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STATUTORY INSTRUMENTS

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**2012 No. 2996**

**The National Health Service Commissioning  
Board and Clinical Commissioning Groups  
(Responsibilities and Standing Rules) Regulations 2012**

**PART 1**

General

**Citation and commencement**

1.—(1) These Regulations may be cited as [<sup>F1</sup>the] National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 and, subject to paragraphs (2) to (4), come into force on 1st April 2013.

(2) The following provisions of the Regulations come into force on 1st February 2013—

(a) this Part;

<sup>F2</sup>(b) .....

(c) Part 5 (standing rules: commissioning contract terms); and

(d) insofar as they relate to the functions of a relevant body in arranging for the provision of services as part of the health service on and after the relevant date—

(i) Part 3 (services to be commissioned by [<sup>F3</sup>NHS England]),

<sup>F4</sup>(ii) .....

(iii) in Part 6 (standing rules: NHS Continuing Healthcare and NHS funded nursing care), regulations 21, 22 and 28, and regulation 20 insofar as it defines terms that appear in those regulations,

(iv) in Part 7 (standing rules: decisions about drugs and other treatment), regulations 33 to 35,

(v) in Part 8 (standing rules: choice of health service provider), regulations 38 to 41,

(vi) in Part 9 (standing rules: waiting times), regulations 44 to 50 and 52 to 54, and

(vii) Part 10 (standing rules: funding of therapies for Multiple Sclerosis).

(3) Part 8 of these Regulations, insofar as the provisions of that Part are made under section 75 of the 2012 Act, comes into force immediately after that section comes fully into force <sup>M1</sup>.

(4) Part 11 of these Regulations (financial duties of a relevant body in relation to administration) comes into force immediately after sections 24 and 27 of the 2012 Act come fully into force <sup>M2</sup>.

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### Textual Amendments

- F1** Word in reg. 1(1) inserted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **2**
- F2** Reg. 1(2)(b) omitted (1.7.2022) by virtue of [The National Health Service \(Integrated Care Boards: Responsibilities\) Regulations 2022 \(S.I. 2022/635\)](#), regs. 1(1), **9(2)(a)**
- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F4** Reg. 1(2)(d)(ii) omitted (1.7.2022) by virtue of [The National Health Service \(Integrated Care Boards: Responsibilities\) Regulations 2022 \(S.I. 2022/635\)](#), regs. 1(1), **9(2)(b)**

### Marginal Citations

- M1** Section 75 was commenced for limited purposes by section 306(1)(d) of the 2012 Act.
- M2** Sections 24 and 27 were commenced for limited purposes by section 306(1)(d) of the 2012 Act and [S.I. 2012/1831](#).

## Interpretation

### 2.—(1) In these Regulations—

“1983 Act” means the Mental Health Act 1983;

“the 2006 Act” means the National Health Service Act 2006;

“the 2012 Act” means the Health and Social Care Act 2012;

“armed forces” means the regular forces and the reserved forces within the meaning of the Armed Forces Act 2006 <sup>M3</sup>;

**F5** ...

**F6** ...

[<sup>F7</sup>“ clinical commissioning group ” means a body corporate which, immediately before 1st July 2022, was established in accordance with Chapter A2 of Part 2 of the 2006 Act;]

“commissioning contract” means a contract, other than a primary care contract, entered into by a relevant body in the exercise of its commissioning functions [<sup>F8</sup>and includes an integrated care provider contract];

“commissioning functions” means the functions of a relevant body in arranging for the provision of services as part of the health service, but it does not include, in relation to [<sup>F3</sup>NHS England], its functions in relation to services provided under a primary care contract;

“consultant” means a person who has been appointed to a medical consultant post with a health service provider;

“general dental practitioner” means a person whose name is included in the register maintained by the General Dental Council under section 14 of the Dentists Act 1984 <sup>M4</sup>;

“general medical practitioner” means a person registered in the General Practitioner Register held by the General Medical Council under section 34C of the Medical Act 1983 <sup>M5</sup>;

“health care professional” means a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 <sup>M6</sup>;

“health care services” means one or more services consisting of the provision of treatment for the purposes of the health service;

“health service provider” means a person, other than a relevant body, who has entered into a commissioning contract;

“immigration removal centre” means a removal centre within the meaning of section 147 of the Immigration and Asylum Act 1999 <sup>M7</sup>;

[<sup>F7</sup>“integrated care board” means an integrated care board established in accordance with Chapter A3 of Part 2 of the 2006 Act;]

[<sup>F9</sup>“integrated care provider contract” has the meaning given in paragraph 3 of Schedule 3A to the National Health Service (General Medical Services Contracts) Regulations 2015;]

“maternity services” includes all services relating to female patients from the start of the pregnancy to 6 weeks after the birth other than—

- (a) the treatment of any medical condition unrelated to pregnancy,
- (b) the treatment of any medical condition which does not usually occur in the ordinary course of pregnancy, or
- (c) services relating to the termination of pregnancy in accordance with the Abortion Act 1967 <sup>M8</sup>;

“mental health services” means services provided to patients in relation to a disorder or disability of the mind;

[<sup>F10</sup>“NHS England” means the body corporate established under section 1H of the 2006 Act;]

“optometrist” means a registered dispensing optician or a registered optometrist within the meaning of the Opticians Act 1989 <sup>M9</sup>;

“patient” means any person who is receiving treatment provided as part of the health service;

“primary care contract” means a contract or other arrangement between [<sup>F3</sup>NHS England] and a provider of primary care services to provide one or more primary care services [<sup>F11</sup>, but does not include an integrated care provider contract];

“primary care services” means services provided as part of the health service pursuant to arrangements made by [<sup>F3</sup>NHS England] under Parts 4 to 7 of the 2006 Act;

“relevant body” means a CCG or [<sup>F3</sup>NHS England];

“relevant date” means 1st April 2013;

“secure children's home” means a children's home used for the purpose of restricting liberty and approved for that purpose in respect of which a person is registered under Part 2 of the Care Standards Act 2000<sup>M10</sup>[<sup>F12</sup>, or premises in respect of which a person is registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 to provide a secure accommodation service within the meaning of Part 1 of and Schedule 1 to that Act];

“secure training centre” means a place in which offenders subject to detention and training orders [<sup>F13</sup>within the meaning given by section 233 of the Sentencing Code] may be detained and given training and education and prepared for their release;

“treatment”, except in Part 9 (waiting times), means an intervention that is intended to manage a person's disease, condition or injury and includes prevention, examination and diagnosis;

“young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life.

(2) Except in [<sup>F14</sup>Part] 6, where reference is made in these Regulations to a person or persons for whom the relevant body has responsibility, or to a person whom the relevant body is responsible for, it means—

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- (a) in respect of a CCG, a person for whom it is responsible under or by virtue of section [F153(2)] of the 2006 Act (duties of clinical commissioning groups as to commissioning certain health services) <sup>M11</sup>, in relation only to the provision of services which it has a duty to arrange for, or in respect of, that person; and
- (b) in respect of [F3NHS England], a person for or in respect of whom it is required to arrange the provision of services for under or by virtue of regulations under section 3B of the 2006 Act (Secretary of State's power to [F16require NHS England] to commission services), in respect only of services which [F3NHS England] is required to arrange for, or in respect of, that person.

### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**
- F5** Words in reg. 2(1) omitted (6.11.2023) by virtue of The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **56(2)(a)**
- F6** Words in reg. 2(1) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **58(2)(a)**
- F7** Words in reg. 2(1) inserted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **58(2)(b)**
- F8** Words in reg. 2(1) inserted (1.4.2019) by The Amendments Relating to the Provision of Integrated Care Regulations 2019 (S.I. 2019/248), regs. 1(1), **19(2)**
- F9** Words in reg. 2(1) inserted (1.4.2019) by The Amendments Relating to the Provision of Integrated Care Regulations 2019 (S.I. 2019/248), regs. 1(1), **19(1)**
- F10** Words in reg. 2(1) inserted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **56(2)(b)**
- F11** Words in reg. 2(1) inserted (1.4.2019) by The Amendments Relating to the Provision of Integrated Care Regulations 2019 (S.I. 2019/248), regs. 1(1), **19(3)**
- F12** Words in reg. 2(1) inserted (2.4.2018) by The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018 (S.I. 2018/48), reg. 1(2), **Sch. 1 para. 29(2)**
- F13** Words in reg. 2(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 409** (with Sch. 27); S.I. 2020/1236, reg. 2
- F14** Word in reg. 2(2) substituted (1.7.2022) by The National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 (S.I. 2022/635), regs. 1(1), **9(3)**
- F15** Word in reg. 2(2)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(2)(a)**
- F16** Words in reg. 2(2)(b) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(2)(b)**

### Marginal Citations

- M3** 2006 c.52.
- M4** 1984 c. 24.
- M5** 1983 c. 54; section 34C was inserted by S.I. 2010/234.
- M6** 2002 c. 17.
- M7** 1999 c. 33. Relevant amendments were made by section 66(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41).
- M8** 1967 c.87.

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- M9** 1989 c.44. The definition of “optometrist” was inserted by [S.I. 2005/848](#).  
**M10** 2000 c. 14.  
**M11** See Part 2 of these Regulations as to persons for whom a CCG has responsibility.

## **F17**PART 2

### Persons for whom a CCG has responsibility

.....

#### **Textual Amendments**

- F17** Pt. 2 omitted (1.7.2022) by virtue of [The National Health Service \(Integrated Care Boards: Responsibilities\) Regulations 2022 \(S.I. 2022/635\)](#), regs. 1(1), **9(4)(a)**

## **PART 3**

### Services to be commissioned by [<sup>F3</sup>NHS England]

#### **Interpretation of Part 3**

**5.** In this Part—

“Armed Forces Compensation Scheme” means the Armed Forces and Reserve Forces Compensation Scheme 2011 set out in the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 <sup>M12</sup>;

“community dental services” means dental services provided as part of the health service other than—

- (a) emergency services,
- (b) dental services provided pursuant to arrangements made by [<sup>F3</sup>NHS England] under Part 5 of the 2006 Act, or
- (c) the dental services specified in Schedule 2;

“community services” means services provided as part of the health service other than—

- (a) emergency services,
- (b) primary care services,
- (c) secondary care services, or
- (d) the services specified in Schedule 4;

“Defence Medical Services” means medical services provided by—

- (a) the Ministry of Defence including the Surgeon General's organisation,
- (b) other elements of the Joint Forces Command, and
- (c) the three single Service medical organisations <sup>M13</sup>;

“emergency services” means ambulance services and accident and emergency services provided as part of the health service, whether provided at a hospital accident or emergency department, a minor injuries unit, a walk-in centre or elsewhere;

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[<sup>F18</sup>“mandatory dental services” means dental services which are equivalent in nature to services which must be provided under a general dental services contract by virtue of provision in regulation 14 of the National Health Services (General Dental Services Contracts) Regulations 2005 (mandatory services);]

“secondary care services” means services provided as part of the health service in a hospital setting, or by those working in or based in a hospital setting, other than emergency services, primary care services or the services specified in Schedule 4;

[<sup>F19</sup>“sedation services” means a course of treatment provided to a patient in connection with the provision to that patient of mandatory dental services during which the provider of that treatment administers one or more drugs to the patient which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—

- (a) the drugs and techniques used to provide the sedation are deployed by the provider of the treatment in a manner that ensures loss of consciousness is rendered unlikely; and
- (b) verbal contact with the patient is maintained in so far as is reasonably possible;]

“veteran” means any person who has served for at least one day in one of the armed forces or Merchant Navy seafarers and fishermen who have served in a vessel at a time when it was operated to facilitate military operations by the armed forces.

#### Textual Amendments

**F18** Words in reg. 5 inserted (1.4.2013) by [The National Health Service and Public Health \(Functions and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/261\)](#), regs. 1(1), **19(a)**

**F19** Words in reg. 5 inserted (1.4.2013) by [The National Health Service and Public Health \(Functions and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/261\)](#), regs. 1(1), **19(b)**

#### Marginal Citations

**M12** [S.I. 2011/517](#).

**M13** The three single Service organisations referred to are Royal Navy Medical Services, Army Medical Services and RAF Medical Services.

### Dental services

6. [<sup>F3</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—

- (a) community dental services; and
- (b) the dental services specified in Schedule 2.

### Services for serving members of the armed forces and their families

7.—(1) This regulation applies to—

- (a) a person who is a serving member of the armed forces; and
- (b) that person's family.

