

2005 No. 368

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Primary Medical Services) (Miscellaneous Amendments) Regulations (Northern Ireland) 2005

Made - - - - *4th August 2005*

Coming into operation - *25th August 2005*

The Department of Health, Social Services and Public Safety^(a) in exercise of the powers conferred upon it by Articles 57A, 57B, 57E, 57F, 57G, 106(b) and 107(6) of the Health and Personal Social Services (Northern Ireland) Order 1972^(b) and Article 8(6) of the Health and Personal Social Services (Northern Ireland) Order 1991^(c) and all other powers enabling it in that behalf, in conjunction with the Department of Finance and Personnel, hereby makes the following Regulations:

PART 1
GENERAL

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Primary Medical Services) (Miscellaneous Amendments) Regulations (Northern Ireland) 2005 and shall come into operation on 25th August 2005.

(2) In these Regulations —

“GMS Contract Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004^(d);

“Performers Lists Regulations” means the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004^(e).

(a) See S.I. 1999/283 (N.I. 1) - Article 3(6).

(b) S.I. 1972/1265 (N.I. 14). Articles 57A, 57B, 57E and 57F were inserted by S.I. 2004/311 (N.I. 2) – Article 4. Article 57G was inserted by Article 8 of that Order.

(c) S.I. 1991/194 (N.I. 1).

(d) S.R. 2004/140 as amended by S.R. 2005/230

(e) S.R. 2004/149

PART 2
AMENDMENT OF THE GMS CONTRACTS REGULATIONS

Amendment of Regulation 2 of the GMS Contracts Regulations

2.—(1) Regulation 2 (interpretation) of the GMS Contracts Regulations shall be amended as provided in the following paragraphs.

(2) In the definition of “supplementary prescriber”—

- (a) in paragraph (b)(ii), omit “or”;
- (b) in paragraph (b)(iii), for “and”, in the second place where it occurs, substitute “or”; and
- (c) after paragraph (b)(iii), insert—

“(iv) the part of the register maintained by the Health Professions Council in pursuance of Article 5 of the Health Professions Order 2001(a) relating to—

- (aa) chiropodists and podiatrists;
- (bb) physiotherapists; or
- (cc) radiographers: diagnostic or therapeutic;
- (dd) optometrists, and”.

Amendment of Schedule 5 to the GMS Contracts Regulations

3.—(1) Schedule 5 (other contractual terms) to the GMS Contracts Regulations shall be amended as provided in the following paragraphs.

(2) After paragraph 1 (premises) insert—

“Telephone services

1A.—(1) The contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used—

- (a) by patients to contact the practice for any purpose related to the contract; or
- (b) by any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”.

(3) After paragraph 11 (standards for out of hours services), insert—

“Supply of medicines, etc. by contractors providing out of hours services

11A.—(1) In this paragraph—

“the Charges Regulations” means the Charges for Drugs and Appliances Regulations (Northern Ireland) 1997(b);

“complete course” means the course of treatment appropriate to the patient’s condition, being the same as the amount that would have been prescribed if the patient had been seen during core hours;

“necessary drugs, medicines and appliances” means those drugs, medicines and appliances which the patient requires and for which, the reasonable opinion of the

(a) S.I. 2002/254

(b) S.R. 1997 No. 382; relevant amending instruments are S.R. 1999 No. 166, S.R. 2000 No. 57 and S.R. 2005 No. 97.

contractor, and in the light of the patient's medical condition, it would not be reasonable in all the circumstances for the patient to wait until such time as he could obtain during core hours;

“out of hours performer” means a prescriber, a person acting in accordance with a Patient Group Direction or any other health professional employed or engaged by the contractor who can lawfully supply a drug, medicine or appliance, who is performing out of hours services under the contract;

“Patient Group Direction” has the same meaning as in the Prescriptions Only Medicines (Human Use) Order 1997(a); and

“supply form” means a form provided by the Agency and completed by or on behalf of the contractor for the purpose of recording the provision of drugs, medicines or appliances to a patient during the out of hours period.

(2) Where a contractor whose contract includes the provision of out of hours services has agreed with the Board that its contract should also include the supply of necessary drugs, medicines or appliances to patients at the time that it is providing them with out of hours services, the contractor shall comply with the requirements in sub-paragraphs (3) to (5).

