
STATUTORY INSTRUMENTS

2003 No. 2277

**NATIONAL HEALTH SERVICE, ENGLAND
SOCIAL SERVICES, ENGLAND**

The Delayed Discharges (England) Regulations 2003

Made - - - - 4th September 2003

Laid before Parliament 10th September 2003

Coming into force

*For the purposes of
regulations 1 to 6, 10, 12
and 13 to 18 1st October 2003*

For all other purposes 5th January 2004

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 1(1), 3(3) and (5), 5(7) and (10), 6(2) and (7), 7(3), 9(1), (2), (4) and (5), 10(1) and (2) of the Community Care (Delayed Discharges etc.) Act 2003⁽¹⁾ and of all other powers enabling him in that behalf, having regard to the matters set out in section 7(1) of the Community Care (Delayed Discharges etc.) Act 2003, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Delayed Discharges (England) Regulations 2003 and shall come into force on—

- (a) for the purposes of this regulation and regulations 2 to 6, 10, 12 and 13 to 18, on 1st October 2003; and
- (b) for all other purposes, on 5th January 2004.

(2) These Regulations apply to England only.

Interpretation

2. In these Regulations—

“the Act” means the Community Care (Delayed Discharges etc.) Act 2003;

“continuing NHS care” means a package of care which is arranged and funded solely by NHS bodies⁽²⁾ to meet a person’s continuing care needs;

(1) 2003 c. 5.

(2) See section 1(1) of the Community Care (Delayed Discharges etc.) Act 2003 (“the Act”) for the definition of NHS body.

“health service body” means—

- (a) a Strategic Health Authority;
- (b) a Special Health Authority;
- (c) an NHS body⁽³⁾;
- (d) a pilot scheme health service body within the meaning of section 16(6) of the National Health Service (Primary Care) Act 1997⁽⁴⁾; or
- (e) a PHS body within in the meaning of section 33(6) of the Health and Social Care Act 2001⁽⁵⁾;

“higher rate authorities” means those social services authorities⁽⁶⁾ listed in the Schedule;

“lower rate authorities” means those social services authorities which are not higher rate authorities;

“panel” means a panel to assist in the resolution of disputes between two or more authorities about matters arising under or in relation to Part 1 of the Act; and

“public holiday” means a public holiday in England and Wales.

Prescribed care

3.—(1) For the purposes of the definition of “qualifying hospital patient” in section 1 of the Act care is of a prescribed description if it is—

- (a) acute care; and
- (b) not care in respect of which the patient has given an undertaking to pay (or for whom such an undertaking has been given).

(2) In paragraph (1) acute care means, subject to paragraph (3), intensive medical treatment provided by or under the supervision of a consultant which is for a limited time after which the patient no longer benefits from that treatment.

(3) The following types of care are not acute care—

- (a) maternity care, that is, care of expectant and nursing mothers;
- (b) mental health care within the meaning of article 2 of the Delayed Discharges (Mental Health Care) (England) Order 2003⁽⁷⁾;
- (c) palliative care;
- (d) intermediate care;
- (e) care provided for the purposes of recuperation or rehabilitation.

(4) In paragraph (3) intermediate care means a structured programme of care provided for a limited period of time to assist a person to maintain or regain the ability to live in his home.

Notice of possible need for community care services

4.—(1) A notice given by an NHS body to a social services authority under section 2 shall—

- (a) be given in written form; and
- (b) bear the date on which it is given.

⁽³⁾ See section 1(1) of the Act.

⁽⁴⁾ 1997 c. 46.

⁽⁵⁾ 2001 c. 15.

⁽⁶⁾ See section 12 of the Act.

⁽⁷⁾ S.I.2003/2276. See sections 11(3) and 12 of the Act.

(2) For the purposes of paragraph (1), a notice given “in written form” means in a manner which is in, or which is capable of being reproduced in, legible form.

(3) Such a notice shall contain the following information⁽⁸⁾—

- (a) the name of the patient;
- (b) if given prior to the patient’s admission, the expected date of admission and the name of the hospital in which the patient is expected to be accommodated;
- (c) if given after the patient’s admission, the name of the hospital in which the patient is being accommodated;
- (d) an indication of the likely date of discharge, if known;
- (e) a statement—
 - (i) that the NHS body has complied with the consultation requirements in section 2(4) of the Act;
 - (ii) that the NHS body has considered whether or not to provide the patient with continuing NHS care and of the result of that consideration; and
 - (iii) whether the patient or any carer has objected to the giving of the notice; and
- (f) the name of the person at the hospital who will be responsible for liaising with the social services authority in relation to the patient’s discharge from that hospital.

