

SCHEDULE 6

Regulation 21

OUT OF HOURS TRANSITIONAL PROVISIONS

Out of hours arrangements

1.—(1) In this Schedule—

“accredited service provider” has the same meaning as in the Out of Hours Regulations;

“normal hours” means the period encompassing the days and times of day specified in an agreement as being the days on which, and the times at which, the contractor normally performs the medical services which the contractor wishes to make an out of hours arrangement in respect of;

“out of hours arrangement” means an arrangement under sub-paragraph (2) or (3);

“out of hours period”—

- (a) in relation to the services referred to in sub-paragraph (2), has the meaning given to it in regulation 2 of these Regulations; and
- (b) in relation to the services referred to in sub-paragraph (3), means outside normal hours; and

“Out of Hours Regulations” means the National Health Service (Out of Hours Medical Services) and National Health Service (General Medical Services) Amendment Regulations 2002(1).

(2) A contractor which provides—

- (a) out of hours services pursuant to regulation 20; and
- (b) out of hours services only to patients which it provides essential services to under the agreement,

may, with the approval of the relevant body, make an arrangement under which any of its liabilities and obligations under the agreement in respect of those services are transferred to an accredited service provider during part or all of the out of hours period as if regulations 1 to 11 of the Out of Hours Regulations were still in force as modified in accordance with sub-paragraph (8).

(3) A contractor falling within sub-paragraph (2) may also, with the approval of the relevant body, make an arrangement in respect of other services which it provides under the agreement under which any of its liabilities and obligations under the agreement in respect of those services are transferred to an accredited service provider during part or all of the out of hours period as if regulations 1 to 11 of the Out of Hours Regulations were still in force as modified in accordance with sub-paragraph (8).

(4) An out of hours arrangement made pursuant to sub-paragraph (2) or (3) shall cease to have effect on 1st January 2005 (if it has not ceased to have effect before that date).

(5) An out of hours arrangement made in accordance with sub-paragraph (2) or (3) shall, for so long as it continues, or is not suspended under paragraph 6(1), relieve the contractor of—

- (a) its obligations to provide the services in respect of which the out of hours arrangement has been made; and
- (b) all liabilities under the agreement in respect of those services.

(6) A contractor may make more than one out of hours arrangement, for example with different accredited service providers and in respect of different patients, different times and different parts of its practice area.

(1) S.I.2002/2548 as amended by S.I. 2003/26.

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(7) Nothing in this paragraph prevents a contractor from retaining or resuming its obligations in relation to named patients.

(8) The modifications referred to in sub-paragraphs (2) and (3) are—

- (a) as if out of hours period had the meaning given in sub-paragraph (1);
- (b) as if the requirements relating to an assessing authority in regulation 4(5) to (8) did not apply in cases where, in the opinion of the accrediting authority, it was appropriate and safe to dispense with them;
- (c) as if the reference to a medical practitioner in regulation 11(2)(c) was a reference to a contractor;
- (d) as if the reference to section 44 in regulation 11(2)(d) was to section 45A of the Act⁽²⁾; and
- (e) as if the reference to a medical list or supplementary list in paragraph 7 of the Schedule was to a medical performers list and the words “or he is named in an agreement under section 2 of the 1997 Act as a performer of personal medical services” were omitted.

Application for approval of an out of hours arrangement

2.—(1) An application to the relevant body for approval of an out of hours arrangement shall be made in writing and shall state—

- (a) the name and address of the accredited service provider;
- (b) the periods during which the contractor’s obligations under the agreement are to be transferred;
- (c) how the accredited service provider intends to meet the contractor’s obligations during the periods specified under paragraph (b);
- (d) the arrangements for the transfer of the contractor’s obligations under the agreement to and from the accredited service provider at the beginning and end of the periods specified under paragraph (b); and
- (e) how long the proposed arrangements are intended to last and the circumstances in which the contractor’s obligations under the agreement during the periods specified under paragraph (b) would revert to it.

(2) The relevant body shall determine the application before the end of the period of 28 days beginning with the day on which the relevant body received it.

(3) The relevant body shall grant approval to a proposed out of hours arrangement if it is satisfied—

- (a) having regard to the overall provision of primary medical services provided in the out of hours period in its area, that the arrangement is reasonable and will contribute to the efficient provision of such services in the area;
- (b) having regard, in particular, to the interests of the contractor’s patients, that the arrangement is reasonable;
- (c) having regard, in particular, to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;
- (d) that the area covered by the proposed out of hours arrangements is within the geographical area in respect of which approval is given under regulation 5 of the Out of Hours Regulations;
- (e) that it will be clear to the contractor’s patients how to seek primary medical services during the out of hours period;

(2) Section 45A was inserted into the Act by paragraph 23 of Schedule 11 to the 2003 Act.

