

SCHEDULE 3

Other contractual terms

PART 4

Assignment of patients to lists

Application of this Part

38. This Part applies in respect of the assignment by the Board of a person as a new patient to a contractor's list of patients where that person—

- (a) has been refused inclusion in a contractor's list of patients or has not been accepted as a temporary resident by a contractor; and
- (b) would like to be included in the list of patients of a contractor in whose outer boundary area (as specified in accordance with regulation 20(1)(d)) that person resides.

Assignment of patients to list of patients: open and closed lists

39.—(1) Subject to paragraph 40, the Board may—

- (a) assign a new patient to a contractor whose list of patients is open; and
- (b) only assign a new patient to a contractor whose list of patients is closed in the circumstances specified in sub-paragraph (2).

(2) The circumstances specified in this sub-paragraph are where—

- (a) the assessment panel has determined under paragraph 41(7) that new patients may be assigned to the contractor in question, and that determination has not been overturned either by a determination of the Secretary of State under paragraph 42(13) or (where applicable) by a court; and
- (b) the Board has entered into discussions with the contractor in question regarding the assignment of new patients if such discussions are required under paragraph 43.

Factors relevant to assignments

40. When assigning a person as a new patient to a contractor's list of patients under paragraph 39(1)(a) or (b), the Board must have regard to—

- (a) the preferences and circumstances of the person;
- (b) the distance between the person's place of residence and the contractor's practice premises;
- (c) any request made by a contractor to remove the person from its list of patients within the preceding period of six months beginning with the date on which the application for assignment is received by the Board;
- (d) whether, during the preceding period of six months beginning with the date on which the application for assignment is received by the Board, the person has been removed from a list of patients on the grounds referred to in—
 - (i) paragraph 24 (relating to the circumstances in which a person may be removed from a contractor's list of patients at the request of the contractor),
 - (ii) paragraph 25 (relating to the removal from the contractor's list of patients of persons who are violent), or

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- (iii) the equivalent provisions to those paragraphs in relation to arrangements made under section 83(2)(1) of the Act or section 92(2) of the Act (which relate to arrangements for the provision of primary medical services);
- (e) in a case to which sub-paragraph (d)(ii) applies (or equivalent provisions as mentioned in sub-paragraph (d)(iii) apply), whether the contractor has appropriate facilities to deal with such patients; and
- (f) such other matters as the Board considers relevant.

Assignments to closed lists: composition and determinations of the assessment panel

41.—(1) Where the Board wants to assign a new patient to a contractor which has closed its lists of patients, the Board must prepare a proposal to be considered by the assessment panel.

(2) The Board must give notice in writing to—

- (a) contractors, including those contractors who provide primary medical services under arrangements made under section 83(2) of the Act(3) or 92 of the Act (which relate to arrangements for the provision of primary medical services) which—
 - (i) have closed their lists of patients, and
 - (ii) may, in the opinion of the Board, be affected by the determination of the assessment panel; and
- (b) the Local Medical Committee (if any) for the area in which the contractors referred to in paragraph (a) provide essential services (or their equivalent),

that it has referred the matter to the assessment panel.

(3) The Board must ensure that the assessment panel is appointed to consider and determine the proposal made under sub-paragraph (1), and the composition of the assessment panel must be as described in sub-paragraph (4).

(4) The members of the assessment panel must be—

- (a) a member of the Board who is a director;
- (b) a patient representative who is a member of the Local Health and Wellbeing Board(4) or Local Healthwatch organisation(5);
- (c) a member of a Local Medical Committee, but not a member of the Local Medical Committee (if any) for the area in which the contractors who may be assigned patients as a consequence of the assessment panel's determination provide services.

(5) In reaching its determination, the assessment panel must have regard to all relevant factors including—

- (a) whether the Board has attempted to secure the provision of essential services (or their equivalent) for new patients other than by means of assignment to a contractor with a closed list; and
- (b) the workload of those contractors likely to be affected by any decision to assign such patients to their list of patients.

(1) Section 83 was amended by paragraph 30 of Schedule 4 to the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(2) Section 92 was amended by paragraph 36 of Schedule 4 to the 2012 Act.

(3) Section 151 was amended by paragraph 79 of Schedule 4 to the 2012 Act.

(4) See section 194 of the 2012 Act which requires a local authority to establish a Health and Wellbeing Board for its area.

(5) Local Healthwatch organisations are bodies corporate with which a local authority may enter into arrangements under section 222 of the Local Government and Public Involvement in Health Act 2007 (c.28) for the purpose of discharging their functions. Section 222 was amended by section 183 of, and Schedules 5 and 14 to, the Health and Social Care Act 2012 (c.7).

(6) The assessment panel must reach a determination before the end of the period of 28 days beginning with the date on which the panel was appointed.

(7) The assessment panel must—

- (a) determine whether the Board may assign new patients to a contractor which has a closed list of patients; and
- (b) if it determines that the Board may make such an assignment, determine, where there is more than one contractor, the contractors to which patients may be assigned.

(8) The assessment panel may determine that the Board may assign new patients to contractors other than any of the contractors specified in its proposals under sub-paragraph (1), as long as the contractors were given notice in writing under sub-paragraph (2)(a).

(9) The assessment panel's determination must include its comments on the matters referred to in sub-paragraph (5), and notice in writing of that determination must be given to those contractors referred to in sub-paragraph (2)(a).

