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STATUTORY INSTRUMENTS

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**2015 No. 238**

**The National Health Service (Charges  
to Overseas Visitors) Regulations 2015**

**PART 2**

Provision for making and recovery of charges

**Obligation to make and recover charges**

3.—(1) Where the condition specified in paragraph (2) is met, a relevant NHS body must make and recover charges for any relevant services it provides to an overseas visitor from the person liable under regulation 4 (liability for payment of charges).

(2) The condition is that the relevant NHS body, having made such enquiries as it is satisfied are reasonable in all the circumstances, including in relation to the state of health of that overseas visitor, determines that the case is not one in which these Regulations provide for no charge to be made.

(3) Where more than one relevant NHS body provides relevant services to an overseas visitor, each relevant NHS body must make and recover charges for the relevant services it provides to that overseas visitor in accordance with paragraph (1).

(4) A relevant NHS body that makes and recovers a charge in accordance with paragraph (1), must give or send to the person making the payment a receipt for the amount paid.

(5) Subject to paragraph (6), where—

- (a) a relevant NHS body has determined that an overseas visitor is exempt from being charged for relevant services under these Regulations, except where the overseas visitor is exempt from being charged by virtue of—
  - (i) regulation 10 (immigration health charge);
  - (ii) regulation 11 (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge); or
  - (iii) regulation 25(3) (family members of overseas visitors – children born to a parent exempt under regulation 10 or 11);
- (b) the overseas visitor has received relevant services from a relevant NHS body as part of a course of treatment; and
- (c) prior to the course of treatment being completed, a relevant NHS body has determined that the overseas visitor is no longer exempt from being charged for relevant services under these Regulations,

a relevant NHS body may not make and recover charges under paragraph (1) in respect of relevant services provided as part of that course of treatment during a period where the overseas visitor has remained in the United Kingdom without absence.

(6) Paragraph (5) does not apply where a relevant NHS body has determined that a person is exempt from being charged for relevant services as a result of that body receiving fraudulent or misleading information.

**Liability for payment of charges**

4.—(1) The person liable to pay charges under these Regulations is, unless paragraph (2), (3) or (4) applies, the overseas visitor in respect of whom the relevant services are provided.

(2) Where—

- (a) an overseas visitor is employed or engaged or works in any capacity on board a ship and whose normal place of work is on board a ship; and
- (b) that overseas visitor is present in the United Kingdom in the course of that employment, engagement or work,

the person liable to pay charges under these Regulations is the shipowner of the ship on which the overseas visitor is employed, engaged or works.

(3) Where an overseas visitor is an air crew member and is present in the United Kingdom in the course of that employment, the person liable to pay charges under these Regulations is the employer of that overseas visitor.

(4) Where an overseas visitor is a child, the person liable to pay charges under these Regulations is the person with parental responsibility for that child.

(5) In this regulation—

“air crew member” means any person employed or engaged in an aircraft in flight on the business of the aircraft;

“shipowner” has the meaning given in regulation 2(1) (interpretation) of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc) Regulations 2014<sup>(1)</sup>.

**Repayment of charges made and recovered by relevant NHS bodies**

5.—(1) Where a sum has been paid in respect of a charge for relevant services by or on behalf of a person who—

- (a) at the time that the relevant services were provided was an overseas visitor in respect of whom these Regulations provide for no charge to be made or recovered; or
- (b) did not receive the relevant services for which the charge was payable,

a claim for repayment of the sum may be made in accordance with this regulation.

(2) A person making a claim for repayment (“the claimant”) of a sum must provide to the relevant NHS body—

- (a) the receipt for payment of the sum;
- (b) a declaration in support of the claim signed by or on behalf of the claimant; and
- (c) such other evidence in support of the declaration as the relevant NHS body may require.

(3) The relevant NHS body must repay to the claimant the amount of the sum if it is satisfied that the sum was not payable by virtue of these Regulations.

(4) For the purposes of this regulation, the relevant NHS body is the one to which the sum was paid.

**Provision relating to recovery of charges in respect of refugees and victims of human trafficking**

6.—(1) This paragraph applies to an overseas visitor who—

(1) S.I. 2014/1613.

- (a) received relevant services from a relevant NHS body;
  - (b) subsequent to receiving the relevant services, has become an overseas visitor who is exempt from charges under—
    - (i) regulation 15(a) (refugees, asylum seekers, supported individuals and looked after children); or
    - (ii) regulation 16 (victims of human trafficking); and
  - (c) at the time that the overseas visitor received the relevant services—
    - (i) where paragraph (1)(b)(i) applies, was in the United Kingdom for the purpose of making an application to be granted temporary protection, asylum or humanitarian protection under the immigration rules, but had not made that application; or
    - (ii) where paragraph (1)(b)(ii) applies, was a person to whom regulation 16 applies but had not yet been identified as such.
- (2) An overseas visitor to whom paragraph (1) applies is to be treated for the purposes of these Regulations as if, at the time that the relevant services were provided, the overseas visitor was an overseas visitor in respect of whom no charge may be made or recovered for the relevant services.
- (3) A relevant NHS body which, in respect of an overseas visitor to whom paragraph (1) applies, has—
- (a) yet to make charges under regulation 3 (obligation to make and recover charges), must not make the charges;
  - (b) made charges under regulation 3 but has yet to recover the charges, must not recover the charges; or
  - (c) made charges under regulation 3 and received payment in respect of the charges, must repay any sum paid in respect of the charges in accordance with regulation 5 (repayment of charges made and recovered by relevant NHS bodies).

