
STATUTORY INSTRUMENTS

2015 No. 1879

The National Health Service (Personal Medical Services Agreements) Regulations 2015

PART 5

Agreements: required terms

Health service contract

12. If, by virtue of regulation 9 or 10 the contractor is to be regarded as a health service body, the agreement must state that it is an NHS contract.

Agreements: general

13.—(1) An agreement must specify—

- (a) the services to be provided under the agreement;
- (b) subject to paragraph (3), the address of each of the premises to be used by the contractor or by any sub-contractor for the provision of such services;
- (c) the persons to whom such services are to be provided under the agreement; and
- (d) where the agreement requires the contractor to provide essential services, the area as respects which persons resident in it are, subject to any other terms of the agreement relating to patient registration, entitled to—
 - (i) register with the contractor, or
 - (ii) seek acceptance by the contractor as a temporary resident; and
- (e) where the agreement requires the contractor to provide essential services, whether, at the date on which the agreement comes into effect, the contractor's list of patients is open or closed.

(2) An agreement—

- (a) may also specify an area, other than the contractor's practice area, which is to be known as the outer boundary area as respects which a patient who—
 - (i) moves into that outer boundary area to reside, and
 - (ii) would like to remain on the contractor's list of patients,may remain on that list if the contractor so agrees, notwithstanding that the patient no longer resides in the contractor's practice area; and
- (b) which specifies an outer boundary must specify that, where a patient remains on the contractor's list of patients as a consequence of sub-paragraph (a), the outer boundary area is to be treated as part of the contractor's practice area for the purposes of the application of any other terms and conditions of the agreement in respect of that patient.

(3) 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.

Membership of a CCG

- 14.** An agreement must contain a term which has the effect of requiring the contractor—
- (a) if that contractor provides essential services to patients on its list of patients, to be a member of a CCG; and
 - (b) to appoint at least one individual who is a health care professional to act on the contractor's behalf in the dealings between the contractor and the CCG to which the contractor belongs.

Certificates

15.—(1) Subject to paragraphs (2) and (3), an agreement which requires a contractor to provide essential services must contain a term which has the effect of requiring the contractor to issue any medical certificate of a description prescribed in column 1 of Schedule 1 under, or for the purposes of, the enactments specified in relation to the certificate in column 2 of that Schedule if that certificate is reasonably required under or for the purposes of the enactments specified in relation to that certificate.

(2) A certificate referred to in paragraph (1) must be issued free of charge to a patient or to a patient's personal representatives.

(3) A certificate must not be issued where, for the condition to which the certificate relates, the patient is—

- (a) being attended by a medical practitioner who is not—
 - (i) engaged or employed 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) not being treated by or under the supervision of a health care professional.

(4) The exception in paragraph (3)(a) does not apply where the certificate is issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976⁽¹⁾ (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985⁽²⁾ (medical information).

Finance

16.—(1) The agreement must contain a term which has the effect of requiring payments to be made under the agreement promptly and in accordance with—

- (a) the terms of the agreement;
- (b) any other terms based on which the payment is made; and
- (c) any other conditions relating to the payment contained in regulations made by the Secretary of State under section 94(4) (regulations about section 92 arrangements) or directions given by the Secretary of State under section 98A (exercise of functions) of the Act⁽³⁾.

(1) S.I. 1976/615; as amended by S.I. 1982/699, S.I.1987/409, S.I. 1989/1686, S.I. 1991/2284, S.I.1994/2975, S.I.1999/3109, S.I.2001/2931, S.I. 2002/881 and 2469, S.I. 2004/1771, S.I. 2008/1554, S.I. 2010/137, S.I. 2013/235 and 630.

(2) S.I. 1985/1604; as amended by S.I. 1992/247 and S.I. 2010/137.

(3) Sections 92 was amended by paragraphs 36 of Schedule 4 to the Health and Social Care Act 2012 (c.7) ("the 2012 Act"). Section 94 was amended by section 28(2) of, and paragraph 38(1) and (2) to, the 2012 Act, and by section 17(5) of, and

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

- (a) is owed by the contractor to the Board under the agreement; or
- (b) the Board may withhold from the contractor in accordance with the terms of the agreement or any other applicable provisions contained in regulations made by the Secretary of State under section 94(4) of the Act (regulations about section 92 arrangements) or directions given by the Secretary of State under section 98A of the Act (exercise of functions).

Conditions about payments

17. Where, as a consequence of regulations made under section 94(4) of the Act (regulations about section 92 arrangements) or in accordance with directions given by the Secretary of State under section 98A of the Act (exercise of functions), the Board is required to make a payment to a contractor under an agreement which is subject to conditions, the agreement must contain a term which requires those conditions to be a term of the agreement.

