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STATUTORY INSTRUMENTS

2023 No. 436

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>17th April 2023</i>
<i>Laid before Parliament</i>		<i>18th April 2023</i>
<i>Coming into force</i>	- -	<i>15th May 2023</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(1) and section 182 of the Health and Care Act 2022(2).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023.

(2) These Regulations come into force on 15th May 2023.

(3) These Regulations extend to England and Wales.

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

2. The National Health Service (General Medical Services Contracts) Regulations 2015(3) (“the GMS Contracts Regulations”) are amended in accordance with Schedule 1.

(1) 2006 c. 41. Relevant amendments are made to both sections 89 and 94 by paragraph 1(1) of Schedule 1 to the Health and Care Act 2022 (c. 31) (“the 2022 Act”). Section 94 is also amended by section 28 of, and paragraph 38 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7), by paragraph 52 of Schedule 9 to the Crime and Courts Act 2013 (c. 22) and by paragraph 38(3) of Schedule 4 to the 2022 Act. There are amendments to section 272 which are not relevant to these Regulations. “Prescribed” and “regulations” are defined in section 275.

(2) 2022 c. 31.

(3) S.I. 2015/1862; relevant amending instruments are S.I. 2020/226 and 2022/935.

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

3. The National Health Service (Personal Medical Services Agreements) Regulations 2015⁽⁴⁾ (“the PMS Agreements Regulations”) are amended in accordance with Schedule 2.

Transitional provision

4. Where a contractor has provided a registered patient with the facility to access online their medical record under—

- (a) regulation 71ZA of the GMS Contracts Regulations; or
- (b) regulation 64ZA of the PMS Agreements Regulations,

as in force immediately before these Regulations come into force, nothing in these Regulations authorises the contractor to remove that facility.

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

17th April 2023

Neil O'Brien
Parliamentary Under Secretary of State,
Department for Health and Social Care

(4) [S.I. 2015/1879](#); relevant amending instruments are [S.I. 2019/248](#), [2020/226](#), [2021/331](#) and [2022/634](#) and [935](#).

SCHEDULE 1

Regulation 2

Amendments to the GMS Contracts Regulations

Removal of references to medical cards

1. In regulation 3 (interpretation), omit the definition of “medical card”.
2. In regulation 24 (fees and charges), in paragraph (3)(a)—
 - (a) at the end of paragraph (i) insert “and”;
 - (b) omit paragraph (iii) and the “and” immediately after it.
3. In Schedule 3 (other contractual terms), in paragraph 18(3) (application for inclusion in a list of patients) omit “a medical card or”.

Pay transparency

4.—(1) Regulation 27AA (disclosure of information about NHS earnings: jobholders) is amended as follows.

- (2) In paragraph (10), for the words from “to include the term” to the end substitute—

“__

 - (a) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with the contractor;
 - (b) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with the contractor.”.
- (3) In paragraph (11)—
 - (a) in sub-paragraph (a), for the words from “to include the term” to the end substitute—

“__

 - (i) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with S;
 - (ii) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with S;”;
 - (b) in sub-paragraph (b), after “requiring P to” insert “use reasonable endeavours to”;
- (4) For paragraph (12) substitute—

“(12) The term is one which requires T—

 - (a) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with P;
 - (b) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with P.”.

Patient online services: provision of online access to coded information in medical record and prospective medical records

- 5.—(1) For regulation 71ZA substitute—

Status: This is the original version (as it was originally made).

“Patient online services: provision of online access to coded information in medical record and prospective medical records

71ZA.—(1) Where the contractor holds the medical record of a registered patient (“P”) on its computerised clinical systems, the contractor must—

- (a) provide P with the facility to access online information entered onto P’s medical record on or after the relevant date (the “prospective medical record”); and
- (b) promote and offer to P the facility to access online the information from P’s medical record held in coded form.

