

2013 No. 474

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Clinical Commissioning Groups –
Payments in Respect of Quality) Regulations 2013**

<i>Made</i> - - - -	<i>4th March 2013</i>
<i>Laid before Parliament</i>	<i>7th March 2013</i>
<i>Coming into force</i> - -	<i>1st April 2013</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 223K and 272(7) and (8) of the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Commissioning Groups – Payments in Respect of Quality) Regulations 2013, and come into force on 1st April 2013.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

“the 2012 Act” means the Health and Social Care Act 2012(b);

“CCG” means clinical commissioning group(c);

“joint health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint health and wellbeing strategies)(d) which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the 2012 Act (other functions of Health and Wellbeing Boards)(e);

“performance indicator” means a matter by reference to which a CCG’s performance in relation to one or more of the factors listed in section 223K(2) or (3) of the 2006 Act may be measured;

“relevant financial year” means the financial year in respect of which the Board(f) is considering whether or not to make any payment under section 223K of the 2006 Act.

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- (a) 2006 c. 41. Section 223K of the National Health Service Act 2006 (“the 2006 Act”), was inserted into the 2006 Act by section 27 of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). By virtue of section 271(1) of the 2006 Act, the powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.
- (b) 2012 c. 7.
- (c) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is part of an insertion made by section 25(1) of the 2012 Act. *See also* section 11 of the 2006 Act, inserted by section 10 of the 2012 Act.
- (d) 2007 c. 28. Section 116A of the Local Government and Public Involvement in Health Act 2007 was inserted by section 193 of the 2012 Act.
- (e) A Health and Wellbeing Board is established under section 194 of the 2012 Act.
- (f) The National Health Service Commissioning Board was established by section 1H of the 2006 Act as inserted by section 9(1) of the 2012 Act.

Principles or other matters that the Board must take into account

2.—(1) The principles or other matters that the Board must take into account in assessing any of the factors listed in section 223K(2) or (3) of the 2006 Act are—

- (a) such objectives or requirements relating to—
 - (i) the quality of relevant services(a) and outcomes to be achieved from the provision of relevant services; or
 - (ii) the reduction in relevant inequalities(b),

as are specified in the mandate published by the Secretary of State under section 13A of the 2006 Act (mandate to the Board)(c) that applies in relation to the relevant financial year; and

- (b) the extent to which during the relevant financial year a CCG has contributed to the delivery of any joint health and wellbeing strategy to which the group was required to have regard during that year under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies)(d).

(2) Where the Board is assessing any of the factors listed in section 223K(2) of the 2006 Act it must in addition to the principles or other matters specified in paragraph (1) take into account any document published by the Secretary of State for the purposes of section 13E of the 2006 Act (duty as to improvement in quality of services)(e) that applies in relation to the relevant financial year.

Principles or other matters that the Board may take into account

3.—(1) The principles or other matters that the Board may take into account in assessing any of the factors listed in section 223K(2) or (3) of the 2006 Act are—

- (a) relevant quality standards prepared by NICE(f) under section 234 of the 2012 Act (quality standards);
- (b) any performance indicator proposed by a CCG and adopted by the Board in accordance with the procedure under regulation 5;
- (c) any other principle or matter that the Board considers relevant.

Circumstances in which the Board may withhold or reduce payment

4.—(1) The following circumstances are prescribed for the purposes of section 223K(5) of the 2006 Act—

- (a) a CCG has failed to exercise its functions in respect of the relevant financial year so as to ensure that its expenditure which is attributable to the exercise of those functions in that year does not exceed the aggregate of amounts and sums listed in section 223H(1)(a) to (c) of the 2006 Act (financial duties of clinical commissioning groups: expenditure)(g);
- (b) a CCG has failed to ensure that its capital resource use in respect of the relevant financial year does not exceed the amount specified by direction of the Board under section 223I(2) of the 2006 Act (financial duties of clinical commissioning groups: use of resources)(h);

(a) See section 223K(8) of the 2006 Act for the meaning of “relevant services”.
(b) See section 223K(8) of the 2006 Act for the meaning of “relevant inequalities”.
(c) Section 13A of the 2006 Act was inserted into the 2006 Act by section 23 of the 2012 Act.
(d) Section 116B of the Local Government and Public Involvement in Health Act 2007 was inserted by section 193 of the 2012 Act.
(e) See section 13E(4)(a) of the 2006 Act. Section 13E was inserted into the 2006 Act by section 23 of the 2012 Act.
(f) The National Institute for Health and Care Excellence (“NICE”) is established by section 232 of the 2012 Act – see further sections 233 to 246 of, and Schedule 16 to, the 2012 Act.
(g) Section 223H of the 2006 Act was inserted into the 2006 Act by section 27 of the 2012 Act.
(h) Section 223I of the 2006 Act was inserted into the 2006 Act by section 27 of the 2012 Act.

