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STATUTORY INSTRUMENTS

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**2017 No. 756**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017**

*Made - - - - 17th July 2017*

*Laid before Parliament 19th July 2017*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 175 and 272(7) and (8) of the National Health Service Act 2006<sup>(1)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017.

(2) These Regulations come into force—

- (a) for the purposes of regulations 2 to 4, 7 to 9 and 10(c) on 23rd October 2017; and
- (b) for all other purposes on 21st August 2017.

(3) In these Regulations, “the Principal Regulations” means the National Health Service (Charges to Overseas Visitors) Regulations 2015<sup>(2)</sup>.

**Amendment of regulation 2**

2.—(1) Regulation 2 of the Principal Regulations (interpretation) is amended as follows.

(2) Omit the definition of “relevant NHS body”.

(3) At the appropriate places, insert—

““actual charge” has the meaning given in regulation 3(7);

“advance payment sum” has the meaning given in regulation 3(7);”;

““relevant body” means—

- (a) an NHS foundation trust;

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<sup>(1)</sup> 2006 c.41. By virtue of section 271(1), the powers of the Secretary of State exercised in making these Regulations are exercisable only in relation to England. See section 275(1) for the definitions of “prescribed” and “regulations”.

<sup>(2)</sup> S.I. 2015/238, amended by S.I. 2015/2025 and 2016/211.

- (b) an NHS trust;
  - (c) a local authority within the meaning of section 2B of the 2006 Act<sup>(3)</sup> (functions of local authorities and Secretary of State as to improvement of public health) exercising public health functions (within the meaning of that Act<sup>(4)</sup>); or
  - (d) any other person providing relevant services,
- except in respect of regulation 6A, for which purposes a person mentioned in paragraph (d) is not a “relevant body”;

### **Substitution of the term “relevant NHS body”**

**3.—**(1) In regulations 2, 3, 6, 6A and 7 of the Principal Regulations, in each place that it occurs, for “relevant NHS body”, substitute “relevant body”.

(2) In regulation 7(6), for “the NHS body”, substitute “the relevant body”.

### **Amendment of regulation 3**

**4.—**(1) Regulation 3 of the Principal Regulations (obligation to make and recover charges) is amended as follows.

(2) After paragraph (1), insert—

“(1A) Where the condition specified in paragraph (2) is met, before providing a relevant service in respect of an overseas visitor, a relevant body must secure payment for the estimated amount of charges to be made under paragraph (1) for that relevant service unless doing so would prevent or delay the provision of—

- (a) an immediately necessary service; or
- (b) an urgent service.

(1B) The person from whom payment is to be secured under paragraph (1A) in respect of a relevant service is the person who it appears to the relevant body, at the time that the request for that payment is made, will be the person to whom a charge will be made under paragraph (1) in respect of that relevant service at the time that it is provided.”

(3) For paragraphs (3) and (4), substitute—

“(3) Where more than one relevant body is to provide relevant services to an overseas visitor, each relevant body must secure the advance payment sum in respect of each relevant service that it is to provide.

(3A) Where more than one relevant body provides relevant services to an overseas visitor, each relevant body must make and recover the actual charge in respect of each relevant service that it provides.

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

(4A) In making and recovering an actual charge from a person in respect of a relevant service, a relevant body must—

- (a) deduct any advance payment sum secured by the relevant body from that person in respect of that relevant service; and

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<sup>(3)</sup> 2006 c.41. Section 2B was inserted by section 12 of the Health and Social Care Act 2012 (c.7).

<sup>(4)</sup> The meaning of a reference to the public health functions of local authorities is given by section 1H(5)(b) of the National Health Service Act 2006 (c. 41), which was inserted by section 9(1) of the Health and Social Care Act 2012.