(2) For the purposes of paragraph (1)(b), the contractor is taken to be—

- (a) promoting the facility to P where P is encouraged to utilise the practice’s digital services and to interact with the practice via online access;
- (b) offering the facility to P where it is freely available to P if P shows interest in the facility or requests access in writing to their medical records held in coded form.

(3) In relation to any person who is in the process of becoming a registered patient of the contractor (“R”), the contractor must, as part of the registration process—

- (a) make information prominently available to R about the practice’s digital services and about interacting with the practice via online access; and
- (b) inform R that on becoming a registered patient, R will be provided with the facility to access R’s prospective medical record (unless R chooses not to be provided with that facility).

(4) The contractor must configure its computerised clinical systems so as to allow its registered patients the facility to access online information entered onto their medical record.

(5) In this regulation, “relevant date” means [] 2023 or if the contractor has not provided P with the facility to access online P’s prospective medical record on that day—

- (a) the day on which the contractor does provide the facility;
- (b) 31st October 2023,

whichever is the earlier.

(6) Where—

- (a) the contractor has not, as at [] 2023, provided P with the facility to access online P’s prospective medical record; and
- (b) P makes a request in writing to the contractor on or after that date but before 31st October 2023, to be provided with that facility,

the contractor must provide that facility to P by the end of the compliance period or by 31st October 2023 whichever is the earlier.

(7) Where—

- (a) the contractor has not, as at 31st October 2023, for whatever reason, provided P with the facility to access online P’s prospective medical record; and
- (b) P makes a request, in writing to the contractor on or after that date, to be provided with that facility,

the contractor must provide P with that facility by the end of the compliance period.

(8) Nothing in this regulation requires the contractor to provide P with the facility to access—

- (a) online information entered onto the medical record where that information is excepted information;

- (b) online information entered onto P’s prospective medical record where P has informed the contractor that they do not, or no longer, wish to be provided with that facility; or
 - (c) information referred to in paragraph (1)(b) which the contractor’s computerised systems cannot separate from any free-text entry in P’s medical record.
- (9) For the purposes of this regulation and regulation 71ZB—
- (a) “the compliance period” means the period specified in Article 12 of the UK GDPR for compliance with a request made by virtue of Article 15 of the UK GDPR;
 - (b) information is “excepted information” if the contractor would not be required to disclose it in response to a request made in exercise of a right under Article 15 of the UK GDPR.
- (10) For the purposes of paragraph (9), “UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018(5).”.

Patient online services: provision of online access to full digital medical record

6.—(1) Regulation 71ZB (patient online services: provision of online access to full digital medical record) is amended as follows.

(2) In paragraph (1)(a), omit “and redaction software”.

(3) After paragraph (1) insert—

“(1A) Where P makes a request under paragraph (1)(b), the contractor must provide P with the facility by the end of the compliance period.

(1B) The contractor must configure its computerised clinical systems so as to allow its registered patients the facility to access online their relevant medical information.”.

(4) In paragraph (2)(a), for “offered in accordance with regulation 71ZA(1) or (2)” substitute “provided in accordance with regulation 71ZA(1)”.

Patient online services: provision of an online consultation tool

7. In regulation 71ZD (patient online services: provision of an online consultation tool), in paragraph (3)—

(a) in sub-paragraph (a), after “offer” insert “, promote or, as the case may be, provide”;

(b) in sub-paragraph (b), after “offer” insert “and promote”.

Patient access to online services

8. In regulation 71A (patient access to online services), in paragraph (1), for “promote and offer” substitute “promote, offer or, as the case may be, provide”.

New telephone contract or arrangements

9. After paragraph 2 of Schedule 3 insert—

“New telephone contract or arrangements

2A.—(1) The contractor must ensure that any new contract or other arrangement relating to telephone services used by—

(5) 2018 c. 12. Section 3(10) is amended, with effect from IP completion day, by S.I. 2019/419. “IP completion day” has the meaning given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

Status: This is the original version (as it was originally made).