(4) Such a notice must be withdrawn where—

- (a) the responsible NHS body no longer considers that it is unlikely to be safe to discharge the patient from hospital unless one or more community care services are made available for him;
- (b) the responsible NHS body considers that the patient’s on-going need is now for continuing NHS care;
- (c) the responsible NHS body, following the decision by the responsible authority required under section 4(2)(b) of the Act, still considers that it is unlikely to be safe to discharge the patient from hospital unless one or more further community care services are made available for him;
- (d) the patient’s proposed treatment is cancelled or postponed;
- (e) the responsible NHS body becomes aware that either—
 - (i) the patient’s ordinary residence has changed since the notice was given; or
 - (ii) the notice was given to a social services authority other than the one in whose area the patient is ordinarily resident.

(5) Such a notice shall cease to have effect upon—

- (a) the death of the patient; or
- (b) the patient discharging himself.

Notice of proposed discharge date

5.—(1) A notice given by a responsible NHS body to a responsible authority under section 5(3) of the Act shall—

- (a) be given at least one day in advance of the proposed discharge date;
- (b) be given in written form; and
- (c) bear the date on which it is given.

⁽⁸⁾ See also section 2(3)(a) of the Act.

(2) For the purposes of paragraph (1), a notice given “in written form” means in a manner which is in, or which is capable of being reproduced in, legible form.

(3) Such a notice shall contain the following information—

- (a) the name of the patient;
- (b) the name of the hospital in which the patient is being accommodated;
- (c) the name of the person at the hospital who is responsible for liaising with the social services authority in relation to the patient’s discharge from that hospital;
- (d) the date on which it is proposed that the patient be discharged;
- (e) a statement that the patient and, where appropriate, the carer has been informed of the date on which it is proposed the patient be discharged;
- (f) a statement that the notice is given under section 5(3) of the Act.

(4) Such a notice must be withdrawn if the responsible NHS body considers that it is no longer likely to be safe to discharge the patient from hospital on the proposed day, except where that is only because the responsible authority has not complied with its duties under section 4(2) of the Act or because the responsible authority has not made available for—

- (a) the patient a community care service which it decided under section 4(2)(b) of the Act to make available to him;
- (b) the patient’s carer a service which it decided under section 4(3)(b) of the Act to make available to the carer.

Minimum interval

6. The period prescribed as the minimum interval for the purposes of section 5(6)(b) of the Act is two days⁽⁹⁾.

Delayed discharge payment

7. The amount of payment prescribed for the purposes of section 6(2) of the Act is, for each day of the delayed discharge period—

- (a) for higher rate authorities, £120; and
- (b) for lower rate authorities, £100.

Days exempt from liability

8.—(1) The day after the relevant day⁽¹⁰⁾ shall not be treated as a day of the delayed discharge period⁽¹¹⁾ if by 11am on that day the responsible authority is ready to provide the services which it decided it would provide under section 4(2)(b) and 4(3)(b) of the Act.

(2) If the day after the relevant day is a Sunday or a public holiday it shall not be treated as a day of the delayed discharge period and the following day (excluding Sundays and public holidays) shall be treated as the day after the relevant day.

(3) Any day on which the patient suffers what the responsible NHS body considers to be a short-term deterioration, so that he is not fit for discharge on the relevant day, shall not be treated as a day of the delayed discharge period.

⁽⁹⁾ See also section 5(8) of the Act.

⁽¹⁰⁾ See section 5(6) of the Act.

⁽¹¹⁾ See section 6(4) of the Act.

Days on which liability ends

9. The delayed discharge period shall end on any day on which any of the following circumstances occur—

- (a) the death of the patient;
- (b) the patient arranges his own care or other care is arranged for him so that he no longer requires community care services;
- (c) the patient discharges himself;
- (d) the patient needs to remain in hospital for a further course of treatment.

Deemed time of notices

10.—(1) Subject to paragraph (3), any notice given under section 2 of the Act which is given—

- (a) on a Sunday;
- (b) on a public holiday; or
- (c) after 2pm on any other day;

shall be treated as having been given on the following day.

(2) Subject to paragraph (3), any notice given under section 5(3) of the Act which is given—

- (a) after 2pm on a Friday;
- (b) on a Sunday;
- (c) on a public holiday; or
- (d) after 5pm on any other day,

shall be treated as having been given on the following day.

(3) If a notice would, by virtue of paragraphs (1) or (2), be treated as having been given on a Sunday or a public holiday, the notice shall instead be treated as having been given on the following day (excluding Sundays and public holidays).

Deemed day of discharge

11. Where—

- (a) a patient is discharged before 11am; or
- (b) the responsible authority is able before 11am to provide those services which it decided it would provide under section 4(2)(b) or 4(3)(b) of the Act

the patient shall be treated as having been discharged on the previous day.

