
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 67

**The National Health Service (Primary Medical Services
Section 17C Agreements) (Scotland) Regulations 2018**

PART 5

CONTENT OF AGREEMENTS

Parties to the agreement

- 15.** An agreement must specify—
- (a) the names of the parties;
 - (b) where a party to the agreement is a partnership—
 - (i) whether or not that partnership is a limited partnership; and
 - (ii) the names of the partners and, in the case of a limited partnership, their status as general or limited partner; and
 - (c) in the case of the Health Board and the provider and each party to the agreement comprising the provider, the address to which official correspondence and notices should be sent.

NHS contracts

- 16.** If the provider is to be treated as a health service body the agreement must state that it is an NHS contract.

Agreements with one or more partnerships

17.—(1) Where a partnership is a party to the agreement, the agreement is to be treated as made with that partnership as it is from time to time constituted, and the agreement must make specific provision to this effect.

(2) Where a partnership is a party to the agreement, the provider must be required by the terms of the agreement to ensure that any person who becomes a member of the partnership after the agreement has been made is bound automatically by the agreement, whether by virtue of the partnership deed or otherwise.

(3) For the avoidance of doubt, in this regulation, a reference to a “partnership” does not include a reference to a limited liability partnership or any member of a limited liability partnership.

Arrangements on termination

- 18.** An agreement must make suitable provision for arrangements on termination of an agreement, including the consequences (whether financial or otherwise) of the agreement ending.

Services generally

19.—(1) An agreement must specify—

- (a) the services to be provided;
- (b) subject to paragraph (2), the address of each of the premises to be used by the provider or any sub-contractor for the provision of such services;
- (c) to whom such services are to be provided;
- (d) the period (if any) for which the services are to be provided; and
- (e) where the agreement does not include the provision of essential services, the area (if any) in which the provider agrees to attend on patients outside the practice premises.

(2) The premises referred to in paragraph (1)(b) do not include—

- (a) the homes of patients; or
- (b) any other premises where services are provided on an emergency basis.

(3) Where on the date on which the agreement is to be made, the Health Board is not satisfied that all or any of the premises specified in accordance with sub-paragraph (1)(b) meet the requirements set out in paragraph 1 of schedule 1, the agreement may not be made unless it includes a plan, drawn up jointly by the Health Board and the provider, which specifies—

- (a) the steps to be taken by the provider to bring the premises up to the relevant standard;
- (b) any financial support that may be made available from the Health Board; and
- (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

Certificates

20.—(1) An agreement must contain a term which has the effect of requiring the provider to issue free of charge to a patient or a patient’s personal representatives any medical certificate of a description prescribed in column 1 of schedule 4 (list of prescribed medical certificates) of the GMS Contracts Regulations, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that schedule, except where, for the condition to which the certificate relates, the patient—

- (a) is being attended by a medical practitioner or alternative provider for the relevant certificate who is not—
 - (i) employed or engaged by the provider;
 - (ii) a party to the agreement;
 - (iii) in the case where a partnership is a party to the agreement, a partner in such a partnership;
 - (iv) in the case where a limited liability partnership is a party to the agreement, a member of the limited liability partnership; or
 - (v) in the case where a company is a party to the agreement, a member of the company; or
- (b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) must not apply where the certificate is a doctor’s statement issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976 (evidence of incapacity for work, limited capability for work and confinement)(1) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985 (medical information)(2).

(1) [S.I. 1976/615](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

(2) [S.I. 1985/1604](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

(3) The agreement must contain a term which has the effect of permitting the provider's obligation to issue any medical certificate prescribed in column 1 of schedule 4 of the *GMS Contracts Regulations* to be discharged on behalf of the provider by an alternative provider for the relevant medical certificate.

(4) In this regulation, "alternative provider" means another health care professional⁽³⁾ who falls within the description of alternative providers specified in column 3 of schedule 4 of the *GMS Contracts Regulations* in relation to the relevant medical certificate prescribed in column 1 of that schedule.

Additional obligations in relation to practice premises

21.—(1) A provider who receives financial assistance must comply with the obligations set out in schedule 4 throughout the period that the provider receives that assistance and a term to this effect must be included in the agreement.

(2) In this regulation, "financial assistance" means financial assistance from a Health Board or the Scottish Ministers in the form of—

- (a) a recurring payment to the provider of—
 - (i) the provider's owner-occupier borrowing costs;
 - (ii) notional rent payments as an owner-occupier; or
 - (iii) reimbursement of the provider's rent payments;in accordance with directions under sections 2(5) and 17E(3A) of the Act⁽⁴⁾; or
- (b) a loan secured over the practice premises.

Finance

22.—(1) Subject to paragraph (2), the agreement must contain a term which has the effect of requiring the Health Board to make payments to the provider under the agreement promptly and in accordance with both the terms of the agreement and, as respects the provision or performance of primary medical services, any other conditions relating to the payment contained in directions by the Scottish Ministers under section 17E(3A) of the Act.

(2) The obligation referred to in paragraph (1) is subject to any right the Health Board may have to set off, against any amount payable to the provider under the agreement, any amount—

- (a) that is owed by the provider to the Health Board under the agreement; or
- (b) that the Health Board may withhold from the provider in accordance with the terms of the agreement or any other applicable provisions contained in directions given by the Scottish Ministers under section 17E(3A) of the Act.

Finance

23. An agreement must contain a term to the effect that where, pursuant to directions of the Scottish Ministers under section 2(5) or section 17E(3A) of the Act, a Health Board is required to make a payment to a provider under an agreement but subject to conditions, those conditions are to be a term of the agreement.

⁽³⁾ "Health care professional" includes nurses and midwives registered with the Nursing and Midwifery Council.

⁽⁴⁾ Section 2(5) was amended by paragraph 19 of schedule 9 of the *National Health Service and Community Care Act 1990 (c.19)*. Section 17E(3A) was inserted by section 2(4) of the *Primary Medical Services (Scotland) Act 2004*.

Fees and charges

24.—(1) An agreement must contain terms relating to fees and charges to the effect that, subject to the provisions of paragraph 5 of schedule 2, the provider must not, directly or indirectly, demand or accept a fee or other remuneration from any patient of the provider for—

- (a) the provision of any treatment whether under the agreement or otherwise; or
- (b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, subject to paragraph (2) of this regulation.

(2) The modifications, referred to in paragraph (1), of paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, are—

- (a) for “contractor” read “provider” in each place where it occurs; and
- (b) for “contract” read “agreement” in each place where it occurs.

Implied agreement terms

25.—(1) Where an agreement fails to include any required term, such a term is to be an implied term of the agreement.

(2) An agreement must contain terms which have the effect that—

- (a) where, or to the extent that, a term is a required term and such a term is omitted, either in whole or in part, from the express terms of the agreement; and
- (b) as a result, the agreement does not expressly include that required term in full,

that required term, to the extent that it was omitted from the express terms of the agreement, is to be an implied term of the agreement.

(3) In the event of, and only to the extent of, any conflict between any term that must be implied in accordance with this regulation, the clauses of the agreement and the schedules of the agreement, the following order of precedence applies:

- (a) any required term that is implied in accordance with this regulation;
- (b) the clauses of the agreement; and
- (c) the schedules of the agreement.

(4) A “required term” is any term which is required to be included in the agreement by virtue of these Regulations, including any term which is required by an amendment, extension, re-enactment, or consolidation of these Regulations, whether before or after the commencement of the agreement.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018, PART 5.