(2) [<sup>F3</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service to persons to whom this regulation applies of—

- (a) community services;
- (b) secondary care services; and

- (c) the services specified in Schedule 4.
- (3) The arrangements to be made by [F<sup>3</sup>NHS England] under paragraph (2)(b) in respect of a person referred to in paragraph (1)(a) must include the provision of any infertility treatment to that person and to that person's partner.
- (4) The infertility treatment referred to in paragraph (3) must—
- (a) where a person referred to in paragraph (1)(a) has been injured in service and is in receipt of compensation for infertility under the Armed Forces Compensation Scheme, include funding the cost of sperm storage facilities from the date on which the injury was sustained (where clinically necessary and where provision for such storage has previously been made); and
  - (b) where, and to the extent that, [F<sup>3</sup>NHS England] is satisfied that this is clinically appropriate in the circumstances of any case, include the provision of up to three cycles of in vitro fertilisation treatments or other means of assisted conception.
- (5) In paragraph (1)(b), “family”, in relation to a person to whom this regulation applies, means that person's immediate family registered for primary care services with Defence Medical Services.
- (6) [F<sup>3</sup>NHS England] must regard a person (“A”) as the partner of a person referred to in paragraph (1)(a) (“B”) if—
- (a) A is the spouse or civil partner of B; or
  - (b) A and B are cohabiting as partners in a substantial and exclusive relationship in circumstances where either—
    - (i) A is financially dependent on B, or
    - (ii) A and B are financially interdependent.
- (7) In deciding whether A is in a substantial relationship with B, [F<sup>3</sup>NHS England] must—
- (a) have regard to any evidence which A considers demonstrates that the relationship is substantial; and
  - (b) in particular, have regard to the examples of evidence specified in paragraph (8) which could, either alone or together, indicate that the relationship is substantial.
- (8) The evidence referred to in paragraph (7)(b) is—
- (a) evidence of regular financial support of A by B;
  - (b) evidence of a will or life insurance policy, valid at the time at which the infertility treatment is sought in which—
    - (i) B nominates A as principal beneficiary or co-beneficiary, or
    - (ii) A nominates B as the principal beneficiary;
  - (c) evidence indicating that A and B have purchased or are purchasing accommodation together as joint owners or evidence of joint ownership of other valuable property, such as a car or land;
  - (d) evidence of a joint savings plan or joint investments of a substantial nature;
  - (e) evidence that A and B operate a joint account for which they are co-signatories;
  - (f) evidence of joint financial arrangements such as joint repayment of a loan or payment of each other's debts;
  - (g) evidence that either A or B has given the other the power of attorney;
  - (h) evidence that the names of both A and B appear on a lease or, if they live in rental accommodation, rental agreement; and
  - (i) evidence of the length of the relationship.

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(9) For the purposes of paragraph (6)(b), a relationship is not an exclusive relationship if one or both of the parties is a party to another relationship which is, or could be considered to be, a substantial and exclusive relationship having regard to the provisions of this regulation.

### **Infertility treatment: seriously injured serving members and veterans**

**8.—**(1) This regulation applies to a person who is a serving member of the armed forces or a veteran of the armed forces where that person—

- (a) has been severely injured in service; and
- (b) as a result of the injury sustained—
  - (i) suffers from infertility, and
  - (ii) is in receipt of compensation for infertility under the Armed Forces Compensation Scheme; and
- (c) after specialist sperm retrieval, wishes to receive infertility treatment and is eligible for, and has been accepted for, such treatment.

(2) [<sup>F3</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of infertility treatment to a person to whom this regulation applies and to that person's partner.

(3) The infertility treatment referred to in paragraph (2) must—

- (a) in any case, include funding the cost of sperm storage facilities;
- (b) where, and to the extent that, [<sup>F3</sup>NHS England] is satisfied that it is clinically appropriate in the circumstances of any particular case, include up to three cycles of in vitro fertilisation treatments or other means of assisted conception;
- (c) be provided at the same facility at which the specialist sperm retrieval took place and the extracted sperm of that person is stored.

(4) For the purposes of this regulation and regulation 9, “partner” is to be construed in accordance with regulation 7(6) to (9).

### **Infertility treatment: further provision**

**9.—**(1) Where a person referred to in regulation 7(1)(a) or 8(1)—

- (a) has died or has become mentally incapacitated; and
- (b) has, before the time of that person's death or mental incapacity—
  - (i) made provision for sperm storage, and
  - (ii) given written consent to the stored sperm being used by a named partner,

[<sup>F3</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of infertility treatment to that person's named partner.

(2) The infertility treatment referred to in paragraph (1) must—

- (a) in any case, include funding the cost of sperm storage facilities from the date on which the person died or, as the case may be, became mentally incapacitated; and
- (b) where, and to the extent that, [<sup>F3</sup>NHS England] is satisfied that it is clinically appropriate in the circumstances of any particular case, include up to three cycles of in vitro fertilisation treatments and other means of assisted conception.

(3) Where infertility treatment is provided by [<sup>F3</sup>NHS England] under paragraph (1) to the named partner of a person referred to in regulation 8(1), that treatment must be provided at the same facility



at which specialist sperm retrieval took place in relation to that person and at which that person's extracted sperm has been stored.

### Services for prisoners and other detainees

**10.**—(1) Where a person is detained in a prison or in other accommodation described in paragraph (2), [<sup>F23</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision to that person as part of the health service of—

- [<sup>F20</sup>(a) community services (including mandatory dental services and sedation services);]
- (b) secondary care services; and
- (c) the services specified in Schedule 4.

(2) The other accommodation referred to in paragraph (1) is—

- (a) a court;
- (b) a secure children's home <sup>F21</sup> ...;
- (c) a secure training centre specified in the first column of Table 1 in Schedule 3 from the date specified in the corresponding entry in the second column of that Table;
- (d) an immigration removal centre specified in the first column of Table 2 in Schedule 3 from the date specified in the corresponding entry in the second column of that Table; and
- (e) a young offender institution <sup>F22</sup> ....

(3) In this regulation, “court” means any court in which criminal proceedings against a person are heard.

#### Textual Amendments

- F20** Reg. 10(1)(a) substituted (1.4.2013) by [The National Health Service and Public Health \(Functions and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/261\)](#), regs. 1(1), **20(a)**
- F21** Words in reg. 10(2)(b) omitted (1.4.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2014 \(S.I. 2014/452\)](#), regs. 1(1), **2(1)**
- F22** Words in reg. 10(2)(e) omitted (1.4.2013) by [The National Health Service and Public Health \(Functions and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/261\)](#), regs. 1(1), **20(b)**

### Specified services for rare and very rare conditions

**11.** [<sup>F3</sup>NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of the services specified in Schedule 4.

#### [<sup>F23</sup>Saving and transitional provision in relation to certain services for rare and very rare conditions

**11A.**—(1) A relevant contract in relation to transferring services is not terminated or modified by virtue of the omission of those transferring services from Schedule 4 with effect from the transfer date and continues in force as it did immediately before the transfer date.

(2) [<sup>F3</sup>NHS England] retains the duty under regulations 7(2)(c), 10(1)(c) and 11 which it held in relation to those transferring services immediately before the transfer date for so long as a relevant contract for the provision of those services continues to have effect in relation to those transferring services but only to the extent of the provision which is made in that relevant contract for such services.

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- (3) In this regulation—
- (a) a “relevant contract” is a contract having effect as between [<sup>F3</sup>NHS England] and another person for the provision as part of the health service of transferring services where that contract has effect immediately before the transfer date;
- [<sup>F24</sup>(b) “the transfer date” means—
- (i) in relation to transferring services referred to in paragraph (c)(i) (wheelchair services), 1st April 2015; and
- (ii) in relation to transferring services referred to in paragraph (c)(ii) (specialist morbid obesity services), 1st April 2016;
- (c) “transferring services” are—
- (i) wheelchair services as included within the service specified in paragraph 135 of Schedule 4 immediately prior to the transfer date;
- (ii) specialist morbid obesity services as specified in paragraph 118 of that Schedule immediately prior to the transfer date.]]

#### Textual Amendments

- F23** Reg. 11A inserted (1.4.2015) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2015 \(S.I. 2015/415\)](#), regs. 1(1), **2(1)**
- F24** Reg. 11A(3)(b)(c) substituted (1.4.2016) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2016 \(S.I. 2016/293\)](#), regs. 1(1), **4(1)** (with reg. 5)

#### Assessment, diagnostic, elective and minor elective care services provided by Independent Sector Treatment Centres

**12.**—(1) This regulation applies to services provided by an Independent Sector Treatment Centre pursuant to the arrangements specified in paragraph (2).

- (2) The arrangements referred to in paragraph (1) are—
- (a) the agreement made on 20th July 2005 and ending on 27th July 2013 between the Secretary of State for Health, Nations Healthcare (Nottingham) Limited, Nottinghamshire County Teaching Primary Care Trust, Nottingham City Primary Care Trust, Derby City Primary Care Trust, Derbyshire County Primary Care Trust, Lincolnshire Teaching Primary Care Trust, Leicestershire County and Rutland Primary Care Trust, Bassetlaw Primary Care Trust and Nottinghamshire University Hospitals NHS Trust for the provision of elective services and diagnostic services by Nations Healthcare (Nottingham) Limited;
- (b) the agreement made on 15th December 2006 and ending on 31st March 2014 between the Secretary of State for Health, InHealth Group Limited and InHealth London Limited for the provision of diagnostic services by InHealth London Limited;
- (c) the agreement made on 30th May 2008 and ending on 2nd February 2016 between the Secretary of State for Health, Care UK Clinical Services Limited and Care UK Limited for the provision of assessment and minor elective care services and diagnostic services by Care UK Clinical Services Limited;
- (d) the agreement made on 30th May 2008 and ending on 27th October 2015 between the Secretary of State for Health, PHG (Hampshire) Limited and Care UK plc for the provision of elective services and diagnostic services by PHG (Hampshire) Limited;

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- (e) the agreement made on 31st July 2008 and ending on 31st October 2015 between the Secretary of State for Health, UKSH South West Limited and UK Specialist Hospitals Limited for the provision of elective services and diagnostic services by UKSH South West Limited; and
- (f) the agreement made on 26th September 2011 and ending on 16th October 2016 between the Secretary of State for Health, Clinicenta (Hertfordshire) Limited and Carillion plc for the provision of elective services and assessment and minor elective care services by Clinicenta (Hertfordshire) Limited.

(3) [F3NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of the services to which each of the agreements specified in paragraph (2)(a) to (f) relates for the period beginning on 1st April 2013 and, in the case of each respective agreement, ending on the date on which that agreement comes to an end.

(4) In this regulation—

“assessment and minor elective care services” means services related to the assessment, screening and planned care or treatment of minor medical conditions;

“diagnostic services” includes imaging services (such as MRI, CT, Ultrasound, Xray, Dexa Scan), physiological measurement, audiology, endoscopies, including direct access diagnostic services from primary care and other ancillary services needed to support the delivery of these services; and

“elective services” means clinical care services including Final Finished Consultant Episodes relating to, for example, trauma and orthopaedic surgery, general surgery, ear nose and throat, oral surgery, urology, gynaecology, plastic surgery, ophthalmology, hepatobiliary and pancreatic surgery, colorectal surgery, vascular surgery, gastroenterology, respiratory medicine, endocrinology, rheumatology, pain management and dermatology.

#### **Fixated threat assessment services**

13.—(1) [F3NHS England] must arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of specialised clinical risk assessment and management services for people with mental health problems who may present a risk to prominent people or locations.

(2) The arrangements to be made by [F3NHS England] under paragraph (1) must include—

- (a) the provision of funding for mental health staff to provide the services referred to in paragraph (1); and
- (b) such provision for partnership working with other persons or health services as is considered necessary to facilitate the effective delivery of those services.

## **F25 PART 4**

### **Mental health after-care services**

.....

#### **Textual Amendments**

**F25** Pt. 4 omitted (1.7.2022) by virtue of [The National Health Service \(Integrated Care Boards: Responsibilities\) Regulations 2022 \(S.I. 2022/635\)](#), regs. 1(1), **9(4)(b)**

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## PART 5

### Standing rules: commissioning contract terms

#### Matters to be included in commissioning contracts

**16.**—<sup>F26</sup>(1) A commissioning contract entered into by a relevant body must contain terms and conditions that ensure that the health service provider complies with all the duties imposed upon a registered person by regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (duty of candour) (“the 2014 Regulations”), as modified by paragraph (1B), irrespective of whether—

- (a) the health service provider is a registered person; or
- (b) the health service provider is carrying on a regulated activity.]

<sup>F27</sup>(1A) A commissioning contract entered into by a relevant body must contain terms and conditions that ensure that the health service provider—

- <sup>F28</sup>(a) co-operates with the education and training body in such manner and to such extent as the education and training body may request, in planning the provision of, and in providing, education and training for health care workers; and]
- (b) provides <sup>F29</sup>the education and training body] with such information as it may request.]

<sup>F30</sup>(1B) For the purposes of paragraph (1), regulation 20 of the 2014 Regulations is modified as follows—

- (a) for “Registered persons” in paragraph (1), substitute “Health service providers”;
- (b) for “registered person”, in each place it appears, substitute “health service provider”;
- (c) in paragraph (1), omit “in carrying on a regulated activity”; and
- (d) in paragraphs (8) and (9) for “a regulated activity”, substitute “health care services”;

(2) In this regulation—

<sup>F31</sup> ...

<sup>F32</sup>“education and training body” means a local education and training board appointed by Health Education England under section 103 of the Care Act 2014;]

<sup>F33</sup> ...

<sup>F34</sup>“registered person” has the same meaning as in regulation 2(1) of the 2014 Regulations (interpretation);]

<sup>F34</sup>“regulated activity” means an activity prescribed as a regulated activity for the purposes of section 8(1) of the Health and Social Care Act 2008 (regulated activity) by regulation 3 of the 2014 Regulations (prescribed activities).]

<sup>F31</sup> ...

<sup>F31</sup> ...

<sup>F31</sup> ...

