

2013 No. 2891

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service Commissioning Board and Clinical
Commissioning Groups (Responsibilities and Standing Rules)
(Amendment) Regulations 2013**

<i>Made</i>	- - - -	<i>8th November 2013</i>
<i>Laid before Parliament</i>		<i>13th November 2013</i>
<i>Coming into force</i>		
	<i>for the purposes of regulations 1 and 6</i>	<i>16th December 2013</i>
	<i>for all other purposes</i>	<i>1st April 2014</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 3(1B), 6E(1), (2) and (3) and 272(7) and (8) of the National Health Service Act 2006(a) and section 75 of the Health and Social Care Act 2012(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013.

(2) These regulations come into force for the purposes of this regulation and regulation 6 on 16th December 2013, and for all other purposes on 1st April 2014.

(3) In these Regulations, “the 2012 Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012(c).

Amendments in relation to NHS Continuing Healthcare and NHS funded nursing care

2.—(1) In regulation 21 of the 2012 Regulations (duty of relevant bodies: assessment and provision of NHS Continuing Healthcare)—

(a) for paragraph (3), substitute—

“(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) 2006 c. 41 (“the 2006 Act”). Section 3(1B) was inserted by section 13 of the Health and Social Care Act 2012 (c. 7), and section 6E was inserted by section 20 of the 2006 Act. 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. See section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.

(b) 2012 c. 7.

(c) S.I. 2012/2996, to which there are amendments not relevant to these Regulations.

- (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
 - (b) any notice is given to a social services authority pursuant to section 2(2) of the Community Care (Delayed Discharges etc) Act 2003 (notice of patient’s likely need for community care services)(a) in relation to that person.”;
- (b) after paragraph (7) insert—
- “(7A) Paragraph (7B) applies where an NHS trust makes a recommendation to a relevant body that it should decide that a person is eligible for NHS Continuing Healthcare pursuant to direction 2(6) of the Delayed Discharges Directions.
- (7B) Where this paragraph applies, the relevant body may decide that the person is eligible for NHS Continuing Healthcare in reliance on the recommendation of the NHS trust, and if it does so, paragraphs (2) to (6) do not apply.”;
- (c) in paragraph (8), for “a Fast Track Pathway Tool”, substitute “the Fast Track Pathway Tool”;
- (d) for paragraph (9) substitute—
- “(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
 - (b) the recommendation of an NHS trust under direction 2(9) of the Delayed Discharges Directions that a person is eligible for NHS Continuing Healthcare, based on the Fast Track Pathway Tool completed in accordance with direction 2(8) of those Directions.”;
- (e) for paragraph (10) substitute—
- “(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.”; and
- (f) in paragraph (13)—
- (i) in the definition of “appropriate clinician”, for “a Fast Track Pathway Tool”, substitute “the Fast Track Pathway Tool”;
 - (ii) after the definition of “appropriate clinician” insert—

““Delayed Discharges Directions” means the Delayed Discharges (Continuing Care) Directions 2013(b)”;
 - (iii) in the definition of “healthcare profession”, for “(whether or not that person is regulated by, or by virtue of, any enactment)”, substitute “(whether or not a person engaged in that profession is regulated by, or by virtue of, any enactment)”.
- (2) In Schedule 5 (persons disqualified from being a chair, CCG member or social services authority member of a review panel), omit paragraph (2).

(a) 2003 c. 5. Section 2(2) imposes a duty on relevant bodies by virtue of section 1. Section 1 was amended so as to include relevant bodies by the Health and Social Care Act 2012 (Consequential Amendments) (No. 2) Order 2013 (S.I. 2013/2341). There are other amendments to section 1 not relevant to these Regulations.

(b) The Directions can be found at: <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>.

Amendments in relation to personal health budgets and NHS Continuing Healthcare

3. After Part 6 of the 2012 Regulations, insert—

“PART 6A

Standing rules: personal health budgets

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;

“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 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; or
- (b) NHS Continuing Healthcare.

(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.

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^(a);
- (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) See section 12A(5) of the 2006 Act for the meaning of “direct payment”.