Lists of Persons

12.—(1) Each Strategic Health Authority shall keep—

- (a) a list of representatives of health service bodies;
- (b) a list of representatives of social services authorities; and
- (c) a list of persons independent of both health service bodies and social services authorities

who are in that Authority's opinion, suitable to be appointed to panels to assist in the resolution of disputes between two or more public authorities about matters arising under or in relation to Part 1 of the Act(12).

(12) See section 9(1) and (2) of the Act and, for the definition of public authority, section 9(6) of the Act.

- (2) In paragraph (1)(a), a person is a representative of a health service body if he is—
- (a) an employee of;
 - (b) an officer of;
 - (c) a member or a director of; or
 - (d) a person providing services (pursuant to a contractual or other arrangement) to,
- a health service body.
- (3) In paragraph (1)(b), a person is a representative of a social services authority if he is—
- (a) an employee of;
 - (b) an officer of;
 - (c) a member of; or
 - (d) a person providing services (pursuant to a contractual or other arrangement) to,
- a local authority.
- (4) In paragraph 1(c), a person is independent of both health service bodies and social services authorities if he is not a representative of a health service body or a social services authority.

Inclusion on and removal of a person's name from a list

13.—(1) A Strategic Health Authority shall not include a person on any of the lists to be kept under regulation 12(1) unless each social services authority any part of whose area is situated in that Strategic Health Authority's area has been consulted about that person's inclusion.

(2) A person shall be included on a list kept under regulation 12(1) for such period, not exceeding 3 years, as the Strategic Health Authority may specify when including him on the list and shall be eligible to be included in the list again at the end of that period.

(3) Any person who is included on a list may give notice in writing to the Chief Executive of the Strategic Health Authority that he wishes to be removed from the list and that Authority shall forthwith remove that person from the list.

(4) Where a Strategic Health Authority is of the opinion that a person included on a list is no longer suitable to be included on a list, the Authority may remove him from the list and if it does so, shall forthwith notify him in writing of his removal and the reason for the removal.

Application for assistance with the resolution of a dispute

- 14.**—(1) Subject to paragraph (3), where—
- (a) a dispute arises between two or more public authorities about matters arising under or in relation to Part 1 of the Act; and
 - (b) the public authorities concerned have not been able to resolve the dispute informally,
- any of those public authorities may apply in writing to the Strategic Health Authority in whose area it is situated for the appointment of a panel in accordance with regulation 15.
- (2) In paragraph (1) a public authority is situated in a Strategic Health Authority's area if—
- (a) in the case of a National Health Service trust, all or most of the hospitals, establishments and facilities managed by that trust are situated in the area of the Strategic Health Authority;
 - (b) in the case of a Primary Care Trust, all or most of that Trust's area is situated within the area of the Strategic Health Authority;
 - (c) in the case of a social services authority, all or most of that social services authority's area is situated within the area of the Strategic Health Authority.

(3) Where a dispute arises involving two or more public authorities and at least one of those authorities is situated in a different Strategic Health Authority's area than the other or others, the Strategic Health Authority in whose area the responsible NHS body is situated shall be the Strategic Health Authority to which the public authorities shall apply for the appointment of a panel under paragraph (1).

(4) Paragraph (1) does not apply to any dispute about the ordinary residence of a person who is or is expected to become a qualifying hospital patient.

Appointment of a panel to assist with the resolution of a dispute

15.—(1) Within 7 days of the receipt of an application under regulation 14(1), the Strategic Health Authority shall appoint a panel in accordance with paragraph (2).

(2) The panel appointed shall consist of—

- (a) a chairman appointed from the list established under regulation 12(1)(c);
- (b) one person from each of the lists of persons established under regulation 12(1)(a) and (b) who is not—
 - (i) an employee of;
 - (ii) an officer of;
 - (iii) a member or director of;
 - (iv) a person providing services (pursuant to a contractual or other arrangement) to any of the public authorities involved in the dispute.

(3) The Strategic Health Authority shall pay to persons appointed to a panel such expenses as appear to it to be reasonable.

Procedure of the panel

16.—(1) Following his appointment under regulation 15(2)(a), the chairman shall, as soon as reasonably practicable, notify the public authorities concerned in writing of—

- (a) his appointment and the persons appointed under regulation 15(2)(b);
- (b) whether the panel require written representations and the time in which they should be submitted; and
- (c) the date of any hearing to be held by the panel at which oral representations could be made.

(2) The panel, following consideration of any representations submitted or made, may make such recommendations as it considers appropriate to resolve the dispute, and shall inform the public authorities concerned of those recommendations.

(3) Unless it is not reasonably practicable to do so the panel shall make its recommendations within 28 days of its being appointed.

(4) The recommendations made by the panel under paragraph (2) may include the payment of monies by one public authority to another, but any such payment shall not include any amount representing the costs incurred by the public authorities in relation to the application to the Strategic Health Authority under regulation 14 and the proceedings before the panel.

