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STATUTORY INSTRUMENTS

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**2003 No. 26**

The National Health Service (Out of Hours Provision of Personal Medical Services and Miscellaneous Amendments) (England) Regulations 2003

**PART I**

**OUT OF HOURS PROVISION OF PERSONAL MEDICAL SERVICES**

**Interpretation**

2.—(1) In this Part—

“accredited service provider” has the same meaning as in the Out of Hours Regulations;

“normal hours” means the period encompassing the days and times of the day specified in a pilot scheme agreement as being the days on which, and the times at which, a doctor will normally be available to perform personal medical services;

“out of hours arrangement” shall be construed in accordance with regulation 3(1);

“out of hours period” means any period which does not fall within the normal hours;

“Out of Hours Regulations” means the National Health Service (Out of Hours Medical Services) and National Health Service (General Medical Services) Amendment Regulations 2002(1);

“pilot area” means the area specified in a pilot scheme agreement as the area in which piloted services are to be provided;

“pilot scheme” means any agreement under section 1(1) of the National Health Service (Primary Care) Act 1997(2) (pilot schemes) other than a scheme under which personal dental services are provided;

“pilot scheme agreement” means an agreement which constitutes, or is one of the agreements which together constitute, a pilot scheme;

“piloted services” means services provided in accordance with a pilot scheme;

“relevant body” means—

- (a) in the case where a pilot scheme provider is a party to a pilot scheme agreement with a Strategic Health Authority, that Strategic Health Authority; or
- (b) in the case where a pilot scheme provider is a party to a pilot scheme agreement with a Primary Care Trust, that Primary Care Trust.

(2) In this Part, subject to paragraph (3), “pilot scheme provider” means a person, other than a Primary Care Trust or a Strategic Health Authority, who is a party to a pilot scheme agreement.

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(1) S.I. 2002/2548.

(2) 1997 c. 46.

(3) Where a Primary Care Trust is providing services under a pilot scheme agreement, “pilot scheme provider” means that Primary Care Trust.

### **Out of hours arrangements**

**3.—(1)** A pilot scheme provider may, with the approval of the relevant body, make an arrangement under which any of its liabilities and obligations under a pilot scheme are transferred to an accredited service provider during part or all of the out of hours period (“an out of hours arrangement”).

(2) An out of hours arrangement shall—

- (a) terminate if the approval of the accredited service provider is withdrawn under regulation 8 of the Out of Hours Regulations (withdrawal of accreditation); or
- (b) be suspended if the approval of the accredited service provider is suspended under regulation 9 of the Out of Hours Regulations (suspension of approval),

and in these circumstances, the provisions of regulations 5 and 6 below shall not apply.

(3) A pilot scheme provider may—

- (a) make more than one out of hours arrangement, for example with different accredited service providers and in respect of different patients, different times and different parts of the pilot area;
- (b) retain responsibility for, or make separate out of hours arrangements in respect of, the provision of maternity medical services, and any separate out of hours arrangements it makes may encompass all or any part of the maternity medical services it provides.

(4) Nothing in this regulation prevents a pilot scheme provider from retaining or resuming its obligations in relation to named patients.

### **Form of applications for approval of out of hours arrangements and determinations of applications**

**4.—(1)** An application for approval of an out of hours arrangement shall be made by the pilot scheme provider in writing to the relevant body and shall state—

- (a) the name and address of the accredited service provider;
- (b) the periods during which the pilot scheme provider’s liabilities and obligations under the pilot scheme are to be transferred to the accredited service provider;
- (c) how it is proposed that the accredited service provider will meet the pilot scheme provider’s liabilities and obligations during the periods specified under sub-paragraph (b);
- (d) the arrangements for the transfer of the pilot scheme provider’s liabilities and obligations to and from the accredited service provider at the beginning and end of the periods specified under sub-paragraph (b);
- (e) whether the proposed out of hours arrangement includes the pilot scheme provider’s liabilities and obligations in respect of maternity medical services, and if so, details of any doctor who will perform maternity medical services during the periods specified under sub-paragraph (b);
- (f) how long the proposed out of hours arrangement is intended to last and the circumstances in which the pilot scheme provider’s liabilities and obligations during the periods specified under sub-paragraph (b) would revert to it; and
- (g) what arrangements are proposed to enable patients in respect of whom piloted services are provided to contact the accredited service provider.

(2) The relevant body shall determine the application before the end of the period of 28 days beginning with the day on which the relevant body received it.

