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STATUTORY INSTRUMENTS

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**2005 No. 3361**

**The National Health Service (General  
Dental Services Contracts) Regulations 2005**

**PART 5**

**CONTRACTS: REQUIRED TERMS**

**Parties to the contract**

**10.** A contract must specify—

- (a) the names of the parties;
- (b) in the case of a partnership—
  - (i) whether or not it is a limited partnership; and
  - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
- (c) in the case of each party, the postal address to which official correspondence and notices should be sent.

**NHS contracts**

**11.** In the case of a contractor who is to be regarded as a health service body pursuant to regulation 9, the contract must state that it is an NHS contract.

**Contracts with individuals practising in partnership**

**12.—**(1) Where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted, and the contract shall make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

**Duration**

**13.—**(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Primary Care Trust has terminated the contract of another provider of primary dental services, and as a result of that termination, it wishes to enter into a temporary contract for a period specified in the contract for the provision of services.

(3) Where a contract is entered into pursuant to paragraph (2)—

- (a) paragraph 66 (termination by the contractor) of Schedule 3 shall not apply to the contract; and
- (b) the parties to the temporary contract may include such terms as to termination by notice as they may agree.

### **Mandatory services**

**14.**—(1) For the purposes of section 28L of the Act<sup>(1)</sup> (requirement to provide certain primary dental services), the services which must be provided under a general dental services contract (“mandatory services”) are described in paragraphs (2) to (4).

(2) A contractor must provide to its patients, during the period specified in paragraph (3), all proper and necessary dental care and treatment which includes—

- (a) the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;
- (b) treatment, including urgent treatment; and
- (c) where appropriate, the referral of the patient for advanced mandatory services, domiciliary services, sedation services or other relevant services provided under Part 1 of the Act.

(3) A contractor must provide—

- (a) urgent treatment; and
- (b) all other services described in paragraph (2),

that are necessary to meet the reasonable needs of its patients during normal surgery hours.

(4) The dental care and treatment referred to in paragraph (2) includes—

- (a) examination;
- (b) diagnosis;
- (c) advice and planning of treatment;
- (d) preventative care and treatment;
- (e) periodontal treatment;
- (f) conservative treatment;
- (g) surgical treatment;
- (h) supply and repair of dental appliances;
- (i) the taking of radiographs;
- (j) the supply of listed drugs and listed appliances; and
- (k) the issue of prescriptions,

but it does not include additional services.

### **Additional services**

**15.** In the case where a contract includes the provision of additional services, that contract must contain, in relation to each such service as is included in the contract, terms that have the same effect as those specified in Schedule 1 in so far as they are relevant to that service.

### **Services: general**

**16.**—(1) A contract must specify—

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(1) Section 28L was inserted into the Act by section 172(1) of the 2003 Act.

- (a) the services to be provided by the contractor;
  - (b) the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services, or, if the contractor is to provide services from a mobile surgery, that fact; and
  - (c) the hours during which services that are not mandatory services are to be provided.
- (2) The reference to premises in paragraph (1)(b) does not include any place in which a patient is residing.

### **Units of dental activity**

**17.—**(1) The contract must specify the number of units of dental activity to be provided by the contractor—

- (a) where the contract begins on 1st April, in each financial year; or
- (b) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) A contract must contain terms which have the effect of those specified in Part 1 of Schedule 2 in relation to the calculation of the number of units of dental activity that the contractor will provide under the contract.

### **Units of orthodontic activity**

**18.—**(1) Where a contract includes the provision of orthodontic services, the contract must specify the number of units of orthodontic activity to be provided by the contractor—

- (a) where the contract begins on 1st April, in each financial year; or
- (b) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

(2) Where paragraph (1) applies, the contract must also contain terms which have the effect of those provisions specified in Part 2 of Schedule 2 in relation to the calculation of the number of units of orthodontic activity that the contractor will provide under the contract.

### **Under provision of units of dental activity or units of orthodontic activity**

**19.—**(1) The contract shall provide that the Primary Care Trust shall not pursuant to Part 9 of Schedule 3 (variation and termination of agreements) be entitled to take any action for breach of a term of the contract giving effect to regulation 17 or 18 (including termination of the contract) where paragraph (2) applies.

