
STATUTORY INSTRUMENTS

2005 No. 3373

The National Health Service (Personal Dental Services Agreements) Regulations 2005

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Personal Dental Services Agreements) Regulations 2005 and shall come into force on 1st January 2006.

(2) These Regulations apply in relation to England only⁽¹⁾.

Interpretation

2.—(1) In these Regulations—

“the Act” means the National Health Service Act 1977;

“the 1990 Act” means the National Health Service and Community Care Act 1990;

“additional services” means one or more of—

- (a) advanced mandatory services;
- (b) dental public health services;
- (c) domiciliary services;
- (d) orthodontic services; and
- (e) sedation services;

“adjudicator” means the Secretary of State or a person or persons appointed by the Secretary of State under section 4(5) of the 1990 Act (NHS contracts) or paragraph 55(4) of Schedule 3 (NHS dispute resolution procedure);

“advanced mandatory services” means any primary dental service that would fall within the services described in regulation 14 of the GDS Contracts Regulations, but by virtue of the high level of facilities, experience or expertise required in respect of a particular patient, is provided as a referral service;

“agreement” means, except where the context otherwise requires, an agreement for primary dental services made under section 28C of the Act;

“Band 1 course of treatment” means a course of treatment, including a course of treatment consisting of urgent treatment, provided to a patient in respect of which a Band 1 NHS Charge

⁽¹⁾ As regards Wales, the functions of the Secretary of State under sections 28D, 28E and 126(4) of the Act and section 4 of the 1990 Act were transferred to Wales under *S.I. 1999/672*, article 2 and Schedule 1, as amended by the 1999 Act, section 66(5) and as read with section 40(1) of the 2002 Act and section 197(1) of the 2003 Act.

is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“Band 2 course of treatment” means a course of treatment provided to a patient in respect of which a Band 2 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“Band 3 course of treatment” means a course of treatment provided to a patient in respect of which a Band 3 NHS Charge is payable pursuant to the NHS Charges Regulations, or would be payable if the patient was not an exempt person;

“banded course of treatment” means a Band 1, Band 2 or Band 3 course of treatment;

“bank holiday” means any day that is specified or proclaimed as a bank holiday in England pursuant to section 1 of the Banking and Financial Dealings Act 1971(2);

“bridge” means a fixed or removable bridge which takes the place of any teeth;

“case assessment”, in respect of an orthodontic course of treatment, means a clinical examination of the patient, including the taking of such radiographs, colour photographs and models as are required in order to determine what orthodontic treatment (if any) is to be provided to the patient;

“charge exempt course of treatment” means a course of treatment that involves the examination and assessment of a patient leading to—

- (a) the issue of a prescription;
- (b) the repair of a dental appliance;
- (c) the arrest of bleeding; or
- (d) the removal of sutures,

which, by virtue of regulation 3(2)(d) or (e) of the NHS Charges Regulations, is provided free of charge to the patient;

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“child” means a person who has not attained the age of 16 years;

“complete”, in relation to—

- (a) a course of treatment, means that—
 - (i) where no treatment plan has to be provided in respect of a course of treatment pursuant to paragraph 8(5) of Schedule 3 (treatment plans), all the treatment recommended to, and agreed with, the patient by the contractor at the initial examination and assessment of that patient has been provided to the patient; or
 - (ii) where a treatment plan has to be provided to the patient pursuant to paragraph 8(1) of Schedule 3, all the treatment specified on that plan by the contractor (or that plan as revised in accordance with paragraph 8(3) of that Schedule) has been provided to the patient; and
- (b) an orthodontic course of treatment, means that—
 - (i) where the contractor determines in accordance with paragraph 4 of Schedule 1 (patients to whom orthodontic treatment may be provided) that no orthodontic treatment should be provided following the case assessment, the completion of the case assessment; or
 - (ii) where the contractor has determined that orthodontic treatment should be provided following the case assessment, all of the orthodontic treatment specified on the

orthodontic treatment plan by the contractor pursuant to paragraph 6 of Schedule 1 (orthodontic treatment plans) (or that plan as revised in accordance with paragraph 6(3) of that Schedule) has been provided to the patient,

and “completed” shall be construed accordingly;

“contractor” means, except where the context otherwise requires—

- (a) where a Primary Care Trust is not providing services under the agreement, a person or persons other than a Primary Care Trust, who is a party, or are parties, to the agreement; or
- (b) where a Primary Care Trust is providing services under the agreement, that Primary Care Trust and any other person or persons (other than a Strategic Health Authority) who is a party, or are parties, to the agreement;

