



National Health Service (Wales) Act 2006

2006 CHAPTER 42

PART 1

PROMOTION AND PROVISION OF THE HEALTH SERVICE IN WALES

The Welsh Ministers and the health service in Wales

1 Welsh Ministers' duty to promote health service

- (1) The Welsh Ministers must continue the promotion in Wales of a comprehensive health service designed to secure improvement—
 - (a) in the physical and mental health of the people of Wales, and
 - (b) in the prevention, diagnosis and treatment of illness.
- (2) The Welsh Ministers must for that purpose provide or secure the provision of services in accordance with this Act.
- (3) The services so provided must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

Modifications etc. (not altering text)

- C1** S. 1: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

General power to provide services

2 Welsh Ministers' general power

- (1) The Welsh Ministers may—

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- (a) provide such services as they consider appropriate for the purpose of discharging any duty imposed on them by this Act, and
 - (b) do anything else which is calculated to facilitate, or is conducive or incidental to, the discharge of such a duty.
- (2) Subsection (1) does not affect—
- (a) the powers of the Welsh Ministers apart from this section,
 - (b) Part 6 and Chapter 1 of Part 7 (ophthalmic and pharmaceutical services).

Modifications etc. (not altering text)

- C2** [S. 2: Functions made exercisable by Local Health Boards \(1.10.2009\) by The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\), reg. 4, Sch.](#)

Provision of particular services

3 Welsh Ministers' duty as to provision of certain services

- (1) The Welsh Ministers must provide throughout Wales, to such extent as they consider necessary to meet all reasonable requirements—
- (a) hospital accommodation,
 - (b) other accommodation for the purpose of any service provided under this Act,
 - (c) medical, dental, ophthalmic, nursing and ambulance services,
 - (d) such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as they consider are appropriate as part of the health service,
 - (e) such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as they consider are appropriate as part of the health service,
 - (f) such other services or facilities as are required for the diagnosis and treatment of illness.
- (2) For the purposes of the duty in subsection (1), services provided under—
- (a) section 41(2) (primary medical services) or 56(2) (primary dental services), or
 - (b) a general medical services contract or a general dental services contract,
- must be regarded as provided by the Welsh Ministers.
- (3) This section does not affect Part 6 and Chapter 1 of Part 7 (ophthalmic and pharmaceutical services).

Modifications etc. (not altering text)

- C3** [S. 3\(1\)\(a\)\(b\)\(c\)\(d\)\(e\)\(f\): Functions made exercisable by Local Health Boards \(1.10.2009\) by The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\), reg. 4, Sch.](#)

4 High security psychiatric services

- (1) The Welsh Ministers' duty under section 1 includes a duty to provide hospital accommodation and services for persons who—

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- (a) are liable to be detained under the Mental Health Act 1983 (c. 20), and
 - (b) in the opinion of the Welsh Ministers require treatment under conditions of high security on account of their dangerous, violent or criminal propensities.
- (2) The hospital accommodation and services mentioned in subsection (1) are referred to in this section and paragraph 15 of Schedule 3 as “high security psychiatric services”.
- (3) High security psychiatric services may be provided only at hospital premises at which services are provided only for the persons mentioned in subsection (1).
- (4) “Hospital premises” means—
 - (a) a hospital, or
 - (b) any part of a hospital which is treated as a separate unit.

Modifications etc. (not altering text)

- C4** S. 4: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

5 Other services

Schedule 1 makes further provision about the Welsh Ministers and services under this Act.

Modifications etc. (not altering text)

- C5** S. 5: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

Provision of services otherwise than in Wales

6 Performance of functions outside Wales

- (1) The Welsh Ministers may provide or secure the provision of anything mentioned in section 3(1) outside Wales.
- (2) The Welsh Ministers' functions may be performed outside England and Wales, in so far as they relate to—
 - (a) holidays for patients,
 - (b) the transfer of patients to or from Scotland, Northern Ireland, the Isle of Man or the Channel Islands, or
 - (c) the return of patients who have received treatment in England and Wales, to countries or territories outside the British Islands (including for this purpose the Republic of Ireland).

