

SCHEDULE 2

OPT OUTS OF ADDITIONAL AND OUT OF HOURS SERVICES

Permanent opt outs

3.—(1) In this paragraph –

“A day” is the day specified by the contactor in his permanent opt out notice to a Board for the commencement of the permanent opt out;

“B day” is the day six months after the date of service of the permanent opt out notice; and

“C day” is the day nine months after the date of service of the permanent opt out notice.

(2) As soon as is reasonably practicable and in any event within the period of 28 days beginning with and including the date of receipt of a permanent opt out notice under paragraph 1(5) (or temporary opt out notice which is treated as a permanent opt out notice under paragraph 1(7), the Board shall –

(a) approve the opt out notice; or

(b) reject the opt out notice in accordance with sub-paragraph (3),

and shall notify the contractor of its decision as soon as possible, including reasons for its decision where its decision is to reject the opt out notice.

(3) A Board may reject the opt out notice on the ground that the contractor is providing an additional service to patients other than his registered patients or enhanced services.

(4) A contractor may not withdraw an opt out notice once it has been approved by the Board in accordance with sub-paragraph (2)(a) without the Board’s agreement.

(5) If the Board approves the opt out notice under sub-paragraph (2)(a), it shall use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the additional service from an alternative provider from A day.

(6) The contractor’s duty to provide the additional service shall terminate on A day unless the Board serves a notice under sub-paragraph (7) (extending A day to B day or C day).

(7) If the Board is not successful in finding an alternative provider to take on the provision of the additional service from A day, then it shall notify the contractor in writing of this fact no later than one month before A day, and –

(a) in a case where A day is three months after service of the opt out notice, the contractor shall continue to provide the additional service until B day unless at least one month before B day he receives a notice in writing from the Board under sub-paragraph (8) that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the additional service from B day;

(b) in a case where A day is six months after the service of the opt out notice, the contractor shall continue to provide the additional service until C day unless at least one month before C day he receives a notice from the Board under sub-paragraph (11) that it has made an application to the Department under sub-paragraph (10) seeking its approval to a decision to refuse a permanent opt out or to delay the commencement of a permanent opt out until after C day.

(8) Where in accordance with sub-paragraph (7)(a) the permanent opt out is to commence on B day and the Board, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the additional service from that day, it shall notify the contractor in writing of this fact at least one month before B day, in which case the contractor shall continue to provide the additional service until C Day unless at least one month before C day he receives a notice from the Board under sub-paragraph (11) that it has applied to the Department under sub-paragraph (10)

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seeking its approval to a decision to refuse a permanent opt out or to postpone the commencement of a permanent opt out until after C day.

(9) As soon as is reasonably practicable and in any event within 7 days of the Board serving a notice under sub-paragraph (8), the Board shall enter into discussions with the contractor concerning the support that the Board may give to the contractor or other changes which the Board or the contractor may make in relation to the provision of the additional service until C day.

(10) The Board may, if it considers that there are exceptional circumstances, make an application to the Department for approval of a decision to –

- (a) refuse a permanent opt out; or
- (b) postpone the commencement of a permanent opt out until after C day.

(11) As soon as practicable after making an application under sub-paragraph (10) to the Department, the Board shall notify the contractor in writing that it has made such an application.

(12) On receiving an application under sub-paragraph (10) for approval of a decision to refuse a permanent opt out, the Department shall –

- (a) approve the Board's application;
- (b) reject the Board's application, but nonetheless recommend a different date for the commencement of the permanent opt out which may be later than C day; or
- (c) reject the Board's application.

(13) On receiving an application under sub-paragraph (10) for approval of a decision to postpone the commencement of a permanent opt out until after C day the Department shall –

- (a) approve the Board's application;
- (b) reject the Board's application, but nonetheless recommend –
 - (i) that the permanent opt out commence on an earlier date to that proposed by the Board in its application, or
 - (ii) that the permanent opt out be refused; or
- (c) reject the Board's application.

(14) The Department shall notify the Board and the contractor in writing of its decision under sub-paragraph (12) or (13) as soon as is practicable, including reasons for its decision.

(15) Where the Department –

- (a) approves a decision to refuse an opt out under sub-paragraph (12)(a); or
- (b) recommends that a permanent opt out be refused under sub-paragraph (13)(b)(ii),

the Board shall notify the contractor in writing that the contractor may not opt out of the additional service.

(16) Where a Board notifies a contractor under sub-paragraph (15), the contractor may not serve a preliminary opt out notice in respect of that additional service for a period of 12 months beginning with the date of service of the Board's notice under sub-paragraph (15) unless there has been a change in the circumstances of the contractor in relation to his ability to deliver services under the contract.

(17) Where the Department –

- (a) recommends a different date for the commencement of the permanent opt out under sub-paragraph (12)(b);
- (b) approves a Board's application to postpone a permanent opt out under sub-paragraph (13)(a); or
- (c) recommends an earlier date to that proposed by the Board in its application under sub-paragraph (13)(b)(i),

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the Board shall in accordance with the decision of the Department notify the contractor in writing of its decision and the notice shall specify the date from which permanent opt out shall commence.

(18) Where the Department rejects the Board's application under sub-paragraph (12)(c) or (13)(c), the Board shall notify the contractor in writing that there shall be a permanent opt out, and the permanent opt out shall commence on C day or 28 days after the date of service of the Board's notice, whichever is the later.

(19) If the Department has not reached a decision on the Board's application under sub-paragraph (10) before C day, the contractor's obligation to provide the additional service shall continue until a notice is served on the contractor by the Board under sub-paragraph (17) or (18).

(20) Nothing in sub-paragraphs (1) to (19) shall prevent the contractor and the Board from agreeing a different date for the termination of the contractor's duty under the contract to provide the additional service and accordingly, varying the contract in accordance with paragraph 96(1) of Schedule 5.

(21) The permanent opt out takes effect at 08.00 on the relevant day unless the Board and the contractor agree a different day or time.