

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 5

RECORDS, INFORMATION, NOTIFICATIONS AND RIGHTS OF ENTRY

Patient records

33.—(1) The contractor will ensure that a full, accurate and contemporaneous record is kept in the patient record in respect of the care and treatment given to each patient under the agreement, including treatment given to a patient who is referred to the contractor.

(2) The patient record may be kept in electronic form.

(3) The patient record will include details of any private services (to the extent that it is provided with services under the agreement) and will be kept with—

(a) a copy of any treatment plan or referral treatment plan given to the patient pursuant to paragraph 2 of Schedule 1 (referral services) or paragraph 8 of this Schedule;

(b) all radiographs, photographs and study casts taken or obtained by it as part of the services provided to that patient; and

(c) where an orthodontic course of treatment has been provided to a patient, a copy of the orthodontic treatment plan;

(d) where information is to be submitted to the Relevant Body or where the contractor is a Local Health Board, collated by that Board in accordance with paragraph 39 and that information is submitted or collated electronically—

(i) the written declaration form in respect of exemption under paragraph 1(1) of Schedule 12ZA to the Act duly made and completed in accordance with regulations made under section 79 of, and paragraph 7(a) of Schedule 12ZA to that Act; and

(ii) a note of the evidence in support of that declaration; and

(e) the statement concerning any custom-made devices provided by any person as a consequence of regulation 15 of the Medical Devices Regulations 2002⁽¹⁾ (procedures for custom-made devices) in respect of services being provided to that patient.

(4) The patient record and the items referred to in sub-paragraph (3) will be retained for a period of two years beginning with—

(a) the date on which—

(i) a course of treatment or orthodontic course of treatment is terminated, or

(ii) a course of treatment or an orthodontic course of treatment is completed; or

(b) in respect of courses of treatment or orthodontic courses of treatment not falling within paragraph (a)(i) or (a)(ii) the date by which no more services can be provided as part of that course of treatment or orthodontic course of treatment by virtue of paragraph 5(4)(b) of Schedule 1 or paragraph 7(4)(b) of this Schedule.

(5) Nothing in this paragraph will affect any property right which the contractor may have in relation to the records, radiographs, photographs and study models referred to in this paragraph.

(1) [S.I. 2002/618](#).

Status: This is the original version (as it was originally made).

Confidentiality of personal data

34. The contractor will nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

Patient information

35.—(1) The contractor will ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access—

- (a) in respect of its practice based quality assurance system referred to in paragraph 78, a written statement relating to its commitment to the matters referred to in paragraph 78(4);
- (b) such information relating to NHS Charges—
 - (i) as is supplied by the Relevant Body for the purposes of providing information to patients; or
 - (ii) in the case where the contractor is a Local Health Board, that it supplies to other contractors for this purpose; and
- (c) information about the complaints procedure which it operates in accordance with Part 6, giving the name and title of the person nominated by the contractor in accordance with paragraph 50(2)(a).

(2) The contractor will—

- (a) compile a document (in this paragraph called a “patient information leaflet”) which will include the information specified in Schedule 4;
- (b) review its patient information leaflet at least once in every period of twelve months and make any amendments necessary to maintain its accuracy; and
- (c) make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

(3) The requirements in sub-paragraph (2) do not apply to any contractor to the extent that it provides services to persons detained in prison.

Provision of and access to information: the Relevant Body

36.—(1) The contractor will, at the request of the Relevant Body—

- (a) produce to the Relevant Body or to a person authorised in writing by the Relevant Body in such format, and at such intervals or within such time period, as the Relevant Body specifies; or
- (b) allow the Relevant Body, or a person authorised in writing by it to access,

the information specified in sub-paragraph (2).

(2) The information specified for the purposes of sub-paragraph (1) is—

- (a) any information which is reasonably required by the Relevant Body for the purposes of or in connection with the agreement; and
- (b) any other information which is reasonably required in connection with the Relevant Body’s functions,

and includes the contractor’s patient records.

