
STATUTORY INSTRUMENTS

2015 No. 415

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service Commissioning Board
and Clinical Commissioning Groups (Responsibilities
and Standing Rules) (Amendment) Regulations 2015**

Made - - - - 24th February 2015

Laid before Parliament 5th March 2015

Coming into force - - 1st April 2015

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 3B(1), 6E(1) and (2) and 272(7) and (8) of the National Health Service Act 2006(1).

Before deciding to make regulations under section 3B of that Act, the Secretary of State obtained appropriate advice and consulted the National Health Service Commissioning Board in accordance with subsection (4) of that section.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2015 and come into force on 1st April 2015.

(2) In these Regulations, “the principal Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012(2).

Amendments in relation to services for rare and very rare conditions which are commissioned by the Board

2.—(1) After regulation 11 (specified services for rare and very rare conditions) of the principal Regulations, insert—

(1) 2006 c. 41. Section 3B of the National Health Service Act 2006 (“the 2006 Act”), was inserted by section 15 of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 6E of the 2006 Act was inserted by section 20 of the 2012 Act. By virtue of section 271(1) of the 2006 Act, the powers exercised in making these Regulations are exercisable by the Secretary of State in relation to England only. See section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.

(2) S.I. 2012/2996, relevant amendments to which were made by S.I. 2013/261, 2014/91, 2014/452 and 2014/1611.

“Saving and transitional provision in relation to certain services for rare and very rare conditions

11A.—(1) A relevant contract in relation to transferring services is not terminated or modified by virtue of the omission of those transferring services from Schedule 4 with effect from the transfer date and continues in force as it did immediately before the transfer date.

(2) The Board retains the duty under regulations 7(2)(c), 10(1)(c) and 11 which it held in relation to those transferring services immediately before the transfer date for so long as a relevant contract for the provision of those services continues to have effect in relation to those transferring services but only to the extent of the provision which is made in that relevant contract for such services.

(3) In this regulation—

- (a) a “relevant contract” is a contract having effect as between the Board and another person for the provision as part of the health service⁽³⁾ of transferring services where that contract has effect immediately before the transfer date;
- (b) “the transfer date” means 1st April 2015;
- (c) “transferring services” are wheelchair services as included within the service specified at paragraph 135 in Schedule 4 immediately prior to the transfer date.”.

(2) Schedule 4 to the principal Regulations (services for rare and very rare conditions) is amended as follows.

(3) After paragraph 3, insert—

“3A. Adult highly specialist oesophageal gastric services in the form of gastro-electrical stimulation for patients with intractable gastroparesis.”.

(4) Omit paragraph 11.

(5) For paragraph 31, substitute—

“31. Bone conduction hearing implant services.”.

(6) For paragraph 59, substitute—

“59. Highly specialist adult gynaecological surgery and urinary surgery services for women.

59A. Highly specialist adult urological surgery services for men.”.

(7) Omit paragraph 61.

(8) Omit paragraph 76.

(9) After paragraph 107, insert—

“107A. Specialist colorectal surgery services.”.

(10) For paragraph 116, substitute—

“116. Specialist immunology services for adults with deficient immune systems.

116A. Specialist immunology services for children with deficient immune systems.”.

(11) At the end of paragraph 135, insert “excluding wheelchair services”.

Amendments in relation to NHS funded nursing care

3. In regulation 28 (persons who enter relevant premises or who develop a need for nursing care) of the principal Regulations—

(3) See section 275(1) of the 2006 Act for the definition of “the health service”.

- (a) in paragraph (5), after “paragraph (6)”, insert “or, as the case may be, (6A)”; and
- (b) after paragraph (6), insert—

“(6A) Where the relevant body consents to the arrangement by a local authority, in accordance with section 22(4) and, where applicable, sections 22(5) and 22(9) of the Care Act 2014(4), for the provision of nursing care in accommodation arranged by the local authority in Northern Ireland or Scotland, the relevant body must pay to the relevant provider in respect of the person receiving nursing care—

- (a) £100 per week, where nursing care is provided in accommodation in Northern Ireland, or
- (b) £78 per week, where nursing care is provided in accommodation in Scotland,

unless or until paragraph (6B) applies.

