

## SCHEDULE 3

### Other contractual terms

## PART 5

### Sub-contracting

#### Sub-contracting of clinical matters

**44.**—(1) Subject to sub-paragraph (2), the contractor must not sub-contract any of its rights or duties under the contract in relation to clinical matters to any person unless—

- (a) in all cases, including those duties relating to out of hours services to which paragraph 45 applies, it has taken reasonable steps to satisfy itself that—
  - (i) it is reasonable in all the circumstances to do so, and
  - (ii) the person to whom any of those rights or duties is sub-contracted is qualified and competent to provide the service; and
- (b) except in cases to which paragraph 45 applies, the contractor has given notice in writing to [F1NHS England] of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into effect.

(2) Sub-paragraph (1)(b) does not apply to a contract for services with a health care professional for the provision by that professional personally of clinical services.

(3) A notice given under sub-paragraph (1)(b) must include—

- (a) the name and address of the proposed sub-contractor;
- (b) the duration of the proposed sub-contract;
- (c) the services to be covered by the proposed sub-contract; and
- (d) the address of any premises to be used [F2as practice premises] under the proposed sub-contract.

(4) On receipt of a notice given under sub-paragraph (1)(b), [F1NHS England] may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the contractor must supply such information to [F1NHS England] promptly.

(5) The contractor must not proceed with a sub-contract or, if the sub-contract has already taken effect, the contractor must take steps to terminate it, where—

- (a) [F1NHS England] gives notice in writing of its objection to the sub-contract on the grounds that the sub-contract would—
  - (i) put the safety of the contractor's patients at serious risk, or
  - (ii) put [F1NHS England] at risk of material financial loss,

and notice is given by [F1NHS England] before the end of the period of 28 days beginning with the date on which [F1NHS England] received a notice from the contractor under sub-paragraph (1)(b); or

- (b) the sub-contractor would be unable to meet the contractor's obligations under the contract.

(6) A notice given by [F1NHS England] under sub-paragraph (5)(a) must include a statement of the reasons for [F1NHS England's] objection.

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(7) Sub-paragraphs (1) and (3) to (6) also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where [<sup>F1</sup>NHS England] does not give notice of an objection under sub-paragraph (5), the parties to the contract are deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises any premises the address of which was notified to [<sup>F1</sup>NHS England] under sub-paragraph (3)(d) and, in these circumstances, paragraph 57(1) of Schedule 3 does not apply.

(9) [<sup>F3</sup>Subject to sub-paragraph (9A), a sub-contract] entered into by a contractor must prohibit the sub-contractor from sub-contracting any of the clinical services that it has agreed with the contractor to provide under the sub-contract.

[<sup>F4</sup>(9A) A sub-contract entered into by the contractor may allow the sub-contractor to sub-contract clinical services the contractor has agreed to provide under the Network Contract Directed Enhanced Service Scheme, pursuant to direction 4 of the Primary Medical Services (Directed Enhanced Services) Directions 2020, provided the contractor obtains the written approval of [<sup>F1</sup>NHS England] prior to the sub-contractor sub-contracting those services.]

(10) The contractor must not sub-contract any of its rights or duties under the contract in relation to the provision of essential services to a company or firm that is—

- (a) wholly or partly owned by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;
- (b) formed by or on behalf of the contractor, or from which the contractor derives or may derive a pecuniary benefit; or
- (c) formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where sub-paragraph (11) applies to that company or firm.

(11) This sub-paragraph applies to a company or firm which is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in section 259 of the Act <sup>M1</sup> (sale of medical practices), and Schedule 21 to the Act (prohibition of sale of medical practices), or any regulations made wholly or partly under those provisions of the Act.

#### Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F2** Words in Sch. 3 para. 44(3)(d) substituted (1.10.2022) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 3\) Regulations 2022 \(S.I. 2022/935\)](#), reg. 1(b), **Sch. 1 para. 7(6)**
- F3** Words in Sch. 3 para. 44(9) substituted (1.10.2020) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/911\)](#), reg. 1(2), **Sch. 1 para. 13(a)**
- F4** Sch. 3 para. 44(9A) inserted (1.10.2020) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/911\)](#), reg. 1(2), **Sch. 1 para. 13(b)**

#### Marginal Citations

- M1** Section 259 was amended by paragraph 131 of Schedule 4 to the [Health and Social Care Act 2012 \(c.7\)](#).

## Sub-contracting out of hours services

45.—(1) A contractor must not sub-contract all or part of its duty to provide out of hours services under the contract to a person other than those specified in sub-paragraph (2) without the prior written approval of [F1NHS England].