- (a) patients to contact the contractor’s practice for a purpose related to the contract; or
- (b) any other person to contact the contractor’s practice in relation to services provided as part of the health service,

is with a supplier specified in the nationally set framework for cloud based telephony⁽⁶⁾.

(2) The contractor must ensure that any telephony solution adopted under the contract or arrangements referred to in sub-paragraph (1) meets the national specification requirements and standards specified in the framework referred to in that sub-paragraph.”.

Contact with the practice

10. For paragraph 4 of Schedule 3 substitute—

“Contact with the practice

4.—(1) The contractor must take steps to ensure that a patient who contacts the contractor—

- (a) by attendance at the contractor’s practice premises;
- (b) by telephone;
- (c) through the practice’s online consultation system; or
- (d) through any other available online system,

is provided with an appropriate response in accordance with the following sub-paragraphs.

(2) The appropriate response is that the contractor must—

- (a) invite the patient for an appointment, either to attend the contractor’s practice premises or to participate in a telephone or video consultation, at a time which is appropriate and reasonable having regard to all the circumstances;
- (b) provide appropriate advice or care to the patient by another method;
- (c) invite the patient to make use of, or direct the patient towards, appropriate services which are available to the patient, including services which the patient may access themselves; or
- (d) communicate with the patient—
 - (i) to request further information; or
 - (ii) as to when and how the patient will receive further information on the services that may be provided to them, having regard to the urgency of their clinical needs and other relevant circumstances.

(3) The appropriate response must be provided—

- (a) if the contact under sub-paragraph (1) is made outside core hours, during the following core hours;
- (b) in any other case, during the day on which the core hours fall.

(4) The appropriate response must—

- (a) not jeopardise the patient’s health;
- (b) be based on the clinical needs of the patient; and
- (c) where appropriate, take into account the preferences of the patient.”.

⁽⁶⁾ The framework is the Advanced Telephony Better Purchasing framework (<https://buyingcatalogue.digital.nhs.uk/advanced-telephony-better-purchase>). Hard copies are available from NHS England, Quarry House, Leeds, LS2 7UE.

SCHEDULE 2

Regulation 3

Amendments to the PMS Agreements Regulations

Removal of references to medical cards

1. In regulation 3 (interpretation), omit the definition of “medical card”.
2. In Schedule 2 (other contractual terms), in paragraph 17(3) (application for inclusion in a list of patients), omit “a medical card or”.

Pay transparency

3.—(1) Regulation 21AA (disclosure of information about NHS earnings: jobholders) is amended as follows.

- (2) In paragraph (10), for the words from “to include the term” to the end substitute—
“—
 - (a) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with the contractor;
 - (b) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with the contractor.”.
- (3) In paragraph (11)—
 - (a) in sub-paragraph (a), for the words from “to include the term” to the end substitute—
“—
 - (i) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with S;
 - (ii) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with S;”;
 - (b) in sub-paragraph (b), after “requiring P to” insert “use reasonable endeavours to”;
- (4) For paragraph (12) substitute—
“(12) The term is one which requires T—
 - (a) to include the term specified in paragraph (6) in any contract of engagement which T enters into with a jobholder on or after entering into the contract with P;
 - (b) to use reasonable endeavours to include that term in any contract of engagement which T has entered into prior to entering into the contract with P.”.

Vaccines and immunisations: duty of co-operation

4. In regulation 59B (vaccines and immunisations: duty of co-operation), at the end of paragraph (2) insert—

- “(e) integrated care boards.”.

Patient online services: provision of online access to coded information in medical record and prospective medical records

5. For regulation 64ZA substitute—

Status: This is the original version (as it was originally made).

“Patient online services: provision of online access to coded information in medical record and prospective medical records

64ZA.—(1) Where the contractor holds the medical record of a registered patient (“P”) on its computerised clinical systems, the contractor must—

- (a) provide P with the facility to access online information entered onto P’s medical record on or after the relevant date (the “prospective medical record”); and
- (b) promote and offer to P the facility to access online the information from P’s medical record held in coded form.

