

**2020 No. 1415**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (General Medical Services  
Contracts and Personal Medical Services Agreements)  
(Amendment) (No. 3) Regulations 2020**

<i>Made</i>	- - - -	<i>2nd December 2020</i>
<i>Laid before Parliament</i>		<i>3rd December 2020</i>
<i>Coming into force</i>	- -	<i>1st January 2021</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 89(1), 94(1), and 272(7) and (8) of the National Health Service Act 2006(a).

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 3) Regulations 2020.

(2) These Regulations come into force on 1st January 2021.

**Amendment of the National Health Service (General Medical Services Contracts) Regulations 2015**

**2.**—(1) The National Health Service (General Medical Services Contracts) Regulations 2015(b) are amended as follows.

(2) After regulation 67 insert—

**“Record of ethnicity information**

**67A.**—(1) This regulation applies if a contractor, or a person acting on behalf of a contractor, makes a request to a patient (“P”) for P to disclose their ethnicity to the contractor so that information can be recorded in P’s medical record (a “relevant request”).

(2) If P, or where P is a person to whom paragraph (4) applies, an appropriate person, discloses P’s ethnicity in response to the relevant request, the contractor must record P’s ethnicity in P’s medical record.

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(a) 2006 c. 41. Section 89 was amended by sections 28 and 202 of, and paragraph 34 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 94 was amended by section 28 of, and paragraph 38 of Schedule 4 to, the 2012 Act, and by paragraph 52 of Schedule 9 to the Crime and Courts Act 2013 (c. 22). There are amendments to section 272 but none is relevant to these Regulations. “Prescribed” and “regulations” are defined in section 275 of the National Health Service Act 2006.

(b) S.I. 2015/1862. Regulation 68 was amended by S.I. 2016/875.

(3) If P, or where P is a person to whom paragraph (4) applies, an appropriate person, indicates that they would prefer not to disclose P's ethnicity in response to the relevant request, the contractor must record that response in P's medical record.

(4) This paragraph applies to a person if they—

- (a) are a child, or
- (b) lack the capacity to respond to the relevant request.

(5) Any information recorded in accordance with this regulation may only be processed if the processing is necessary for medical purposes.

(6) Nothing in this regulation authorises the processing of personal data in a manner inconsistent with any provision of the data protection legislation.

(7) In this regulation—

“appropriate person” means a person who is acting on behalf of P and is—

- (a) where P is a child—
  - (i) a parent of P, or in the absence of both of P's parents, the guardian or other adult who has the care of P,
  - (ii) a person duly authorised by a local authority to whose care P has been committed under the Children Act 1989(a), or
  - (iii) a person duly authorised by a voluntary organisation by which P is being accommodated under the provisions of that Act;
- (b) otherwise—
  - (i) a relative of P,
  - (ii) the primary carer of P,
  - (iii) a donee of a lasting power of attorney granted by P, or
  - (iv) a deputy appointed for P by the court under the provisions of the Mental Capacity Act 2005(b);

“data protection legislation”, “personal data” and “processing” have the same meanings as in the Data Protection Act 2018 (see section 3 of that Act)(c);

“medical purposes” has the meaning given for the purposes of section 251 of the Act.”.

(3) In regulation 68(2), in the definition of “Summary Care Record”, after “any other data” insert “(other than any information recorded in accordance with regulation 67A)”.

### **Amendment of the National Health Service (Personal Medical Services Agreements) Regulations 2015**

**3.**—(1) The National Health Service (Personal Medical Services Agreements) Regulations 2015(d) are amended as follows.

(2) After regulation 60 insert—

#### **“Record of ethnicity information**

**60A.**—(1) This regulation applies if a contractor, or a person acting on behalf of a contractor, makes a request to a patient (“P”) for P to disclose their ethnicity to the contractor so that information can be recorded in P's medical record (a “relevant request”).

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(a) 1989 c. 41.

(b) 2005. c. 9.

(c) 2018 c. 12.

(d) S.I. 2015/1879. Regulation 61 was amended by S.I. 2016/875.

(2) If P, or where P is a person to whom paragraph (4) applies, an appropriate person, discloses P's ethnicity in response to the relevant request, the contractor must record P's ethnicity in P's medical record.

(3) If P, or where P is a person to whom paragraph (4) applies, an appropriate person, indicates that they would prefer not to disclose P's ethnicity in response to the relevant request, the contractor must record that response in P's medical record.

(4) This paragraph applies to a person if they—

- (a) are a child, or
- (b) lack the capacity to respond to the relevant request.

(5) Any information recorded in accordance with this regulation may only be processed if the processing is necessary for medical purposes.

(6) Nothing in this regulation authorises the processing of personal data in a manner inconsistent with any provision of the data protection legislation.

(7) In this regulation—

“appropriate person” means a person who is acting on behalf of P and is—

- (a) where P is a child—
  - (i) a parent of P, or in the absence of both of P's parents, the guardian or other adult who has the care of P,
  - (ii) a person duly authorised by a local authority to whose care P has been committed under the Children Act 1989, or
  - (iii) a person duly authorised by a voluntary organisation by which P is being accommodated under the provisions of that Act;
- (b) otherwise—
  - (i) a relative of P,
  - (ii) the primary carer of P,
  - (iii) a donee of a lasting power of attorney granted by P, or
  - (iv) a deputy appointed for P by the court under the provisions of the Mental Capacity Act 2005;

“data protection legislation”, “personal data” and “processing” have the same meanings as in the Data Protection Act 2018 (see section 3 of that Act);

“medical purposes” has the meaning given for the purposes of section 251 of the Act.”.

(3) In regulation 61(2), in the definition of “Summary Care Record”, after “any other data” insert “(other than any information recorded in accordance with regulation 60A)”.

Signed by authority of the Secretary of State for Health and Social Care

*Jo Churchill*

Parliamentary Under-Secretary of State for Prevention,  
Public Health and Primary Care

2nd December 2020

### **EXPLANATORY NOTE**

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

These Regulations amend the National Health Service (General Medical Services Contracts) Regulations 2015 and the National Health Service (Personal Medical Services Agreements) Regulations 2015.

The purpose of these amendments is to ensure where, in response to a specific request made by their GP, patients provide information about their ethnicity, that information is recorded in their medical records. It also sets out the purposes for which that information may be processed.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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