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

- (a) a person who holds a general medical services contract with [F1NHS England] which includes out of hours services;
- (b) a section 92 provider who is required to provide the equivalent of essential services to its patients during all or part of the out of hours period;
- (c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or
- (d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota agreements.

(3) The requirement in sub-paragraph (1) to obtain prior written approval does not apply in any case where a contractor sub-contracts all or part of its duty to provide out of hours services under the contract on a short term or occasional basis.

(4) An application for approval under sub-paragraph (1) may be made by the contractor in writing to [F1NHS England] and must state—

- (a) the name and address of the proposed sub-contractor;
- (b) the address of any premises to be used [F5as practice premises] under the sub-contract;
- (c) the duration of the proposed sub-contract;
- (d) the services to be covered by the sub-contract; and
- (e) the manner in which the sub-contractor proposes to meet the contractor's obligations under the contract in respect of the services to be covered by the sub-contract.

(5) [F1NHS England] may request such further information relating to arrangements under the proposed sub-contract as appears to it to be reasonable before the end of the period of seven days beginning with the date on which [F1NHS England] received the application under sub-paragraph (4).

(6) Where [F1NHS England] receives an application which meets the requirements specified in sub-paragraph (4), or receives any further information requested under sub-paragraph (5) in relation to an application, [F1NHS England] must, before the end of the period of 28 days beginning with the date on which it received the application or that information (whichever is the latest)—

- (a) approve the application;
- (b) approve the application subject to conditions; or
- (c) refuse the application.

(7) [F1NHS England] must not refuse the application if it is satisfied that the arrangements covered by the proposed sub-contract would, in respect of the services to be provided, enable the contractor to satisfactorily meet its obligations under the contract and would not—

- (a) put the safety of the contractor's patients at serious risk; or
- (b) put [F1NHS England] at risk of material financial loss.

(8) [F1NHS England] must give notice in writing to the contractor of its decision on the application and, where it refuses an application, it must include in the notice a statement of the reasons for its refusal.

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(9) Where [F1NHS England] approves an application under this paragraph, the parties to the contract are deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises, for the purposes of the provision of services in accordance with that application, any premises the address of which was notified to [F1NHS England] under sub-paragraph (4)(b) and, in these circumstances, paragraph 57(1) of Schedule 3 does not apply.

(10) Sub-paragraphs (1) to (9) also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(11) A sub-contract entered into by a contractor must prohibit the sub-contractor from sub-contracting the out of hours services that it has agreed with the contractor to provide under the sub-contract.

#### Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F5** Words in Sch. 3 para. 45(4)(b) substituted (1.10.2022) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 3\) Regulations 2022 \(S.I. 2022/935\)](#), reg. 1(b), **Sch. 1 para. 7(7)**

#### Withdrawal and variation of approval under paragraph 45

**46.**—(1) Subject to paragraph 47, where [F1NHS England] approves an application made under paragraph 45, [F1NHS England] may subsequently give notice in writing to the contractor withdrawing or varying that approval from a date specified in the notice if it is no longer satisfied that the arrangements covered by the sub-contract would enable the contractor to satisfactorily meet its obligations under the contract.

(2) The date specified in the notice given under sub-paragraph (1) may be such date as appears to [F1NHS England] to be reasonable in all the circumstances.

(3) A notice given under sub-paragraph (1) takes effect on whichever is the later of—

- (a) the date specified in the notice; or
- (b) in a case where a dispute arising in relation to the notice given by [F1NHS England] under sub-paragraph (1) is referred to the NHS dispute resolution procedure, the date of the final determination of the dispute under that procedure (or any court proceedings) in favour of [F1NHS England].

(4) This paragraph does not affect any other remedies which [F1NHS England] may have under the contract.

#### Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

#### Withdrawal or variation of approval with immediate effect

**47.**—(1) Where [F1NHS England] approves an application made under paragraph 45, [F1NHS England] may subsequently give notice in writing to the contractor withdrawing or varying that approval with immediate effect if [F1NHS England] is—

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- (a) no longer satisfied that the arrangements covered by the sub-contract would enable the contractor to satisfactorily meet its obligations under the contract; and
  - (b) satisfied that the immediate withdrawal or variation of the approval is necessary to protect the safety of the contractor's patients.
- (2) A notice given under sub-paragraph (1) takes effect on the date on which it is received by the contractor.
- (3) This paragraph does not affect any other remedies which [<sup>F1</sup>NHS England] may have under the contract.

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#### **Textual Amendments**

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 para. 2(3)(4) inserted by [S.I. 2024/575 Sch. 1 para. 7\(a\)\(ii\)](#)
- Sch. 3 para. 18(3)(3A) substituted for Sch. 3 para. 18(3) by [S.I. 2024/575 Sch. 1 para. 10](#)