



Health Act 2009

2009 CHAPTER 21

PART 1

QUALITY AND DELIVERY OF NHS SERVICES IN ENGLAND

CHAPTER 3

DIRECT PAYMENTS

11 Direct payments for health care

In Part 1 of the National Health Service Act 2006 (c. 41), after section 12 insert—

“Direct payments for health care

12A Direct payments for health care

- (1) The Secretary of State may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient's consent, to the patient or to a person nominated by the patient.
- (2) Subsection (1) applies to—
 - (a) anything that the Secretary of State may or must provide under section 2(1) or 3(1);
 - (b) anything for which the Secretary of State must arrange under paragraph 8 of Schedule 1;
 - (c) vehicles that the Secretary of State may provide under paragraph 9 of that Schedule.
- (3) Subsection (1) is subject to any provision made by regulations under section 12B.

Status: Point in time view as at 19/01/2010.

Changes to legislation: Health Act 2009, Section 11 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) If regulations so provide, a Primary Care Trust may, for the purpose of securing the provision for a patient of services that the trust must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient's consent, to the patient or to a person nominated by the patient.
- (5) A payment under subsection (1) or under regulations under subsection (4) is referred to in this Part as a “direct payment”.
- (6) A direct payment may be made only in accordance with a pilot scheme under regulations made by virtue of section 12C.

12B Regulations about direct payments

- (1) The Secretary of State may make regulations about direct payments.
- (2) The regulations may in particular make provision—
 - (a) as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;
 - (b) as to circumstances in which direct payments may or must be made to a person nominated by the patient;
 - (c) as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;
 - (d) as to conditions that the Secretary of State or the Primary Care Trust must comply with before, after or at the time of making a direct payment;
 - (e) as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;
 - (f) as to the amount of any direct payment or how it is to be calculated;
 - (g) as to circumstances in which the Secretary of State or the Primary Care Trust may or must stop making direct payments;
 - (h) as to circumstances in which the Secretary of State or the Primary Care Trust may or must require all or part of a direct payment to be repaid, by the payee or otherwise;
 - (i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;
 - (j) as to arrangements to be made by the Secretary of State or the Primary Care Trust for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;
 - (k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.
- (3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).
- (4) The regulations may provide for a sum which must be repaid to the Secretary of State or the Primary Care Trust by virtue of a condition or other requirement

Status: Point in time view as at 19/01/2010.

Changes to legislation: Health Act 2009, Section 11 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

imposed by or under the regulations to be recoverable as a debt due to the Secretary of State or the Primary Care Trust.

- (5) The regulations may make provision—
- (a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State under an enactment mentioned in section 12A(2);
 - (b) displacing functions or obligations of a Primary Care Trust with respect to the provision of after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.
- (6) In this section—
- (a) “service” includes anything in respect of which direct payments may be made;
 - (b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

12C Direct payments pilot schemes

- (1) Regulations under section 12B may provide for the Secretary of State to have power—
- (a) to make pilot schemes in accordance with which direct payments may be made;
 - (b) to include in a pilot scheme, as respects payments to which the scheme applies, any provision within section 12B(2), subject to any provision made by the regulations.
- (2) The regulations may in particular make provision, or provide for the pilot scheme to make provision, as to—
- (a) the geographical area in which a pilot scheme operates;
 - (b) the revocation or amendment of a pilot scheme.
- (3) A pilot scheme must, in accordance with the regulations, specify the period for which it has effect, subject to the extension of that period by the Secretary of State in accordance with the regulations.
- (4) The regulations must make provision as to the review of a pilot scheme, or require the pilot scheme to include such provision.
- (5) Provision as to the review of a pilot scheme may in particular include provision—
- (a) for a review to be carried out by an independent person;
 - (b) for publication of the findings of a review;
 - (c) as to matters to be considered on a review.
- (6) Those matters may in particular include any of the following—
- (a) the administration of the scheme;
 - (b) the effect of direct payments on the cost or quality of care received by patients;

Status: Point in time view as at 19/01/2010.

Changes to legislation: Health Act 2009, Section 11 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.
- (7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).
- (8) An order under this subsection is an order making provision for either or both of the following—
 - (a) repealing section 12A(6) and subsections (1) to (4) of this section;
 - (b) amending, repealing, or otherwise modifying any other provision of this Act.
- (9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).
- (10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

12D Arrangements with other bodies relating to direct payments

- (1) The Secretary of State may arrange with any person or body to give assistance in connection with direct payments.
- (2) Arrangements may be made under subsection (1) with voluntary organisations.
- (3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State.”

Commencement Information

11 S. 11 in force at 19.1.2010 by [S.I. 2010/30](#), [art. 2\(b\)](#)

Status:

Point in time view as at 19/01/2010.

Changes to legislation:

Health Act 2009, Section 11 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.