- (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.
- (4) A relevant body must—
- (a) give due consideration to a request made by or on behalf of an eligible person for a personal health budget;
 - (b) decide whether it is appropriate in the circumstances of the eligible person’s case to arrange for the provision of the relevant health service to that person by means of a personal health budget; and
 - (c) if it decides that it would be appropriate, decide which of the ways mentioned in paragraph (2) would be the most appropriate way in which to manage the 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^(a) (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, it must provide that person and their representatives with the reasons for that decision in writing.
- (8) On receipt of 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.”

Amendments in relation to choice of health service provider

- 4.—**(1) In regulation 39 of the 2012 Regulations (duty to ensure persons are offered a choice of health service provider)—
- (a) for paragraph (2) substitute—
 - “(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, of—
 - (i) any clinically appropriate health service provider with whom any relevant body has a commissioning contract for the service required as a result of the referral, 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, of—

(a) S.I. 2013/1617, to which there are amendments not relevant to these Regulations.

- (i) any clinically appropriate health service provider with whom any relevant body has a commissioning contract for the service required as a result of the referral, and
 - (ii) any clinically appropriate team led by a named health care professional who is employed or engaged by that health service provider.”;
- (b) omit paragraphs (3) and (4); and
- (c) in paragraph (5), for “paragraphs (1) and (3)”, substitute “paragraph (1)”.
- (2) In regulation 40 of the 2012 Regulations (services to which the duties as to choice do not apply)—
- (a) in paragraph (1)—
 - (i) at the end of sub-paragraph (a), insert “or”;
 - (ii) omit the “or” at the end of sub-paragraph (b); and
 - (iii) omit sub-paragraph (c); and
 - (b) in paragraph (2), for “Regulation 39(1) and (3) do”, substitute “Regulation 39(1) does”.
- (3) In regulation 41 of the 2012 Regulations (persons to whom the duties as to choice do not apply), for “Regulations 39(1) and (3) do”, substitute “Regulation 39(1) does”.
- (4) In regulation 42(2)(a)(iii) of the 2012 Regulations (duty to publicise and promote information about choice), for “regulation 39(3)” substitute “regulation 39(1)”.

Amendment in relation to waiting times

5. In regulation 50 of the 2012 Regulations (duty to have regard to guidance), for ““The Referral to Treatment Consultant-led Waiting Times Rules Suite” dated January 2012”, substitute ““The Referral to Treatment Consultant-led Waiting Times Rules Suite” dated April 2014”(a).

Amendments in relation to persons for whom a CCG has responsibility

6. In Schedule 1 to the 2012 Regulations (additional persons for whom a CCG has responsibility) in paragraphs 3(b)(i) and 5(b)(i), after “CCG” insert “or of a Local Health Board”.

Signed by authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

8th November 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the 2012 Regulations”). Regulations 2 to 5 are made under section 6E of the National Health Service Act 2006 (c. 41) (“the Act”), which provides for requirements to be imposed on the National Health Service Commissioning Board (“NHS England”) and clinical commissioning groups (“CCGs”) in the exercise of their functions. These regulations come into force on 1st April 2014. Regulation 6 is made under section 3(1B) of the Act, which allows regulations to prescribe

(a) The rules suite can be found at <https://www.gov.uk/government/publications/right-to-start-consultant-led-treatment-within-18-weeks>.

additional persons for whom a CCG has responsibility. The amendment made by regulation 6 comes into force on 16th December 2013.

Regulation 2 amends Part 6 of the 2012 Regulations, which imposes obligations on NHS England and CCGs in relation to NHS Continuing Healthcare. The amendments deal with several different aspects. Firstly, they require NHS England and CCGs to carry out an assessment for NHS Continuing Healthcare before issuing a delayed discharge notice to a local authority in respect of a patient under section 2(2) of the Community Care (Delayed Discharges etc) Act 2003 (c. 5) (regulation 2(1)(a)). Secondly, they enable NHS England and CCGs to rely on recommendations of NHS trusts in relation to NHS Continuing Healthcare made in accordance with the Delayed Discharges (Continuing Care) Directions 2013 (regulation 2(1)(b) and (d)). Thirdly, they amend Schedule 5 to the 2012 Regulations, which lists the people who are disqualified from being members of review panels (regulation 2(2)). Paragraph 2 of Schedule 5 is omitted, meaning that people who provide commissioning support for CCGs, or who work for organisations which do so, may be CCG members of review panels.