#### Textual Amendments

- F26** Reg. 16(1) substituted (1.4.2016) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2016 \(S.I. 2016/293\)](#), regs. 1(1), **3(a)** (with reg. 5)

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- F27** Reg. 16(1A) inserted (1.4.2015) by The Health Education England Regulations 2014 (S.I. 2014/3215), regs. 1(1), **5(2)**
- F28** Reg. 16(1A)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **127(2)(a)(i)**
- F29** Words in reg. 16(1A)(b) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **127(2)(a)(ii)**
- F30** Reg. 16(1B) inserted (1.4.2016) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2016 (S.I. 2016/293), regs. 1(1), **3(b)** (with reg. 5)
- F31** Words in reg. 16(2) omitted (1.4.2016) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2016 (S.I. 2016/293), regs. 1(1), **3(c)(i)** (with reg. 5)
- F32** Words in reg. 16(2) inserted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **127(2)(b)(i)**
- F33** Words in reg. 16(2) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **127(2)(b)(ii)**
- F34** Words in reg. 16(2) inserted (1.4.2016) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2016 (S.I. 2016/293), regs. 1(1), **3(c)(ii)** (with reg. 5)

### Terms and conditions to be drafted by [F3NHS England]

- 17.—(1) [F3NHS England] must draft—
- (a) terms and conditions making provision for the matters specified in regulation 16; and
  - (b) such other terms and conditions as [F3NHS England] considers are, or might be, appropriate for inclusion in commissioning contracts entered into by a relevant body.
- (2) [F3NHS England] may draft model commissioning contracts which reflect the terms and conditions it has drafted pursuant to paragraph (1).
- (3) A relevant body must incorporate the terms and conditions drafted by virtue of paragraph (1) (a) in commissioning contracts entered into by it.
- (4) [F3NHS England] may require [F35integrated care boards] to incorporate the terms and conditions it has drafted pursuant to paragraph (1)(b) in commissioning contracts that a CCG enters into.
- (5) If [F35an integrated care board] is required by [F3NHS England] to incorporate terms and conditions pursuant to paragraph (4), it must do so.

### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**
- F35** Words in Regulations substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), reg. 1(2), **Sch. para. 1(1)(3)** (with Sch. para. 1(2))

### Consultation by [F3NHS England]

- 18.—(1) [F3NHS England] must consult the persons specified in paragraph (2)—

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- (a) before exercising its functions under regulation 17(1) and (2) for the first time; and
- (b) before revising—
- (i) terms and conditions it has drafted pursuant to regulation 17(1), or
  - (ii) a model commissioning contract it has drafted pursuant to regulation 17(2),
- in a way which would, in the opinion of [F<sup>33</sup>NHS England], result in a substantial change to those terms and conditions or that contract (as the case may be).
- (2) The persons specified for the purposes of paragraph (1) are—
- (a) the Care Quality Commission <sup>M14</sup>;
  - (b) [F<sup>35</sup>integrated care boards] ;
  - (c) Healthwatch England <sup>M15</sup>;
  - <sup>F36</sup>(d) . . . . .
  - (e) the Secretary of State; and
  - (f) such other persons as [F<sup>33</sup>NHS England] considers it is appropriate to consult.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F35** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), Sch. para. 1(1)(3) (with Sch. para. 1(2))
- F36** Reg. 18(2)(d) omitted (1.7.2022) by virtue of [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **109(2)**

#### Marginal Citations

- M14** The Care Quality Commission is established by section 1 of the [Health and Social Care Act 2008 \(c. 14\)](#) (“the 2008 Act”).
- M15** Healthwatch England is established as a committee of the Care Quality Commission by virtue of paragraph 6(1A) of Schedule 1 to the 2008 Act, as amended by section 181(2) of the 2012 Act.

#### Transitional provision

**19.**—(1) The requirements in regulations 16 and 17 apply in relation to commissioning contracts entered into on or after 1st February 2013.

(2) Consultation undertaken before the coming into force of this Part is as effective for the purposes of regulation 18 as consultation undertaken after the coming into force of this Part.

[F<sup>37</sup>(3) Consultation undertaken before 1st July 2022 is as effective for the purposes of regulation 18 as consultation undertaken after 1st July 2022.]

#### Textual Amendments

- F37** [Reg. 19\(3\)](#) inserted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **209(3)**

## PART 6

### Standing rules: NHS Continuing Healthcare and NHS funded nursing care

#### Interpretation

**20.**—(1) In this Part—

“2008 Act” means the Health and Social Care Act 2008 <sup>M16</sup>;

“Fast Track Pathway Tool” means the Fast Track Pathway Tool for NHS Continuing Healthcare issued by the Secretary of State and dated [<sup>F38</sup>1st March 2018];

[<sup>F39</sup>“flat rate payment” except in regulation 29(1), means a payment of [<sup>F40</sup>£219.71] per week;]

[<sup>F41</sup>“high band payment” except in regulation 30(1), means a payment of [<sup>F42</sup>£302.25] per week;]

“low band payment” means a payment made at the low band rate following a RNCC determination;

“medium band payment” means a payment made at the medium band rate following a RNCC determination;

“National Framework” means the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care issued by the Secretary of State and dated [<sup>F43</sup>30th May 2022];

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

“nursing care” means nursing care by a registered nurse and “nursing care by a registered nurse” has the same meaning as in [<sup>F44</sup>section 22(8) of the Care Act 2014];

“old Guidance” means the documents entitled “Guidance on Free Nursing Care in Nursing Homes” dated 25th September 2001 <sup>M17</sup> and “NHS Funded Nursing Care Practice Guidance and Workbook (August 2001)” dated 5th September 2001 <sup>M18</sup>, as supplemented by “NHS Continuing Health Care: Action following the Grogan Judgement” dated 3rd March 2006 <sup>M19</sup>;

“registered manager” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the 2008 Act as a manager in respect of the regulated activity carried on at those premises;

“registered person” means, in respect of relevant premises, a person who is a service provider or registered manager in respect of those premises;

“regulated activity” means the activity of providing residential accommodation, together with personal or nursing care, specified in paragraph 2 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations [<sup>F45</sup>2014];

“relevant premises” means premises where regulated activity is carried on and for which there is a registered person;

“relevant social services authority” means the social services authority appearing to a relevant body to be the authority in whose area a patient is ordinarily resident;

“RNCC determination” means a determination as to the Registered Nursing Contribution to Care taken in respect of a person in accordance with the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2001 <sup>M20</sup>;

“service provider” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the 2008 Act as a service provider in respect of the regulated activity carried on at those premises;

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“social services authority” means a local authority for the purposes of the Local Authority Social Services Act 1970 <sup>M21</sup> and the Council of the Isles of Scilly;

“social services authority area” means an area for which a local social services authority is responsible.

(2) For the purposes of this Part a relevant body has responsibility for a person if the body is responsible—

[<sup>F46</sup>(a) in the case of an integrated care board—

(i) by virtue of section 3(2)(a) of the 2006 Act, except where the person is a person for whom another integrated care board is responsible by virtue of paragraphs 2(b), (d), (e), (f), (h) or (j) of the Schedule to the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022, or

(ii) by virtue of regulations 3(1), 5 and 6 of the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022, except where the person is a person to whom paragraph 2(a) of the Schedule to those Regulations applies; or]

(b) in the case of [<sup>F3</sup>NHS England], by virtue of regulation 7 (secondary care services and community services: serving members of the armed forces and their families) or regulation 10 (services for prisoners and other detainees).

(3) For the purposes of this Part, an assessment in relation to a person's need for nursing care means such assessment as the relevant body considers appropriate in the circumstances in order to determine whether the person has a need for nursing care.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F38** Words in reg. 20(1) substituted (1.10.2018) by [The Responsibilities and Standing Rules, and Care and Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/283\)](#), regs. 1(3)(a), **2(2)(a)**
- F39** Words in reg. 20 substituted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(1)(a)**
- F40** Sum in reg. 20 substituted (1.4.2023) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2023 \(S.I. 2023/288\)](#), regs. 1(2), **2(2)(a)**
- F41** Words in reg. 20 substituted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(1)(b)**
- F42** Sum in reg. 20 substituted (1.4.2023) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2023 \(S.I. 2023/288\)](#), regs. 1(2), **2(2)(b)**
- F43** Words in reg. 20(1) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **58(3)**
- F44** Words in reg. 20(1) substituted (1.4.2018) by [The Responsibilities and Standing Rules, and Care and Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/283\)](#), regs. 1(2), **2(2)(e)**
- F45** Word in reg. 20(1) substituted (1.4.2018) by [The Responsibilities and Standing Rules, and Care and Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/283\)](#), regs. 1(2), **2(2)(f)**
- F46** Reg. 20(2)(a) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **209(4)**

#### Marginal Citations

**M16** 2008 c. 14.



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- M17** The guidance can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthservicecirculars/DH\\_4003954](http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthservicecirculars/DH_4003954).
- M18** The guidance and workbook can be found at [webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4009471](http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4009471).
- M19** The guidance can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/Publicationspolicyandguidance/DH\\_4131162](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/Publicationspolicyandguidance/DH_4131162).
- M20** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_4003016](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4003016).
- M21** [1970 c.42](#). See section 1, to which a relevant amendment was made by section 195(3) of the [Local Government Act 1972 \(c. 70\)](#).

### Duty of relevant bodies: assessment and provision of NHS Continuing Healthcare

**21.**—(1) In exercising its functions under or by virtue of sections 3, 3A or 3B of the 2006 Act, insofar as they relate to NHS Continuing Healthcare, a relevant body must comply with paragraphs (2) to (11).

(2) A relevant body must take reasonable steps to ensure that an assessment of eligibility for NHS Continuing Healthcare is carried out in respect of a person for which that body has responsibility in all cases where it appears to that body that—

- (a) there may be a need for such care; or
- (b) an individual who is receiving NHS Continuing Healthcare may no longer be eligible for such care.

<sup>F47</sup>(3) If an assessment of a person's need for NHS Continuing Healthcare is required under paragraph (2)(a), the relevant body must ensure that it is carried out before—

- (a) any assessment pursuant to regulation 28(1) (persons who enter relevant premises or who develop a need for nursing care) is carried out in relation to that person; and

<sup>F48</sup>(b) . . . . .]

(4) If a relevant body wishes to use an initial screening process to decide whether to undertake an assessment of a person's eligibility for NHS Continuing Healthcare it must—

- (a) complete and use the NHS Continuing Healthcare Checklist issued by the Secretary of State and dated [<sup>F49</sup>1st March 2018] to inform that decision;
- (b) inform that person (or someone lawfully acting on that person's behalf) in writing of the decision as to whether to carry out an assessment of that person's eligibility for NHS Continuing Healthcare; and
- (c) make a record of that decision.

(5) When carrying out an assessment of eligibility for NHS Continuing Healthcare, a relevant body must ensure that—

- (a) a multi-disciplinary team—
  - (i) undertakes an assessment of needs, or has undertaken an assessment of needs, that is an accurate reflection of that person's needs at the date of the assessment of eligibility for NHS Continuing Healthcare, and
  - (ii) uses that assessment of needs to complete the Decision Support Tool for NHS Continuing Healthcare issued by the Secretary of State and dated [<sup>F50</sup>1st March 2018]; and
- (b) the relevant body makes a decision as to whether that person has a primary health need in accordance with paragraph (7), using the completed Decision Support Tool to inform that decision.

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(6) If a relevant body decides that a person has a primary health need in accordance with paragraph (5)(b), it must also decide that that person is eligible for NHS Continuing Healthcare.

(7) In deciding whether a person has a primary health need in accordance with paragraph (5)(b), a relevant body must consider whether the nursing or other health services required by that person are—

- (a) where that person is, or is to be, accommodated in relevant premises, more than incidental or ancillary to the provision of accommodation which a social services authority is, or would be but for a person's means, under a duty to provide; or
- (b) of a nature beyond which a social services authority whose primary responsibility is to provide social services could be expected to provide,

and, if it decides that the nursing or other health services required do, when considered in their totality, fall within sub-paragraph (a) or (b), it must decide that that person has a primary health need.

<sup>F51</sup>(7A) .....

<sup>F52</sup>(7B) .....

(8) Paragraphs (2) to (6) do not apply where an appropriate clinician decides that—

- (a) an individual has a primary health need arising from a rapidly deteriorating condition; and
- (b) the condition may be entering a terminal phase,

and that clinician has completed [<sup>F53</sup>the Fast Track Pathway Tool] stating reasons for the decision.

[<sup>F54</sup>(9) A relevant body must decide that a person is eligible for NHS Continuing Healthcare upon receipt of—

- (a) the Fast Track Pathway Tool completed in accordance with paragraph (8); or

<sup>F55</sup>(b)] .....

[<sup>F56</sup>(10) Where a relevant body makes a decision about a person’s eligibility for NHS Continuing Healthcare, it must—

- (a) notify the person (or someone lawfully acting on that person’s behalf), in writing, of the decision made about their eligibility for NHS Continuing Healthcare, the reasons for that decision and, where applicable, the matters referred to in paragraph (11); and
- (b) make a record of that decision.]

(11) Where a relevant body has decided that a person is not eligible for NHS Continuing Healthcare, it must inform the person (or someone acting on that person's behalf) of the circumstances and manner in which that person may apply for a review of the decision if they are dissatisfied with—

- (a) the procedure followed by the relevant body in reaching that decision; or
- (b) the primary health need decision made in accordance with paragraph (5)(b).

(12) In carrying out its duties under this regulation, a relevant body must have regard to the National Framework.

(13) In this regulation—

“appropriate clinician” means a person who is—

- (a) responsible for the diagnosis, treatment or care of the person under the 2006 Act in respect of whom [<sup>F57</sup>the Fast Track Pathway Tool] is being completed, and
- (b) a registered nurse <sup>M22</sup> or a registered medical practitioner <sup>M23</sup>;

<sup>F58</sup> ...