### **Charges imposed on overseas visitors**

7.—(1) The relevant NHS body must calculate charges made under these Regulations in accordance with this regulation.

(2) Where the overseas visitor is ordinarily resident in another EEA state or Switzerland the charge payable in respect of a relevant service provided to the overseas visitor shall be calculated in the same way as provided for by regulation 13(1) (NHS charges) of the National Health Service (Cross-Border Healthcare) Regulations 2013(2).

(3) In any other case, the charge payable in respect of each relevant service provided to an overseas visitor shall be equal to the tariff for that relevant service multiplied by 150 per cent.

(4) In this regulation “the tariff” has the meaning set out in paragraphs (5) to (8), subject to paragraphs (9) to (12).

(5) Unless paragraph (6) applies, where a relevant service is specified in the national tariff under section 116(1)(a) (national tariff) of the 2012 Act, the tariff for the provision of that service to an overseas visitor is such price as is determined in accordance with the national tariff on the basis of the national price specified in the national tariff for that service in relation to that relevant NHS body including any applicable modification referred to in paragraph (10).

(6) Where—

- (a) a relevant NHS body provides a relevant service to an overseas visitor that is included in a bundle of services to which a pathway payment applies in accordance with the national tariff;
- (b) that relevant service constitutes part, but not all, of the bundle of services; and
- (c) the relevant NHS body is unable to determine the price of that relevant service as an individual service within the bundle of services to which the pathway payment relates,

the tariff is such reasonable price for the provision of the relevant service that the NHS body determines having had regard to the matters set out in paragraph (7).

(7) The matters to which the relevant NHS body must have regard for the purposes of determining the tariff for a relevant service under paragraph (6) are—

- (a) the amount of the pathway payment which would be payable to the relevant NHS body in accordance with the national tariff, by the commissioner with responsibility for commissioning services in respect of the overseas visitor to whom the relevant service was provided, if that overseas visitor were ordinarily resident in the United Kingdom;
- (b) the relevant service that the overseas visitor received as a proportion of the bundle of services to which the pathway payment applies; and
- (c) the complexity of the relevant service provided to the overseas visitor.

(8) Where a relevant service is not specified in the national tariff under section 116(1)(a) of the 2012 Act, the tariff is such price for the provision of that service as is determined in accordance with the rules provided for in the national tariff for that purpose including any applicable modification referred to in paragraph (10).

(9) The following variations to the national price of a relevant service made under the 2012 Act shall not apply to the determination of the national price for that relevant service for the purpose of paragraph (5)—

- (a) a variation agreed to by the commissioner of the service and the relevant NHS body that is providing that service in accordance with rules made under section 116(2);
- (b) a variation specified in the national tariff under section 116(4)(a), except for a variation—
  - (i) to reflect regional cost difference; or
  - (ii) to reflect patient complexity.

(10) An applicable modification is any modification to the price, as determined in accordance with the national tariff, of the relevant service where that modification is—

- (a) made in accordance with an agreement made under section 124(1) of the 2012 Act; or
- (b) determined by Monitor under section 125(1) of the 2012 Act.

(11) For the purposes of determining the tariff for a relevant service provided to an overseas visitor—

- (a) under paragraph (5) or (8) (whichever is applicable), a modification of the kind specified in paragraph (10) will apply to the relevant service only when the modification applies to the price payable to the relevant NHS body by the commissioner with responsibility for commissioning services in respect of that overseas visitor; and
- (b) under paragraph (8), an agreement between a commissioner and the relevant NHS body made in accordance with the rules will be relevant for the determination of the tariff only when the commissioner which is party to the agreement is the commissioner with responsibility for commissioning services in respect of that overseas visitor.

(12) Where rules made under section 116(6) provide for which specification of a relevant service is to apply in a particular case or cases of any particular description, the relevant NHS body must comply with those rules when calculating charges under this regulation for that relevant service.

(13) For the purposes of this regulation—

“the 2012 Act” means the Health and Social Care Act 2012<sup>(3)</sup>;

“national price” has the meaning given in section 115(1) (price payable by commissioners for NHS services) of the 2012 Act;

“national tariff” is the document known as the national tariff published by Monitor under section 116(1) of the 2012 Act<sup>(4)</sup>;

“the rules” mean the rules provided for in the national tariff under section 116 and 117 (the national tariff: further provision) of the 2012 Act.

(14) Nothing in this regulation prevents a relevant NHS body from obtaining a deposit or full payment in advance in respect of relevant services to be provided to an overseas visitor in respect of whom charges are payable under these Regulations.

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(3) [2012 c. 7.](#)

(4) The 2014/15 national tariff is published on the following website: <https://www.gov.uk/government/publications/national-tariff-payment-system-2014-to-2015> or available from the Pricing Team, Monitor, 3rd Floor Wellington House, 133-155 Waterloo Road, London SE1 8UG.