(6B) This paragraph applies where a person receiving nursing care in accommodation in Northern Ireland or Scotland—

- (a) has their need for nursing care assessed and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in that accommodation;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

(6C) In paragraphs (6A) and (6B)—

“accommodation” means—

- (a) in relation to Northern Ireland, residential or other accommodation in Northern Ireland of a type which may be provided under article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972(5) and includes a nursing home within the meaning of article 11 of the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003(6);
- (b) in relation to Scotland, residential accommodation in Scotland of a type which may be provided under or by virtue of section 12(7) or 13A(8) of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003(9);

“local authority” has the same meaning as in section 1(4) of the Care Act 2014(10); and

“relevant provider” means—

(4) 2014 c. 23. Section 22 is modified by Schedule 1, paragraph 1(2) and (5)(a) to (c), to that Act.

(5) S.I. 1972/1265 (N.I. 14), relevant amendments to which were made by S.I.1991/194 (N.I. 1), S.I. 1992/3204 (N.I. 20), the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (c.5), section 4 and the Schedule, and by the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), section 36 and Schedule 6, paragraph 3(6).

(6) S.I. 2003/431 (N.I. 9), amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), section 32, Schedule 6, paragraph 1(1)(d) (with Schedule 6, paragraph 1(3)).

(7) 1968 c. 49. Section 12 was amended by the National Health Care and Community Service Act 1990 (c. 19) (“the 1990 Act”), section 66(1), Schedule 9, paragraph 10(5), by the Children (Scotland) Act 1995 (c. 36) Schedule 4, paragraph 15(11), by the Immigration and Asylum Act 1999 (c.33) (“the 1999 Act”), section 120(1), by the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), section 3, and was modified by S.I. 1991/536, (S.45), regulation 3.

(8) Section 13A was amended by the 1990 Act, section 56, by the 1999 Act, section 120(2), by the Regulation of Care (Scotland) Act 2001 (asp 8), section 72(a) and Schedule 3, paragraph 4(3), by the 2002 Act, Schedule 2, paragraph 1(4), and by S.S.I. 2011/211, Schedule 1(1), paragraph 3(b), and Schedule 2(1), paragraph 1.

(9) 2003 asp 13. Section 25 was amended by SSI 2011/211, Schedule 1(1), paragraph 13(3).

(10) The definition is limited to local authorities in England.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) in relation to Northern Ireland, the person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003⁽¹¹⁾ in respect of that accommodation;
- (b) in relation to Scotland, the person who provides in respect of that accommodation a care service registered under section 59 of the Public Services Reform (Scotland) Act 2010⁽¹²⁾.”.

Signed by authority of the Secretary of State for Health.

24th February 2015

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

⁽¹¹⁾ S.I. 2003/431 (N.I. 9). Article 12(3) was amended by the Health and Social Care (Amendment) Act (Northern Ireland) 2014 (c. 5), Schedule 1, paragraph 1(1)(b).

⁽¹²⁾ 2010 asp 8. See section 47 for the definition of “care service”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the principal Regulations”) which (amongst other things) require the National Health Service Commissioning Board (“the Board”) to make arrangements for the provision, as part of the health service, of specified services or facilities to specified people or groups of people, and which also set standing rules for the Board and clinical commissioning groups (CCGs) in relation to certain commissioning functions, including NHS funded nursing care.

The amendments in regulation 2 follow advice received, and consultation with the Board, pursuant to the statutory procedures set out in section 3B(4) of the National Health Service Act 2006.

Regulation 2(1) inserts a new regulation 11A to make transitional and saving provision in relation to the amendment made in regulation 2(11) so that while the Board retains responsibility after 1st April 2015 for on-going contracts for wheelchair services, its statutory duty to commission the services as they are provided for in any such contract continues.

Regulation 2 also amends Schedule 4 to the principal Regulations (services for rare and very rare conditions) to give effect to revised commissioning responsibilities for the Board pursuant to regulations 7, 10 and 11 of the principal Regulations. Regulation 2(4) removes the separate service prescribed at paragraph 11, which is recognised as forming part of the services prescribed at paragraph 102 of Schedule 4. Regulation 2(5) and (8) combine services previously described separately at paragraphs 31 and 76 of Schedule 4. Regulation 2(7) and (9) together redefine an existing service. Regulation 2(10) splits an existing service into two distinct prescribed services, distinguishing between paediatric and adult patients. Other paragraphs in regulation 2 either add to or remove from Schedule 4 services which must be commissioned by the Board.

Regulation 3 amends Part 6 of the principal Regulations to specify the rates for nursing care payable by the relevant body (the Board or a CCG) where nursing care is provided in residential accommodation in Scotland or Northern Ireland arranged by a local authority.

No impact assessment has been prepared in respect of regulations 2 and 3 as minimal impact on the private or voluntary sectors is foreseen.