“healthcare profession” means a profession which is concerned (wholly or partly) with the physical or mental health of individuals [<sup>F59</sup>(whether or not a person engaged in that profession is regulated by, or by virtue of, any enactment)];

“multi-disciplinary team” means a team consisting of at least—

- (a) two professionals who are from different healthcare professions, or
- (b) one professional who is from a healthcare profession and one person who is responsible for assessing [<sup>F60</sup>an adult’s needs for care and support] under [<sup>F61</sup>section 9 of the Care Act 2014 (assessment of an adult’s needs for care and support)].

### Textual Amendments

- F47** Reg. 21(3) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(a)**
- F48** Reg. 21(3)(b) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(a)**
- F49** Words in reg. 21(4)(a) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(a)**
- F50** Words in reg. 21(5)(a)(ii) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(b)**
- F51** Reg. 21(7A) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(b)**
- F52** Reg. 21(7B) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(b)**
- F53** Words in reg. 21(8) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(c)**
- F54** Reg. 21(9) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(d)**
- F55** Reg. 21(9)(b) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(c)**
- F56** Reg. 21(10) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(e)**
- F57** Words in reg. 21(13) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(f)(i)**
- F58** Words in reg. 21(13) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(d)**
- F59** Words in reg. 21(13) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(f)(iii)**
- F60** Words in reg. 21(13) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(c)**

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**F61** Words in reg. 21(13) substituted (1.4.2015) by [The Care Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Order 2015 \(S.I. 2015/643\)](#), art. 1(2), [Sch. para. 38\(2\)\(b\)](#) (with art. 4); S.I. 2015/993, [art. 2\(a\)](#)

#### Marginal Citations

**M22** See Schedule 1 of the [Interpretation Act 1978 \(c. 3\)](#) for the definition of a registered nurse.  
**M23** See Schedule 1 of the [Interpretation Act 1978 \(c. 3\)](#) for the definition of a registered medical practitioner.

### Duty of relevant bodies: joint working with social services authorities

**22.**—(1) A relevant body must, insofar as is reasonably practicable—

- (a) consult with the relevant social services authority before making a decision about a person's eligibility for NHS Continuing Healthcare, including any decision that a person receiving NHS Continuing Healthcare is no longer eligible to do so; and
- (b) co-operate with the relevant social services authority in arranging for persons to participate in a multi-disciplinary team for the purpose of fulfilling its duty under regulation 21(5).

(2) Where there is a dispute between a relevant body and the relevant social services authority about—

- (a) a decision as to eligibility for NHS Continuing Healthcare; or
- (b) where a person is not eligible for NHS Continuing Healthcare, the contribution of a relevant body or social services authority to a joint package of care for that person,

the relevant body must, having regard to the National Framework, agree a dispute resolution procedure with the relevant social services authority, and resolve the disagreement in accordance with that procedure.

(3) In complying with its duties under regulation 21 and this regulation, a relevant body must have due regard to the need to promote and secure the continuity of appropriate services for persons who—

- (a) are receiving community care services under <sup>[F62]</sup>Part 1 of the Care Act 2014 (care and support) or section 117 of the Mental Health Act 1983 (after-care)] on the date on which they are found to be eligible to receive NHS Continuing Healthcare;
- (b) have been in receipt of NHS Continuing Healthcare but are determined to be no longer eligible for NHS Continuing Healthcare; or
- (c) are otherwise determined to be ineligible for NHS Continuing Healthcare.

#### Textual Amendments

**F62** Words in reg. 22(3)(a) substituted (1.4.2015) by [The Care Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Order 2015 \(S.I. 2015/643\)](#), art. 1(2), [Sch. para. 38\(3\)](#) (with art. 4); S.I. 2015/993, [art. 2\(a\)](#)

### <sup>[F3]</sup>NHS England's] duty: reviewing decisions

**23.**—(1) <sup>[F3]</sup>NHS England] must—

- (a) appoint such number of persons to act as chairs of the panels referred to in paragraph (4) (“chairs”) as <sup>[F3]</sup>NHS England] considers reasonable to ensure that applications for a review under paragraph (3) can be considered by such a panel within a reasonable time; and

- (b) establish a list consisting of the following persons—
  - (i) at least one person (“<sup>F35</sup>an integrated care board] member”) appointed by [<sup>F3</sup>NHS England] in respect of each [<sup>F35</sup>integrated care board], and
  - (ii) at least one person (“a social services authority member”) appointed by [<sup>F3</sup>NHS England] in respect of each social services authority.
- (2) In complying with its duty under paragraph (1), [<sup>F3</sup>NHS England] must ensure that the persons it—
  - (a) appoints under paragraph (1)(a); or
  - (b) includes in a list pursuant to paragraph (1)(b),reside in locations that have a sufficient geographical distribution to ensure that a review panel can be held in any social services authority area in England.
- (3) Where a person, or someone lawfully acting on a person's behalf—
  - (a) is dissatisfied with—
    - (i) the procedure followed by a relevant body in reaching a decision as to that person's eligibility for NHS Continuing Healthcare pursuant to regulation 21(5), or
    - (ii) the primary health need decision by a relevant body pursuant to regulation 21(5)(b); and
  - (b) the person has—
    - (i) used the resolution procedure of the relevant body in question, but that has not resolved the matter, or
    - (ii) not used that resolution procedure and [<sup>F3</sup>NHS England] is satisfied that requiring the person to do so would cause undue delay,that person may apply in writing to [<sup>F3</sup>NHS England] for a review of that decision.
- (4) Following receipt of an application for a review under paragraph (3), [<sup>F3</sup>NHS England] may refer the matter for a decision to a panel of members (“a review panel”) consisting of—
  - (a) a chair;
  - (b) one [<sup>F35</sup>integrated care board] member drawn from the list established under paragraph (1)
    - (b) who has been appointed in respect of a [<sup>F35</sup>integrated care board], other than [<sup>F35</sup>an integrated care board] whose procedure or decision is the subject of the review; and
  - (c) one social services authority member drawn from that list who has been appointed in respect of a social services authority other than one in whose area is situated all or part of the area of [<sup>F35</sup>an integrated care board] whose procedure or decision is the subject of the review.
- (5) Where an application for a review under paragraph (3) relates to the procedure followed by, or a decision taken by, [<sup>F3</sup>NHS England], it must ensure that in organising a review of that decision, it makes appropriate arrangements as regards the manner in which it organises such a review so as to avoid any conflict of interest.
- (6) The procedure and operation of the review panel are to be a matter for the chair of the review panel, having regard to the National Framework.
- (7) [<sup>F3</sup>NHS England] must, as soon as reasonably practicable, give notice in writing of the review decision and the reasons for it to the applicant and, where the relevant body is [<sup>F35</sup>an integrated care board], to the [<sup>F35</sup>integrated care board] whose decision has been the subject of review.

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(8) A relevant body must, unless it determines in accordance with paragraph (9) that there are exceptional reasons not to do so, implement the decision of the review panel as soon as reasonably practicable.

(9) In determining whether under paragraph (8) there are exceptional reasons, a relevant body must have regard to the National Framework.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F35** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

#### Appointment and term of appointment

24.—(1) Subject to regulation 25 (disqualification for appointment), the [<sup>F35</sup>integrated care board] members and social services authority members must be appointed by [<sup>F3</sup>NHS England] following nomination by [<sup>F35</sup>an integrated care board] or a social services authority in respect of which they are to be appointed.

(2) [<sup>F35</sup>An integrated care board] must—

- (a) when requested to do so by [<sup>F3</sup>NHS England], provide its nomination pursuant to paragraph (1) as soon as is reasonably practicable; and
- (b) ensure that [<sup>F35</sup>integrated care board] members are, so far as reasonably practicable, available to participate in review panels.

(3) Subject to regulation 27 (termination of appointment), the term of appointment of a chair, [<sup>F35</sup>an integrated care board] or a social services authority member is to be such period, not exceeding three years, as [<sup>F3</sup>NHS England] specifies on making the appointment.

(4) Subject to regulation 25 (disqualification for appointment), a chair, [<sup>F35</sup>integrated care board] member or social services authority member is to be eligible for reappointment on the termination of the period of that chair or member's term of appointment.

(5) [<sup>F3</sup>NHS England] must pay to a chair such remuneration and expenses as appear to it to be reasonable.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F35** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

#### Disqualification for appointment

25.—(1) A person is disqualified for appointment as a chair if that person is—

- (a) the chair, a member (other than a member of an NHS foundation trust), a director, a governor or an employee of an NHS body;

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- (b) the chair or a member of the governing body of [F35an integrated care board] ; or
  - (c) an elected member or employee of a social services authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.
- (2) A person is disqualified for appointment as [F35an integrated care board] member or social services authority member if that person is—
- (a) the chair, the chief executive, a non-executive director or a non-officer member of an NHS body (other than a member of an NHS foundation trust);
  - (b) the chair or a member of the governing body of [F35an integrated care board]; or
  - (c) an elected member of a social services authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.
- (3) Persons of the description set out in Schedule 5 are, subject to regulation 26 (cessation of disqualification), disqualified for appointment as a chair, [F35integrated care board] member or social services authority member.

#### Textual Amendments

- F35** Words in Regulations substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), reg. 1(2), Sch. para. 1(1)(3) (with Sch. para. 1(2))

#### Cessation of disqualification

- 26.**—(1) Where a person is disqualified under paragraph 5 of Schedule 5—
- (a) that person may, after the second anniversary of the day on which they were dismissed, apply in writing to [F3NHS England] to remove the disqualification for appointment as a chair, [F35integrated care board] member or social services authority member; and
  - (b) [F3NHS England] may decide that the disqualification is removed.
- (2) Where [F3NHS England] refuses an application to remove a disqualification, no further application may be made by that person to [F3NHS England] until the second anniversary of the day of the refusal and this paragraph applies to any subsequent application.
- (3) Where a person is disqualified under paragraph 6 of Schedule 5, the disqualification is to cease on the second anniversary of the termination of the person's appointment, or at the end of such longer period as may have been specified on termination.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), Sch. para. 1
- F35** Words in Regulations substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), reg. 1(2), Sch. para. 1(1)(3) (with Sch. para. 1(2))

#### Termination of appointment

- 27.**—(1) A chair, [F35integrated care board] member or social services authority member may resign at any time during their term of appointment by giving notice in writing to the Chief Executive of [F3NHS England].

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(2) Subject to paragraph (3), where [<sup>F3</sup>NHS England] is of the opinion that it is not in the interests of the health service that a chair, [<sup>F35</sup>integrated care board] member or social services authority member should continue to hold office, it may terminate that person's appointment with immediate effect by giving notice to that person in writing to that effect.

(3) The term of appointment of a [<sup>F35</sup>integrated care board] member or social services authority member must not be terminated under paragraph (2) unless the body responsible for nominating that member has been consulted.

(4) Where a person has been appointed by [<sup>F3</sup>NHS England] to be a chair, [<sup>F35</sup>integrated care board] member or social services authority member, if it comes to the attention of [<sup>F3</sup>NHS England] that—

- (a) that person has become disqualified for appointment under regulation 25, [<sup>F3</sup>NHS England] must notify that person in writing of such disqualification; or
- (b) at the time of that person's appointment they were so disqualified, [<sup>F3</sup>NHS England] must declare that the person in question was not duly appointed and notify that person in writing to that effect.

(5) Upon receipt of any notification referred to in paragraph (4), the person's term of appointment, if any, terminates with immediate effect and that person must cease to act as a chair, [<sup>F35</sup>integrated care board] member or social services authority member.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), Sch. para. 1
- F35** Words in Regulations substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), reg. 1(2), Sch. para. 1(1)(3) (with Sch. para. 1(2))

#### Persons who enter relevant premises or who develop a need for nursing care

**28.**—(1) Subject to paragraphs (2) and (3), where it appears to a relevant body in respect of a person for whom it has responsibility that that person—

- (a) is resident in relevant premises or may need to become resident in such premises; and
- (b) may be in need of nursing care,

that body must carry out an assessment of the need for nursing care.

(2) Before carrying out an assessment under paragraph (1), the relevant body must consider whether its duty under regulation 21(2) is engaged, and if so, it must comply with the requirements of regulation 21 prior to carrying out any assessment under this regulation.

(3) Paragraph (1) does not apply if a relevant body has made arrangements for providing the person with NHS Continuing Healthcare.

(4) Where—

- (a) the relevant body has carried out an assessment pursuant to regulation 21(2); but
- (b) paragraph (3) does not apply because a decision has been made that the person is not eligible for NHS Continuing Healthcare,

that body must nevertheless use that assessment, wherever reasonably practicable, in making its assessment under paragraph (1).

(5) Where—



- (a) the relevant body determines that a person has a need for nursing care pursuant to this regulation; and
- (b) the person has agreed with that body that that person does want to be provided with such nursing care,

paragraph (6) [<sup>F63</sup>or, as the case may be, (6A)] applies.

