

2016 No. 293

MENTAL HEALTH, ENGLAND

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service Commissioning Board and Clinical
Commissioning Groups (Responsibilities and Standing Rules)
(Amendment) Regulations 2016**

<i>Made</i>	- - - -	<i>3rd March 2016</i>
<i>Laid before Parliament</i>		<i>10th March 2016</i>
<i>Coming into force</i>	- -	<i>1st April 2016</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 117(2E) and (2G) of the Mental Health Act 1983(a) and sections 3B(1), 6E(1), (2) and (4) and 272(7) and (8) of the National Health Service Act 2006(b).

Before deciding to make regulations under section 3B of the National Health Service Act 2006, the Secretary of State obtained appropriate advice and consulted the National Health Service Commissioning Board in accordance with subsection (4) of that section.

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 2016 and come into force on 1st April 2016.

(2) In these Regulations—

“the 1983 Act” means the Mental Health Act 1983;

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

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- (a) 1983 c.20. Section 117(2E) and (2G) of the Mental Health Act 1983 (“the 1983 Act”) was inserted by section 40 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).
- (b) 2006 c.41. Section 3B of the National Health Service Act 2006 (“the 2006 Act”) was inserted by section 15 of the 2012 Act. Section 6E of the 2006 Act was inserted by section 20(1) of the 2012 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 in relation to England only. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.
- (c) S.I. 2012/2996; relevant amendments to which were made by S.I. 2014/452, 2014/3215 and 2015/415.

Amendment to regulation 14 of the principal Regulations

2. In regulation 14 of the principal Regulations (circumstances in which a duty to provider after-care services under section 117(2) of the 1983 Act^(a) may be imposed on another clinical commissioning group), omit paragraph (2)(a).

Amendments to regulation 16 of the principal Regulations

3. In regulation 16 of the principal Regulations (matters to be included in commissioning contracts)—

(a) for paragraph (1), substitute—

“(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^(b) (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.”;

(b) after paragraph (1A), insert—

“(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”;; and

(c) in paragraph (2)—

(i) omit the definitions of “appropriate apology”, “patient safety incident”, “relevant person” and “relevant information”; and

(ii) after the definition of “LETB”, insert—

““registered person” has the same meaning as in regulation 2(1) of the 2014 Regulations (interpretation);

“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^(c) (regulated activity) by regulation 3 of the 2014 Regulations (prescribed activities).”.

Amendments in relation to services for rare and very rare conditions which are commissioned by the Board

4.—(1) In regulation 11A of the principal Regulations (saving and transitional provision in relation to certain services for rare and very rare conditions), for paragraph (3)(b) and (c), substitute—

“(b) “the transfer date” means—

(a) 1983 c.20. Section 117(2) of the 1983 Act was amended by section 1(2) of, and paragraphs 15(1) and (3) of Schedule 1 to, the Mental Health (Patients in the Community) Act 1995 (c.52); section 2(5) of, and paragraphs 42 and 47 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17); section 32(4) of, and paragraphs 1 and 24 of Schedule 3 to, the Mental Health Act 2007 (c.12); section 40(1) and (2) of the 2012 Act; section 75(1) of the Care Act 2014 (c.23); and S.I. 2007/961.

(b) S.I. 2014/2936; relevant amendments to which were made by S.I. 2015/64.

(c) 2008 c.14.

- (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.”.
- (2) In Schedule 4 to the principal Regulations (services for rare and very rare conditions)—
 - (a) in paragraph 58, for “(including bridge to transplant using mechanical circulatory support)”, substitute “(including mechanical circulatory support)”;
 - (b) after paragraph 75, insert—

“**76.** Mitochondrial donation service.”;
 - (c) after paragraph 116A, insert—

“**116B.** Specialist maternity care for women diagnosed with abnormally invasive placenta.”;
 - (d) omit paragraph 118; and
 - (e) after paragraph 140, insert—

“**140A.** Surgery for complex obesity in children.”.

Transitional provision

5. Where, immediately before these Regulations come into force, a clinical commissioning group has responsibility to arrange for the provision of after-care services for a person under section 117(2) of the 1983 Act by virtue of paragraphs (1) and (2)(a) of regulation 14 of the principal Regulations, responsibility shall remain with that clinical commissioning group—

- (a) for as long as that person needs after-care; or
- (b) until that person is detained under a provision referred to in section 117(1) of the 1983 Act(a).

Signed by authority of the Secretary of State for Health.

3rd March 2016

Alistair Burt
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to regulations 11A, 14 and 16 of, and Schedule 4 to, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the principal Regulations”) which require the National Health Service Commissioning Board (“the Board”) to make arrangements for the provision, as part of the health service, of specified services or facilities to specified people or groups of people, and which impose a duty to provide after-care

(a) Section 117(1) of the 1983 Act was amended by section 55 of, and paragraph 12(17) of Schedule 4 to, the Crime (Sentences) Act 1997 (c.43); and section 1(2) of, and paragraph 15(1) and (2) of Schedule 1 to, the Mental Health (Patients in the Community) Act 1995 (c.52).

services under section 117(2) of the Mental Health Act 1983 (“the 1983 Act”) on a clinical commissioning group (“CCG”) other than the one which would be under that duty by virtue of that section.

Regulation 2 omits paragraph (2)(a) of regulation 14 of the principal Regulations. This means that the duty on a CCG (“CCG A”) to provide a person with after-care services under section 117(2) of the 1983 Act will no longer be imposed on another CCG (“CCG B”) in cases where CCG B has responsibility for that person by virtue of section 3(1A) of the National Health Service Act 2006. Regulation 5 makes transitional provisions which ensure that where CCG B has responsibility for providing a person with after-care services under regulation 14(1) and (2)(a) of the principal Regulations immediately before these Regulations come into force, responsibility continues to lie with CCG B until that person no longer requires after-care services or that person is detained under the provisions referred to in section 117(1) of the 1983 Act.

Regulation 3 amends regulation 16 of the principal Regulations to provide that where the Board or a CCG enters into a commissioning contract with a health service provider, that contract must contain terms and conditions which ensure that the provider complies with the duties set out in regulation 20 of the Health and Social Care Act (Regulated Activities) Regulations 2014 (which relate to candour), as modified by this regulation for the purposes of the principal Regulations, irrespective of whether other than by virtue of this regulation the provider would have to comply with the duties set out in regulation 20 of those Regulations.

Regulation 4(1) amends regulation 11A of the principal Regulations to make transitional and saving provision in relation to the amendment made in regulation 4(2)(d) to provide that while the Board retains responsibility after 1st April 2016 for on-going contracts for specialist morbid obesity services, its statutory duty to commission the services as they are provided for in any such contract continues.

Regulation 4 also amends Schedule 4 to the principal Regulations (services for rare and very rare conditions) to give effect to revised commissioning responsibilities for the Board pursuant to regulations 7, 10 and 11 of the principal Regulations.

These amendments follow advice received, and consultation with the Board, pursuant to the statutory procedures set out in section 3B(4) of the National Health Service Act 2006.

No impact assessment has been carried out in respect of these Regulations as no impact on the private or voluntary sectors is foreseen.

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