Assignment to closed lists: NHS dispute resolution procedure relating to determinations of the assessment panel

42.—(1) Where an assessment panel makes a determination under paragraph 41(7)(a) that the Board may assign new patients to contractors who have closed their lists of patients, any contractor specified in the determination may refer the matter to the Secretary of State to review that determination.

(2) Where a matter is referred to the Secretary of State under sub-paragraph (1), it must be reviewed in accordance with the procedure specified in the following sub-paragraphs.

(3) Where more than one contractor specified in the determination would like to refer the matter for dispute resolution, those contractors may, if they all agree, refer the matter jointly and, in that case, the Secretary of State must review the matter in relation to those contractors together.

(4) The contractor (or contractors) must send to the Secretary of State, before the end of the period of seven days beginning with the date of the determination of the assessment panel in accordance with paragraph 41(7), a written request for dispute resolution which must include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the contract (or contracts); and
- (c) a brief statement describing the nature of and circumstances giving rise to the dispute.

(5) The Secretary of State must, before the end of the period of seven days beginning with the date on which the matter was referred to the Secretary of State—

- (a) give notice in writing to the parties that the Secretary of State is dealing with the matter; and
- (b) include with the notice a written request to the parties to make, in writing before the end of a specified period, any representations which those parties would like to make about the dispute.

(6) The Secretary of State must give, with the notice under sub-paragraph (5), to the party other than the one which referred the matter to dispute resolution, a copy of any document by which the dispute was referred to dispute resolution.

(7) The Secretary of State must, upon receiving any representations from a party—

- (a) give a copy of those representations to each other party; and

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- (b) request, in writing, that each party to which a copy of those representations is given makes, before the end of a specified period, any written observations which the party would like to make about those representations.
- (8) The Secretary of State may—
 - (a) invite representatives of the parties to appear before, and make oral representations to, the Secretary of State either together or, with the agreement of the parties, separately, and may, in advance, provide the parties with a list of matters or questions to which the Secretary of State would like them to give special consideration; or
 - (b) consult other persons whose expertise the Secretary of State considers is likely to assist the Secretary of State’s consideration of the dispute.
- (9) Where the Secretary of State consults another person under sub-paragraph (8)(b), the Secretary of State must—
 - (a) give notice in writing to that effect to the parties; and
 - (b) where the Secretary of State considers that the interests of any party might be substantially affected by the results of the consultation, give to the parties such opportunity as the Secretary of State considers reasonable in the circumstances to make observations about those results.
- (10) In considering the dispute, the Secretary of State must take into account—
 - (a) any written representations made in response to a request under sub-paragraph (5)(b), but only if those representations are made before the end of the specified period;
 - (b) any written observations made in response to a request under sub-paragraph (7), but only if those written observations are made before the end of the specified period;
 - (c) any oral representations made in response to an invitation under sub-paragraph (8)(a);
 - (d) the results of any consultation under sub-paragraph (8)(b); and
 - (e) any observations made in accordance with an opportunity given under sub-paragraph (9).
- (11) Subject to the other provisions of this paragraph and to any agreement between the parties, the Secretary of State may determine the procedure which is to apply to the dispute resolution in such manner as the Secretary of State considers appropriate in order to ensure the just, expeditious, economical and final determination of the dispute.
- (12) In this paragraph, “specified period” means—
 - (a) such period as the Secretary of State specifies in the request being a period of not less than one week and not more than two weeks beginning with the date on which the notice referred to is given; or
 - (b) such longer period as the Secretary of State may allow for the determination of the dispute where the period for determination of the dispute has been extended in accordance with sub-paragraph (16), and where the Secretary of State does so allow, a reference in this paragraph to the specified period is to the period as so extended.
- (13) Subject to sub-paragraph (16), the Secretary of State must—
 - (a) determine the dispute before the end of the period of 21 days beginning with the date on which the matter was referred to the Secretary of State;
 - (b) determine whether the Board may assign new patients to contractors which have closed their lists of patients; and
 - (c) if the Secretary of State determines that the Board may assign new patients to such contractors, determine the contractors to which such new patients may be assigned.
- (14) The Secretary of State must not determine that patients may be assigned to a contractor which was not specified in the determination of the assessment panel under paragraph 41(7)(b).

(15) In the case of a matter referred jointly by contractors in accordance with sub-paragraph (3), the Secretary of State may determine that patients may be assigned to one, some or all of the contractors which referred the matter.

(16) The period of 21 days referred to in sub-paragraph (13) may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by—

- (a) the Secretary of State;
- (b) the Board; and
- (c) the contractor (or contractors) which referred the matter to dispute resolution.

(17) The Secretary of State must—

- (a) record the determination, and the reasons for it, in writing; and
- (b) give notice in writing of the determination (including the record of the reasons) to the parties.

Assignments to closed lists: assignments of patients by the Board

43.—(1) Before the Board assigns a new patient to a contractor, the Board must, subject to sub-paragraph (3)—

- (a) enter into discussions with the contractor regarding the additional support that the Board can offer the contractor; and
- (b) use its best endeavours to provide such appropriate support.

(2) In the discussions referred to in sub-paragraph (1)(a), both parties must use reasonable endeavours to reach agreement.

(3) The requirement in sub-paragraph (1)(a) to enter into discussions applies—

- (a) to the first assignment of a patient to a particular contractor; and
- (b) to any subsequent assignment to that contractor to the extent that it is reasonable and appropriate having regard to—
 - (i) the numbers of patients who have been or may be assigned to it, and
 - (ii) the period of time since the last discussions under sub-paragraph (1)(a) took place.