“course of treatment” means—

- (a) an examination of a patient, an assessment of his oral health, and the planning of any treatment to be provided to that patient as a result of that examination and assessment; and
- (b) the provision of any planned treatment (including any treatment planned at a time other than the time of the initial examination) to that patient,

provided by, except where expressly provided otherwise, one or more providers of primary dental services, but it does not include the provision of any orthodontic services or dental public health services;

“dental appliance” means a denture or bridge and for the purposes of this definition, a denture includes an obturator;

“dental care professional” means a person whose name is included in the register of dental care professionals or on the appropriate roll for dental auxiliaries established in accordance with Part II of the Dental Auxiliaries Regulations 1986(3);

“dental performers list” means a list of dental practitioners prepared in accordance with regulations made under section 28X of the Act(4) (persons performing primary medical and dental services);

“dental public health services” means services provided by the contractor by virtue of section 16CB(4)(c) of the Act(5) (dental public health);

“Dentists Act” means the Dentists Act 1984(6);

“Dentists Act Order” means the Dentists Act 1984 (Amendment) Order 2005(7);

“Dentists Register” means the register maintained by the General Dental Council pursuant to section 14 of the Dentists Act(8) (the dentists register and the registrar);

“domiciliary services” means a course of treatment, or part of a course of treatment, provided at a location other than—

- (a) the practice premises of any provider of primary dental services;
- (b) a mobile surgery of any provider of primary dental services; or
- (c) a prison;

(3) S.I. 1986/887; relevant amending instrument is S.I. 2002/1671.

(4) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.

(5) Section 16CB was inserted into the Act by section 171(1) of the 2003 Act.

(6) 1984 (c. 24) amended by section 41(1) of, and Schedule 2 paragraph 62 to, the 1997 Act, sections 31 and 37 of, and Schedule 9 to, the 2002 Act, section 187 of, and Schedule 12 to, the 2003 Act and S.I. 1987/2047, 1991/1705, 1996/1496, 1998/811 and 2840, 2001/3926, 2002/3135, 2003/833, 2004/1947 and 2005/2011.

(7) S.I. 2005/2011.

(8) Section 14 of the Dentists Act 1984 is prospectively substituted by the Dentists Act Order, article 6.

“exempt person” means a person who is, by virtue of either Schedule 12ZA to the Act⁽⁹⁾ (dental charging: exemptions) or the NHS Charges Regulations, exempt from the need to pay an NHS Charge in respect of the services he has received under the agreement;

“family member” means—

- (a) a spouse;
- (b) a civil partner;
- (c) a person whose relationship with the registered patient has the characteristics of the relationship between husband and wife, or civil partners;
- (d) a parent or step-parent;
- (e) a son;
- (f) a daughter;
- (g) a child of whom the person is—
 - (i) the guardian; or
 - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children Act 1989⁽¹⁰⁾; or
- (h) a grandparent;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the Act⁽¹¹⁾ (the Family Health Services Appeal Authority);

“financial year” means the period of 12 months ending with 31st March in any year;

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005⁽¹²⁾;

“health care professional” has the same meaning as in section 28M of the Act⁽¹³⁾ (persons eligible to enter into GDS contracts) and “health care profession” shall be construed accordingly;

“health service body” has, unless the context otherwise requires, the meaning given to it in section 4(2) of the 1990 Act⁽¹⁴⁾ (NHS contracts);

“licensing body” means any body that licenses or regulates any profession;

“listed”, in relation to drugs, medicines or appliances, means such drugs, medicines or appliances as are included in a list for the time being approved by the Secretary of State for the purposes of section 41(1)(c) of the Act⁽¹⁵⁾ (arrangements for pharmaceutical services);

“mandatory services” means the services described in regulation 14 of the GDS Contracts Regulations;

“mobile surgery”, except where expressly provided otherwise in these Regulations, means any vehicle in which services under the agreement are to be provided;

“national disqualification” means—

(9) Schedule 12ZA was inserted into the Act by section 183(2) of the 2003 Act.

(10) 1989 c. 41.

(11) Section 49S was inserted into the Act by section 27(1) of the 2001 Act.

(12) S.I. 2005/ .

(13) Section 28M was inserted into the Act by section 172(1) of the 2003 Act.

(14) Section 4(2) was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 68, the Health Act 1999 (c. 8), Schedule 4, paragraph 76(a) and Schedule 5, the 2002 Act, Schedule 1, paragraph 40 and Schedule 5, paragraph 31.

