
STATUTORY INSTRUMENTS

2005 No. 3373

The National Health Service (Personal Dental Services Agreements) Regulations 2005

PART 5

AGREEMENTS: REQUIRED TERMS

NHS contracts

10. If the contractor is to be regarded as a health service body, the agreement must state that it is an NHS contract.

Additional services

11. If the agreement includes the provision of additional services, it must contain in relation to each such service as is included in the agreement, terms that have the same effect as those specified in Schedule 1 in so far as they are relevant to that service.

Agreements: general

12.—(1) An agreement must specify—

- (a) the services to be provided by the contractor;
- (b) the duration of the agreement;
- (c) to whom such services are to be provided; and
- (d) the postal 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.

(2) The premises referred to in paragraph (1)(d) do not include any place in which a patient is residing.

Units of dental activity

13.—(1) Where an agreement includes the provision of mandatory or advanced mandatory services, the agreement must specify the number of units of dental activity to be provided by the contractor—

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

(2) An agreement 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 has provided under the agreement.

Units of orthodontic activity

14.—(1) Where an agreement includes the provision of orthodontic services, the agreement must specify the number of units of orthodontic activity to be provided by the contractor—

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

(2) Where paragraph (1) applies, the agreement must also contain terms which have the effect of those specified in Part 2 of Schedule 2 in relation to the calculation of how many units of orthodontic activity a contractor has provided under the agreement.

Under-provision of units of dental activity or units of orthodontic activity

15.—(1) The agreement shall provide that the Relevant Body 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 agreement giving effect to regulation 13 or 14 (including termination of the agreement) 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 agreement giving effect to regulation 13 or 14 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 that ought to have been provided; and
- (ii) the contractor agrees to provide and does so provide the units it has failed to provide within such period as the Relevant Body specifies in writing, such period to consist of not less than 60 days.

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

(4) In the case of an agreement with a duration period of less than 12 months, the period of 60 days in paragraph (2)(ii) may not apply if the Relevant Body considers it not appropriate or considers that another period of less than 60 days should apply.

Domiciliary services and sedation services

16. Where an agreement includes the provision of domiciliary services or sedation services, the agreement 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 for which the contract continues.

Finance

- 17.—(1) The agreement must contain a term which has the effect of requiring—
- (a) the Relevant Body to make payments to the contractor under the agreement promptly and in accordance with both the terms of the agreement and any other conditions relating to the payment contained in directions given by the Secretary of State under section 28E(3A) of the Act⁽¹⁾ (personal medical or dental services: regulations);
 - (b) the contractor to make payments promptly to the Relevant Body and in accordance with both the terms of the agreement and any other conditions relating to the payment contained in directions given by the Secretary of State under section 17 (Secretary of State's directions: exercise of functions) or 28E(3A) of the Act.
- (2) The obligation referred to in paragraph (1) is subject to any right the Relevant Body has to set off against an amount payable to the contractor an amount that—
- (a) is owed by the contractor to the Relevant Body under the agreement;
 - (b) has been paid to the contractor owing to an error or in circumstances when it was not due; or
 - (c) the Relevant Body may withhold from the contractor in accordance with the terms of the agreement or any other applicable provisions contained in directions given by the Secretary of State under section 28E(3A).
- (3) The agreement must contain a term to the effect that where, pursuant to directions under section 17 or 28E(3A) of the Act, a Relevant Body is required to make a payment to a contractor under an agreement but subject to conditions, those conditions are to be a term of the agreement.

Fees, charges and financial interests of the contractor

- 18.—(1) The agreement must contain terms relating to fees, charges and financial interests which have the same effect as those set out in paragraphs (2) to (4).
- (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 agreement, except as otherwise provided in the NHS Charges Regulations; or
 - (b) any person who has requested services under the agreement for himself or a family member, as a prerequisite to providing services under the agreement to that person or his family member.
- (3) The agreement 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 agreement.
- (4) The agreement 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 agreement; or
 - (b) to refer a patient for other services by another contractor, hospital or other relevant service provider under Part 1 of the Act,

(1) Section 17 of the Act was substituted by the Health Act 1999 (c. 8), section 12(1), and amended by the 2001 Act, section 67(1) and Schedule 5, paragraph 5(1) and (3) and the 2002 Act, section 1(3) and Schedule 1, paragraph 7. Section 28E(3A) was inserted by section 177(8) of the 2003 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

19. An agreement shall make suitable provision for arrangements on termination of an agreement including the consequences (whether financial or otherwise) of the agreement ending.

Other contractual terms

20.—(1) An agreement 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 and Schedule 5.

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

(3) Where an agreement does not commence on 1st April in any financial year or the duration of an agreement is less than 12 months, 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.