Fees and charges

18.—(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 may not, either itself or through any other person, demand or accept from any patient of the contractor 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) a prescription or repeatable prescription for any drug, medicine or appliance,

except in circumstances set out in regulation 19.

(3) Subject to paragraph (4), where—

- (a) a person applies to a contractor for the provision of services;
- (b) claims to be entitled to be treated by the contractor without paying a fee or other remuneration; and
- (c) the contractor has reasonable doubts about that person's claim,

the contractor must give any necessary treatment to that person and may demand and accept from that person a reasonable fee accordingly in accordance with regulation 19(e).

(4) Where—

- (a) a person from whom a contractor received a fee under regulation 19(e) applies to the Board for a refund within 14 days from the date of payment of the fee (or within such longer period not exceeding one month as the Board may allow if it is satisfied that the failure to apply within 14 days was reasonable); and
- (b) the Board 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 Board may recover the amount of the fee from the contractor, by deduction from the contractor's remuneration or otherwise, and must pay the amount recovered to the person who paid the fee.

Circumstances in which fees and charges may be made

19. The contractor may demand or accept, directly or indirectly, a fee or other remuneration—

paragraph 2(1)(b) and (2) of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Section 98A was inserted by section 49(1) of the 2012 Act.

- (a) from a statutory body for services rendered for the purposes of that body's statutory functions;
- (b) from a body, employer or school for—
 - (i) a routine medical examination of persons for whose welfare the body, employer or school is responsible, or
 - (ii) an examination of such persons for the purpose of advising the body, employer or school of any administrative action that they might take;
- (c) for treatment which is not primary medical services or is otherwise required to be provided under the agreement and which is given—
 - (i) at accommodation made available in accordance with the provisions of paragraph 11 of Schedule 6 to the Act (accommodation and services for private patients), or
 - (ii) in a registered nursing home which is not providing services under the Act,
 if, in either case, the person administering the treatment is serving on the staff of a hospital providing services under the Act as a specialist providing treatment of the kind the patient requires and if, within seven days of giving the treatment, the contractor or the person giving the treatment supplies the Board, on a form provided by it for that purpose, with such information about the treatment as the Board may require;
- (d) under section 158 of the Road Traffic Act(4) (payment for emergency treatment of traffic casualties);
- (e) when the contractor treats a patient under regulation 18(3), in which case the contractor is entitled to demand and accept a reasonable fee (recoverable in certain circumstances under regulation 18(4)) for any treatment given, if it gives the patient a receipt;
- (f) for attending and examining (but not otherwise treating) a patient—
 - (i) at a police station, at the patient's request, in connection with possible criminal proceedings against the patient,
 - (ii) for the purpose of creating a medical report or certificate, at the request of a commercial, educational or not for profit organisation, or
 - (iii) for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the patient;
- (g) for treatment consisting of an immunisation for which no remuneration is payable by the Board and which is requested in connection with travel abroad;
- (h) for prescribing or providing drugs, medicines or appliances (including a collection of drugs, medicines or appliances in the form of a travel kit) which are required to be in the possession of a patient solely in anticipation of the onset of an ailment or occurrence of an injury while the patient is outside the United Kingdom but for which the patient is not requiring treatment when the medicine is prescribed;
- (i) for a medical examination—
 - (i) to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or
 - (ii) for the purpose of creating a report—
 - (aa) relating to a road traffic accident or criminal assault, or
 - (bb) that offers an opinion as to whether a patient is fit to travel;

(4) 1988 c.52. Section 158 was amended by section 20(2) of the Community Care and Health (Scotland) Act 2002 (asp 5) and by S.I. 1995/889.

- (j) for testing the sight of a person to whom none of paragraphs (a) to (e) of section 115(2) of the Act (primary ophthalmic services) applies (including by virtue of regulations made under section 115(7) of the Act⁽⁵⁾);
- (k) where the contractor is authorised or required in accordance with arrangements made with the Board under section 126 of the Act⁽⁶⁾ (arrangements for pharmaceutical services) and in accordance with regulations made under section 129 of the Act⁽⁷⁾ (regulations as to pharmaceutical services) to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than by way of dispensing services, any Scheduled drug; or
- (l) for prescribing or providing drugs or medicines for malaria chemoprophylaxis.

Patient participation

20.—(1) A contractor which provides essential services must establish and maintain a group known as a “Patient Participation Group” comprising some of its registered patients for the purposes of—

- (a) obtaining the views of patients who have attended the contractor’s practice about the services delivered by the contractor; and
- (b) enabling the contractor to obtain feedback from its registered patients about those services.

(2) The contractor is not required to establish a Patient Participation Group if such a group has already been established by the contractor in accordance with the provisions of any directions about enhanced services which were given by the Secretary of State under section 98A of the Act⁽⁸⁾ (exercise of functions) before 1st April 2015.

