or (f) of regulation 6(1) of the Charges Regulations, and at the time of the declaration the doctor already has such evidence available to him; and

(b) if no satisfactory evidence is produced to him (and, where it is relevant none is already available to him as mentioned in sub-paragraph (a)) endorse the prescription form to that effect.".

Frank Dobson
One of Her Majesty's Principal Secretaries of State
Department of Health

9th March 1999

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Pharmaceutical Services) Regulations 1992 which govern the arrangements to be made by Health Authorities for the provision in their area of pharmaceutical services under the National Health Service Act 1977 ("the 1977 Act").

Regulation 2 extends the definition of "prescription form" to include forms issued by NHS trusts and those issued by a Health Board in Scotland and a Health and Social Services Board in Northern Ireland; extends the definition of nurse prescriber to include certain nurses who assist in the performance of personal medical services under a pilot scheme; introduces a definition of "directed services" to mean the additional pharmaceutical services referred to in sections 41A and 41B of the 1977 Act; and amends the definition of "pharmaceutical services" to exclude "directed services".

Regulation 3 removes the provisions relating to supplemental services.

Regulation 6 enables a chemist who doubts the authenticity of a prescription form presented to him and who acts as specified to claim payment in the manner specified.

Regulation 8(2) provides for any arrangements for the provision of directed services by a chemist to be included as part of the chemists' terms of service.

Regulation 8(3)(a) requires a chemist to ask a person presenting an order for drugs and appliances under paragraph 3(1) of the chemists' terms of service to provide specified evidence to substantiate specific claims relating to exemptions from or remission of charges due under the NHS (Charges for Drugs and Appliances) Regulations 1989 and regulation 9 places similar requirements on doctors authorised to provide pharmaceutical services to a patient under regulation 20.

Regulation 8(4) amends the circumstances in which a chemist may be directed to secure the availability of a pharmacist to take account of any directions on the same point given by the Secretary of State under sections 41A of the 1977 Act.

Regulations 2(2)(a) and 5 provide for certain consequential amendments and regulations 4, 7, and 8(3)(b) and (c) and (5) make certain minor clarifactory amendments.

These Regulations impose no cost on business.