Legal Proceedings

17. Any public authority involved in a dispute arising under or in relation to Part 1 of the Act shall not bring legal proceedings in relation to that dispute until a panel appointed under regulation 15 has made a recommendation in relation to the dispute.

Ordinary residence

18.—(1) Subject to paragraph (2), in a case where a social services authority has been given a notice under section 2 of the Act, that authority shall be required to undertake the duties in section 4 of the Act and, on or after 5th January 2004, be liable for any payment under section 6 of the Act, notwithstanding that it disputes that the patient is ordinarily resident in its area.

(2) In a case where it becomes clear prior to the patient's discharge, for any of the reasons set out in paragraph (3), that the responsible NHS body gave a notice under section 2 of the Act to a social services authority in which the patient was not ordinarily resident ("the wrong authority"), then the social services authority in which the patient was ordinarily resident ("the correct authority") shall become the responsible authority and shall become responsible for the duties and liabilities accordingly.

(3) The reasons referred to in paragraph (2) are that—

- (a) a determination is made under section 8 of the Act that the current responsible authority is the wrong authority and that another social services authority is the correct authority; or
- (b) another social services authority agrees that it is the correct authority, and takes over the duties of the responsible authority.

(4) In a case where a social services authority is identified as the wrong authority in relation to a patient, it shall be entitled to claim reimbursement from the correct authority for any costs it (the wrong authority) incurred in—

- (a) making payments under section 6 of the Act; or
- (b) providing services to the patient or the carer following the patient's discharge.

Signed by authority of the Secretary of State for Health

4th September 2003

Stephen Ladyman
Parliamentary Under Secretary of State,
Department of Health

SCHEDULE

Regulation 2

HIGHER RATE AUTHORITIES

Barking and Dagenham
Barnet
Bedfordshire
Bexley
Bracknell Forest
Brent
Bromley
Buckinghamshire
Camden
City of London
Croydon
Ealing
Enfield
Greenwich
Hackney
Hammersmith and Fulham
Haringey
Harrow
Havering
Hertfordshire
Hillingdon
Hounslow
Islington
Kensington and Chelsea
Kingston upon Thames
Lambeth
Lewisham
Luton
Merton
Milton Keynes
Newham
Oxfordshire
Reading
Redbridge
Richmond upon Thames
Slough
Southwark

Surrey
Sutton
Thurrock
Tower Hamlets
Waltham Forest
Wandsworth
West Berkshire
West Sussex
Westminster
Windsor and Maidenhead
Wokingham

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations make provision for the details of the delayed discharges scheme under the Community Care (Delayed Discharges etc.) Act 2003. The Act deals with how the NHS and local authorities must deal with patients whose discharge from hospital is delayed. The Act makes provision for co-operative working in order to avoid delayed discharges, and requires local authorities to reimburse the relevant NHS body where a patient's discharge has been delayed due to a failure of the local social services authority.

Regulation 3 prescribes the type of care which a patient must be receiving in order to come within the provisions of the Act.

Regulation 4 sets out details of the notice which the relevant NHS body must give to the local social services authority to inform it that there is a patient who is likely to need community care services upon discharge, and Regulation 5 sets out details of the notice which the relevant NHS body must give as to the proposed discharge date.

Regulation 6 prescribes the minimum period that the local authority must have to assess the patient's need for community care services and decide what services it will provide, and regulation 7 prescribes the daily amount the local authority must pay to the relevant NHS body as reimbursement for the cost of the patient's care if the local authority have not assessed the patient and put in place services within the time frame set out in the Act.

Regulation 8 provides for circumstances in which days will not count as part of the delayed discharge period, for which the local authority is liable to make a reimbursement payment, and regulation 9 provides for circumstances in which the delayed discharge period will come to an end.

Regulation 10 makes provision as to what is to be regarded as the day on which a notice given by the relevant NHS body is given, and regulation 11 makes provision as to what is to be regarded as the discharge day.

Regulation 12 requires Strategic Health Authorities to keep lists of persons from which panels can be appointed to assist in the resolution of disputes between public authorities arising under or in relation

to Part 1 of the Act. Regulation 13 makes provision for the inclusion and removal of a person's name from the lists. Regulation 14 provides for public authorities to make an application for assistance with resolving a dispute. Regulation 15 provides for the appointment of a panel to assist with the resolution of a dispute. Regulation 16 makes provision for the procedure to be applied to the panels and for the panel to make recommendations for resolution of the dispute. Regulation 17 provides that a public authority cannot bring legal proceedings in relation to a dispute arising under or in relation to Part 1 of the Act until a panel has made recommendations.

Regulation 18 concerns the ordinary residence of the patient, and details which local authority is under a duty to act in relation to a patient, depending on the patient's ordinary residence. It also allows a local authority who has wrongly acted in relation to a patient to claim reimbursement from the correct local authority.