(6) The relevant body must pay to a registered person for the relevant premises the flat rate [<sup>F64</sup>payment] in respect of that person's nursing care unless or until that person—

- (a) has their need for nursing care assessed and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

[<sup>F65</sup>(6A) Where the relevant body consents to the arrangement by a local authority, in accordance with section 22(4) and, where applicable, sections 22(5) and 22(9) of the Care Act 2014, for the provision of nursing care in accommodation arranged by the local authority in Northern Ireland or Scotland, the relevant body must pay to the relevant provider in respect of the person receiving nursing care—

- (a) £100 per week, where nursing care is provided in accommodation in Northern Ireland, or
- (b) £78 per week, where nursing care is provided in accommodation in Scotland,

unless or until paragraph (6B) applies.

(6B) This paragraph applies where a person receiving nursing care in accommodation in Northern Ireland or Scotland—

- (a) has their need for nursing care assessed and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in that accommodation;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

(6C) In paragraphs (6A) and (6B)—

“accommodation” means—

- (a) in relation to Northern Ireland, residential or other accommodation in Northern Ireland of a type which may be provided under article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 and includes a nursing home within the meaning of article 11 of the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003;
- (b) in relation to Scotland, residential accommodation in Scotland of a type which may be provided under or by virtue of section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

“local authority” has the same meaning as in section 1(4) of the Care Act 2014; and

“relevant provider” means—

- (a) in relation to Northern Ireland, the person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of that accommodation;
- (b) in relation to Scotland, the person who provides in respect of that accommodation a care service registered under section 59 of the Public Services Reform (Scotland) Act 2010.]

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#### Textual Amendments

- F63** Words in reg. 28(5) inserted (1.4.2015) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2015 \(S.I. 2015/415\)](#), regs. 1(1), **3(a)**
- F64** Word in reg. 28(6) inserted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(2)**
- F65** Reg. 28(6A)-(6C) inserted (1.4.2015) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2015 \(S.I. 2015/415\)](#), regs. 1(1), **3(b)**

#### Persons in receipt of flat rate payments immediately before the relevant date

**29.**—(1) Where, immediately before the relevant date, a Primary Care Trust was making a flat rate payment in respect of any person pursuant to the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007<sup>M24</sup>, paragraph (2) applies.

(2) The relevant body which has responsibility for a person falling within paragraph (1) must<sup>F66</sup>... pay to a registered person for the relevant premises the flat rate payment in respect of the person falling within paragraph (1)<sup>F66</sup>... unless or until that person—

- (a) has their need for nursing care assessed on or after the relevant date and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

#### Textual Amendments

- F66** Words in reg. 29(2) omitted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(3)**

#### Marginal Citations

- M24** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Legislation/DH\\_078061](http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/DH_078061).

#### Persons in receipt of high band payments immediately before the relevant date

**30.**—(1) Where, immediately before the relevant date, a Primary Care Trust was making a high band payment in respect of any person pursuant to direction 4 of the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007, paragraphs (2) and (3) apply.

(2) The relevant body which has responsibility for a person falling within paragraph (1) must<sup>F67</sup>... pay the high band payment to a registered person for the relevant premises in respect of the person falling within paragraph (1)<sup>F67</sup>... unless or until that person—

- (a) has their need for nursing care assessed on or after the relevant date and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;

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- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies,

unless paragraph (3) applies.

(3) Where a person in respect of whom a high band payment is being made pursuant to this regulation—

- (a) has their need for nursing care assessed on or after the relevant date; and
- (b) following that assessment it is determined that that person's need for nursing care has diminished to the extent that if the old Guidance were applied, that person would be eligible only for a medium band payment or low band payment,

the relevant body with responsibility for that person must comply with paragraph (4).

(4) Where paragraph (3) applies, the relevant body must give—

- (a) the person in respect of whom the high band payment was being made (and where appropriate that person's representative); and
- (b) the registered person,

written notice of the outcome of the assessment referred to in paragraph (3) and must, no sooner than 14 days beginning with the date that notice is given, thereafter pay the flat rate payment in respect of that person unless or until paragraph (2)(a), (b), (c) or (d) applies.

#### Textual Amendments

**F67** Words in reg. 30(2) omitted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(4)**

#### Urgent need

**31.** Nothing in regulations 28 to 30 prevents a relevant body from temporarily providing nursing care to a person without carrying out an assessment if, in the opinion of that body, the condition of that person is such that those services are required urgently.

#### Revocation and transitional provisions

**32.—(1)** Where a Primary Care Trust has, before the relevant date, determined that a person is eligible for NHS Continuing Healthcare under direction 2 of the NHS Continuing Healthcare (Responsibilities) Directions 2009<sup>M25</sup> (“the Responsibilities Directions”) or the Delayed Discharges (Continuing Care) Directions 2009<sup>M26</sup> (“the Delayed Discharges Directions”) [<sup>F68</sup>and that healthcare was being provided immediately before 1st July 2022], the relevant body with responsibility for that person on [<sup>F69</sup>1st July 2022] must continue to provide NHS Continuing Healthcare unless—

- (a) regulation 21(2)(b) applies;
- (b) an assessment of eligibility for NHS Continuing Healthcare is undertaken pursuant to regulation 21; and
- (c) that body determines that the person is no longer eligible for NHS Continuing Healthcare.

[<sup>F70</sup>(1A) Where a clinical commissioning group has, before 1st July 2022, determined that a person is eligible for NHS Continuing Healthcare, the relevant body with responsibility for that person on 1st July 2022 must continue to provide NHS Continuing Healthcare unless—

- (a) regulation 21(2)(b) applies;

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- (b) an assessment of eligibility for NHS Continuing Healthcare is undertaken pursuant to regulation 21; and
- (c) that body determines that the person is no longer eligible for NHS Continuing Healthcare.]

[<sup>F71</sup>(2) Where a clinical commissioning group has, before 1st July 2022—

- (a) started an initial screening process to decide whether to undertake an assessment of a person's eligibility for NHS Continuing Healthcare but not completed the process, the relevant body with responsibility for that person must—
  - (i) complete the initial screening process as if it had commenced under regulation 21(4), and
  - (ii) where the outcome of that process is that an assessment for NHS Continuing Healthcare is required, assess that person's eligibility for NHS Continuing Healthcare under this Part; or
- (b) started to assess a person's eligibility for NHS Continuing Healthcare, the relevant body with responsibility for that person must complete the assessment as if it had commenced under regulation 21.]

<sup>F72</sup>(3) .....

<sup>F73</sup>(4) .....

(5) Subject to regulation 27, the appointment of a person appointed as a chair in accordance with the Responsibilities Directions continues for such period as it would have continued if those directions had not been revoked, and such a person must be treated as if they had been appointed by [<sup>F3</sup>NHS England] under regulation 23.

[<sup>F74</sup>(6) Subject to regulation 27, the appointment of a person appointed as a CCG member in accordance with regulation 24 before 1st July 2022—

- (a) continues for such period as it would have continued if the clinical commissioning group had not been abolished, and
- (b) as if that person were appointed as an integrated care board member in respect of each integrated care board whose area falls wholly or partly within the area of the clinical commissioning group in relation to which they were a CCG member.]

(7) The following directions are revoked—

- (a) the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007 <sup>M27</sup> which came into force on 1st October 2007;
- (b) the National Health Service (Nursing Care in Residential Accommodation) (Amendment) (England) Directions 2009 which came into force on 1st October 2009 <sup>M28</sup>;
- (c) the NHS Continuing Healthcare (Responsibilities) Directions 2009 <sup>M29</sup> which came into force on 1st October 2009; and
- (d) the Delayed Discharges (Continuing Care) Directions 2009 which came into force on 28th September 2009 <sup>M30</sup>.

#### Textual Amendments

**F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

**F68** Words in [reg. 32\(1\)](#) inserted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **209(6)(a)(i)**

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- F69** Words in reg. 32(1) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(a)(ii)**
- F70** Reg. 32(1A) inserted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(b)**
- F71** Reg. 32(2) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(c)**
- F72** Reg. 32(3) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(d)**
- F73** Reg. 32(4) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(d)**
- F74** Reg. 32(6) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(6)(e)**

#### Marginal Citations

- M25** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_106176](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106176).
- M26** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_106178](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106178).
- M27** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_078061](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_078061).
- M28** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_106179](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106179).
- M29** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_106176](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106176).
- M30** The Directions can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_106178](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106178).

## [<sup>F75</sup>Part 6A

### Standing rules: personal health budgets

#### Textual Amendments

- F75** Pt. 6A inserted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **3**

#### Interpretation

##### 32A.—(1) In this Part—

“Continuing Care for Children” means that part of a package of care which is arranged and funded by a relevant body for a person aged 17 or under to meet needs which have arisen as a result of disability, accident or illness;

“eligible person” means a person for whom a relevant body considers it necessary to arrange the provision of a relevant health service;

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

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“personal health budget” means an amount of money—

- (a) which is identified by a relevant body as appropriate for the purpose of securing the provision to a person of [<sup>F76</sup>all or part of] a relevant health service; and
- (b) the application of which is planned and agreed between the relevant body and the eligible person or their representative; and

“relevant health service” means—

- (a) Continuing Care for Children; <sup>F77</sup> ...
- (b) NHS Continuing Healthcare [<sup>F78</sup>;
- (c) [<sup>F79</sup>Section 117 Aftercare; or
- (d) Wheelchair Services.]

[<sup>F80</sup>“Section 117 After-care” means that part of a package of care which is arranged and funded by a relevant body for a person to whom section 117(1) of the 1983 Act applies; and]

[<sup>F80</sup>“Wheelchair Services” means services which are arranged and funded by a relevant body for a person with a medically recognised long term disability who for their health and wellbeing requires a wheelchair or specialist buggy to carry out normal day-to-day activities.]

(2) References in this Part to an eligible person’s representative are to such persons whom, in the opinion of the relevant body, it is appropriate to consult about, and involve in, decisions about the provision of a relevant health service to the eligible person by means of a personal health budget.

#### Textual Amendments

- F76** Words in reg. 32A inserted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **4(1)**
- F77** Word in reg. 32A omitted (2.12.2019) by virtue of [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2019 \(S.I. 2019/1432\)](#), regs. 2, **3(1)(a)**
- F78** Semi-colon in reg. 32A substituted for full stop (2.12.2019) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2019 \(S.I. 2019/1432\)](#), regs. 2, **3(1)(b)**
- F79** Words in reg. 32A inserted (2.12.2019) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2019 \(S.I. 2019/1432\)](#), regs. 2, **3(1)(c)**
- F80** Words in reg. 32A inserted (2.12.2019) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2019 \(S.I. 2019/1432\)](#), regs. 2, **3(1)(d)**

#### Duties of relevant bodies in relation to personal health budgets

**32B.**—(1) A relevant body must ensure that it is able to arrange for the provision of a relevant health service to an eligible person by means of a personal health budget which is managed in accordance with paragraph (2).

(2) A personal health budget must be managed in at least one of the following ways—

- (a) the making of a direct payment;
- (b) the application of the personal health budget by the relevant body in accordance with the outcome of discussions with the eligible person or that person’s representative as to how best to secure the provision of the relevant health service to the person; or

(c) the transfer of the personal health budget by a relevant body to a person who applies the money in accordance with the outcome of discussions with the eligible person or that person's representative as to how best, with the agreement of the relevant body, to secure the provision of the relevant health service to the eligible person.

(3) A relevant body must—

- (a) publicise and promote the availability of personal health budgets to eligible persons and their representatives; and
- (b) provide information, advice and other support to eligible persons and their representatives to assist them in deciding whether to request a personal health budget in respect of a relevant health service.

[<sup>F81</sup>(4) Where a request is made by or on behalf of an eligible person for a personal health budget, a relevant body must grant that request, save to the extent that it is not appropriate to secure provision of all or any part of the relevant health service by that means in the circumstances of the eligible person's case.

(4A) Where a relevant body arranges a personal health budget under paragraph (4), it must decide which of the ways mentioned in paragraph (2) would be the most appropriate way in which to manage that personal health budget.]

(5) A relevant body must make arrangements for eligible persons for whom a personal health budget has been arranged, and their representatives, to obtain information, advice and other support in connection with the management of the personal health budget.

(6) The duty in paragraph (5) does not apply in relation to any part of a personal health budget to which regulation 9 of the National Health Service (Direct Payments) Regulations 2013 (information, advice and other support) applies.

(7) If a relevant body decides to refuse a request for a personal health budget made by or on behalf of an eligible person [<sup>F82</sup>in full or in part], it must provide that person and their representatives with the reasons for that decision in writing.

(8) [<sup>F83</sup>On receipt of—

- (a) a decision under paragraph (4A); or
- (b) written reasons in accordance with paragraph (7),]

an eligible person or a person acting on the eligible person's behalf may require a relevant body to undertake a review of the decision and may provide evidence or information for the relevant body to consider as part of that review.

(9) A relevant body must inform the eligible person or their representatives in writing of the decision following a review, and state the reasons for the decision.

(10) A relevant body may not be required to undertake more than one review following a decision under paragraph (7) in any six month period.]