- (b) refund any amount by which an advance payment sum secured by the relevant body from that person in respect of that relevant service exceeds the amount of the actual charge that person is liable to pay.”.
- (4) In paragraph (5)(a)—
  - (a) at the end of sub-paragraph (ii), omit “or”;
  - (b) at the end of sub-paragraph (iii), insert “or”;
  - (c) after sub-paragraph (iii), insert—
    - “(iv) regulation 14 (reciprocal health care agreements);”.
- (5) After paragraph (6), insert—
  - “(7) In this regulation—
    - “actual charge” means a charge to be made under paragraph (1);
    - “advance payment sum” means a sum to be secured under paragraph (1A);
    - “immediately necessary service” means—
      - (a) antenatal services provided in respect of a person who is pregnant;
      - (b) intrapartum and postnatal services provided in respect of—
        - (i) a person who is pregnant;
        - (ii) a person who has recently given birth; or
        - (iii) a baby; and
      - (c) any other relevant service that the treating clinician determines the recipient needs promptly—
        - (i) to save the recipient’s life;
        - (ii) to prevent a condition becoming immediately life-threatening; or
        - (iii) to prevent permanent serious damage to the recipient from occurring;
    - “urgent service” means a service that the treating clinician determines is not an immediately necessary service but which should not wait until the recipient can be reasonably expected to leave the United Kingdom.”.

### **Insertion of new regulation 3A**

- 5. After regulation 3 of the Principal Regulations, insert—

#### **“Obligation to record information against an overseas visitor’s consistent identifier**

**3A.**—(1) An NHS foundation trust or an NHS trust that, in meeting its obligations under regulation 3, determines that a person is an overseas visitor must, as soon as it is practicable to do so, record against the overseas visitor’s consistent identifier—

- (a) the fact that the person has been determined to be an overseas visitor;
- (b) the date on which that determination was made; and
- (c) whether Part 4 (overseas visitors exempt from charges) provides for no charge to be made.

(2) In this regulation, “consistent identifier” means a consistent identifier specified in regulation 2 of the Health and Social Care Act 2012 (Consistent Identifier) Regulations 2015(5).”.

#### **Amendment of regulation 4**

6. In regulation 4 of the Principal Regulations (liability for payment of charges), after paragraph (4), insert—

“(4A) Where, due to a change in circumstances occurring during the period in which a relevant service is provided, more than one person is liable under paragraphs (1) to (4) to pay charges under these Regulations in respect of that relevant service, each such person is liable to pay charges only in respect of relevant services provided during the period during which those paragraphs apply to that person.”.

#### **Substitution of regulation 5**

7. For regulation 5 of the Principal Regulations (repayment of charges made and recovered by relevant NHS bodies), substitute—

##### **“Repayment of a sum recovered or secured by a relevant body**

5.—(1) A claim to a relevant body for repayment of a sum—

- (a) recovered in respect of charges made; or
- (b) secured in respect of an estimated amount of charges to be made,

under these Regulations may be made by the person who paid the sum to the relevant body (“the claimant”).

(2) When making a claim under paragraph (1), the claimant must provide to the relevant body—

- (a) the receipt for payment of the sum or other evidence of the claimant’s having paid 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 body may require.

(3) Where a claimant makes a claim under paragraph (1) and the relevant body is satisfied that any sum was paid to it by the claimant in respect of—

- (a) a charge that should not have been made and recovered under these Regulations;
- (b) a relevant service that was not, or will not in the reasonably foreseeable future be, provided by the relevant body;
- (c) an advance payment sum, which was paid by or on behalf of a person who is not liable to pay an actual charge in respect of the relevant service to which the advance payment sum relates; or
- (d) a charge that should not have been recovered as a consequence of regulation 6A(2) (b) (provision relating to victims of female genital mutilation and supported individuals),

the relevant body must repay that sum to the claimant.”.

#### **Amendment of regulation 6**

8. In regulation 6(3)(c) of the Principal Regulations (provision relating to recovery of charges in respect of refugees and victims of modern slavery), for “(repayment of charges made and recovered by relevant NHS bodies)”, substitute “(repayment of a sum recovered or secured by a relevant body)”.

### **Amendment of regulation 7**

- 9.** In regulation 7 of the Principal Regulations (charges imposed on overseas visitors)—
- (a) in paragraph (1), after “charges made under these Regulations”, insert “, including where charges are estimated for the purposes of determining an advance payment sum,”; and
  - (b) omit paragraph (14).