(3) The contractor must make reasonable efforts during each financial year to review the membership of its Patient Participation Group in order to ensure that the group is representative of its registered patients.

(4) The contractor must—

- (a) engage with its Patient Participation Group, at such frequent intervals throughout each financial year as the contractor must agree with that group, with a view to obtaining feedback from the contractor’s registered patients, in an appropriate and accessible manner, about the services delivered by the contractor; and
- (b) review any feedback received about the services delivered by the contractor, whether in accordance with sub-paragraph (a) or otherwise, with its Patient Participation Group with a view to agreeing with that group the improvements (if any) which are to be made to those services.

(5) The contractor must make reasonable efforts to implement such improvements to the services delivered by the contractor as are agreed between the contractor and its Patient Participation Group.

Publication of earnings information

21.—(1) The contractor must publish each year on its practice website (if it has one) the information specified in paragraph (2).

(2) The information specified in this paragraph is—

(5) Section 115 was amended by paragraph 54 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(6) Section 126 was amended by sections 213(7)(k) and 220(7) of, and paragraph 63 of Schedule 4 to, the 2012 Act.

(7) Section 129 was amended by section 26, 27 and 38 of, and Schedule 6 to, the Health Act 2009 (c.7); section 207(1) to (9) of, and paragraph 66 of Schedule 4 to, the 2012 Act; paragraph 121 of Schedule 9 to the Protection of Freedoms Act 2012 (c.9); and by S.I. 2007/289 and S.I. 2010/231.

(8) Section 98A was inserted by section 49(1) of the Health and Social Care Act 2012 (c.7).

- (a) the mean net earnings in respect of the previous financial year of—
 - (i) every general medical practitioner who was a party to the agreement for a period of at least six months during that financial year, and
 - (ii) every general medical practitioner who was employed or engaged by the contractor to provide services under the agreement in the contractor’s practice, whether on a full-time or a part-time basis, for a period of at least six months during that financial year; and
- (b) the—
 - (i) total number of any general medical practitioners to whom the earnings information referred to in sub-paragraph (a) relates, and
 - (ii) (where applicable) the number of those practitioners who have been employed or engaged by the contractor to provide services under the agreement in the contractor’s practice on a full-time or a part-time basis and for a period of at least six months during the financial year in respect of which that information relates.
- (3) The information specified in sub-paragraph (2) must be—
 - (a) published by the contractor before the end of the financial year following the financial year to which that information relates; and
 - (b) made available by the contractor in hard copy form on request.
- (4) For the purposes of this regulation, “mean net earnings” are to be calculated by reference to the earnings of a general medical practitioner that, in the opinion of the Board, are attributable to the performance or provision by the practitioner under the agreement of medical services to which Part 4 of the Act applies, after having disregarded any expenses properly incurred in the course of performing or providing those services.

Out of hours services

- 22.**—(1) Subject to paragraphs (2) and (3), an agreement under which essential services are to be provided must provide for the provision of out of hours services throughout the out of hours period unless—
- (a) the Board has accepted in writing, prior to the signing of the agreement, a written request from the contractor that the agreement should not require the contractor to make such provision;
 - (b) the contractor has opted out of providing such services in the out of hours period in accordance with Part 6; or
 - (c) the agreement has been otherwise varied to exclude a requirement to make such provision.
- (2) Except to the extent that the agreement otherwise provides, a contractor whose agreement includes the provision of out of hours services is only required to provide such services if, in the contractor’s reasonable opinion having regard to the patient’s medical condition, it would not be reasonable in all the circumstances for the patient to wait to obtain such services.
- (3) Paragraph (4) applies to a contractor which—
- (a) provides out of hours services to registered patients of another contractor or provider of essential services (or their equivalent); or
 - (b) has contracted to provide out of hours services to patients to whom it provides essential services.
- (4) The contractor must, in the provision of those services—

- (a) meet the quality requirements set out in the document entitled “National Quality Requirements in the Delivery of Out of Hours Services” published on 29th July 2006⁽⁹⁾; and
 - (b) comply with any requests for information which it receives from, or on behalf of, the Board about the provision by the contractor of out of hours services to its registered patients in such manner, and before the end of such period, as is specified in the request.
- (5) Where a contractor is a provider of essential services but is not required to provide out of hours services under the agreement or, under Part 6, has opted out of the provision of such services under the agreement, the contractor must—
- (a) monitor the quality of the out of hours services which are offered or provided to its registered patients having regard to the National Quality Standards referred to in subparagraph (4) and record, and act appropriately in relation to, any concerns arising;
 - (b) record any patient feedback received, including complaints; and
 - (c) report to the Board, either at the request of the Board or otherwise, any concerns arising about the quality of the out of hours services which are offered or provided to patients to its registered patients having regard to—
 - (i) any patient feedback received, including any complaints; and
 - (ii) the quality requirements set out in the National Quality Standards referred to in paragraph (4).