(15) Section 41 of the Act was substituted by the 2001 Act, section 42(1) and amended by the 2002 Act, section 2(5) and Schedule 3, paragraphs 1 and 13, by the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 18(1), (2) and (3) and by S.I. 2003/1590, article 3 and the Schedule, paragraph 3.

- (a) a decision made by the FHSAA under section 49N or under regulations corresponding to that section made under section 28X(4) of the Act(16) (national disqualifications);
- (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act; or
- (c) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(17) or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(18);

“NHS Charge” means a charge made to the patient for provision of services pursuant to the NHS Charges Regulations;

“NHS Charges Regulations” means the National Health Service (Dental Charges) Regulations 2005(19);

“NHS contract” has the meaning assigned to it in section 4 of the 1990 Act;

“NHS dispute resolution procedure” means the procedure for disputes specified in paragraphs 55 and 56 of Schedule 3;

“NHS Tribunal” means the Tribunal constituted under section 46 of the Act(20) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales only until 26th August 2002(21);

“normal surgery hours” means the times at which the contractor has agreed with the Relevant Body (and specified in the agreement) that the surgery will be open to patients for the provision of services;

“NPSA” means the National Patient Safety Agency established as a Special Health Authority by the National Patient Safety Agency (Establishment and Constitution) Order 2001(22);

“orthodontic appliance” means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

“orthodontic course of treatment” means—

- (a) a case assessment of a patient; and
- (b) the provision of any orthodontic treatment that the contractor determines should be provided to the patient in accordance with Part 2 of Schedule 1 (orthodontic services);

“orthodontic services” means the provision of orthodontic courses of treatment or the services referred to in paragraph 5(2) of Schedule 1 (repairs);

“orthodontic treatment” means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

“parent”, in relation to any child, means a parent or other person who has parental responsibility for that child;

“patient” means, unless the context otherwise requires, a person to whom the contractor is providing services under the agreement;

(16) Section 49N was inserted into the Act by section 25 of the 2001 Act. Section 28X was inserted by section 179 of the 2003 Act.

(17) S.I. 2001/3744 amended by S.I. 2002/2469.

(18) S.I. 2002/1920.

(19) S.I. 2005/.

(20) Section 46 was revoked by the 2001 Act, section 67, Schedule 5, paragraph 5 and Schedule 6, Part 1.

(21) See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

(22) S.I.2001/1743.

“patient record” means a form supplied by a Relevant Body for the purpose of maintaining a record of treatment, and may include an electronic form;

“practice premises”, except where expressly provided otherwise in these Regulations, means an address specified in the agreement as one at which services are to be provided under the agreement but does not include a mobile surgery;

“prescriber” means a dental practitioner who is either engaged or employed by the contractor or is a party to the agreement;

“primary care list” means—

- (a) a list of persons performing primary medical or dental services under section 28X of the Act(23);
- (b) a list of persons undertaking to provide general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under section 39, 42 or 43 of the Act(24);
- (c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) or (d) prepared in accordance with regulations made under section 43D of the Act(25);
- (d) a list of persons who undertook to provide general medical services or general dental services prepared in accordance with regulations made under sections 29 or 35 of the Act(26);
- (e) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997(27);
- (f) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001(28); or
- (g) a list corresponding to any of the above lists in Scotland or Northern Ireland;

“Primary Care Trust” means, except where the context otherwise requires, the Primary Care Trust which is a party, or prospective party, to an agreement;

“prison” includes a young offender institution but not a secure training centre or a naval, military or air force prison, and for the purposes of this definition—

- (a) “secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000(29) (offenders under 18: detention and training orders) may be detained and given training and education and prepared for their release; and

(23) Section 28X was inserted into the Act by section 179(1) of the 2003 Act.

