
STATUTORY INSTRUMENTS

2013 No. 1617

**The National Health Service (Direct
Payments) Regulations 2013**

PART 1

General

Interpretation

2.—(1) In these Regulations—

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002(1);

“the 2005 Act” means the Mental Capacity Act 2005(2);

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

“the Board” means the National Health Service Commissioning Board(3);

“care plan” means a plan prepared in accordance with regulation 8 (care plan and care co-ordinator);

“CCG” means a clinical commissioning group(4);

“child” means a person under the age of 16;

“health body” means a CCG, the Board, a local authority (within the meaning of section 2B of the 2006 Act(5)) or the Secretary of State;

“health care professional” means a member of a profession regulated by a body mentioned in section 25(3) of the 2002 Act (the Professional Standards Authority for Health and Social Care)(6);

“nominee” has the meaning given in regulation 6 (nominated person);

“parental responsibility” has the meaning given in section 3 of the Children Act 1989 (meaning of parental responsibility)(7);

“patient” means a person to or in respect of whom direct payments may be made in accordance with regulations 3, 4 or 5 (persons to whom a direct payment may be made, and direct payments in respect of children and persons who lack capacity);

(1) 2002 c.17 (“the 2002 Act”).

(2) 2005 c.9.

(3) The Board is established by section 1H of the 2006 Act as inserted by section 9(1) of the 2012 Act.

(4) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is inserted by section 25(1) of the 2012 Act. See also section 11 of the 2006 Act as inserted by section 10 of the 2012 Act.

(5) Section 2B was inserted by section 12 of the 2012 Act.

(6) Section 25(3) of the 2002 Act has been amended by S.I. 2010/231; section 127 of, and paragraphs 17 of Schedule 10 to, the Health and Social Care Act 2008 (c.14) (“the 2008 Act”), and by section 230(1) of, and paragraph 56(b) of Schedule 15 to, the 2012 Act.

(7) 1989 c.41 (“the 1989 Act”). A person may have parental responsibility for a person who is not a child for the purposes of these Regulations; see section 105 of the 1989 Act, by virtue of which “child” for the purposes of the 1989 Act means, subject to paragraph 16 of Schedule 1 to the Act, a person under the age of 18.

“regulated activity” has the meaning given in section 8 of the Health and Social Care Act 2008 (regulated activity)(**8**);

“relevant services for a disabled person” means any services in relation to which direct payments regulations, within the meaning of section 42 of the Welfare Reform Act 2009 (provision that may be made about direct payments)(**9**), have been made;

“relevant services for social care” means relevant services within the meaning of regulation 1(2) of the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009(**10**);

“representative” means—

- (a) in the case of a person in respect of whom any deputy has been appointed by the Court of Protection under section 16(2)(b) of the 2005 Act (powers to appoint deputies) to make decisions on that person’s behalf in relation to matters in respect of which direct payments may be made, any such deputy;
- (b) in the case of a person who has appointed any donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act (lasting powers of attorney) to make decisions on that person’s behalf in relation to matters in respect of which direct payments may be made, any such donee;
- (c) in the case of a person who has created an enduring power of attorney within the meaning of Schedule 4 to the 2005 Act (provisions applying to existing enduring powers of attorney), which is registered in accordance with paragraphs 4 and 13 of that Schedule or in respect of which an application has been made for such registration, any attorney in whom the power is vested;
- (d) in the case of a child, any person with parental responsibility for the child;
- (e) in the case of a person aged 16 or over but who lacks capacity and in respect of whom there is a person with parental responsibility, any such person with parental responsibility; or
- (f) in the case of a person in respect of whom a person has been appointed under regulation 5(4) (appointment of person in respect of persons who lack capacity), that other person.

(2) In determining for the purposes of these Regulations what is in the best interests of a patient, other than a child, the person making the determination must comply with the requirements specified in section 4(1) to (7) of the 2005 Act (best interests).

(8) 2008 c.14. See the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, S.I. 2010/781, as amended by S.I. 2011/2711 and S.I. 2012/1513.

(9) 2009 c.24.

(10) S.I. 2009/1887, as amended by S.I. 2010/2246.