Modifications etc. (not altering text)

- C6** S. 6: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

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VALID FROM 01/06/2010

[^{F1}6A Reimbursement of cost of services provided in another EEA state

- (1) The Welsh Ministers must, on an application made by any person, reimburse to that person the amount of any qualifying EEA expenditure incurred by that person on or after 23 August 2010, but this is subject to subsections (5) and (6), to any limit applicable under subsection (8) and to any deduction applicable under subsection (9).
- (2) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA state other than the United Kingdom, to a person ordinarily resident in Wales (“the patient”) of a service as respects which condition A or condition B is met.
- (3) Condition A is that the service—
 - (a) was necessary to treat or diagnose a medical condition of the patient,
 - (b) is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make or have made available to the patient under this Act in the circumstances of the patient's case, and
 - (c) is not a special service.
- (4) Condition B is that before the service was provided the Welsh Ministers had given authorisation under section 6B for the provision of the service to the patient.
- (5) The duty in subsection (1) does not apply where the applicant incurred the qualifying expenditure in connection with an arrangement which was entered into by the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.
- (6) This section does not apply in circumstances where Article 20 or 27(3) of Regulation [\(EC\) No. 883/2004](#) apply.
- (7) Subsections (8) and (9) apply where the service is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would have made available to the patient under this Act in the circumstances of the patient's case.
- (8) The Welsh Ministers may limit the amount of any reimbursement under this section—
 - (a) in relation to a service other than a dental service, to the cost that the Welsh Ministers or the Local Health Board would have incurred if the same or an equivalent service had been made available by either of them, and
 - (b) in relation to a dental service, to the average cost that the Welsh Ministers or the Local Health Board would have incurred if the same or an equivalent service had been made available by either of them.
- (9) The Welsh Ministers may deduct from any reimbursement under this section the amount of any NHS charge which would have been payable for the same service or an equivalent service if the service had been made available by the Welsh Ministers or the Local Health Board; and in determining for this purpose the amount of any NHS charge regard shall be had to any entitlement the patient would have had—

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- (a) to any payment or contribution by virtue of regulations made under section 129(1) or (3), or
 - (b) to any remission or repayment by virtue of regulations made under section 130.
- (10) The Welsh Ministers may determine—
- (a) the form in which an application under this section must be made, and
 - (b) the information to be provided in support of the application.
- (11) In this section and section 6B—
- “authorised provider”, in relation to any service provided in an EEA state other than the United Kingdom, means a person who is lawfully providing that service;
- “NHS charge” means a charge payable under regulations made under section 121(1), 125(1) or 128(1);
- “special service” means—
- (a) a service that involves a stay in hospital accommodation for at least one night,
 - (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation,
 - (c) dental treatment that involves general anaesthesia or intravenously administered sedation, or
 - (d) a service whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment;
- “service” includes any goods, including drugs, medicines and appliances, which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation.

Textual Amendments

- F1** Ss. 6A, 6B inserted (1.6.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) Regulations 2010 \(S.I. 2010/915\)](#), [reg. 5](#)

VALID FROM 01/06/2010

6B Prior authorisation for the purposes of section 6A

- (1) A person may apply to the Welsh Ministers under this section for prior authorisation for the purposes of section 6A in relation to the provision of a service (“the requested service”) to a person ordinarily resident in Wales (“the patient”).
- (2) The requested service must be—
- (a) a special service, or
 - (b) a service that is neither the same as nor equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make available to the patient under this Act in the circumstances of the patient's case.
- (3) The Welsh Ministers may determine—

