

**2009 No. 1166**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Charges) (Amendments Relating to Pandemic Influenza) Regulations 2009**

<i>Made</i>	- - - -	<i>6th May 2009</i>
<i>Laid before Parliament</i>		<i>7th May 2009</i>
<i>Coming into force</i>	- -	<i>8th May 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 172(1), 175 and 272(7) of the National Health Service Act 2006(a).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (Charges) (Amendments Relating to Pandemic Influenza) Regulations 2009 and shall come into force on 8th May 2009.

(2) These Regulations apply in relation to England.

**Amendment of the National Health Service (Charges for Drugs and Appliances) Regulations 2000**

2.—(1) The National Health Service (Charges for Drugs and Appliances) Regulations 2000(b) are amended as follows.

(2) In regulation 5 (supply of drugs and appliances by Health Authorities, NHS trusts and Primary Care Trusts)—

- (a) in paragraph (1), after “(3A)” insert “, (3B)”; and
- (b) after paragraph (3A) insert the following paragraph—

“(3B) No charge shall be made and recovered under this regulation in respect of a supply which is—

- (a) made—
  - (i) while a disease is, or
  - (ii) in anticipation of a disease being imminently, pandemic and a serious risk, or potentially a serious risk, to human health; and

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(a) 2006 c.41. By virtue of section 271 of the Act, the powers conferred by sections 172, 175 and 272(7) are exercisable by the Secretary of State only in relation to England. See section 275(1) of the Act for the definitions of “prescribed” and “regulations”.

(b) S.I. 2000/620; relevant amending instruments are S.I. 2002/2352, 2004/696, 2007/1975 and 2009/411.

- (b) in accordance with a protocol relating to that disease as provided for in article 12F of the Prescription Only Medicines (Human Use) Order 1997<sup>(a)</sup> or article 8 of the Medicines (Pharmacy and General Sale—Exemption) Order 1980<sup>(b)</sup>.”.

**Amendment of the National Health Service (Charges to Overseas Visitors) Regulations 1989**

3. In Schedule 1 to the National Health Service (Charges to Overseas Visitors) Regulations 1989<sup>(c)</sup>, in Part IV (other diseases), after “Severe Acute Respiratory Syndrome” insert the following entry—

“Pandemic influenza (influenza caused by a new virus subtype that has an increased and sustained transmission during a global outbreak of influenza).”.

Signed by authority of the Secretary of State for Health.

*Dawn Primarolo*  
Minister of State,  
Department of Health

6th May 2009

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(a) 1997/1830; relevant amending instrument is S.I. 2009/1165.  
(b) S.I. 1980/1924; relevant amending instrument is S.I. 2009/1165.  
(c) S.I. 1989/306; Part IV of Schedule 1 was inserted by S.I. 2004/614.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend regulations relating to the making and recovery of charges in relation to the supply of drugs and the provision of treatment as part of the health service in England, so as to enable the provision of treatment in relation to pandemic influenza without charge.

Regulation 2 amends the National Health Service (Charges for Drugs and Appliances) Regulations 2000, which make provision for charges for the supply of drugs and appliances under the National Health Service Act 2006. The amendment provides that no charge shall be made by a Primary Care Trust, NHS trust or NHS foundation trust when there is a pandemic disease (such as pandemic influenza) which poses a serious risk, or potentially poses a serious risk, to human health (or such a disease is anticipated imminently) and the supply of the drug is in accordance with a protocol relating to that disease as provided for in article 12F of the Prescription Only Medicines (Human Use) Order 1997 or article 8 of the Medicines (Pharmacy and General Sale—Exemption) Order 1980.

Regulation 3 amends the National Health Service (Charges to Overseas Visitors) Regulations 1989 (“the 1989 Regulations”), which make provision for charges in respect of the provision of certain NHS treatment to persons not ordinarily resident in the United Kingdom (“overseas visitors”). Regulations 3(c) of the 1989 Regulations provides that no charge shall be made in respects of services forming part of the health service that are provided for an overseas visitor for treatment in respect of a disease listed in Schedule 1 to the 1989 Regulations. Regulation 3 of these Regulations amends that Schedule to insert an entry for pandemic influenza. The effect is that an overseas visitor who is being treated in a hospital for pandemic influenza will not be charged for any NHS treatment in respect of that condition.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the private and voluntary sectors.

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STATUTORY INSTRUMENTS

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