Sub-contracting

23. An agreement must contain terms which prevent a contractor from sub-contracting any of its obligations to provide clinical services under the agreement except in the circumstances provided for in Part 5 of Schedule 2.

Variation of agreements

24.—(1) Subject to paragraph (2), a variation of, or amendment to, the agreement may only be made in the circumstances provided for in Part 8 of Schedule 2.

(2) Paragraph (1) does not prevent a variation of, or amendment to, an agreement in the circumstances provided for in—

- (a) regulation 25;
- (b) Part 6; and
- (c) paragraphs 43(3) and 52 of Schedule 2.

Variation of agreements: registered patients from outside practice area

25.—(1) A contractor may accept onto its list of patients a person who resides outside of the contractor’s practice area.

(2) Subject to paragraphs (4) and (5), the terms of the contractor’s agreement specified in paragraph (3) must be varied so as to require the contractor to provide to the person any services which the contractor is required to provide to its registered patients under the agreement as if the person resided within the contractor’s practice area.

(3) The terms of the agreement specified in this paragraph are—

⁽⁹⁾ The document entitled National Quality Standards in the Delivery of Out of Hours Services published on 20th July 2006 is available at http://www.dh.gov.uk/en/PublicationsAndStatistics/Publications/PolicyAndGuidance/DH_4137271. Hard copies of this document may be obtained from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

- (a) the terms under which the contractor is to provide essential services and any other service;
- (b) the terms under which the contractor is required to provide out of hours services to patients to whom it provides essential services; and
- (c) the terms which give effect to the following provisions of Schedule 2 (other contractual terms)—
 - (i) paragraph 1 (services to registered patients),
 - (ii) paragraph 5(1) (attendance at practice premises),
 - (iii) paragraph 6(2)(a) (attendance outside practice premises) , and
 - (iv) paragraph 20(2) (refusal of applications for inclusion list of patients).

(4) Where, under paragraph (1), a contractor accepts onto its list of patients a person who resides outside of the contractor’s practice area and the contractor subsequently considers that it is not clinically appropriate or practical to continue to provide that patient with services in accordance with the terms specified in paragraph (3), or to comply with those terms, the agreement must be varied so as to include a term which has the effect of modifying the application of paragraph 23 of Schedule 2 (which relates to the removal of a patient from the list at the contractor’s request) in relation to that patient so that—

- (a) in sub-paragraph (1), the reference to the patient’s disability or medical condition is removed; and
- (b) sub-paragraph (4) applies as if, after paragraph (a), there were inserted the following paragraph—

“(aa) the reason for the removal is that the contractor considers that it is not clinically appropriate or practical to continue to provide services under the agreement to the patient which do not include the provision of such services at the patient’s home address.”

(5) Where the contractor is required to provide services to a patient in accordance with arrangements made under paragraph (1), the agreement must also be varied so as to include terms which have the effect of releasing the contractor and the Board from all obligations, rights and liabilities relating to the terms specified in paragraph (3) (including any right to enforce those terms) where, in the opinion of the contractor, it is not clinically appropriate or practical under those arrangements to—

- (a) provide services in accordance with those terms; or
- (b) comply with those terms.

(6) The agreement must also include a term which has the effect of requiring the contractor to notify a person in writing, where the contractor is minded to accept that person on its list of patients in accordance with arrangements made under paragraph (1), that the contractor is under no obligation to provide—

- (a) essential services, and any other service in core hours, if, at the time the treatment is required, it is not clinically appropriate or practical to provide primary medical services given the particular circumstances of the patient; or
- (b) out of hours services if, at the time treatment is required, it is not clinically appropriate or practical to provide such services given the particular circumstances of the patient.

Termination of agreements

26.—(1) An agreement may only be terminated in the circumstances provided for by Part 8 of Schedule 2.

(2) An agreement must make suitable provision for arrangements which are to have effect on termination of the agreement, including the consequences (whether financial or otherwise) of the agreement ending.

Other required terms

27.—(1) Subject to paragraph (2), an agreement must also contain provisions which are equivalent in their effect to the provisions set out in Parts 6 to 14 of, and Schedules 1 and 2 to, these Regulations, unless the agreement is of a type or nature to which a particular provision does not apply.

(2) The requirement in paragraph (1) does not apply to the provisions specified in—

- (a) regulation 76(5) to (14);
- (b) regulation 77; and
- (c) paragraph 40(5) to (9) and 41(5) to (17) of Schedule 2,

which are to have effect in relation to the matters set out in those provisions.