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- (a) the form in which an application under this section must be made, and
 - (b) the information to be provided in support of the application.
- (4) The Welsh Ministers—
- (a) must authorise the provision of the requested service if it is a special service and the conditions in subsection (5) are met, and
 - (b) may authorise the provision of the requested service in any other case where the requested service is necessary to treat or diagnose a medical condition of the patient.
- (5) The conditions referred to in subsection (4)(a) are—
- (a) that the requested service is necessary to treat or diagnose a medical condition of the patient,
 - (b) that the requested service is the same as or equivalent to a service that the Welsh Ministers or the Local Health Board in whose area the patient usually resides would make available to the patient in the circumstances of the patient's case, and
 - (c) that the Welsh Ministers or the Local Health Board cannot provide to the patient a service that is the same as or equivalent to the requested service within a period of time that is acceptable on the basis of medical evidence as to the patient's clinical needs, taking into account the patient's state of health at the time the decision under this section is made and the probable course of the medical condition to which the service relates.
- (6) The matters to which the Welsh Ministers are to have regard in determining for the purpose of subsection (5)(c) whether the length of any delay is acceptable include—
- (a) the patient's medical history,
 - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the service is to relate,
 - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks, and
 - (d) the extent to which the provision of the service would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.
- (7) Any authorisation under this section must be in writing.]

Textual Amendments

- F1** Ss. 6A, 6B inserted (1.6.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) Regulations 2010 \(S.I. 2010/915\)](#), [reg. 5](#)

NHS contracts

7 NHS contracts

- (1) In this Act, an NHS contract is an arrangement under which one health service body (“the commissioner”) arranges for the provision to it by another health service body (“the provider”) of goods or services which it reasonably requires for the purposes of its functions.

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- (2) Section 97(6) (NHS contracts and the provision of local pharmaceutical services under pilot schemes) makes further provision about acting as commissioner for the purposes of subsection (1).
- (3) Paragraph 15 of Schedule 3 (NHS trusts and NHS contracts) makes further provision about an NHS trust acting as provider for the purposes of subsection (1).
- (4) “Health service body” means any of the following—
 - (a) a Strategic Health Authority,
 - (b) a Primary Care Trust,
 - (c) an NHS trust,
 - (d) a Special Health Authority,
 - (e) a Local Health Board,
 - (f) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
 - (g) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)),
 - (h) the Common Services Agency for the Scottish Health Service,
 - (i) the Wales Centre for Health,
 - (j) the Health Protection Agency,
 - (k) the Commission for Healthcare Audit and Inspection,
 - (l) the Scottish Dental Practice Board,
 - (m) the Secretary of State,
 - (n) the Welsh Ministers,
 - (o) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972,
 - (p) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (S.I. 1990/247 (N.I.3)),
 - (q) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)),
 - (r) the Department of Health, Social Services and Public Safety.
- (5) Whether or not an arrangement which constitutes an NHS contract would apart from this subsection be a contract in law, it must not to be regarded for any purpose as giving rise to contractual rights or liabilities.
- (6) But if any dispute arises with respect to such an arrangement, either party may refer the matter to the Welsh Ministers for determination under this section.
- (7) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to a health service body—
 - (a) that the terms proposed by another health service body are unfair by reason that the other is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement, or

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- (b) that for any other reason arising out of the relative bargaining position of the prospective parties any of the terms of the proposed arrangement cannot be agreed,
 that health service body may refer the terms of the proposed arrangement to the Welsh Ministers for determination under this section.
- (8) Where a reference is made to the Welsh Ministers under subsection (6) or (7), they may determine the matter themselves or appoint a person to consider and determine it in accordance with regulations.
- (9) “The appropriate person” means the Welsh Ministers or the person appointed under subsection (8).
- (10) By the determination of a reference under subsection (7), the appropriate person may specify terms to be included in the proposed arrangement and may direct that it be proceeded with.
- (11) A determination of a reference under subsection (6) may contain such directions (including directions as to payment) as the appropriate person considers appropriate to resolve the matter in dispute.
- (12) The appropriate person may by the determination in relation to an NHS contract vary the terms of the arrangement or bring it to an end (but this does not affect the generality of the power of determination under subsection (6)).
- (13) Where an arrangement is so varied or brought to an end—
 - (a) subject to paragraph (b), the variation or termination must be treated as being effected by agreement between the parties, and
 - (b) the directions included in the determination by virtue of subsection (11) may contain such provisions as the appropriate person considers appropriate in order to give effect to the variation or to bring the arrangement to an end.