Requests for information from Community Health Councils

37.—(1) Subject to sub-paragraph (2), where the contractor (other than a Local Health Board) receives a written request from the Community Health Council to produce any information which

appears to the Council to be necessary for the effective carrying out of its functions it will comply with that request promptly and in any event no later than the twentieth working day following the date the request was made.

- (2) The contractor will not be required to produce information under sub-paragraph (1) which—
 - (a) is confidential and relates to a living individual, unless at least one of the conditions specified in sub-paragraph (3) applies; or
 - (b) is prohibited from disclosure by or under any enactment or any ruling of a court of competent jurisdiction or is protected by the common law, unless sub-paragraph (4) applies.
- (3) The conditions referred to in sub-paragraph (2)(a) are—
 - (a) the information can be disclosed in a form from which the identity of the individual cannot be ascertained; or
 - (b) the individual consents to the information being disclosed.
- (4) This sub-paragraph applies where—
 - (a) the prohibition of the disclosure of information arises because the information is capable of identifying an individual; and
 - (b) the information can be disclosed in a form from which the identity of the individual cannot be ascertained.
- (5) In a case where the information falls within—
 - (a) sub-paragraph (2)(a) and the condition in sub-paragraph (3)(a) applies; or
 - (b) sub-paragraph (2)(b) and sub-paragraph (4) applies,

a Community Health Council may require the contractor to disclose the information in a form from which the identity of the individual concerned cannot be ascertained.

Inquiries about prescriptions and referrals

38.—(1) A contractor will, subject to sub-paragraphs (2) and (3), sufficiently answer any inquiries whether oral or in writing from the Relevant Body concerning—

- (a) any prescription form issued by a prescriber;
- (b) the considerations by reference to which prescribers issue such forms;
- (c) the referral by or on behalf of the contractor of any patient to any other services provided under the Act; or
- (d) the considerations by which the contractor makes such referrals or provides for them to be made on its behalf.

(2) An inquiry referred to in sub-paragraph (1) may only be made for the purpose either of obtaining information to assist the Relevant Body to discharge its functions or of assisting the contractor in the discharge of its obligations under the agreement.

(3) The contractor will not be obliged to answer any inquiry referred to in sub-paragraph (1) unless it is made—

- (a) in the case of sub-paragraph (1)(a) or (1)(b), by an appropriately qualified health care professional; or
- (b) in the case of sub-paragraph (1)(c) or (1)(d), by an appropriately qualified dental practitioner,

appointed in either case by the Relevant Body to assist it in the exercise of its functions under this paragraph and that person produces, on request, written evidence that he or she is authorised by the Relevant Body to make such inquiry on its behalf.

Status: This is the original version (as it was originally made).

Notification of a course of treatment, orthodontic course of treatment etc.

39.—(1) Subject to paragraph (2), the contractor will, within two months of the date upon which—

- (a) it completes a course of treatment in respect of mandatory or additional services;
- (b) it completes a case assessment in respect of an orthodontic course of treatment that does not lead to a course of treatment;
- (c) it provides an orthodontic appliance following a case assessment in respect of orthodontic treatment;
- (d) it completes a course of treatment in respect of orthodontic treatment;
- (e) it completes a course of treatment in respect of mandatory services or additional services or orthodontic course of treatment is terminated; or
- (f) in respect of courses not falling with sub-paragraph (d) or (e), no more services can be provided by virtue of paragraph 5(4)(b) of Schedule 1 (orthodontic course of treatment) or paragraph 7(4)(b) of this Schedule,

send to the Relevant Body, on a form supplied by the Local Health Board, the information specified in paragraph (3).

(2) In the case where the contractor is the Local Health Board, that Board will collate the information specified in paragraph (3).

(3) The information referred to in sub-paragraph (1) and (2) comprises of—

- (a) details of the patient to whom it provides services;
- (b) details of the services provided (including any appliances provided) to that patient;
- (c) details of any NHS Charge payable and paid by that patient; and
- (d) in the case of a patient exempt from NHS Charges and where such information is not submitted electronically, the written declaration from and note of evidence in support of that declaration.

