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STATUTORY INSTRUMENTS

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**2012 No. 2996**

The National Health Service Commissioning  
Board and Clinical Commissioning Groups  
(Responsibilities and Standing Rules) Regulations 2012

PART 8

Standing rules: choice of health service provider

**Interpretation**

**38.** In this Part—

“elective referral” means referral by a general medical practitioner, general dental practitioner or optometrist to a health service provider for treatment that is not identified as being immediately required at the time of referral;

“Choice Directions” means the Primary Care Trusts (Choice of Secondary Care Provider) Directions 2009 which came into force on 1st April 2009<sup>(1)</sup>;

“prison” includes any other institution to which prison rules made under section 47 of the Prison Act 1952<sup>(2)</sup> apply.

**Duty to ensure persons are offered a choice of health service provider**

**39.**—(1) A relevant body must make arrangements to ensure that a person—

- (a) who requires an elective referral; and
- (b) for whom that body has responsibility,

is given the choices specified in paragraph (2).

(2) Subject to regulations 40 and 41, the choices specified for the purposes of this paragraph are the choice, in respect of a first outpatient appointment with a consultant or a member of a consultant’s team, of—

- (a) any clinically appropriate health service provider with whom any relevant body has a commissioning contract for the service required as a result of the referral; and
- (b) any clinically appropriate team led by a named consultant who is employed or engaged by that health service provider.

(3) A relevant body must make arrangements to ensure that a person—

- (a) who requires an elective referral for mental health services; and

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(1) The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_093004](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_093004). These Directions were amended by further Directions that came into force on 1st April 2012 which can be found at the same link.

(2) 1952 c.47.

(b) for whom that body has responsibility in relation to the services in respect of which the referral is made,  
is given the choice specified in paragraph (4).

(4) Subject to regulation 41, the choice specified for the purposes of this paragraph is the choice, in respect of a first outpatient appointment with a health care professional or a member of a health care professional's team, of any clinically appropriate team led by a named health care professional who is employed or engaged by the health service provider to whom the patient has been referred.

(5) The arrangements referred to in paragraphs (1) and (3) must include such arrangements as are necessary to ensure that a person may make the choices specified in those paragraphs where that person—

- (a) has not been offered that choice by the person making the initial referral; and
- (b) notifies the relevant body who has responsibility for that person that that choice was not offered.

(6) For the purposes of this Part, a health service provider, or a team led by a consultant or a health care professional, is clinically appropriate if, in the opinion of the person making the referral, they offer services that are clinically appropriate for that person in respect of the condition for which that person is referred.

#### **Services to which the duties as to choice do not apply**

40.—(1) Regulation 39(1) does not apply to the following services—

- (a) cancer services which are subject to the 2 week maximum waiting time by virtue of regulation 52;
- (b) maternity services; or
- (c) mental health services.

(2) Regulation 39(1) and (3) do not apply to any service where it is necessary to provide urgent care.

#### **Persons to whom the duties as to choice do not apply**

41. Regulations 39(1) and (3) do not apply in relation to any person who is—

- (a) detained under the 1983 Act;
- (b) detained in or on temporary release from prison; or
- (c) serving as a member of the armed forces.

#### **Duty to publicise and promote information about choice**

42.—(1) A relevant body must make arrangements to ensure that the availability of choice under the arrangements it makes pursuant to regulation 39 are publicised and promoted.

(2) Without prejudice to the generality of paragraph (1), those arrangements must include arrangements for—

- (a) publicising, and promoting awareness of, information about—
  - (i) health service providers for the purpose of enabling a person to choose a health service provider in accordance with arrangements that the relevant body has made pursuant to regulation 39(1),
  - (ii) consultant-led teams for the purpose of enabling a person to choose a clinically appropriate team in accordance with arrangements that the relevant body has made pursuant to regulation 39(1), and

- (iii) teams led by health care professionals providing mental health services for the purpose of enabling a person to choose a clinically appropriate team in accordance with arrangements that the relevant body has made pursuant to regulation 39(3); and
- (b) publicising details, and promoting awareness, of where that information may be found.

### **Transitional provision**

**43.**—(1) Where, before the relevant date—

- (a) a person requires an elective referral;
- (b) that person has not yet seen a clinically appropriate secondary care provider as a result of the referral; and
- (c) that person had not been offered the choice of any clinically appropriate secondary care provider in relation to that referral,

the relevant body that has responsibility for that person on and after the relevant date must comply with paragraph (2).

(2) The relevant body must ensure that, in respect of a person falling within paragraph (1), it complies with directions 2 to 4 of the Choice Directions in respect of the person as if—

- (a) the Choice Directions continued in force on and after the relevant date in respect of that person;
- (b) references to “Primary Care Trust” in those directions, and any relevant guidance referred to in those directions, were a reference to the relevant body that has responsibility for that person; and
- (c) references to “secondary care provider” were references to “health service provider” within the meaning of these Regulations.

(3) Where—

- (a) a person—
  - (i) makes a complaint to a Primary Care Trust before the relevant date in accordance with a complaints procedure published pursuant to direction 7 of the Choice Directions, and
  - (ii) that complaint has not been resolved in accordance with that published procedure before the relevant date; or
- (b) a person makes a complaint to a relevant body on or after the relevant date in respect of failure before that date to ensure that choice is offered pursuant to direction 2 of the Choice Directions, or failure to publicise or promote such choice in accordance with direction 6 of those Directions,

the relevant body that has responsibility for that person on and after the relevant date must comply with paragraph (4).

(4) The relevant body must ensure that, in respect of a person who makes a complaint falling within paragraph (3)(a) or (b), it deals with the complaint in accordance with the procedures published pursuant to direction 7 of the Choice Directions by the Primary Care Trust that previously had responsibility for that person.

(5) In this regulation, “clinically appropriate secondary care provider” has the meaning given in direction 1(2) and (3)(a) of the Choice Directions.