#### Textual Amendments

- F81** Reg. 32B(4)(4A) substituted for reg. 32B(4) (1.10.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014 (S.I. 2014/1611), regs. 1(1), **4(2)(a)**
- F82** Words in reg. 32B(7) inserted (1.10.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014 (S.I. 2014/1611), regs. 1(1), **4(2)(b)**

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**F83** Words in [reg. 32B\(8\)](#) substituted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), [regs. 1\(1\), 4\(2\)\(c\)](#)

## PART 7

### Standing rules: decisions about drugs and other treatments

#### Interpretation

#### 33. In this Part—

“health care intervention” includes the use of a medicine or medical device, diagnostic technique, surgical procedure or other therapeutic intervention;

“NICE” means—

- (a) until the coming into force of section 232 of the 2012 Act <sup>M31</sup>, the National Institute for Health and Clinical Excellence <sup>M32</sup>; and
- (b) from the coming into force of that section, the National Institute for Health and Care Excellence;

“relevant NICE recommendations” means—

- (a) any directions given by the Secretary of State as to the application of sums paid to a Primary Care Trust under section 228 of the 2006 Act (public funding by Primary Care Trusts) in relation to a health care intervention recommended by NICE; and
- (b) from the coming into force of section 237(8) of the 2012 Act (NICE advice, guidance, information and recommendations), recommendations specified, or recommendations of a description specified, in regulations made under that section where the relevant body—
  - (i) is specified in such regulations as required to comply with the recommendation, or
  - (ii) is a health and social care body of a description specified in such regulations as a health and social care body that is required to comply with the recommendation.

#### Marginal Citations

**M31** [Section 232](#) of the 2012 Act establishes a body corporate to be known as the National Institute for Health and Care Excellence.

**M32** The National Institute for Health and Clinical Excellence is a Special Health Authority established by [S.I. 1999/220](#), as amended by [S.I. 1999/2219](#), [2002/1760](#), [2005/497](#) and [2012/476](#). It is abolished by section 248 of the 2012 Act.

#### Duty of a relevant body in respect of the funding and commissioning of drugs and other treatments

**34.—(1)** A relevant body must have in place arrangements for making decisions and adopting policies on whether a particular health care intervention is to be made available for persons for whom the relevant body has responsibility.

**(2)** Arrangements under paragraph (1) must—

- (a) ensure that the relevant body complies with relevant NICE recommendations; and



- (b) include arrangements for the determination of any request for the funding of a health care intervention for a person, where there is no relevant NICE recommendation and the relevant body's general policy is not to fund that intervention.

### **Duty to give reasons for decisions**

**35.**—(1) A relevant body must—

- (a) publish on its website a written statement of its reasons for any general policy it has on whether a particular healthcare intervention is to be made available for persons for whom it has responsibility; or
- (b) where it has not published such a statement, provide a written statement of the reasons for any such policy when any person makes a written request for such a statement.

(2) Where a relevant body—

- (a) makes a decision to refuse a request for the funding of a health care intervention for a person; and
- (b) its general policy is not to fund that intervention,

the relevant body must provide that person with the reasons for that decision in writing.

### **Duty to provide written information**

**36.** Each relevant body must compile information in writing describing the arrangements it has made pursuant to the requirements in regulation 34 and must ensure that that information is—

- (a) published on the website of the relevant body; and
- (b) available to inspect at the head or main office of the relevant body.

### **[<sup>F84</sup>Transitional provisions**

**37.**—(1) Where—

- (a) before 1st July 2022, a person has made a request for a written statement of the reasons for a clinical commissioning group's general policy on whether a particular health care intervention is to be made available pursuant to regulation 35(1)(b), and
- (b) a written statement of reasons has not been provided before 1st July 2022 by the clinical commissioning group to whom that request was made,

the relevant body with responsibility for that person must provide a written statement of reasons for that general policy as soon as reasonably practicable.

(2) Where a clinical commissioning group—

- (a) before 1st July 2022, has made a decision to refuse a request for the funding of a health care intervention in respect of a person where the clinical commissioning group's general policy is not to fund that intervention, but
- (b) has not provided that person with a written statement of reasons for that decision pursuant to regulation 35(2),

the relevant body with responsibility for that person must provide a written statement of reasons to that person as soon as reasonably practicable.

(3) Where a clinical commissioning group—

- (a) before 1st July 2022, has made a decision to fund a health care intervention for a person where the clinical commissioning group's general policy is not to fund that intervention, but

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(b) has not notified that person of that decision, the relevant body with responsibility for that person must notify that person as soon as reasonably practicable of that decision, and fund that intervention.

(4) Where, before 1st July 2022, a clinical commissioning group has received a request for the funding of a health care intervention but has not determined it, the relevant body with responsibility for the person who made the request must—

- (a) decide whether or not to fund that intervention, and
- (b) if the decision is to refuse to fund that intervention, provide a written statement of reasons to that person as soon as reasonably practicable.]

#### Textual Amendments

**F84** [Reg. 37](#) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(7\)](#)

## PART 8

### Standing rules: choice of health service provider

#### Interpretation

**38.** In this Part—

[<sup>F85cc</sup>“elective referral” means referral by—

- (a) a general medical practitioner,
- (b) a general dental practitioner, or
- (c) an optometrist,

to a health service provider, including when the referral is first assessed by a person providing interface services, for treatment that is not identified as being immediately required at the time of referral;]

<sup>F86</sup>  
...

[<sup>F87cc</sup>“interface services” means services that are provided otherwise than by—

- (a) a consultant,
- (b) a consultant-led team, or
- (c) a health care professional specialising in mental health services,

which provide clinical triage, assessment and treatment services, but does not include services provided under a primary care contract;

“NHS Standard Contract” means a contract in the form of a model commissioning contract drafted by NHS England pursuant to regulation 17(2);]

“prison” includes any other institution to which prison rules made under section 47 of the Prison Act 1952 <sup>M33</sup> apply.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### Textual Amendments

- F85** Words in reg. 38 substituted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(2)(b)**
- F86** Words in reg. 38 omitted (1.1.2024) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(2)(a)**
- F87** Words in reg. 38 inserted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(2)(c)**

### Marginal Citations

- M33** 1952 c.47.

## Duty to ensure persons are offered a choice of health service provider

**39.**—(1) A relevant body must make arrangements to ensure that a person—

- (a) who requires an elective referral; and
- (b) for whom that body has responsibility,

is given the choices specified in paragraph (2).

[<sup>F88</sup>(2) Subject to regulations 40 and 41, the choices specified for the purposes of this paragraph are the choice—

- (a) in respect of a first outpatient appointment with a consultant or a member of a consultant’s team [<sup>F89</sup>, inclusive of any subsequent treatment required as a result of that elective referral], of—
  - (i) any clinically appropriate health service provider with whom any relevant body has a [<sup>F90</sup>qualifying contract], and
  - (ii) any clinically appropriate team led by a named consultant who is employed or engaged by that health service provider; and
- (b) in relation to an elective referral for mental health services in respect of which the patient’s first outpatient appointment is not with a consultant or a member of a consultant’s team [<sup>F91</sup>, inclusive of any subsequent treatment required as a result of that elective referral], of—
  - (i) any clinically appropriate health service provider with whom any relevant body has a [<sup>F92</sup>qualifying contract], and
  - (ii) any clinically appropriate team led by a named health care professional who is employed or engaged by that health service provider.]

[<sup>F93</sup>(3) .....

[<sup>F93</sup>(4) .....

(5) The arrangements referred to in [<sup>F94</sup>paragraph (1)] must include such arrangements as are necessary to ensure that a person may make the choices specified in [<sup>F95</sup>that paragraph] where that person—

- (a) has not been offered that choice by the person making the initial referral; and
- (b) notifies the relevant body who has responsibility for that person that that choice was not offered.

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(6) For the purposes of this Part, a health service provider, or a team led by a consultant or a health care professional, is clinically appropriate if, in the opinion of the person making the referral, they offer services that are clinically appropriate for that person in respect of the condition for which that person is referred.

[<sup>F96</sup>(7) Where—

- (a) a person makes a choice pursuant to the arrangements required by paragraph (1), and
- (b) the relevant body which is responsible for that person does not have in place a commissioning contract for the service required as a result of the referral,

the terms of the qualifying contract referred to in paragraph (2) under which the service is to be provided apply to the provision of the service required in respect of the person's referral.

(8) In this regulation, “qualifying contract” means an NHS Standard Contract which—

- (a) is signed and in effect before the date on which the referral is made,
- (b) is a commissioning contract for the service required as a result of the referral,
- (c) requires that service to be provided from the location specified in that contract or sets out the criteria specified in that contract which determine the means by which a service will be accessible to patients, and
- (d) is not a contract put in place solely to provide that service to a specified individual.]

#### Textual Amendments

- F88** Reg. 39(2) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(1)(a)**
- F89** Words in reg. 39(2)(a) inserted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(a)(i)**
- F90** Words in reg. 39(2)(a)(i) substituted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(a)(ii)**
- F91** Words in reg. 39(2)(b) inserted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(b)(i)**
- F92** Words in reg. 39(2)(b)(i) substituted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(b)(ii)**
- F93** Reg. 39(3)(4) omitted (1.4.2014) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(1)(b)**
- F94** Words in reg. 39(5) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(1)(c)**
- F95** Words in reg. 39(5) substituted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(c)**
- F96** Reg. 39(7)(8) inserted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(3)(d)**

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### Services to which the duties as to choice do not apply

40.—(1) Regulation 39(1) does not apply to the following services—

(a) cancer services which are subject to the 2 week maximum waiting time by virtue of regulation 52; <sup>F97</sup>or]

(b) maternity services; <sup>F98</sup>...

<sup>F99</sup>(c) .....

(2) <sup>F100</sup>Regulation 39(1) does] not apply to any service where it is necessary to provide urgent care.

#### Textual Amendments

**F97** Word in reg. 40(1)(a) inserted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(2)(a)(i)**

**F98** Word in reg. 40(1)(b) omitted (1.4.2014) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(2)(a)(ii)**

**F99** Reg. 40(1)(c) omitted (1.4.2014) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(2)(a)(iii)**

**F100** Words in reg. 40(2) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(2)(b)**

### Persons to whom the duties as to choice do not apply

41. <sup>F101</sup>Regulation 39(1) does] not apply in relation to any person who is—

(a) detained under the 1983 Act;

(b) detained in or on temporary release from prison <sup>F102</sup>or other accommodation described in regulation 10(2)]; or

(c) serving as a member of the armed forces.

#### Textual Amendments

**F101** Words in reg. 41 substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **4(3)**

**F102** Words in reg. 41(b) inserted (1.10.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014 (S.I. 2014/1611), regs. 1(1), **5**

### Duty to publicise and promote information about choice

42.—(1) A relevant body must make arrangements to ensure that the availability of choice under the arrangements it makes pursuant to regulation 39 are publicised and promoted.

(2) Without prejudice to the generality of paragraph (1), those arrangements must include arrangements for—

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) publicising, and promoting awareness of, information about—
  - (i) health service providers for the purpose of enabling a person to choose a health service provider in accordance with arrangements that the relevant body has made pursuant to regulation 39(1),
  - (ii) consultant-led teams for the purpose of enabling a person to choose a clinically appropriate team in accordance with arrangements that the relevant body has made pursuant to regulation 39(1), and
  - (iii) teams led by health care professionals providing mental health services for the purpose of enabling a person to choose a clinically appropriate team in accordance with arrangements that the relevant body has made pursuant to <sup>F103</sup>regulation 39(1); and
- (b) publicising details, and promoting awareness, of where that information may be found.

#### Textual Amendments

**F103** Words in [reg. 42\(2\)\(a\)\(iii\)](#) substituted (1.4.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2013 \(S.I. 2013/2891\)](#), regs. 1(2), **4(4)**

#### <sup>F104</sup> Patient choice: primary medical services

**42A.**—(1) NHS England must not restrict the ability of a person—

- (a) to apply for inclusion in the list of patients of the practice of the person’s choice;
- (b) to express a preference to receive services from—
  - (i) the practice in whose list of patients the person is included, or
  - (ii) a particular performer or class of performer,
 either generally or in relation to any particular condition.

(2) Paragraph (1) does not apply to the inclusion in a contractor’s contract of any term which provides for the contractor to refuse an application for inclusion in its list of patients, or not to agree to any preference expressed to receive services from a particular performer or class of performer, in accordance with—

- (a) Part 2 of Schedule 3 to the National Health Service (General Medical Services Contracts) Regulations 2015 (other contractual terms - patients: general),
  - (b) Part 2 of Schedule 2 to the National Health Service (Personal Medical Services Agreements) Regulations 2015 (other required terms - patients: general), or
  - (c) arrangements for the provision of primary medical services made under section 83(2) of the 2006 Act (primary medical services).
- (3) In this regulation—
- “contract” means, as the case may be—
- (a) an arrangement for the provision of primary medical services made under section 83(2) of the 2006 Act, including any arrangements which are made in reliance on a combination of that provision and any other powers to arrange for the provision of health care services for the purposes of the NHS,
  - (b) a general medical services contract made under section 84(1) of the 2006 Act (general medical services contracts), or

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(c) an agreement made in accordance with section 92 of the 2006 Act (arrangements by the Board for the provision of primary medical services);

“contractor” means a person who has entered into a contract with NHS England;

“the NHS” means the comprehensive health service continued under section 1(1) of the 2006 Act, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities;

“performer” means a medical practitioner included in a list maintained in accordance with regulations made under section 91(1) of the 2006 Act (persons performing primary medical services);

“practice” means the business operated by a contractor for the purposes of delivering primary medical services under Part 4 of the 2006 Act under a contract for the provision of such services.

#### Textual Amendments

**F104** Regs. 42A-42D inserted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(4)**

#### Requests for NHS Standard Contract assessment

**42B.**—(1) This regulation applies in relation to a decision by a relevant body as to whether it should offer an NHS Standard Contract to a provider where the service being offered by the provider is one which the relevant body arranges or intends to arrange for the persons for whom it has responsibility and in respect of which (if that provider held such a contract) a patient would be permitted to choose that provider as a provider—

- (a) in accordance with regulation 39, or
- (b) otherwise than in accordance with regulation 39 where the relevant body has not restricted the number of providers from which patients may choose.