(2) Subject to paragraph (4), this paragraph applies where the contractor has failed to provide—

- (a) the number of units of dental activity; or
- (b) the number of units of orthodontic activity,

it is contracted to provide pursuant to a term of the contract giving effect to regulation 17 or 18 (as the case may be) where—

- (i) that failure amounts to 4 per cent or less of the total number of units of dental activity or units of orthodontic activity (as the case may be) that ought to have been provided during a financial year; and
- (ii) the contractor agrees to provide and does so provide the units it has failed to provide within such period as the Primary Care Trust specifies in writing, such period to consist of not less than 60 days.

(3) Paragraphs (1) and (2) shall not prevent the Primary Care Trust from taking action under Part 9 of Schedule 3 for breach of contract (including terminating the contract) on other grounds.

(4) In the case of a temporary contract the reference to a period of not less than 60 days in paragraph (2)(ii) may not apply if the Primary Care Trust considers it not appropriate or considers another period of less than 60 days should apply.

### **Domiciliary services and sedation services**

**20.** Where a contract includes the provision of domiciliary services or sedation services, the contract must specify the number of courses of treatment that the contractor is—

- (a) to provide; or
- (b) to contribute to where provided as a referral service,

that involve the provision of domiciliary services or sedation services—

- (i) where the contract begins on 1st April, in each financial year; or
- (ii) where the contract begins on a date other than 1st April, in the remainder of the financial year in which the contract begins, and in each financial year thereafter.

### **Finance**

**21.—**(1) The contract must contain a term which has the effect of requiring—

- (a) the Primary Care Trust to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Secretary of State under section 28N of the Act<sup>(2)</sup> (GDS contracts: payments); and
- (b) the contractor to make payments promptly to the Primary Care Trust and in accordance with both the terms of the contract and any other conditions relating to payment contained in directions given by the Secretary of State under section 28N of the Act.

(2) The obligation referred to in paragraph (1) is subject to any right the Primary Care Trust has to set off against an amount payable to the contractor an amount that—

- (a) is owed by the contractor to the Primary Care Trust under the contract;
- (b) has been paid to the contractor owing to an error or in circumstances when it was not due; or
- (c) the Primary Care Trust may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Secretary of State under section 28N of the Act.

(3) The contract must contain a term to the effect that where, pursuant to directions under section 17<sup>(3)</sup> (Secretary of State's directions: exercise of functions) or 28N of the Act, a Primary Care Trust is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

### **Fees, charges and financial interests of the contractor**

**22.—**(1) The contract must contain terms relating to fee, charges and financial interests which have the same effect as those set out in paragraphs (2) to (4).

<sup>(2)</sup> Section 28N was inserted into the Act by section 172(1) of the 2003 Act.

<sup>(3)</sup> Section 17 of the Act was substituted by the 1999 Act, section 12(1) and amended by the 2001 Act, Schedule 5, paragraph 5(3) and the 2002 Act, Schedule 1, paragraph 7.

(2) The contractor shall not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another's benefit from—

- (a) any patient of its for the provision of any treatment under the contract, except as otherwise provided in the NHS Charges Regulations; or
- (b) any person who has requested services under the contract for himself or a family member, as a prerequisite to providing services under the contract to that person or his family member.

(3) The contract must contain a term that—

- (a) only permits the contractor to collect from any patient of its any charge that that patient is required to pay by virtue of the NHS Charges Regulations, in accordance with the requirements of those Regulations; and
- (b) provides for obligations imposed on the contractor by virtue of the NHS Charges Regulations to be terms of the contract.

(4) The contract must contain a term that requires the contractor in making a decision—

- (a) as to what services to recommend or provide to a patient who has sought services under the contract; or
- (b) to refer a patient for other services by another contractor, hospital or other relevant service provider under Part 1 of the Act,

to do so without regard to its own financial interests.

(5) The term “patient” in paragraph (3) shall have the same meaning as in regulation 2(1) of the NHS Charges Regulations.

### **Arrangements on termination**

**23.** A contract shall make suitable provision for arrangements on termination of a contract including the consequences (whether financial or otherwise) of the contract ending.

### **Other contractual terms**

**24.—**(1) A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in Schedule 3 except paragraphs 55(4) to 55(13) and 56.

(2) The paragraphs specified in paragraph (1) shall have effect in relation to the matters set out in those paragraphs.

(3) Where a contract does not commence on 1st April in any financial year, there must be a contractual term—

- (a) specifying the date and periods for the purposes of a mid-year review of the services provided; and
- (b) which, other than as to the date and periods, have similar effect as those specified in paragraphs 58(3) to (8) and 59 of Schedule 3 in respect of the requirement and procedure for carrying out mid-year reviews.