(24) Section 39 is amended by sections 1 and 2 of, paragraph 52 of Schedule 1 to, the Health Services Act 1980 (c. 53); sections 1 and 24 of, Schedule 9 to, the Health and Social Security Act 1984 (c. 48); section 9 of the 1999 Act; section 20 of the 2001 Act; and section 2 of, paragraphs 1 and 12 of Schedule 2 to, the 2002 Act. Section 42 is amended by section 3 of the National Health Service (Amendment) Act 1986 (c. 66); section 2 of, paragraph 30 of Schedule 1 to, the Health Authorities Act 1995 (c. 17); sections 20, 23, 43 and 67 of, Schedule 6 to, the 2001 Act; and section 2 of, paragraphs 1 and 16 of Schedule 2 to, the 2002 Act. Section 43 is amended by section 21 to the Health Services Act 1980; section 66 of, paragraph 18 of Schedule 9 to, the 1990 Act; section 2 of, paragraph 31 of Schedule 1 to, the Health Authorities Act 1995; sections 29 and 41 of, paragraph 14 of Schedule 2 to, the 1997 Act; section 1 of, paragraph 6 of Schedule 1 to, the Pharmacists (Fitness to Practice) Act 1997 (c. 19); section 20 of the 2001 Act; sections 2 and 42 of, paragraphs 1 and 17 of Schedule 2 to, the 2002 Act; and section 184 of, paragraphs 7 and 19 of Schedule 11 to, the 2003 Act.

(25) Section 43D was inserted into the Act by section 24 of the 2001 Act.

(26) Sections 29 and 36 were repealed by sections 175(2) and 196 of, and Schedule 14 Part 4 to, the 2003 Act.

(27) 1997 c. 46. Section 8ZA was inserted into this Act by section 26(2) of the Health and Social Care Act 2001 and repealed by section 196 and Schedule 14 Part 4 to the 2003 Act.

(28) 2001 c. 15.

(29) 2000 c. 6.

(b) “young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to detention in a young offender institution as part of a longer custodial sentence, including custody for life;

“private”, in the context of services or treatment, means otherwise than under the agreement or Part 1 of the Act, and “privately” shall be construed accordingly;

“professional registration number” means the number against a dental practitioner’s name in the Dentists Register;

“referral notice” means the notice referred to in paragraph 10(2)(a) of Schedule 3 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services);

“referral service” means one or more of advanced mandatory services, domiciliary services or sedation services provided by the contractor to a patient who has, during a course of treatment, been referred to the contractor by—

(a) another contractor; or

(b) another provider of primary dental services under Part 1 of the Act,

for the provision of one or more of those services as part of that course of treatment;

“referral treatment plan” means a treatment plan provided pursuant to paragraph 2(1) of Schedule 1 or that plan as varied in accordance with paragraph 2(2) of that Schedule;

“register of dental care professionals” means the register maintained by the General Dental Council under section 36B of the Dentists Act(30) (the dental care professionals register);

“Relevant Body” means—

(a) in a case where a contractor is a party to an agreement with a Primary Care Trust, that Primary Care Trust; and

(b) in a case where a contractor is a party to an agreement with a Strategic Health Authority, that Strategic Health Authority;

“relevant Strategic Health Authority” means the Strategic Health Authority established for an area which includes the area for which the Primary Care Trust is established;

“sedation services” means a course of treatment provided to a patient during which the contractor administers one or more drugs to a patient, which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—

(a) the drugs and techniques used to provide the sedation are deployed by the contractor in a manner that ensures loss of consciousness is rendered unlikely; and

(b) verbal contact with the patient is maintained in so far as is reasonably possible;

“trauma” means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

“unit of dental activity” means the unit of activity which is in the agreement used to—

(a) express the amount of; and

(b) measure in accordance with Part 1 of Schedule 2 the provision of, mandatory services and advanced mandatory services provided under the agreement;

“unit of orthodontic activity” means the unit of activity which is in the agreement used to—

(a) express the amount of; and

(30) Section 36B is prospectively inserted into the Dentists Act 1984 by article 29 of the Dentists Act Order.

(b) measure in accordance with Part 2 of Schedule 2 the provision of, orthodontic services provided under the agreement;

“urgent treatment” means a course of treatment that consists of one or more of the treatments listed in Schedule 4 to the NHS Charges Regulations (urgent treatment under Band 1 charge) that are provided to a person in circumstances where—

- (a) a prompt course of treatment is provided because, in the opinion of the contractor, that person’s oral health is likely to deteriorate significantly, or the person is in severe pain by reason of his oral condition; and
- (b) treatment is provided only to the extent that is necessary to prevent that significant deterioration or address that severe pain; and

“working day” means any day apart from Saturday, Sunday, Christmas Day, Good Friday or a bank holiday.

(2) In these Regulations—

- (a) the use of the term it in relation to the contractor shall be deemed to include a reference to a contractor that is an individual dental practitioner or two or more persons contracting together to provide services under an agreement and related expressions shall be construed accordingly; and
- (b) references to forms supplied by the Primary Care Trust to contractors includes electronic forms and forms which are generated electronically, but does not include prescription forms.