(2) A provider may express an interest to a relevant body at any time in being assessed for the award of an NHS Standard Contract under this regulation.

(3) Where a provider expresses an interest under paragraph (2), the relevant body must make available to that provider any local terms and conditions for inclusion in any supporting schedules of an NHS Standard Contract it proposes to award as a result of an assessment under this regulation.

(4) Following the provision of any local terms and conditions under paragraph (3) (or confirmation from the relevant body that no such terms and conditions are to be included), a provider may request a relevant body to assess it against the criteria in regulation 42C for the purposes of—

- (a) the award of an NHS Standard Contract where the provider does not have an existing NHS Standard Contract with the relevant body, or
- (b) the award of a further NHS Standard Contract where the provider already has an existing NHS Standard Contract with the relevant body, but wishes to be assessed in relation to—
  - (i) the provision of new services,
  - (ii) the provision of existing services from a location other than that specified in the existing NHS Standard Contract, or
  - (iii) a change to the criteria specified in that contract which determine the means by which a service will be accessible to patients.

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(5) The relevant body must assess a provider who has made a request under paragraph (4) against the criteria in regulation 42C as soon as reasonably practicable but in any event before expiry of a period of six weeks beginning with the day on which the provider has requested to be assessed against those criteria.

(6) Where the criteria in regulation 42C are met, the provider must be offered an NHS Standard Contract, which must include any local terms and conditions referred to in paragraph (3).

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#### Textual Amendments

**F104** Regs. 42A-42D inserted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(4)**

#### Qualification of providers: criteria

**42C.** The criteria referred to in regulation 42B(4) to (6) are that—

- (a) the provider must be registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the regulated activities which are relevant to the services to be provided;
- (b) the provider must, unless exempt, hold a provider licence issued by NHS England under Chapter 3 of Part 3 of the 2012 Act;
- (c) the provider must demonstrate to the satisfaction of the relevant body that it will be able to comply with the terms and conditions of the NHS Standard Contract, including those in any supporting schedules, in respect of the services to be provided and in relation to the location from which those services will be provided;
- (d) the provider must demonstrate that it—
  - (i) is a member of an NHS Clinical Negligence Scheme under the National Health Service (Clinical Negligence Scheme) Regulations 2015 or the National Health Service (Clinical Negligence Scheme for General Practice) Regulations 2019,
  - (ii) has undertaken to join such a scheme, or
  - (iii) has put in place equivalent alternative indemnity arrangements to the satisfaction of the relevant body.

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#### Textual Amendments

**F104** Regs. 42A-42D inserted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(4)**

#### Modification of existing NHS Standard Contract

**42D.**—(1) Regulation 42B(1) to (3) and (5) also applies to the assessment of a provider in respect of a proposed modification of an existing NHS Standard Contract held by that provider, and—

- (a) references to the offering or awarding of an NHS Standard Contract to a provider are to be read respectively as references to the offering to modify or the modifying of an existing NHS Standard Contract held by a provider;
- (b) the reference in regulation 42B(5) to “paragraph (4)” is to be read as a reference to paragraph (2) of this regulation;



- (c) in the application of regulation 42C pursuant to regulation 42B(4) as modified by this regulation, the reference in regulation 42C to “regulation 42B(4) to (6)” is to be read as a reference to paragraphs (2) and (3) of this regulation.

(2) Following the provision of any local terms and conditions under regulation 42B(3) (or confirmation from the relevant body that no such terms and conditions are to be included), a provider may request a relevant body to assess it against the criteria in regulation 42C for the purposes of modification of an existing NHS Standard Contract where the provider has an existing NHS Standard Contract with the relevant body, but wishes to be assessed in relation to—

- (a) the provision of new services,  
(b) the provision of existing services from a location other than that specified in the existing NHS Standard Contract, or  
(c) a change to the criteria specified in that contract which determine the means by which a service will be accessible to patients.

(3) Where—

- (a) the criteria in regulation 42C are met,  
(b) the proposed modification of the existing NHS Standard Contract is not contrary to any restrictions on modification of contracts imposed by regulations made under section 12ZB of the National Health Service Act 2006, and  
(c) the provider agrees to the proposed modification,

the provider’s existing NHS Standard Contract must be modified, and must include any local terms and conditions referred to in regulation 42B(3).

(4) Nothing in this regulation permits the modification of an existing NHS Standard Contract where the proposed modification of the existing NHS Standard Contract would be contrary to any restrictions on modification of contracts imposed by regulations made under section 12ZB of the National Health Service Act 2006.

(5) Paragraph (6) applies where—

- (a) the criteria in regulation 42C are met, but  
(b) the proposed modification of an existing NHS Standard Contract would be contrary to any restrictions on modification of contracts imposed by regulations made under section 12ZB of the National Health Service Act 2006.

(6) Where this paragraph applies—

- (a) the request for assessment of the provider in respect of a proposed modification under this regulation is to be treated as having been a request for assessment of the provider for the award of an NHS Standard Contract under regulation 42B(4) (without the modifications made by this regulation), and  
(b) a new NHS Standard Contract must instead be awarded pursuant to regulation 42B(6) in respect of such of the matters for which the provider asked to be assessed under paragraph (2).]

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#### **Textual Amendments**

**F104** Regs. 42A-42D inserted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(4)**

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## Transitional provision

<sup>F105</sup>43. ....

### Textual Amendments

**F105** Reg. 43 omitted (1.1.2024) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), 2(5)

## [<sup>F106</sup>T] Transitional provision: pre-existing contracts

**43A.**—(1) This regulation applies to any commissioning contract with a provider entered into before 1st January 2024 by—

- (a) a relevant body, or
- (b) in relation to the period before 1st July 2022, a clinical commissioning group (as established in accordance with Chapter A2 of Part 2 of the 2006 Act as it applied before 1st July 2022),

following a determination referred to in regulation 7(2)(a) or (b) of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.

(2) Nothing in regulation 42B (as applied by regulation 42D), 42C or 42D affects any existing contract of the kind mentioned in paragraph (1) except insofar as, on or after 1st January 2024, the provider requests a relevant body to assess it for the purpose of modification of an existing NHS Standard Contract under regulation 42D.

(3) Where the provider expresses an interest of the kind mentioned in paragraph (2), regulations 42B (as applied by regulation 42D), 42C and 42D apply only in respect of the service in relation to which the provider expresses such an interest.

### Textual Amendments

**F106** Regs. 43A, 43B inserted (1.1.2024) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), 2(6)

## Transitional provision: enforcement

**43B.**—(1) NHS England may commence or continue any investigation of an integrated care board—

- (a) in respect of a complaint under regulation 13(1) of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013,
- (b) where the grounds for the complaint occurred before 1st January 2024, and
- (c) which has not been concluded before 1st January 2024,

as though it were an investigation commenced on or after that date under section 6F of the 2006 Act (and accordingly section 6F of, and Schedule 1ZA to, the 2006 Act apply to that investigation as appropriate).

(2) In paragraph (1), an investigation of an integrated care board includes any investigation of a clinical commissioning group (as established in accordance with Chapter A2 of Part 2 of the 2006 Act as it applied before 1st July 2022)—

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- (a) commenced before 1st July 2022, and
- (b) continued as against an integrated care board pursuant to regulation 21(4) of the Health and Care Act 2022 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2022.]

#### Textual Amendments

**F106** Regs. 43A, 43B inserted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(6)**

## PART 9

### Standing rules: waiting times

#### Interpretation

**44.—(1)** In this Part—

“appropriate treatment” means treatment that is the first treatment provided to a person as a result of, and in response to, an elective referral;

“eligible referrer” means—

- (a) a general dental practitioner,
- (b) a general medical practitioner,
- (c) a person approved to make an elective referral under arrangements made by the relevant body which has responsibility for the person being referred, and
- (d) any other person whose request to refer is accepted by—
  - (i) a consultant,
  - (ii) a member of a consultant's team, or
  - (iii) persons providing interface services where a person who has been referred may be referred on from those services to a consultant or consultant-led team,

who is to provide the assessment or treatment required as a result of a referral;

“elective referral” means referral by an eligible referrer to a health service provider for assessment or treatment that is not identified as being immediately required at the time of referral;

“each data collection period” means each calendar month and the end of such a period means the end of the last day of the calendar month in question;

“interface services” means services that are provided otherwise than by a consultant-led team, which provide clinical triage, assessment and treatment services, but does not include mental health services or services provided under a primary care contract;

“registered healthcare professional” means a person who is a member of a profession regulated by one of the following bodies—

- (a) the General Medical Council,
- (b) the Nursing and Midwifery Council, or
- (c) the Health and Care Professions Council;

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“specialist” means a registered healthcare professional working as a consultant, or as part of a consultant-led team, who specialises in the area of professional practice which is most appropriate for the diagnosis and treatment of the type of suspected cancer in question;

“start date” means the date on which the person's referral request was received by the health service provider to whom that person has been referred for the provision of health care services by—

- (a) in regulations 45 to 51—
  - (i) an eligible referrer; or
  - (ii) themselves, with the prior approval of an eligible referrer, or
- (b) in regulations 52 and 53, a general medical practitioner, a general dental practitioner or a person authorised to act on their behalf;

“suitable health service provider”, in relation to a person who has been referred for assessment or treatment, is a health service provider who—

- (a) can provide services which consist of, or include, treatment which is clinically appropriate for that person in response to the reasons for the referral, and
- (b) will provide those services pursuant to a commissioning contract with a relevant body;

“treatment” means an intervention that is intended to manage a person's disease, condition or injury and, insofar as reasonably practicable, avoid further interventions, but does not include a therapy or healthcare intervention referred to in regulation 46(3);

“treatment for suspected cancer” means—

- (a) assessment by a specialist in order to progress towards a diagnosis, or
- (b) treatment for suspected cancer that is provided by a specialist;

F107 ...

(2) For the purposes of this Part, where reference is made to an appointment date being reasonable, it is reasonable if it falls at least 3 weeks after the date on which the offer of the appointment was made.

**Textual Amendments**  
 F107 Words in reg. 44(1) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), 209(8)

**Duty to meet the maximum waiting times standards**

45.—<sup>F108</sup>(1) .....

<sup>F108</sup>(2) .....

(3) A relevant body must make arrangements to ensure that at the end of each data collection period, not less than 92% of the persons falling with paragraph (4) have been waiting to commence [<sup>F109</sup>appropriate] treatment for less than 18 weeks.

- (4) A person falls within this paragraph if—
  - (a) the relevant body has responsibility for that person;
  - (b) there has been a start date in respect of that person; and
  - (c) the person's waiting time period, as specified in regulation 46, has not come to an end.

<sup>F110</sup>(5) .....

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F110(6) .....

**Textual Amendments**

- F108** Reg. 45(1)(2) omitted (1.10.2015) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1430), regs. 1(1), **3(2)**
- F109** Word in reg. 45(3) inserted (1.10.2015) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1430), regs. 1(1), **3(3)**
- F110** Reg. 45(5)(6) omitted (1.10.2015) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No.2) Regulations 2015 (S.I. 2015/1430), regs. 1(1), **3(4)**

**The waiting time period**

**46.**—(1) The waiting time period for a person, as referred to in regulation 45(4)(c), begins with the start date and ends when any of the following paragraphs applies.

- (2) The referred person received appropriate treatment.
- (3) The referred person commenced therapy or received a healthcare science intervention where a consultant, a member of a consultant-led team or an individual providing an interface service decides that the therapy or that intervention is the treatment that is most appropriate for that person.
- (4) A person's name is added to a national transplant waiting list.
- (5) The referred person is notified, verbally or in writing, that the calculation of the period of eighteen weeks beginning on the start date no longer applies in their case because—
  - (a) it is more appropriate for that person to receive treatment from a primary care service;
  - (b) a clinical decision is made to start a period of monitoring of that person <sup>F111</sup>...;
  - (c) a clinical decision is made that no treatment should be provided to that person;
  - (d) they did not attend the first appointment made as a result of the referral by the health service provider to whom they were referred and they—
    - (i) had been made aware of the consequences of not attending an appointment, and
    - (ii) had not requested in advance of the date for the first appointment that the appointment be re-arranged for a different date; or
  - (e) they are being discharged back in to the care of their general medical practitioner because they did not attend an appointment, other than an appointment referred to in subparagraph (d), made as a result of the referral by the health service provider to whom they were referred and they—
    - (i) had been made aware of the consequences of not attending an appointment, and
    - (ii) had not requested in advance of the date for that appointment that the appointment be re-arranged for a different date.

**Textual Amendments**

- F111** Words in reg. 46(5)(b) omitted (1.1.2024) by virtue of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023 (S.I. 2023/1105), regs. 1(b), **2(7)**

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### Application of duty to offer an alternative provider

47.—(1) Regulation 48 applies if the conditions in paragraph (2) to (6) are met.

(2) A person has been referred to a health service provider (“the relevant health service provider”) for the provision of health care services by—

- (a) an eligible referrer; or
- (b) themselves, with the prior approval of an eligible referrer.

(3) The referral is for assessment or treatment in the course of the provision of health care services by—

- (a) a consultant;
- (b) a member of a consultant's team; or
- (c) persons providing interface services where a person who has been referred may be referred on from those services to a consultant or consultant-led team.