- (c) a CCG has failed to ensure that its revenue resource use in respect of the relevant financial year does not exceed the amount specified by direction of the Board under section 223I(3) of the 2006 Act;
 - (d) a CCG has failed to ensure that its capital resource use in respect of the relevant financial year complies with directions given by the Board under section 223J of the 2006 Act (financial duties of clinical commissioning groups: additional controls on resource use)(a);
 - (e) a CCG has failed to ensure that its revenue resource use in respect of the relevant financial year complies with directions given by the Board under section 223J of the 2006 Act;
 - (f) a CCG has failed in respect of the relevant financial year to make appropriate arrangements to discharge any of its functions under Part 7, 8 or 9 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (standing rules: decisions about drugs and treatments, choice and waiting times)(b);
 - (g) a CCG has failed in respect of the relevant financial year to discharge its duties under section 2 of the Health Act 2009 (duty to have regard to the NHS Constitution)(c) or section 14P of the 2006 Act (duty to promote NHS Constitution)(d);
 - (h) a CCG has failed to take appropriate account of any relevant guidance in relation to the management of resources by public bodies published by the Department of Health or Her Majesty's Treasury that applies to the relevant financial year.
- (2) For the purposes of paragraph (1)(g)—
- (a) failure to discharge a duty includes a failure to discharge it properly; and
 - (b) a failure to discharge a duty properly includes a failure to discharge it consistently with what the Board considers to be in the interests of the health service.

Procedure

5.—(1) The Board must before the start of each relevant period publish the procedure that it proposes to adopt in relation to that period, for the purpose of determining whether to make a payment to a CCG under section 223K(1) of the 2006 Act, and if so, the amount of such a payment.

- (2) The procedure must in particular—
- (a) set out the arrangements made by the Board for securing that there is transparency about the exercise of the Board's functions under section 223K of the 2006 Act; and
 - (b) in relation to any relevant period that begins on or after 1st April 2014, allow for a CCG to propose to the Board, and for the Board to adopt, performance indicators relating to a relevant joint health and wellbeing strategy.
- (3) The procedure may in relation to the relevant period that begins on 30th April 2013 and ends on 31st March 2014 allow for a CCG to propose to the Board and for the Board to adopt, performance indicators relating to any relevant draft joint health and wellbeing strategy which it is proposed should apply to the relevant financial year or any part of that year.
- (4) For the purposes of this regulation—

(a) Section 223J of the 2006 Act was inserted into the 2006 Act by section 27 of the 2012 Act. See also regulation 57 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 S.I. 2012/2996.

(b) S.I. 2012/2996.

(c) 2009. c. 21. Section 2 of the Health Act 1999 is inserted into the 2006 Act by section 55(2) of, and paragraph 175 of Schedule 5 to, the 2006 Act.

(d) Section 14P of the 2006 Act is inserted into the 2006 Act by section 26 of the 2012 Act.

- (a) “relevant joint health and wellbeing strategy” means a joint health and wellbeing strategy that relates to the relevant financial year or any part of the relevant financial year and “relevant draft joint health and wellbeing strategy” is to be construed accordingly;
- (b) “relevant period” means—
 - (i) the period which begins on 30th April 2013 and ends on 31st March 2014; and
 - (ii) each subsequent financial year.

Provision in relation to how payments may be spent

6.—(1) Payments under section 223K of the 2006 Act may only be spent by a CCG in relation to—

- (a) securing improvement in—
 - (i) the quality of health services; or
 - (ii) the outcomes achieved from the provision of health services; or
- (b) reducing inequalities between patients with respect to—
 - (i) their ability to access health services; or
 - (ii) the outcomes achieved for them by the provision of health services.

(2) In this regulation—

“health services” means services provided as part of the health service in England;

“patient” means any person to whom health services are being or may be provided.

Signed by the authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

4th March 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to payments to clinical commissioning groups (“CCGs”) in respect of quality.

Under section 223K of the National Health Service Act 2006 (“the 2006 Act”), inserted by section 27 of the Health and Social Care Act 2012 (“the 2012 Act”), the National Health Service Commissioning Board (“the Board”), may after the end of a financial year make a payment to a CCG. Section 223K(2) of the 2006 Act sets out factors in relation to quality of services, outcomes achieved from the provision of those services and improvements to such quality and outcomes. The Board must take into account at least one of these factors in determining whether to make a payment and if so the amount. The Board may also under section 223K(3) of the 2006 Act, take into account any relevant inequalities identified during that year and any reduction in relevant inequalities identified during that year in comparison with relevant inequalities identified over previous years.

Regulation 2 sets out the principles or other matters that the Board must take into account in assessing the factors listed in section 223K(2) and (3) of the 2006 Act. Regulation 3 sets out the matters that the Board may take into account in assessing the factors listed in section 223K(2) and (3) of the 2006 Act.

Regulation 4 sets out the circumstances when the Board may if it considers that it is appropriate to do so either not make a payment to a CCG that it would otherwise make or reduce the amount of a payment that it would otherwise have made.

Regulation 5 makes provision requiring the Board to publish the procedure that it proposes to adopt in determining whether to make a payment to a CCG under section 223K and, if so, the amount of such a payment. It also sets out some requirements in relation to that procedure.

Regulation 6 sets out that payments made to a CCG by the Board under section 223K may only be spent by a CCG for the purposes of improving the quality of health services provided and outcomes achieved for patients or to reduce inequalities between patients with respect to access to and outcomes from health services.

An impact assessment has not been produced for this instrument as the instrument itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the 2012 Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

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STATUTORY INSTRUMENTS

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