(2) For the purposes of paragraph (1)(b), the contractor is taken to be—

- (a) promoting the facility to P where P is encouraged to utilise the practice’s digital services and to interact with the practice via online access;
- (b) offering the facility to P where it is freely available to P if P shows interest in the facility or requests access in writing to their medical records held in coded form.

(3) In relation to any person who is in the process of becoming a registered patient of the contractor (“R”), the contractor must, as part of the registration process—

- (a) make information prominently available to R about the practice’s digital services and about interacting with the practice via online access; and
- (b) inform R that on becoming a registered patient, R will be provided with the facility to access R’s prospective medical record (unless R chooses not to be provided with that facility).

(4) The contractor must configure its computerised clinical systems so as to allow its registered patients the facility to access online information entered onto their medical record.

(5) In this regulation, “relevant date” means [] 2023 or if the contractor has not provided P with the facility to access online P’s prospective medical record on that day—

- (a) the day on which the contractor does provide the facility;
- (b) 31st October 2023,

whichever is the earlier.

(6) Where—

- (a) the contractor has not, as at [] 2023, provided P with the facility to access online P’s prospective medical record; and
- (b) P makes a request in writing to the contractor on or after that date but before 31st October 2023, to be provided with that facility,

the contractor must provide that facility to P by the end of the compliance period or by 31st October 2023 whichever is the earlier.

(7) Where—

- (a) the contractor has not, as at 31st October 2023, for whatever reason, provided P with the facility to access online P’s prospective medical record; and
- (b) P makes a request, in writing to the contractor on or after that date, to be provided with that facility,

the contractor must provide P with that facility by the end of the compliance period.

(8) Nothing in this regulation requires the contractor to provide P with the facility to access—

- (a) online information entered onto the medical record where that information is excepted information;

- (b) online information entered onto P’s prospective medical record where P has informed the contractor that they do not, or no longer, wish to be provided with that facility; or
 - (c) information referred to in paragraph (1)(b) which the contractor’s computerised systems cannot separate from any free-text entry in P’s medical record.
- (9) For the purposes of this regulation and regulation 64ZB—
- (a) “the compliance period” means the period specified in Article 12 of the UK GDPR for compliance with a request made by virtue of Article 15 of the UK GDPR;
 - (b) information is “excepted information” if the contractor would not be required to disclose it in response to a request made in exercise of a right under Article 15 of the UK GDPR.
- (10) For the purposes of paragraph (9), “UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018.”.

Patient online services: provision of online access to full digital medical record

6.—(1) Regulation 64ZB (patient online services: provision of online access to full digital medical record) is amended as follows.

- (2) In paragraph (1)(a), omit “and redaction software”.
- (3) After paragraph (1) insert—
 - “(1A) Where P makes a request under paragraph (1)(b), the contractor must provide P with the facility by the end of the compliance period.
 - (1B) The contractor must configure its computerised clinical systems so as to allow its registered patients the facility to access online their relevant medical information.”.
- (4) In paragraph (2)(a), for “offered in accordance with regulation 64ZA(1) or (2)” substitute “provided in accordance with regulation 64ZA(1)”.

Patient online services: provision of an online consultation tool

7. In regulation 64ZD (patient online services: provision of an online consultation tool), in paragraph (3)—

- (a) in sub-paragraph (a), after “offer” insert “, promote or, as the case may be, provide”;
- (b) in sub-paragraph (b), after “offer” insert “and promote”.

Patient access to online services

8. In regulation 64A (patient access to online services, in paragraph (1), for “promote and offer” substitute “promote, offer or, as the case may be, provide”.

New telephone contract or arrangements

9. After paragraph 3 of Schedule 2 insert—

“New telephone contract or arrangements

3A.—(1)) The contractor must ensure that any new contract or other arrangement relating to telephone services used by—

- (a) patients to contact the contractor’s practice for a purpose related to the contract; or

Status: This is the original version (as it was originally made).

