
WELSH STATUTORY INSTRUMENTS

2023 No. 1053

The National Health Service (Ophthalmic Services) (Wales) Regulations 2023

PART 5

Arrangements with qualified practitioners and payment

The Statement

31.—(1) In these Regulations, references to “the Statement” are references to a determination by the Welsh Ministers, under section 76 of the Act, as to the remuneration to be paid to those who provide general ophthalmic services.

(2) The Welsh Ministers must publish the Statement.

(3) Subject to sub-paragraph (4), the Statement may provide that it has effect in relation to remuneration in respect of a period beginning on or after a date specified in the Statement, which may be the date of the Statement or an earlier or later date.

(4) The Statement may provide for payments to be paid in respect of a period beginning with a date earlier than the date of the Statement only if doing so is not detrimental to the persons to whose remuneration it relates.

(5) Where the Statement does not specify a date, it has effect in relation to remuneration in respect of a period beginning on the date the Statement is published.

Arrangements for the provision of primary ophthalmic services

32. A Local Health Board’s arrangements for the provision of primary ophthalmic services must incorporate—

- (a) the terms of service,
- (b) the Statement (in accordance with which the Local Health Board is required to make payments to contractors for the provision of general ophthalmic services), and
- (c) any directions given by the Welsh Ministers under section 12(3) of the Act (functions of Local Health Boards) relating to remuneration for the provision of eye examination services or compliance with other provisions of the terms of service (in accordance with which the Local Health Board is required to make payments to contractors) (collectively, the “fee directions”).

Payments for partial services

33.—(1) A contractor who is unable to complete for a patient the general ophthalmic services or eye examination services which the contractor has undertaken to provide must inform the Local Health Board accordingly in writing.

(2) If the Local Health Board is satisfied that the inability to complete the general ophthalmic services or eye examinations services is due to a reasonable cause, it must make payment in

accordance with the Statement or relevant fee directions (as appropriate) to the contractor for such part of those services as the contractor has provided.

Payments to suspended qualified practitioners

34.—(1) A Local Health Board must make payments to, or in respect of, qualified practitioners who have been suspended from its combined list under the Act or under regulation 23 in accordance with a determination of the Welsh Ministers in relation to such payments.

(2) The Welsh Ministers must—

- (a) make the determination in accordance with paragraph (3) after consultation with a body appearing to them to be representative of persons to whose remuneration the determination would relate and such other persons as they consider appropriate, and
- (b) publish that determination with the Statement.

(3) Subject to paragraphs (4) and (5), the Welsh Ministers' determination must be such as to secure that, as far as reasonably practicable, the suspended qualified practitioner receives payments at a rate corresponding to the remuneration of that qualified practitioner for primary ophthalmic services during the 12 months ending with the qualified practitioner's suspension.

(4) The Welsh Ministers' determination may include provision that payments in accordance with the determination must not exceed a specified amount in any specified period.

(5) The determination must provide for a deduction to take account of any payments which the suspended qualified practitioner receives for providing primary ophthalmic services otherwise than as a principal.

(6) Determinations may be varied or revoked by subsequent determinations.

(7) Regulation 35(2) to (5) applies to payments made under this regulation as it applies to payments made under that regulation.

Overpayments

35.—(1) Where—

- (a) a Local Health Board has made a payment to a patient under regulation 7(6) in respect of a sight test, and
- (b) the amount paid exceeds the fee payable to the contractor for general ophthalmic services set out in the Statement,

the Local Health Board must deduct the excess from remuneration otherwise payable to the contractor.

(2) Paragraphs (3) to (5) apply where a Local Health Board considers that it has made an overpayment for primary ophthalmic services to a contractor (whether in error or otherwise).

(3) The Local Health Board must, except to the extent that the Welsh Ministers on the application of the Local Health Board direct otherwise, inform the contractor of that fact.

(4) If the contractor admits the overpayment, the Local Health Board may recover the amount overpaid by a deduction from the contractor's remuneration or in some other manner.

(5) If the contractor does not admit the overpayment—

- (a) the Local Health Board may refer the matter under regulation 5(1) of the National Health Service (Service Committees and Tribunal) Regulations 1992(1) for investigation, and

(1) S.I. 1992/664, amended by S.I. 2002/2469; there are other amending instruments but none is relevant to these Regulations.

- (b) if the Local Health Board, or the Welsh Ministers on appeal, decide that there has been an overpayment, the amount overpaid will be recoverable by a deduction from the contractor's remuneration or in some other manner.
- (6) Recovery of an overpayment under this regulation is without prejudice to the investigation of an alleged breach of the terms of service.