### **Amendment of regulation 9**

- 10.** In regulation 9 of the Principal Regulations (relevant services exempt from charges)—
- (a) after paragraph (a), insert—
    - “(aa) services provided as part of the telephone advice line commissioned by a clinical commissioning group(6) or the National Health Service Commissioning Board(7);”;
  - (b) omit paragraph (b);
  - (c) after paragraph (f), insert—
    - “(g) palliative care services provided by—
      - (i) a company referred to in section 26 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(8) (community interest companies); or
      - (ii) a palliative care charity within the meaning given in section 33D of the Value Added Tax Act 1994(9) (charities to which section 33C applies);”.

### **Amendment of Part 4**

- 11.** In Part 4 of the Principal Regulations (overseas visitors exempt from charges), before regulation 10, insert—

#### **“Interpretation of this Part**

**9A.** In this Part—

“chargeable assisted conception services” means any medical, surgical or obstetric services provided for the purpose of assisting a person to carry a child, other than—

- (a) a service that the National Health Service Commissioning Board must arrange under the following regulations of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibility and Standing Rules) Regulations 2012(10)—
  - (i) regulation 7 (services for serving members of the armed forces and their families);
  - (ii) regulation 8 (infertility treatment: seriously injured serving members and veterans); or
  - (iii) regulation 9 (infertility treatment: further provision); or

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(6) The meaning of clinical commissioning group is given by section 275(1) of the National Health Service Act 2006 (c. 41), as inserted by paragraph 138(2) of Schedule 4 to the Health and Social Care Act 2012 (c.7).

(7) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006. Section 1H is inserted by section 9(1) of the Health and Social Care Act 2012.

(8) 2004 c.27. Section 26 was amended by S.I. 2006/242 and 2007/1093.

(9) 1994 c.23. Section 33D was added by section 66 of the Finance Act 2015 (c.11).

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

- (b) a service provided as part of a course of treatment, where that course of treatment began before 21st August 2017.”.

#### **Amendment of regulation 10**

**12.**—(1) Regulation 10 of the Principal Regulations (immigration health charge) is amended as follows.

- (2) At the beginning of paragraph (2) insert, “Subject to paragraph (2A),”.
- (3) After paragraph (2), insert—
- “(2A) Paragraph (2) does not apply in respect of chargeable assisted conception services.”.
- (4) For paragraph (3)(b), substitute—
- “(b) for entry clearance—
- (i) before 6th April 2016, under Part 2 of the immigration rules (visitors to the UK); or
- (ii) on or after 6th April 2016, under Appendix V to the immigration rules (immigration rules for visitors).”.

#### **Amendment of regulation 11**

**13.** In regulation 11 of the Principal Regulations (overseas visitors who have made applications for entry clearance or leave to remain prior to the commencement of the immigration health charge)

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- (a) at the beginning of paragraph (3) insert “Subject to paragraph (3A),”; and
- (b) after paragraph (3), insert—
- “(3A) Paragraph (3) does not apply in respect of chargeable assisted conception services.”.

#### **Amendment of regulation 15**

**14.**—(1) Regulation 15 of the Principal Regulations (refugees, asylum seekers, supported individuals and looked after children) is amended as follows.

- (2) After paragraph (a), insert—
- “(aa) has leave to enter or remain in the United Kingdom as the dependant of a person granted temporary protection, asylum or humanitarian protection under the immigration rules;”.
- (3) In paragraph (b), for “those rules”, substitute “the immigration rules”.
- (4) After paragraph (b), insert—
- “(ba) is treated as a dependant of a person described in paragraph (b) for the purposes of an application described in that paragraph;”.
- (5) At the end of paragraph (d), omit “or”.
- (6) After paragraph (d), insert—
- “(da) is treated as the dependant of a person described in paragraph (d) for the purposes of the provision of support under that paragraph; or”.

#### **Omission of regulation 23**

**15.** Omit regulation 23 of the Principal Regulations (employees on ships).

**Amendment to Schedule 2**

**16.** In Schedule 2 to the Principal Regulations (reciprocal agreements) omit “Barbados”.

Signed by authority of the Secretary of State for Health.

17th July 2017

*O’Shaughnessy*  
Parliamentary Under-Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 2015 (“the Principal Regulations”) which provide for the making and recovery of charges for relevant services provided under the National Health Service Act 2006 (c.41) to certain persons not ordinarily resident in the United Kingdom. The Regulations come into force on 21st August 2017, except for provisions specified in regulation 1(2)(a) as coming into force on 23rd October 2017, which make provision for advance payments and refunds and extending the range of providers of NHS-funded services who must make and recover charges for relevant services from an overseas visitor.

