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STATUTORY INSTRUMENTS

2013 No. 2354

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Direct Payments) (Amendment)
Regulations 2013**

<i>Made</i> - - - -	<i>13th September 2013</i>
<i>Laid before Parliament</i>	<i>19th September 2013</i>
<i>Coming into force</i> - -	<i>14th October 2013</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 12A(4), 12B(1) to (4) and 272(7) and (8) of the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Direct Payments) (Amendment) Regulations 2013 and come into force on 14th October 2013.

(2) In these Regulations, “the Direct Payments Regulations” means the National Health Service (Direct Payments) Regulations 2013(b).

Amendment of regulation 7 of the Direct Payments Regulations

2. In regulation 7 (decision to make a direct payment), after paragraph (10), add the following paragraphs—

“(11) Where a health body decides under paragraph (10) not to make a direct payment, a patient, representative or nominee may require the health body to re-consider the decision, and may provide evidence or relevant information for the health body to consider as part of that deliberation.

(12) A health body must inform the patient and any representative or nominee in writing of the decision on a re-consideration, and state the reasons for the decision.

(13) A health body may not be required to undertake more than one re-consideration following a decision under paragraph (10) in any six month period.”.

(a) 2006 c. 41. Sections 12A to 12D of the National Health Service Act 2006 (“the 2006 Act”) were inserted by section 11 of the Health Act 2009 (c. 21). Sections 12A and 12B have been amended by section 55(1) of, and paragraphs 10 and 11 of Part 1 of Schedule 4 to, the Health and Social Care Act 2012 (c.7). Sections 12A(6) and 12C(1) to (4) have been repealed by the National Health Service (Direct Payments) (Repeal of Pilot Schemes Limitation) Order 2013 (S.I. 2013/1563). See section 275 of the 2006 Act for the definitions of “prescribed” and “regulations”. By virtue of section 271(1) of the 2006 Act, the powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England.

(b) S.I.2013/1617.

Amendment of regulation 8 of the Direct Payments Regulations

3.—(1) Regulation 8 (care plan and care co-ordinator) is amended as follows.

(2) After paragraph (5), insert the following paragraph—

“(5A) A health body may specify in a care plan that a service may be secured in respect of a patient from a person who is an individual living in the same household as the patient, a family member mentioned in regulation 7(8), or a friend involved in the provision of the patient’s care, whether or not a nominee, only if a health body is satisfied that to secure a service from that person is necessary—

- (a) to meet satisfactorily the patient’s need for that service; or
- (b) to promote the welfare of a patient who is a child.”.

(3) After paragraph (6), insert the following paragraphs—

“(6A) Where a health body decides under paragraph (6) not to include a particular service in the care plan, a patient, representative or nominee may require the health body to re-consider the decision, and may provide evidence or relevant information for the health body to consider as part of that deliberation.

(6B) The health body must inform the patient and any representative or nominee in writing of the decision on a re-consideration, and state the reasons for the decision.

(6C) A health body may not be required to undertake more than one re-consideration following a decision under paragraph (6).”.

Amendment of regulation 11 of the Direct Payments Regulations

4. In regulation 11 (conditions to be complied with by the patient, representative or nominee), after paragraph (3), insert the following paragraph—

“(3A) A patient, representative or nominee may use direct payments to secure a service in respect of the patient from a person mentioned in regulation 8(5A), only if the care plan specifies, pursuant to that regulation, that the service may be secured from that person.”.

Amendment of regulation 13 of the Direct Payments Regulations

5. In regulation 13 (amount of direct payment), after paragraph (5), add the following paragraphs—

“(6) Where a health body decides under paragraph (5) to reduce the amount paid by way of direct payments, a patient, representative or nominee may require the health body to re-consider the decision, and may provide evidence or relevant information for the health body to consider as part of that deliberation.

(7) A health body must inform the patient and any representative or nominee in writing of the decision on a re-consideration, and state the reasons for the decision.

(8) A health body may not be required to undertake more than one re-consideration following a decision under paragraph (5).”.

Signed on behalf of the Secretary of State for Health.

Norman Lamb
Minister of State,
Department of Health

13th September 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Direct Payments) Regulations 2013 (S.I. 2013/1617) (“the Direct Payments Regulations”) which make provision for the making of direct payments for health care to secure the provision of certain health services under the National

Health Service Act 2006 by a health body (a clinical commissioning group (“CCG”), the National Health Service Commissioning Board (“the Board”), a local authority or the Secretary of State), or in the case of a CCG or the Board, under any other enactment.

A new review provision is inserted into regulation 7 of the Direct Payments Regulations by regulation 2 requiring a health body to re-consider a decision not to make a direct payment to a person and to give reasons for its decision.

Regulations 3(2) and 4 re-insert two paragraphs of the previous regulations governing direct payments (the National Health Service (Direct Payments) Regulations 2010, S.I.2010/1000) which have not been replicated in the Direct Payments Regulations. These paragraphs allow an individual living in the same household, a family member or a friend to be paid to provide care using part of a patient’s direct payment in very limited circumstances and were left out in error.

Regulations 3(3) and 5 insert new review provisions into regulation 8 and 13 of the Direct Payments Regulations requiring, respectively, a health body to re-consider a decision not to include a particular service in the care plan and a decision to reduce the amount paid by way of direct payments and to give reasons for its decision.

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