

SCHEDULE 4

Regulation 16

OPT OUTS OF OUT OF HOURS SERVICES

Opt outs of out of hours services where the opt out notice is served after 30th September 2004

1.—(1) This paragraph applies where a contractor (other than a Primary Care Trust) serves an out of hours opt out notice after 30th September 2004.

(2) In this paragraph—

“OOH day” is the day specified by the contractor in its out of hours opt out notice to a Primary Care Trust for the commencement of the out of hours opt out;

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

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

(3) A contractor which falls within regulation 16(1) or (2) and which wishes to terminate its obligation to provide out of hours services shall notify the Primary Care Trust in writing to that effect (“an out of hours opt out notice”).

(4) An out of hours opt out notice shall specify the date from which the contractor would like the opt out to take effect, which must be either three or six months after the date of service of the out of hours opt out notice.

(5) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Primary Care Trust shall approve the notice and specify in accordance with sub-paragraph (6) the date on which the out of hours opt out is to commence (“OOH day”). The Primary Care Trust shall notify the contractor of its decision as soon as possible.

(6) The date specified in sub-paragraph (5) shall be the date specified in the out of hours opt out notice.

(7) A contractor may not withdraw an out of hours opt out notice once it has been approved by the Primary Care Trust under sub-paragraph (5) without the Primary Care Trust’s agreement.

(8) Following receipt of the out of hours opt out notice, the Primary Care Trust must use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive the out of hours services from an alternative provider from OOH day.

(9) The contractor’s duty to provide the out of hours services shall terminate on OOH day unless the Primary Care Trust serves a notice under sub-paragraph (10) (extending OOH day to B day or C day).

(10) If the Primary Care Trust is not successful in finding an alternative provider to take on the provision of the out of hours services from OOH day, then it shall notify the contractor in writing of this fact no later than one month before OOH day, and—

(a) in a case where OOH day is three months after service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until B day unless at least one month before B day it receives a notice in writing from the Primary Care Trust under sub-paragraph (11) that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the out of hours services from B day;

(b) in a case where OOH day is six months after the service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until C day unless at least one month before C day it receives a notice from the Primary Care Trust under sub-paragraph (14) that it has made an application to the relevant Strategic Health Authority under sub-paragraph (13) seeking its approval of a decision to refuse an opt out or to delay the commencement of an opt out until after C day.

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(11) Where in accordance with sub-paragraph (10)(a) the opt out is to commence on B day and the Primary Care Trust, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the out of hours services 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 out of hours services until C day unless at least one month before C day it receives a notice from the Primary Care Trust under sub-paragraph (14) that it has applied to the relevant Strategic Health Authority under sub-paragraph (13) seeking the approval of the relevant Strategic Health Authority to a decision to refuse an opt out or to postpone the commencement of an opt out until after C day.

(12) As soon as is reasonably practicable and in any event within 7 days of the Primary Care Trust serving a notice under sub-paragraph (11), the Primary Care Trust shall enter into discussions with the contractor concerning the support that the Primary Care Trust may give to the contractor or other changes which the Primary Care Trust or the contractor may make in relation to the provision of the out of hours services until C day.

(13) The Primary Care Trust may, if it considers that there are exceptional circumstances, make an application to the relevant Strategic Health Authority for approval of a decision to—

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

(14) As soon as practicable after making an application under sub-paragraph (13) to the Strategic Health Authority, the Primary Care Trust shall notify the contractor in writing that it has made such an application.

(15) On receiving an application under sub-paragraph (13) for approval of a decision to refuse an opt out, the Strategic Health Authority shall—

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

(16) On receiving an application under sub-paragraph (13) for approval of a decision to postpone the commencement of an opt out until after C day, the Strategic Health Authority shall—

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

(17) The relevant Strategic Health Authority shall notify the Primary Care Trust and the contractor in writing of its decision under sub-paragraph (15) or (16) as soon as is practicable, including reasons for its decision.