(b) any other person to contact the contractor’s practice in relation to services provided as part of the health service,
is with a supplier specified in the nationally set framework for cloud based telephony.

(2) The contractor must ensure that the telephony solution adopted under the new contract or arrangements referred to in sub-paragraph (1) meets the national specification requirements and standards specified in the framework referred to in that sub-paragraph.”.

Contact with the practice

10. For paragraph 5 of Schedule 2 substitute—

“Contact with the practice

5.—(1) The contractor must take steps to ensure that a patient who contacts the contractor—

- (a) by attendance at the contractor’s practice premises;
- (b) by telephone;
- (c) through the practice’s online consultation system; or
- (d) through any other available online system,

is provided with an appropriate response in accordance with the following sub-paragraphs.

(2) The appropriate response is that the contractor must—

- (a) invite the patient for an appointment, either to attend the contractor’s practice premises or to participate in a telephone or video consultation, at a time which is appropriate and reasonable having regard to all the circumstances;
- (b) provide appropriate advice or care to the patient by another method;
- (c) invite the patient to make use of, or direct the patient towards, appropriate services which are available to the patient, including services which the patient may access themselves; or
- (d) communicate with the patient—
 - (i) to request further information; or
 - (ii) as to when and how the patient will receive further information on the services that may be provided to them, having regard to the urgency of their clinical needs and other relevant circumstances.

(3) The appropriate response must be provided—

- (a) if the contact under sub-paragraph (1) is made outside core hours, during the following core hours;
- (b) in any other case, during the day on which the core hours fall.

(4) The appropriate response must—

- (a) not jeopardise the patient’s health;
- (b) be based on the clinical needs of the patient; and
- (c) where appropriate, take into account the preferences of the patient.”.

Integrated care provider contracts

11. In paragraph (d) of the definition of “public health functions” in paragraph 3(7) of Schedule 2A (integrated care provider contracts), after “health functions)” insert “or 7B (directions requiring NHS bodies to exercise public health functions)”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedule 1 to these Regulations amends the National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862) (“the GMS Contracts Regulations”) and Schedule 2 to these Regulations amends the National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879) (“the PMS Agreements Regulations”).

The GMS Contracts Regulations and the PMS Agreements Regulations respectively make provision in respect of services provided under a general medical services contract and a personal medical services agreement made pursuant to Part 4 of the National Health Service Act 2006 (c. 41). They apply to England only.

The GMS Contracts Regulations and the PMS Agreements Regulations are amended respectively so as to:

- (a) remove references to medical cards (see paragraphs 1 to 3 of Schedule 1 and paragraphs 1 and 2 of Schedule 2);
- (b) correct errors in provisions relating to the disclosure of pay by NHS jobholders (see paragraph 4 of Schedule 1 and paragraph 3 of Schedule 2);
- (c) require contractors to notify both existing and new registered patients about the online services provided by the practice, including being able to access all their medical records, and to be in a position to offer those services to those all patients by at the latest 31st October 2023 and make related amendments (see paragraphs 5 to 8 of Schedule 1 and paragraphs 5 to 8 of Schedule 2);
- (d) require contractors to obtain new telephone services from a supplier specified in the nationally set framework for cloud based telephony and for those services to meet the standards specified in that framework (see paragraph 9 of Schedule 1 and paragraph 9 of Schedule 2);
- (e) where patients contact a practice, require contractors to arrange for the patients’ concerns and queries to be dealt with expeditiously, including the arrangement of appointments where that is appropriate (see paragraph 10 of Schedule 1 and paragraph 10 of Schedule 2).

Regulation 4 makes a transitional provision preventing contractors from removing from registered patients the facility to access online their prospective medical records which was provided under the previous legislation.

In addition, paragraphs 4 and 11 of Schedule 2 amend the PMS Agreements Regulations to make amendments consequential on the Health and Care Act 2022 (c. 31).

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