Regulation 2 amends regulation 2 of the Principal Regulations. In particular, the term “relevant body” is now used to designate the bodies required to make and recover charges and the definition of “relevant NHS body”, which is the term previously used to designate such bodies, is omitted. The definition of “relevant body” expands on the definition of “relevant NHS body” by also including any other person who provides relevant services. References to “relevant NHS body” elsewhere in the Principal Regulations are replaced by “relevant body” by regulation 3.

Regulation 4 amends regulation 3 of the Principal Regulations so as to impose a requirement on relevant bodies, where the condition in regulation 3(2) of the Principal Regulations is satisfied, to secure advance payment of the estimated amount of the charge for the service to be provided (“an advance payment sum”), unless doing so would prevent or delay the provision of an immediately necessary service or an urgent service.

The amendments to that regulation also specify who should pay the sum to be secured; make provision for where more than one relevant body provides relevant services, or proposes to do so; extend the requirement on relevant bodies to provide a receipt to cover payment of an advance payment sum; require that, when making and recovering an actual charge from a person, a relevant body deducts any amount recovered in advance from that person for the relevant service in question, and refunds any excess advance payment that they may have made for that service; and specify that where a person receiving an on-going course of treatment ceases to be exempt from charges under regulation 14 of the Principal Regulations, charges may be made and recovered for the remainder of that course of treatment.

Regulation 5 inserts a new regulation, 3A, which sets out that where an NHS foundation trust or an NHS trust determines that a person is an overseas visitor, it must record that fact and whether the person is exempt from charges against that person’s consistent identifier.

Regulation 6 amends regulation 4 of the Principal Regulations to specify that where there is a change in circumstances while a relevant service is being provided which means that more one person becomes liable for the payment of a charge, each person is only liable for charges in respect of services provided during the period that the provisions of regulation 4 of the Principal Regulations applies to them.

Regulation 7 substitutes regulation 5 of the Principal Regulations with a new regulation extending the grounds under which refunds may be made. A consequential amendment to regulation 6 of the Principal Regulations is made by regulation 8.

Regulation 9 amends regulation 7 of the Principal Regulations to apply the method of calculating charges to the calculation of advance payment sums.

Regulation 10 amends regulation 9 of the Principal Regulations to omit paragraph (b) from the list of relevant services which are exempt from charge, and to provide for exemptions in respect of



the telephone advice line known as NHS 111 and in respect of palliative care services provided by specified types of body.

Regulation 11 inserts a new regulation, 9A, into Part 4 of the Principal Regulations to provide a definition of “chargeable assisted conception services” for the purposes of that Part.

Regulations 12(2) and (3) and 13 respectively amend regulations 10 and 11 of the Principal Regulations to provide that the exemption from charges provided in regulations 10 and 11 do not apply in respect of chargeable assisted conception services. Regulation 12(4) also amends regulation 10 of the Principal Regulations to update a reference to provisions in the rules laid before Parliament under section 3(2) of the Immigration Act 1971 (c.77).

Regulation 14 amends regulation 15 of the Principal Regulations to provide an exemption in respect of dependants of persons described in regulation 15.

Regulation 15 omits regulation 23 of the Principal Regulations to remove the exemption in respect of individuals employed or engaged to work on ships registered in the United Kingdom, so that where a service is provided that is chargeable under the Regulations, owners of ships on which such individuals work will now be liable to pay the charges under regulation 4(2) of the Principal Regulations.

Regulation 16 omits “Barbados” from the list of countries in Schedule 2 to the Principal Regulations (reciprocal agreements) to reflect that the United Kingdom-Barbados reciprocal healthcare agreement has been terminated.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and public sector has been prepared. Copies may be obtained from the Cost Recovery Programme website ( <https://www.gov.uk/government/collections/nhs-visitor-and-migrant-cost-recovery-programme>) or by writing to the Department of Health, Visitor and Migrant NHS Cost Recovery Programme, 2N22, Quarry House, Leeds, LS2 7UE.