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STATUTORY INSTRUMENTS

2023 No. 449

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (General Medical Services
Contracts and Personal Medical Services Agreements)
(Amendment) (No. 2) Regulations 2023**

Made - - - - at 1.24 p.m. on 20th April 2023

Laid before Parliament at 4.30 p.m. on 20th April 2023

Coming into force in accordance with regulation 1(2)

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) and section 182 of the Health and Care Act 2022(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) (No. 2) Regulations 2023.

(2) These Regulations come into force—

- (a) for the purposes of this regulation and regulation 4, immediately before 15th May 2023;
- (b) for all other purposes, 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(c) (“the GMS Contracts Regulations”) are amended in accordance with Schedule 1.

(a) 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.

(b) 2022 c. 31.

(c) S.I. 2015/1862; relevant amending instruments are S.I. 2020/226, 2021/331 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(a) (“the PMS Agreements Regulations”) are amended in accordance with Schedule 2.

Revocation

4. The National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023(b) are revoked.

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

At 1.24 p.m. on 20th April 2023

Markham
Parliamentary Under Secretary of State,
Department of Health and Social Care

SCHEDULE 1

Regulation 2

Amendments to the GMS Contracts Regulations

Removal of references to medical cards

1. In regulation 3(1) (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 of that paragraph 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 of that sub-paragraph substitute—

“—

(a) S.I. 2015/1879; relevant amending instruments are S.I. 2019/248, 2020/226, 2021/331 and 2022/634 and 935.
(b) S.I. 2023/436.

- (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—

“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, in accordance with paragraph (2), 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) Where a person (“R”) applies to become a registered patient of the contractor, the contractor must, as part of the registration process—
 - (a) make information available to R about the practice’s digital services and about how R may interact with the practice via online access; and
 - (b) inform R in writing 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—
 - (a) if the contractor has not provided P with the facility to access online P’s prospective medical record under this regulation as in force immediately before 15th May 2023, the day on which the contractor does provide the facility under paragraph (1)(a); or
 - (b) 31st October 2023,

whichever is the earlier.

(6) Where—

- (a) the contractor has not, before 15th May 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 15th May 2023 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, before 1st November 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 31st October 2023 to be provided with that facility,

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

(8) Subject to paragraph (9), the contractor must not remove the facility of a registered patient to access online their medical record provided under—

- (a) this regulation as in force immediately before 15th May 2023; or
- (b) paragraph (1).

(9) 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.

(10) 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 in exercise of a right under 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.

(11) For the purposes of paragraph (10), “UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018(a).”.

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.”.

(a) 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).

(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 arrangement

2A. 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
- (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 Advanced Telephony Better Purchasing framework(a).”.

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 tool within the meaning given in regulation 71ZD(2); or
- (d) through a relevant electronic communication method within the meaning given in regulation 71ZE(3),

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, and the patient’s health would not thereby be jeopardised;
- (b) provide appropriate advice or care to the patient by another method;

(a) <https://buyingcatalogue.digital.nhs.uk/advanced-telephony-better-purchase>. Hard copies are available from NHS England, Quarry House, Leeds, LS2 7UE.

- (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 take into account—
 - (a) the needs of the patient; and
 - (b) where appropriate, the preferences of the patient.”.

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 required 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 of that paragraph 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 of that sub-paragraph 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—

“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, in accordance with paragraph (2), 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) Where a person (“R”) applies to become a registered patient of the contractor, the contractor must, as part of the registration process—

- (a) make information available to R about the practice’s digital services and about how R may interact with the practice via online access; and
- (b) inform R in writing 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—

- (a) if the contractor has not provided P with the facility to access online P’s prospective medical record under this regulation as in force immediately before 15th May 2023, the day on which the contractor does provide the facility under paragraph (1)(a); or
- (b) 31st October 2023,

whichever is the earlier.

(6) Where—

- (a) the contractor has not, before 15th May 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 15th May 2023 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, before 1st November 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 31st October 2023 to be provided with that facility,

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

(8) Subject to paragraph (9), the contractor must not remove the facility of a registered patient to access online their medical record provided under—

- (a) this regulation as in force immediately before 15th May 2023; or
- (b) paragraph (1).

(9) 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.

(10) 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 in exercise of a right under 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.

(11) For the purposes of paragraph (10), “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 arrangement

3A. 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 agreement; 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 Advanced Telephony Better Purchasing framework.”.

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 tool within the meaning given in regulation 64ZD(2); or
- (d) through a relevant electronic communication method within the meaning given in regulation 64ZE(3),

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, and the patient’s health would not thereby be jeopardised;
- (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 take into account—
 - (a) the needs of the patient; and
 - (b) where appropriate, 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 (Suspension and reactivation of personal medical services agreements: integrated care provider contracts), after “section 7A (exercise of the Secretary of State’s public 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 patients and persons in the process of registering as a patient about the online services provided by the practice, including their ability to access all their medical records, and to be in a position to offer those services to those persons by 31st October 2023 at the latest 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 Advanced Telephony Better Purchasing 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).

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).

Regulation 4 revokes the National Health Service (General Medical Services Contracts and Personal Medical Services Agreements) (Amendment) Regulations 2023 (S.I. 2023/436).

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.

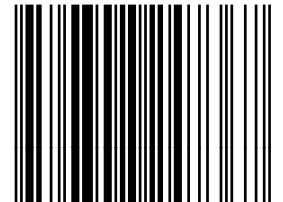
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