(18) Where the Strategic Health Authority—

- (a) approves a decision to refuse an opt out under sub-paragraph (15)(a); or
- (b) recommends that an opt out be refused under sub-paragraph (16)(b)(ii),

the Primary Care Trust shall notify the contractor in writing that it may not opt out of the out of hours services.

(19) Where a Primary Care Trust notifies a contractor under sub-paragraph (18), the contractor may not serve an out of hours opt out notice for a period of 12 months beginning with the date of

service of the Primary Care Trust's notice under sub-paragraph (18) unless there has been a change in the circumstances of the contractor which affects its ability to deliver services under the agreement.

(20) Where the Strategic Health Authority—

- (a) recommends a different date for the commencement of the opt out under sub-paragraph (15)(b);
- (b) approves a Primary Care Trust's application to postpone an opt out under sub-paragraph (16)(a); or
- (c) recommends an earlier date to that proposed by the Primary Care Trust in its application under sub-paragraph (16)(b)(i),

the Primary Care Trust shall in accordance with the decision of the Strategic Health Authority notify the contractor in writing of its decision and the notice shall specify the date of the commencement of the opt out. The opt out shall commence from that date.

(21) Where the Strategic Health Authority rejects the Primary Care Trust's application under sub-paragraph (15)(c) or (16)(c), the Primary Care Trust shall notify the contractor in writing that there shall be an opt out and the opt out shall commence on C day or 28 days after the date of service of the Primary Care Trust's notice, whichever is the later.

(22) If the relevant Strategic Health Authority has not reached a decision on the Primary Care Trust's application under sub-paragraph (13) before C day, the contractor's obligation to provide the out of hours services shall continue until the date specified in sub-paragraph (20) or (21).

(23) Nothing in sub-paragraphs (2) to (22) above shall prevent the contractor and the Primary Care Trust from agreeing a different date for the termination of the contractor's duty under the agreement to provide the out of hours services and accordingly, varying the agreement in accordance with paragraph 98 of Schedule 5.

(24) The opt out takes effect at 08.00 on the relevant day unless—

- (a) the day is a Saturday, Sunday, Good Friday, Christmas Day, or a bank holiday, in which case the opt out shall take effect on the next working day at 08.00; or
- (b) the Primary Care Trust and the contractor agree a different day or time.

Opt outs of out of hours services where the opt out notice is served before 1st October 2004

2.—(1) This paragraph shall apply where a contractor (other than a Primary Care Trust) serves an out of hours opt out notice before 1st October 2004.

(2) In this paragraph—

“OOH day” is the day specified by the Primary Care Trust for the commencement of the out of hours opt out in its decision under sub-paragraph (5);

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

“OOHC day” is the day specified by the Primary Care Trust in its decision under sub-paragraph (11) or (13) (which must be nine months after the date of service of the out of hours opt out notice or before 2nd January 2005).

(3) A contractor which falls within regulation 16(1) and wishes to terminate its obligation to provide out of hours services shall notify the Primary Care Trust in writing to that effect (“an out of hours opt out notice”).

(4) An out of hours opt out notice shall state the date on which the contractor would like the opt out to take effect, which must be either three or six months after the date of service of the out of hours opt out notice.

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(5) As soon as is reasonably practicable and in any event within 28 days of receiving the out of hours opt out notice, the Primary Care Trust shall approve the notice and specify in accordance with sub-paragraphs (6) and (7) the date on which the out of hours opt out is to commence (“OOH day”). The Primary Care Trust shall notify the contractor in writing of its decision as soon as possible, including reasons for its decision.

(6) Subject to sub-paragraph (7), OOH day shall be—

- (a) the date specified in the out of hours opt out notice; or
- (b) any other date before 2nd January 2005.

(7) A Primary Care Trust may not specify under sub-paragraph (5) a date earlier than the date specified in the out of hours opt out notice.

(8) A contractor may not withdraw an out of hours opt out notice once it has been approved by a Primary Care Trust under sub-paragraph (5) without the Primary Care Trust’s agreement.