(3) The relevant body shall approve a proposed out of hours arrangement if it is satisfied—

- (a) having regard to the overall provision of out of hours services in its area, that the arrangement is reasonable and will contribute to the efficient provision of such services in the area;
- (b) having regard to the interests of the patients in respect of whom piloted services are provided, that the arrangement is reasonable;
- (c) having regard to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;
- (d) that the area covered by the proposed out of hours arrangement is within the specified geographical area in respect of which the accredited service provider is approved under regulation 5 of the Out of Hours Regulations (approval);
- (e) that it will be clear to the patients in respect of whom piloted services are provided how to seek personal medical services outside normal hours;
- (f) where maternity medical services are to be provided under the out of hours arrangement, that they will be performed by a doctor who has such medical experience and training as are necessary to enable the doctor properly to perform such services; and
- (g) that if the out of hours arrangement comes to an end, the pilot scheme provider has in place proper arrangements for the immediate resumption of its responsibilities.

(4) The relevant body shall inform the pilot scheme provider of its determination as to whether or not to approve the application by a notice in writing, and where it refuses an application, it shall—

- (a) include in the notice a statement of the reasons for its determination; and
- (b) inform the pilot scheme provider of its right of appeal under paragraph (5).

(5) A pilot scheme provider may, before the end of the period of 30 days beginning with the day on which the notice referred to in paragraph (4) was sent, appeal in writing to the Secretary of State against any refusal of an application under this regulation.

(6) The Secretary of State may, when determining an appeal, either confirm the determination of the relevant body or substitute his own determination for that of the relevant body.

(7) The Secretary of State shall inform the pilot scheme provider of his determination of the appeal by a notice in writing, and shall include in the notice a written statement of the reasons for the determination.

### **Review of, and withdrawal of approval of, out of hours arrangements by the relevant body**

5.—(1) Subject to regulation 6, where, in respect of any out of hours arrangement with a pilot scheme provider, it appears to a relevant body that it may no longer be satisfied as to one or more of the matters referred to in regulation 4(3), it may inform the pilot scheme provider by a notice in writing that it proposes to review its approval of the arrangement, and in that notice it shall—

- (a) explain why it appears to the relevant body that it may no longer be satisfied as to one or more of the matters referred to in regulation 4(3); and
- (b) inform the pilot scheme provider that it may, within 30 days of the date of the notice, make representations in writing to the relevant body addressing the concerns raised in the notice.

(2) After considering any representations made in accordance with paragraph (1)(b), the relevant body may determine either to allow the arrangement to continue or to withdraw its approval.

(3) The relevant body shall give notice to the pilot scheme provider of its determination and, where it withdraws approval, it shall—

- (a) include with the notice a statement in writing of the reasons for its determination; and
  - (b) inform the pilot scheme provider of its right of appeal under paragraph (4).
- (4) A pilot scheme provider may, before the end of the period of 30 days beginning with the day on which the notice referred to in paragraph (3) was sent, appeal in writing to the Secretary of State against the withdrawal of approval under this regulation, and if it does so, the Secretary of State—
- (a) may, when determining the appeal, either confirm the determination of the relevant body or substitute his own determination for that of the relevant body; and
  - (b) shall inform the pilot scheme provider of his determination of the appeal by a notice in writing, and shall include in the notice a written statement of the reasons for the determination.
- (5) Where the relevant body withdraws approval, the withdrawal shall take effect—
- (a) at the end of the period of two months beginning with the date on which the notice referred to in paragraph (3) was sent; or
  - (b) where there is an appeal and the appeal is dismissed, the date on which the pilot scheme provider receives notice from the Secretary of State under paragraph (4)(b) that the appeal has been dismissed,

whichever is the later.

#### **Withdrawal of approval of out of hours arrangements with immediate effect**

6.—(1) Where, in respect of any out of hours arrangement with a pilot scheme provider, it appears to a relevant body that it is necessary in the interests of the patients in respect of whom piloted services are provided under the arrangement to withdraw its approval of that arrangement with immediate effect, it may withdraw its approval of that arrangement with immediate effect, and in these circumstances it shall inform the pilot scheme provider by a notice in writing—

- (a) that it is withdrawing its approval with immediate effect, giving the reasons for that determination; and
- (b) of the pilot scheme provider's right of appeal under paragraph (2).

(2) A pilot scheme provider may, before the end of the period of 30 days beginning with the day on which the notice referred to in paragraph (1) was sent, appeal in writing to the Secretary of State against the withdrawal of approval with immediate effect under this regulation, and if it does so, the Secretary of State—

- (a) may, when determining the appeal either confirm the determination of the relevant body or substitute his own determination for that of the relevant body; and
- (b) shall inform the pilot scheme provider of his determination of the appeal by a notice in writing, and shall include in the notice a written statement of the reasons for the determination.