8 Provision for bodies in Northern Ireland

- (1) Subsection (2) applies where a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) or a body mentioned in paragraph (o), (p), (q) or (r) of section 7(4) is a party or prospective party to an arrangement or proposed arrangement which—
 - (a) falls within the definition of NHS contract in section 7(1), and
 - (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I.1)).
- (2) Subsections (5) to (13) of section 7 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Welsh Ministers of references to the Welsh Ministers and the Department of Health, Social Services and Public Safety acting jointly.

9 Arrangements to be treated as NHS contracts

- (1) This section applies to any arrangement under which a Local Health Board or such other health service body as may be prescribed arranges for the provision to it—
 - (a) by a contractor under a general ophthalmic services contract,

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- (b) by a person on an ophthalmic list,
 - (c) by a person on a pharmaceutical list, or
 - (d) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978 (c. 29),
- of the goods or services mentioned in subsection (2).
- (2) The goods or services are those that the body reasonably requires for the purposes of its functions, other than functions under—
- (a) Part 6 (general ophthalmic services),
 - (b) Chapter 1 or 2 of Part 7 (pharmaceutical services and local pharmaceutical services under pilot schemes), or
 - (c) section 115 of, or Chapter 1 or 2 of Part 7 of, the National Health Service Act 2006 (c. 41) (primary ophthalmic services and pharmaceutical services and local pharmaceutical services under pilot schemes).
- (3) Any such arrangement is to be treated as an NHS contract for the purposes of section 7 (other than subsections (7) and (10)).
- (4) In this section—
- “general ophthalmic services contract” and “contractor” under such a contract have the meanings given by section 117 of the National Health Service Act 2006, “health service body” means a body which is a health service body for the purposes of section 7,
- “ophthalmic list” includes a list published in accordance with regulations made under—
- (a) section 26(2)(a) of the National Health Service (Scotland) Act 1978 (c. 29), or
 - (b) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)), and
- “pharmaceutical list” includes a list published in accordance with regulations made under—
- (a) section 129(2)(a) of the National Health Service Act 2006, or
 - (b) Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.
- (5) The reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.

Modifications etc. (not altering text)

- C7 S. 9 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006](#) (c. 43), ss. 5, 8(2), [Sch. 3 paras. 2, 3](#) (with Sch. 3 Pt. 1)

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Provision of services otherwise than by the Welsh Ministers

10 Welsh Ministers' arrangements with other bodies

- (1) The Welsh Ministers may arrange with any person or body to provide, or assist in providing, any service under this Act.
- (2) Arrangements may be made under subsection (1) with voluntary organisations.
- (3) The Welsh Ministers may make available any facilities provided by them for any service under this Act—
 - (a) to any person or body carrying out any arrangements under subsection (1), or
 - (b) to any voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968 (c. 46).
- (4) Where facilities are made available under subsection (3) the Welsh Ministers may make available the services of any person employed in connection with the facilities by—
 - (a) the Welsh Ministers,
 - (b) a Primary Care Trust,
 - (c) a Special Health Authority, or
 - (d) a Local Health Board.
- (5) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Welsh Ministers.
- (6) Goods or materials may be made available either temporarily or permanently.
- (7) Any power to supply goods or materials under this section includes—
 - (a) a power to purchase and store them, and
 - (b) a power to arrange with third parties for the supply of goods or materials by those third parties.

Modifications etc. (not altering text)

- C8** [S. 10\(1\)\(2\)\(3\)\(4\)\(5\)](#): Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

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