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- (f) where maternity medical services are to be provided under the out of hours arrangement, that they will be performed by a medical practitioner who has such medical experience and training as are necessary to enable him properly to perform such services; and
- (g) that if the arrangement comes to an end, the contractor has in place proper arrangements for the immediate resumption of its responsibilities.

(4) The relevant body shall give notice to the contractor of its determination and, where it refuses an application, it shall send the contractor a statement in writing of the reasons for its determination.

(5) A contractor which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the relevant body's notification under sub-paragraph (4) was sent.

Review of approval

3.—(1) Where it appears to the relevant body that it may no longer be satisfied of any of the matters referred to in sub-paragraphs (a) to (g) of paragraph 2(3), it may give notice to the contractor that it proposes to review its approval of the out of hours arrangement.

(2) On any review under sub-paragraph (1), the relevant body shall allow the contractor a period of 30 days, beginning with the day on which it sent the notice, within which to make representations in writing to the relevant body.

(3) After considering any representations made in accordance with sub-paragraph (2), the relevant body may determine to—

- (a) continue its approval;
- (b) withdraw its approval following a period of notice; or
- (c) if it appears to it that it is necessary in the interests of the contractor's patients, withdraw its approval immediately.

(4) The relevant body shall give notice to the contractor of its determination under sub-paragraph (3).

(5) Where the relevant body withdraws its approval, whether immediately or on notice, it shall include with the notice a statement in writing of the reasons for its determination.

(6) A contractor which wishes to refer the matter in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the relevant body's notification under sub-paragraph (4) was sent.

(7) Where the relevant body determines to withdraw its approval following a period of notice, the withdrawal shall take effect at the end of the period of two months beginning with—

- (a) the date on which the notice referred to in sub-paragraph (4) was sent; or
- (b) where there has been a dispute which has been referred under the NHS dispute resolution procedure and the dispute is determined in favour of withdrawal, the date on which the contractor receives notice of the determination.

(8) Where the relevant body determines to withdraw its approval immediately, the withdrawal shall take effect on the day on which the notice referred to in sub-paragraph (4) is received by the contractor.

Suspension of approval

4.—(1) Where a Primary Care Trust which is a relevant body suspends its approval of an accredited service provider under regulation 9 of the Out of Hours Regulations (suspension of approval) or receives notice of suspension of such approval under regulation 11 of those regulations

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(notification), it shall immediately suspend its approval of any out of hours arrangement made by the contractor with that accredited service provider.

(2) A suspension of approval under sub-paragraph (1) shall take effect on the day on which the contractor receives notice of suspension of approval of the accredited service provider under regulation 11 of the Out of Hours Regulations.

Immediate withdrawal of approval other than following review

5.—(1) Where a Primary Care Trust which is a relevant body withdraws its approval of an accredited service provider under regulation 8 of the Out of Hours Regulations (withdrawal of approval) or receives notice of withdrawal of such approval under regulation 11 of those Regulations, it shall withdraw its approval of any out of hours arrangement made with that accredited service provider immediately.

(2) The relevant body shall withdraw its approval of an out of hours arrangement where, without any review having taken place under paragraph 3, it appears to the relevant body that it is necessary in the interests of the contractor's patients to withdraw its approval immediately.

(3) The relevant body shall give notice to the contractor of a withdrawal of approval under sub-paragraph (2) and shall include with the notice a statement in writing of the reasons for its determination.

(4) A withdrawal of approval under sub-paragraph (1) or (2) shall take effect—

(a) in the case of a withdrawal under sub-paragraph (1), on the day on which the contractor receives notice of withdrawal of approval of the accredited service provider under regulation 11 of the Out of Hours Regulations; and

(b) in the case of a withdrawal of approval under sub-paragraph (2), on the day on which the notice referred to in sub-paragraph (3) is received by the contractor.

(5) A contractor which wishes to refer a withdrawal of approval under sub-paragraph (2) in accordance with the NHS dispute resolution procedure must do so before the end of the period of 30 days beginning with the day on which the relevant body's notification under sub-paragraph (3) was sent.

Suspension or termination of an out of hours arrangement

6.—(1) The contractor shall suspend an arrangement made with an accredited service provider under paragraph 1(2) or (3) on receipt of the notice of suspension of approval under regulation 11 of the Out of Hours Regulations.

(2) The contractor shall terminate an out of hours arrangement under paragraph 1(2) or (3) with effect from the date of the taking of effect of the withdrawal of the relevant body's approval of that arrangement under paragraph 3 or 5.

(3) Where the contractor is a Primary Care Trust and it suspends its approval of an accredited service provider under regulation 9 of the Out of Hours Regulations, it shall forthwith suspend its out of hours arrangement with that accredited service provider.

(4) Where the contractor is a Primary Care Trust and it withdraws its approval of an accredited service provider under regulation 8 of the Out of Hours Regulations or it receives notice of withdrawal of such approval under regulation 11 of those Regulations, it shall immediately terminate its out of hours arrangement with that accredited service provider.