(9) Following receipt of the out of hours opt out notice, the Primary Care Trust must use its reasonable endeavours to make arrangements for the contractor’s registered patients to receive out of hours services from an alternative provider from OOH day.

(10) The contractor’s duty to provide the out of hours services shall terminate on OOH day unless the Primary Care Trust—

- (a) serves a notice under sub-paragraph (11) (extending OOH day to OOHB day or OOHC day); or
- (b) makes an application under sub-paragraph (14) (seeking the approval of the relevant Strategic Health Authority to a decision to refuse an opt out or to delay the taking of effect of an opt out until after OOH day).

(11) If the Primary Care Trust is not successful in finding an alternative provider to take on the provision of the out of hours services from OOH day, then it shall notify the contractor in writing of this fact no later than one month before OOH day, and—

- (a) in a case where OOH day is three months after service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until OOHB day unless at least one month before OOHB day it receives a notice in writing from the Primary Care Trust under sub-paragraph (13) that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the out of hours services from OOHB day;
- (b) in a case where OOH day is after the day three months after the service of the out of hours opt out notice, the contractor shall continue to provide the out of hours services until OOHC day (which shall be specified by the Primary Care Trust in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day it receives a notice from the Primary Care Trust under sub-paragraph (16) that it has made an application to the relevant Strategic Health Authority under sub-paragraph (14) seeking its approval to a decision to refuse an opt out or to delay the commencement of the opt out until after OOHC day.

(12) OOHC day shall be any day before 2nd January 2005 or the day nine months after the service of the out of hours opt out notice.

(13) Where in accordance with sub-paragraph (11)(a) the out of hours opt out is to commence on OOHB day and the Primary Care Trust, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the out of hours services from that day, it shall notify the contractor in writing of this fact at least one month before OOHB day, in which case the contractor shall continue to provide the out of hours services until OOHC day (which shall be specified by the Primary Care Trust in accordance with sub-paragraph (12) and included in its notice to the contractor under this sub-paragraph) unless at least one month before OOHC day it receives

a notice from the Primary Care Trust under sub-paragraph (16) that it has applied to the relevant Strategic Health Authority under sub-paragraph (14) seeking the approval of the relevant Strategic Health Authority of a decision to refuse an opt out or to postpone the commencement of an opt out until after OOHC day.

(14) The Primary Care Trust may, if it considers there are exceptional circumstances, make an application to the relevant Strategic Health Authority for approval of a decision to—

- (a) refuse an opt out; or
- (b) postpone the commencement of an opt out until after—
 - (i) OOHC day, or
 - (ii) OOH day where OOH day is 1st January 2005 and 1st January 2005 is nine months or more after the date of the out of hours opt out notice.

(15) Where OOH day is 1st January 2005, and 1st January 2005 is nine months or more after the date of the out of hours opt out notice, an application under sub-paragraph (14) shall be made at least one month before OOH day.

(16) As soon as practicable after making an application under sub-paragraph (14) to the Strategic Health Authority, the Primary Care Trust shall notify the contractor in writing that it has made such an application.

(17) Sub-paragraphs (15) to (24) of paragraph 1 shall apply to an out of hours opt out notice served 1st October 2004 as they apply to an out of hours opt out notice served after 30th September 2004 and as if the reference to “C day” was a reference to OOHC day or OOH day where OOH day is 1st January 2005 and 1st January 2005 is nine months or more after the date of the out of hours opt out notice.

Informing patients of opt outs

3.—(1) Prior to any out of hours opt out taking effect, the Primary Care Trust and the contractor shall discuss how to inform patients of the proposed opt out.

(2) The contractor shall, if requested by the Primary Care Trust inform its registered patients of an opt out and the arrangements made for them to receive the out of hours services by—

- (a) placing a notice in the contractor’s waiting rooms; or
- (b) including the information in the contractor’s practice leaflet