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STATUTORY INSTRUMENTS

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**2004 No. 627**

**The National Health Service (Personal Medical Services Agreements) Regulations 2004**

**PART 5**

**AGREEMENTS: REQUIRED TERMS**

**Health service contract**

**10.** If the contractor is to be regarded as a health service body, the agreement must state that the agreement is an NHS contract.

**Agreements: general**

**11.**—(1) An agreement must specify—

- (a) the services to be provided;
- (b) subject to paragraph (2), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services;
- (c) to whom such services are to be provided;
- (d) where the agreement requires the contractor to provide essential services, the area as respects which persons resident in it will, subject to any other terms of the agreement relating to patient registration, be entitled to—
  - (i) register with the contractor, or
  - (ii) seek acceptance by the contractor as a temporary resident; and
- (e) subject to paragraph (4), where the agreement requires the contractor to provide essential services, whether, at the date on which the agreement comes into force, the contractor's list of patients is open or closed.

(2) The premises referred to in paragraph (1)(b) do not include—

- (a) the homes of patients; or
- (b) any other premises where services are provided on an emergency basis.

(3) Where, in accordance with paragraph (1)(e), the agreement specifies that the contractor's list of patients is closed, it must also specify in relation to that closure each of the items listed in paragraph 28(8)(a) to (d) of Schedule 5.

(4) Where the contractor is a Primary Care Trust, the agreement must specify that its list of patients is open.

**Certificates**

**12.**—(1) An agreement which requires the contractor to provide essential services must contain a term which has the effect of requiring the contractor to issue free of charge to a patient or his personal

representatives any medical certificate of a description prescribed in column 1 of Schedule 2, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that Schedule, except where, for the condition to which the certificate relates, the patient—

- (a) is being attended by a medical practitioner who is not—
  - (i) employed or engaged by the contractor,
  - (ii) a party to the agreement, or
  - (iii) a shareholder in a qualifying body which is a party to the agreement; or
- (b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations 1976 (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor)(1).

## Finance

**13.**—(1) Subject to paragraph (2), the agreement must contain a term which has the effect of requiring the relevant body to make payments to the contractor under the agreement promptly and in accordance with both the terms of the agreement and any other terms based on which the payment is made and any other conditions relating to the payment contained in directions given by the Secretary of State under section 17 (Secretary of State's directions: exercise of functions) or 28E(3A) of the Act(2).

(2) The obligation referred to in paragraph (1) is subject to any right the relevant body may have to set off against any amount payable to the contractor under the agreement any amount—

- (a) that is owed by the contractor to the relevant body under the agreement; or
- (b) that the relevant body may withhold from the contractor in accordance with the terms of the agreement or any other applicable provisions contained in directions given by the Secretary of State under section 17 or 28E(3A).

**14.** The agreement must contain a term to the effect that where, pursuant to directions under section 17 or 28E(3A), a relevant body is required to make a payment to a contractor under an agreement but subject to conditions, those conditions are to be a term of the agreement.

## Fees and charges

**15.**—(1) The agreement must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor shall not, either itself or through any other person, demand or accept from any patient of its a fee or other remuneration, for its own or another's benefit, for—

- (a) the provision of any treatment whether under the agreement or otherwise; or
- (b) any prescription or repeatable prescription for any drug or appliance,

except in the circumstances set out in Schedule 3.

(3) Where a person applies to a contractor for the provision of services and claims to be entitled to be treated by the contractor without paying a fee or other remuneration, and the contractor has reasonable doubts about that person's claim, the contractor shall give any necessary treatment and

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(1) [S.I. 1976/615](#). Regulation 2 was amended by [S.I. 1982/699](#), [1992/647](#), [1994/2975](#), [1995/987](#) and [2000/950](#).

(2) Section 17 was amended by the 2001 Act, section 67(1) and Schedule 5, paragraph 5(1) and (3) and the 2002 Act, section 1(3) and Schedule 1, paragraph 7 and section 28E(3A) was inserted by section 177(8) of the 2003 Act.

shall be entitled to demand and accept a reasonable fee accordingly in accordance with paragraph (e) of Schedule 3, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under paragraph (e) of Schedule 3 applies to the relevant body for a refund within 14 days of payment of the fee (or such longer period not exceeding a month as the relevant body may allow if it is satisfied that the failure to apply within 14 days was reasonable) and the relevant body is satisfied that the person was entitled to be treated by the contractor without paying a fee or other remuneration when the treatment was given, the relevant body may recover the amount of the fee from the contractor, by set off or otherwise, and shall pay that amount to the person who paid the fee.

### **Opt outs of out of hours services**

**16.**—(1) Where—

- (a) an agreement which is made before 1st October 2004 with a contractor (other than a Primary Care Trust) requires the contractor to provide out of hours services pursuant to regulation 20; and
- (b) the contractor has contracted to provide out of hours services only to patients which it is required to provide essential services to under the agreement,

the agreement must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 1 to 3 of Schedule 4 except paragraph 1(15) to (17) and paragraph 2(17) in so far as that sub-paragraph relates to paragraph 1(15) to (17).

(2) Where—

- (a) an agreement which is made on or after 1st October 2004 with a contractor (other than a Primary Care Trust) requires the contractor to provide out of hours services pursuant to regulation 20; and
- (b) the contractor has contracted to provide out of hours services only to patients which it is required to provide essential services to under the agreement,

the agreement must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 1 and 3 of Schedule 4 except paragraph 1(15) to (17) of that Schedule.

(3) Paragraph 1(15) to (17) and paragraph 2(17) in so far as that sub-paragraph relates to paragraph 1(15) to (17) of Schedule 4 shall have effect in relation to the matters set out in those paragraphs.

### **Consequences of termination**

**17.** An agreement shall make suitable provision for arrangements on termination of an agreement, including the consequences (whether financial or otherwise) of the agreement ending, subject to any specific requirements in these Regulations.

### **Other contractual terms**

**18.**—(1) An agreement must, unless it is of a type or nature to which the particular term does not apply, contain other terms which have, or make provision having, the same effect as those specified in Schedule 5 except paragraphs 30(6) to (8), 34(5) to (9), 35(5) to (17), 95(5) to (14) and 96.

(2) Paragraphs 30(6) to (8), 34(5) to (9), 35(5) to (17), 95(5) to (14) and 96 shall have effect in relation to the matters set out in those paragraphs.