

2023 No. 945

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Disapplication of NHS England’s Powers of Direction) (England) Regulations 2023

Made - - - - *30th August 2023*

Laid before Parliament *1st September 2023*

Coming into force *29th September 2023*

The Secretary of State makes these Regulations in exercise of the power conferred by sections 13YB(3)(a) and 272(8) of the National Health Service Act 2006(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Disapplication of NHS England’s Powers of Direction) (England) Regulations 2023.

(2) These Regulations come into force on 29th September 2023.

(3) These Regulations extend to England and Wales.

Interpretation

2. In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

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

Functions relating to NHS Continuing Healthcare and NHS funded nursing care

3. The power in section 13YB(1) of the 2006 Act does not apply in relation to the functions of NHS England—

(a) arising under or by virtue of sections 3B(1)(b) and (c) of the 2006 Act insofar as they relate to—

(a) 2006 c. 41. Section 13YB was inserted by section 13 of the Health and Care Act 2022 (c. 31). See the definitions of “prescribed” and “regulations” in section 275(1) of the National Health Service Act 2006.

(b) S.I. 2012/2996. Under the Health and Care Act 2022, the NHS Commissioning Board was renamed NHS England (section 1) and NHS England was required to establish integrated care boards to take on the commissioning functions of clinical commissioning groups (section 19, which inserts new Chapter A3 into Part 2 of the National Health Service Act 2006 (c. 41)), which it did on 1st July 2022 in accordance with S.I. 2022/632. As a consequence of those changes, paragraph 1(1) of the Schedule to S.I. 2022/634 substitutes “CCG” with “integrated care board” in regulation 23 and in the definition of “relevant body” in regulation 2(1) of S.I. 2012/2996. In addition, under paragraph 1(3) of Schedule 1 to the Health and Care Act 2022, the references to the National Health Service Commissioning Board (defined as “the Board” in regulation 2(1)) in regulation 23 and in the definition of “relevant body” in regulation 2(1) of S.I. 2012/2996 are to be read, in relation to any time on or after 1st July 2022, as a reference to NHS England.

- (i) deciding whether a person has a primary health need in accordance with paragraph (5)(b) of regulation 21(a) of the Standing Rules (duty of relevant bodies: assessment and provision of NHS Continuing Healthcare);
 - (ii) determining whether a person has a need for nursing care in accordance with regulation 28(b) of the Standing Rules (persons who enter relevant premises or who develop a need for nursing care) but the power continues to apply in relation to an assessment of the need for nursing care under paragraph (1) of that regulation; and
- (b) arising under regulation 23 of the Standing Rules (the Board's duty: reviewing decisions) insofar as they are exercisable in connection with the functions of NHS England arising under or by virtue of sections 3B(1)(b) and (c) of the 2006 Act.

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

Helen Whately
Minister of State,

30th August 2023

Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 13YB(1) of the National Health Service Act 2006 (c. 41) (“the 2006 Act”) gives NHS England the power to provide, by direction, for any of its relevant functions to be exercised by one or more integrated care boards. Section 13YB(3) allows Regulations to be made to limit the application of this power, and this instrument disapplies that power in respect of specified functions of NHS England relating to NHS Continuing Healthcare (“NHS CHC”) and NHS funded nursing care (“NHS FNC”).

In accordance with section 3B of the 2006 Act and the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the Standing Rules”), NHS England has commissioning responsibility for serving members of the armed forces and their families, and prisoners and other detainees in respect of NHS CHC and NHS FNC. The legislative framework relating to NHS CHC and NHS FNC is contained in Part 6 of the Standing Rules. Regulation 20 of the Standing Rules defines NHS CHC as a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness. NHS FNC is funding provided by the health service in England to care home providers for the provision of nursing care by a registered nurse.

Regulation 3 of these Regulations precludes NHS England from directing an integrated care board to make decisions on eligibility for NHS CHC and NHS FNC in respect of the cohorts for whom NHS England has commissioning responsibility by virtue of section 3B of the 2006 Act, namely, serving members of the armed forces and their families, and prisoners and other detainees. However, the power of direction at section 13YB(1) of the 2006 Act continues to apply to NHS England's functions of carrying out assessments of eligibility for NHS CHC and NHS FNC and to commissioning NHS CHC and NHS FNC services for these cohorts.

Regulation 3 of these Regulations also precludes NHS England from directing an integrated care board to arrange for the review of eligibility decisions for NHS CHC in respect of serving members of the armed forces and their families, and prisoners and other detainees.

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.

(a) Paragraph (5)(a)(ii) of regulation 21, which contains information about the Decision Support Tool, was amended by regulation 2(3)(b) of S.I. 2018/283.

(b) Regulation 28 was amended by S.I. 2014/1611 and 2015/415.

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