(4) The relevant health service provider, or the relevant body which has responsibility for the person referred, has been notified that the person referred—

- (a) has not commenced appropriate treatment; or
- (b) will not have commenced appropriate treatment,

within eighteen weeks, beginning with the start date.

(5) The notification referred to in paragraph (4) was given by—

- (a) in the case of the relevant health service provider or [<sup>F35</sup>an integrated care board], the person referred or a person lawfully acting on their behalf; or
- (b) in the case of [<sup>F3</sup>NHS England], [<sup>F35</sup>an integrated care board] which has been notified by the person referred or a person lawfully acting on their behalf.

(6) The relevant body which has responsibility for the person referred is satisfied that the person has not commenced or will not commence appropriate treatment within eighteen weeks, beginning with the start date.

#### Textual Amendments

- F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F35** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

### Duty to offer an alternative provider

48.—(1) Subject to regulation 49, where this regulation applies, the relevant body which has responsibility for the person referred must take all reasonable steps to ensure that that person is offered an appointment in accordance with paragraphs (2) to (4).

(2) The appointment offered must be with a consultant, or a member of a consultant's team, at a suitable health service provider other than the relevant health service provider.

(3) The appointment must be an appointment to commence treatment earlier than the person referred would have commenced treatment if they had continued to wait for treatment at the relevant health service provider.

(4) If there is more than one suitable health service provider, the person referred must be offered a choice of appointment with more than one suitable health service provider that meets the requirements of paragraphs (2) and (3).

(5) In this regulation and regulation 49, “relevant health service provider” has the meaning given to it in regulation 47(2).

### **Exceptions to the duty**

**49.**—(1) Regulation 48 does not apply in the circumstances described in any of paragraphs (2) to (10).

(2) The person referred did not attend an appointment made by the relevant health service provider in response to the referral where—

- (a) the date for the appointment was reasonable;
- (b) that person had been made aware of the consequences of not attending appointments; and
- (c) that person had not requested in advance that the date for that appointment be re-arranged.

(3) The person referred did not attend a re-arranged appointment made by the relevant health service provider in response to the referral where—

- (a) that person had re-arranged the date of the appointment;
- (b) the original date for the appointment had been reasonable; and
- (c) that person had been made aware of the consequences of not attending appointments.

(4) The patient chose to commence treatment on a date falling after the end of the period of 18 weeks beginning with the start date where—

- (a) that patient had been offered a reasonable appointment date falling within that period; or
- (b) they decided that they did not want to be offered any appointment dates within that period.

(5) The person referred decided that they did not want to commence treatment.

(6) The person referred was unable to commence treatment during the period of 18 weeks beginning with the start date for reasons not related to the relevant health service provider, or relevant body which has responsibility for that person, where that person—

- (a) has been offered a reasonable appointment date falling within that period; or
- (b) was unable to make themselves available for any appointment dates within that period.

(7) A person falling within regulation 47(3)(a), (b) or (c) has assessed the person referred and decided—

- (a) that it is in the best clinical interests of that patient to commence treatment after the end of the period of 18 weeks beginning with the start date;
- (b) that the person does not need treatment; or
- (c) to refer the patient back to primary care services prior to any treatment commencing.

(8) A person falling within regulation 47(3)(a), (b) or (c) has assessed the person referred and decided that the person requires a period of monitoring which consist of or includes being re-assessed at intervals within the period of 18 weeks beginning with the start date.

(9) The patient is placed on the national transplant waiting list.

(10) The patient is referred for the purpose of receiving maternity services.

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### Duty to have regard to guidance

**50.** In carrying out its duties under regulations 45 and 48, a relevant body must have regard to the document entitled [<sup>F112</sup>Referral to treatment consultant-led waiting times: rules suite (October 2022)].

#### Textual Amendments

**F112** Words in [reg. 50](#) substituted (1.1.2024) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 2\) Regulations 2023 \(S.I. 2023/1105\)](#), regs. 1(b), **2(8)**

### Duty to notify

**51.** Where—

- (a) a person meets the conditions in regulation 47(2) and (3);
- (b) [<sup>F3</sup>NHS England] has responsibility for that person in respect of the health care service to be provided on referral; and
- (c) [<sup>F35</sup>an integrated care board] receives notification from that person, or a person acting lawfully on that person's behalf, that they—
  - (i) have not commenced appropriate treatment; or
  - (ii) will not commence appropriate treatment, within 18 weeks beginning with the start date,

that [<sup>F35</sup>integrated care board] must notify [<sup>F3</sup>NHS England] in writing of that information.

#### Textual Amendments

**F3** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

**F35** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), **Sch. para. 1(1)(3)** (with **Sch. para. 1(2)**)

### Duty to make arrangements to provide an appointment with a specialist for those patients urgently referred for treatment for suspected cancer

**52.—(1)** A relevant body must make arrangements to ensure that persons—

- (a) for whom the relevant body has responsibility; and
- (b) in respect of whom an urgent referral for suspected cancer is made by—
  - (i) a general medical practitioner or a person authorised to act on their behalf, or
  - (ii) a general dental practitioner or a person authorised to act on their behalf,

are provided with treatment for suspected cancer in accordance with paragraph (2).

(2) The requirement referred to in paragraph (1) is that at the end of each data collection period, treatment for suspected cancer has commenced within the period of 2 weeks beginning with the start date in not less than 93% of cases where that treatment is provided in that data collection period.

(3) Where—



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- (a) the person referred did not attend an appointment made by a health service provider in response to the urgent referral; and
- (b) that person had not requested in advance of the appointment that the date for that appointment be rearranged,

the period of time described in paragraph (4) is to be excluded from the calculation of the period of 2 weeks beginning with the start date referred to in paragraph (2).

(4) The period of time to be excluded for the purposes of paragraph (3)—

- (a) begins with the start date; and
- (b) ends on the date on which the health service provider receives notification from the person who has been urgently referred that they are available again for an appointment for treatment for suspected cancer.

(5) In carrying out its duties under this regulation, a relevant body must have regard to the National Institute for Health and Clinical Excellence Referral Guidelines for Suspected Cancer dated June 2005 <sup>M34</sup>.

#### Marginal Citations

**M34** The Guidelines can be found at [www.nice.org.uk/CG027](http://www.nice.org.uk/CG027).

### Duty to offer alternative provider for treatment for suspected cancer

**53.**—(1) Paragraph (2) applies where—

- (a) a person has been referred urgently for treatment for suspected cancer to a health service provider (“the relevant provider”);
- (b) the referral is made by—
  - (i) a general medical practitioner or a person authorised to act on their behalf, or
  - (ii) a general dental practitioner or a person authorised to act on their behalf;
- (c) the referral is for an appointment with a specialist with a view to diagnosis or treatment of cancer;
- (d) the referred person, or a person lawfully acting on their behalf, notifies the relevant provider or the relevant body which has responsibility for the person referred, that they have not had an appointment, or will not have an appointment, within two weeks beginning with the date on which the person's referral request is received by the relevant provider (“the relevant period”); and
- (e) the relevant provider or the relevant body is satisfied that the person referred has not or will not have an appointment within the relevant period.

(2) Where this paragraph applies, the relevant body which has responsibility for the person referred must take all reasonable steps to ensure that the person is offered an appointment in accordance with paragraphs (3) to (5).

(3) The appointment must be with a specialist at a suitable health service provider other than the relevant provider.

(4) The appointment must be at an earlier date than the appointment the person would have had if they had continued to wait for an appointment at the relevant provider.

(5) If there is more than one suitable health service provider the patient must be offered an appointment falling within paragraphs (2) and (3) at more than one such provider.

(6) Paragraph (2) does not apply if the person—

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- (a) was made aware of the consequences of not attending appointments and did not attend an appointment made by the relevant provider in response to the referral; or
- (b) chose not to attend an appointment within the relevant period.

**Advice and assistance**

**54.**—(1) Each [<sup>F35</sup>integrated care board] must—

- (a) establish a service for the purpose of providing advice and assistance to persons—
  - (i) for whom it has responsibility, and
  - (ii) who meet the conditions set out in regulation 47(2) and (3) or 53(1)(a) to (c) (“relevant persons”);
- (b) publish the name and contact details of the service; and
- (c) take reasonable steps to communicate the name and contact details of that service to any relevant persons for which it has responsibility.

(2) Each [<sup>F35</sup>integrated care board] must make arrangements to ensure that any health service provider providing services to a relevant person pursuant to a commissioning contract with that [<sup>F35</sup>integrated care board] —

- (a) establishes a service for the purpose of providing advice and assistance to relevant persons referred to the provider;
- (b) publishes the name and contact details of that service; and
- (c) takes reasonable steps to communicate the name and contact details of that service to any relevant persons referred to the provider for whom the relevant body is responsible.

**Textual Amendments**

**F35** Words in [Regulations](#) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), Sch. para. 1(1)(3) (with Sch. para. 1(2))

**Transitional provision**

<sup>F113</sup>**55.** .....

**Textual Amendments**

**F113** [Reg. 55](#) omitted (1.7.2022) by virtue of [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **209(9)**

**PART 10**

Standing rules: funding of therapies for Multiple Sclerosis

**Scheme for the funding of certain disease modifying therapies for Multiples Sclerosis**

**56.**—(1) A relevant body must, in exercising its functions under or by virtue of section 3(1), 3A(1) or 3B of the 2006 Act, ensure that—

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- (a) a scheme product is supplied or administered in accordance with the scheme to a scheme patient,
  - (b) a scheme product continues to be supplied or administered in accordance with the scheme to a scheme patient where such a patient was receiving such a course of treatment immediately before the relevant date unless the patient's consultant has determined, in consultation with the scheme patient, that the scheme product is no longer clinically appropriate;
  - (c) a scheme product is supplied or administered to a patient with multiple sclerosis for the purpose of that person's treatment for that condition where that patient—
    - (i) is not a scheme patient, but
    - (ii) was, on 4th February 2002, and is, immediately before the relevant date, receiving such a course of treatment for that condition.
- (2) In this Part—

“scheme” means the arrangement between the Department of Health (England), the National Assembly for Wales, the Scottish Ministers, the Northern Ireland Department of Health, Social Security and Public Safety, Biogen Idec Inc., Bayer PLC, Merck Serono Limited, and Teva Pharmaceutical Industries Limited together with Aventis Pharma Limited, dated 1st February 2002, for the supply and administration of products for the treatment of multiple sclerosis<sup>M35</sup>;

“scheme patient” means a patient with multiple sclerosis who is eligible to receive treatment under the scheme and who consents to receive such treatment;

“scheme product” means—

- (a) Interferon beta-1a: Avonex and Rebif (22mg and 44mg);
- (b) Interferon beta – 1b: Betaferon; or
- (c) Glatiramer acetate: Copaxone,

which is given for the treatment of multiple sclerosis and which is manufactured by a company that is a party to the scheme.

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**Marginal Citations**

**M35** The arrangement can be found at [www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthservicecirculars/DH\\_4004332](http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthservicecirculars/DH_4004332) – see Annex A.

**F114** **PART 11**

Financial duties of a relevant body in relation to administration

.....

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**Textual Amendments**

**F114** Pt. 11 omitted (1.7.2022) by virtue of [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), **209(10)**

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Signed by authority of the Secretary of State for Health.

Department of Health

*Earl Howe*  
Parliamentary Under-Secretary of State,

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Pt. 10 omitted by [S.I. 2024/302 reg. 2\(11\)](#)
- reg. 1(2)(d)(v) word inserted by [S.I. 2024/302 reg. 2\(2\)\(a\)](#)
- reg. 1(2)(d)(vii) omitted by [S.I. 2024/302 reg. 2\(2\)\(c\)](#)
- reg. 1(2)(d)(vi) word omitted by [S.I. 2024/302 reg. 2\(2\)\(b\)](#)
- reg. 20 sum substituted by [S.I. 2024/302 reg. 2\(3\)\(a\)](#)
- reg. 20 sum substituted by [S.I. 2024/302 reg. 2\(3\)\(b\)](#)
- reg. 38 words substituted by [S.I. 2024/302 reg. 2\(4\)](#)
- reg. 39(2)(a)(i) words substituted by [S.I. 2024/302 reg. 2\(5\)\(a\)](#)
- reg. 39(2)(b)(i) words substituted by [S.I. 2024/302 reg. 2\(5\)\(a\)](#)
- reg. 39(8) substituted by [S.I. 2024/302 reg. 2\(5\)\(b\)](#)
- reg. 40(1)(a) substituted by [S.I. 2024/302 reg. 2\(6\)](#)
- reg. 42D(1)(c) words substituted by [S.I. 2024/302 reg. 2\(7\)](#)
- reg. 44(1) words inserted by [S.I. 2024/302 reg. 2\(8\)\(a\)](#)
- reg. 44(1) words inserted by [S.I. 2024/302 reg. 2\(8\)\(b\)](#)
- reg. 44(1) words omitted by [S.I. 2024/302 reg. 2\(8\)\(d\)](#)
- reg. 44(1) words substituted by [S.I. 2024/302 reg. 2\(8\)\(c\)](#)
- reg. 5253 substituted by [S.I. 2024/302 reg. 2\(9\)](#)
- reg. 54(1)(a)(ii) words substituted by [S.I. 2024/302 reg. 2\(10\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 39(9) inserted by [S.I. 2024/302 reg. 2\(5\)\(c\)](#)