Annual report and review

40.—(1) The Relevant Body will provide to the contractor an annual report relating to the agreement which will contain the same categories of information for all persons who hold agreements with that Body.

(2) Once the Relevant Body has provided the report referred to in sub-paragraph (1), the Relevant Body will arrange with the contractor an annual review of its performance in relation to the agreement.

(3) The Relevant Body will prepare a draft record of the review referred to in sub-paragraph (2) for comment by the contractor and, having regard to such comments, will produce a final written record of the review.

(4) A copy of the final record referred to in sub-paragraph (3) will be sent to the contractor.

Notifications to the Relevant Body

41.—(1) In addition to any requirements of notification elsewhere in these Regulations, the contractor will notify the Relevant Body in writing, as soon as reasonably practicable, of—

- (a) any serious incident that, in the reasonable opinion of the contractor, affects or is likely to affect the contractor's performance of its obligations under the agreement; or
- (b) any circumstances which give rise to the Relevant Body's right to terminate the agreement under paragraph 68 or 69(1).

(2) The contractor will, unless it is impracticable for it to do so, notify the Relevant Body in writing within twenty eight days of any occurrence requiring a change in the information about it published by the Relevant Body in accordance with regulations made under section 16CA(3) of the Act⁽²⁾ (primary dental services).

(3) The contractor will give notice in writing to the Relevant Body when a dental practitioner who is performing or will perform services under the agreement—

- (a) leaves the contractor, and the date upon which he or she left; or
- (b) is employed or engaged by the contractor,

which will include the name of the dental practitioner who has left, or who has been employed or engaged, together with his or her professional registration number.

Notice provisions specific to an agreement with a qualifying body

42. Where a qualifying body is a party to the agreement, it will give notice in writing to the Relevant Body forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986⁽³⁾ (definition of inability to pay debts).

Notifications to patients following a variation of the agreement

43. Where the agreement is varied in accordance with Part 9 of this Schedule and, as a result of that variation there is to be a change in the range of services provided by the contractor, the contractor will ensure that there is displayed in a prominent position in its practice premises, in a part to which patients have access, written details of that change.

Entry and inspection by the Relevant Body

44.—(1) Subject to—

- (a) the conditions in sub-paragraph (2); and
- (b) sub-paragraph (3),

the contractor will allow persons authorised in writing by the Relevant Body to enter and inspect the practice premises at any reasonable time.

(2) The conditions referred to in sub-paragraph (1)(a) are that—

- (a) reasonable notice of the intended entry has been given;
- (b) written evidence of the authority of the person seeking entry is produced to the contractor on request; and
- (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

(2) Section 16CA was inserted into the Act by section 170 of the 2003 Act.

(3) 1986 c. 45.

Status: This is the original version (as it was originally made).

(3) Where the contractor is providing services under the agreement in a prison, the contractor will not be obliged to comply with sub-paragraph (1), or paragraph 45 or 46, if—

- (a) the contractor has used its best endeavours to allow the Relevant Body, members of a Community Health Council, the Commission for Healthcare Audit and Inspection or the Assembly to enter and inspect the practice premises; but
- (b) entry and inspection has been prevented by the prison authorities despite the contractor's best endeavours.

(4) In this paragraph “practice premises” includes a mobile surgery.

Entry and inspection by members of Community Health Councils

45. Subject to paragraph 44(3), the contractor will allow members of a Community Health Council authorised by or under regulation 20 of the Community Health Councils Regulations 2004⁽⁴⁾ to enter and inspect the practice premises for the purpose of any of the Council's functions in accordance with that regulation.

Entry and inspection by the Commission for Healthcare Audit and Inspection

46. Subject to paragraph 44(3), the contractor will allow persons authorised by the Commission for Healthcare Audit and Inspection and the Assembly to enter and inspect premises in accordance with sections 66 and 72 of the Health and Social Care (Community Health and Standards) Act 2003⁽⁵⁾ (right of entry).

⁽⁴⁾ S.I. 2004/905 (W.89) (as amended by S.I. 2005/603 (W.51)).

⁽⁵⁾ 2003 c. 43.