Regulation 3 inserts a new Part 6A into the 2012 Regulations, which deals with personal health budgets. These are defined in new regulation 32A of the 2012 Regulations as an amount of money which is identified by NHS England or a CCG as being appropriate for the commissioning of a person's NHS Continuing Healthcare (for adults) or Continuing Care for Children, the application of which is planned and agreed with the person or their representative. New regulation 32B imposes a duty on NHS England and CCGs to be in a position to commission such services by means of a personal health budget, which can be managed in one or more of three ways. They may take the form of a direct payment (within the meaning of section 12A of the Act), a notional budget (described in new regulation 32B(2)(b) as NHS England or a CCG applying a personal health budget in accordance with the outcome of discussions with the person or their representative as to how best to arrange for the services to be provided to that person), or a real budget (described in new regulation 32B(2)(c) as the transfer of a personal health budget by NHS England or a CCG to a body which then arranges for the services to be provided to the person following discussions with them or their representative, and with the agreement of NHS England or the CCG). NHS England and CCGs have a duty to publicise and promote the availability of personal health budgets and to provide information, advice and other support about them (new regulation 32B(3)). They have to give due consideration to requests for them, and if they decide to offer one, they must decide which is the most appropriate way in which to manage it (new regulation 32B(4)). They also have to provide information, advice and support in relation to the management of a personal health budget which is not a direct payment (the obligations in relation to management of a direct payment are found in the Direct Payments Regulations 2013 (S.I. 2013/1617)) (new regulation 32B(5) and (6)).

Regulation 4 amends Part 8 of the 2012 Regulations, which imposes obligations on NHS England and CCGs in relation to offering patients a choice of provider and consultant led team. The amendments to this Part of the 2012 Regulations are also made under section 75 of the Health and Social Care Act 2012 (c. 7), which enables the Secretary of State to make regulations imposing requirements on NHS England and CCGs for the purpose of securing that they protect and promote the right of patients to make choices with respect to treatment or other health care services. The effect of this is that, by virtue of section 76 of the 2012 Act, enforcement powers may be conferred on Monitor in relation to the provisions of Part 8, and these are contained in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500).

Regulation 40 of the 2012 Regulations exempts mental health services from certain of the obligations in relation to choice, and the amendments made by regulation 4 remove this exemption. This means that a patient who requires an elective referral for mental health services is able from 1st April 2014 to choose any clinically appropriate health service provider as regards the first outpatient appointment with a consultant or a consultant led team (or a health care professional or a team led by such a professional), as long as NHS England or a CCG has a commissioning contract with such a provider for the service required.

Regulation 5 amends Part 9 of the 2012 Regulations, which imposes requirements on NHS England and CCGs in relation to waiting times. It amends the reference in regulation 50 of the 2012 Regulations to the Referral to Treatment Consultant-led Waiting Times Rules Suite guidance. This is updated with effect from 1st April 2014 by the removal of a case study which is now no longer applicable as it relates to comprehensive sexual health services, which are commissioned by local authorities under section 2B of the Act.

Regulation 6 amends Schedule 1 to the 2012 Regulations, which identifies the persons for whom a CCG has responsibility in addition to those mentioned in section 3(1A) of the Act. Regulation 6 amends paragraphs 3 and 5 of Schedule 1 to the 2012 Regulations to provide that where the requirements of those paragraphs are satisfied, a CCG is responsible for commissioning NHS Continuing Healthcare services for a person whom it places in a care home or independent hospital situated in the area of a Local Health Board in Wales.

A full impact assessment was produced in respect of the provisions of the Health and Social Care Act 2012 (sections 13 and 20 of which inserted sections 3(1B) and 6E, respectively, into the Act) and a copy is available at: <https://www.gov.uk/government/publications/health-and-social-care-bill-2011-combined-impact-assessments>. No separate impact assessment has been prepared in respect of regulations 2, 5 and 6, as these regulations have no impact on the private sector or civil society organisations. Copies of the impact assessments relating to the provisions of regulations 3 and 4 are annexed to the Explanatory Memorandum which is available alongside these Regulations on the legislation.gov website.

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