(3) The contractor shall ensure that an out of hours performer—

- (a) only supplies necessary drugs, medicines and appliances;
- (b) supplies the complete course of the necessary medicine or drug required to treat the patient; and
- (c) does not supply—
 - (i) drugs, medicines or appliances which he could not lawfully supply,
 - (ii) appliances which are not listed in Part IX of the Drug Tariff,
 - (iii) restricted availability appliances, except where the patient is a person, or it is for a purpose, specified in the Drug Tariff, or
 - (iv) a drug, medicine or other substance listed in Schedule 1 to the Health and Personal Social Services (General Medical Services Contracts) (Prescription of Drugs Etc) Regulations (Northern Ireland) 2004(b), or a drug, medicine or other substance listed in Schedule 2 to those Regulations other than in the circumstances specified in that Schedule.

(4) The out of hours performer shall record on a separate supply form for each patient any drugs, medicines or appliances supplied to that patient.

(5) The out of hours performer shall—

- (a) ask any person who makes a declaration that the patient does not have to pay the charges specified in regulation 4(1) of the Charges Regulations by virtue of either—
 - (i) entitlement to exemption under regulation 7(1) of the Charges Regulations, or
 - (ii) entitlement to remission of charges under regulation 5 of the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 2004(c),to produce satisfactory evidence of such entitlement, unless the declaration is in respect of entitlement to exemption by virtue of sub-paragraph (a), (c), (d), (e), (f) or (g) of regulation 7(1) of the Charges Regulations, and at the time of the declaration the out of hours performer already has such evidence available to him; and
- (b) if no satisfactory evidence is produced to him (and where it is relevant, none is already available to him as mentioned in paragraph (a)), endorse the supply form to that effect.

(a) S.I. 1997/1830; relevant amending instruments are S.I. 2000/1907 and 2003/2915

(b) S.R. 2004 No. 142

(c) S.I. 2004/91

(6) Subject to sub-paragraph (7), nothing in this paragraph shall prevent an out of hours performer supplying a Scheduled drug or restricted availability appliance in the course of treating a patient under a private arrangement.

(7) The provisions of regulation 24 (fees and charges) apply in respect of the supply of necessary drugs, medicines and appliances as they apply in respect of prescriptions for drugs, medicines and appliances.”.

(4) In paragraph 39, sub-paragraph (3) after “buprenorphine” insert “or diazepam”.

(5) In paragraph 41 (restrictions on prescribing by supplementary prescribers), omit sub-paragraphs (2)(b), (4)(c) and (f) and (6);

(6) Omit paragraph 69 (access to records for the purpose of the Quality Information Preparation Scheme).

(7) In paragraph 79 (notice provisions specific to a contract with a company limited by shares)—

(a) in sub-paragraph (1), after paragraph (a) insert—

“(aa) a new director or secretary is appointed;” and

(b) after sub-paragraph (2), insert—

“(3) A notice under sub-paragraph (1)(aa) shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.”.

(8) In paragraph 98 (variation provisions to a contract with two or more individuals practising in partnership)—

(a) in sub-paragraph (4), omit the words from “sub-paragraphs (1), (2) and (3)” to the need and substitute “the remaining individual shall notify the Board in writing as soon as it is reasonably practicable of the death of his partner and sub-paragraph (4A) or (4B) shall apply.”;

(b) after sub-paragraph (4), insert—

“(4A) If the remaining individual is a general medical practitioner, the contract shall continue with that individual.

(4B) If sub-paragraph (4A) does not apply, the Board may, if it thinks fit, serve notice in writing on the remaining individual confirming that the Board will allow the contract to continue with that individual, for a period specified by the Board of up to six months (the “interim period”) provided that he consents to the Board employing or supplying a general medical practitioner to him for the interim period to assist in the provision of clinical services under the contract.

(4C) Before deciding whether to serve a notice pursuant to paragraph (4B), the Board shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for its area.

(4D) If, during the interim period, the contractor withdraws his consent to the Board employing or supplying a general medical practitioner, the Board shall serve notice in writing on the contractor terminating the contract forthwith.

(4E) If, at the end of the interim period, the contractor has not entered into partnership with a general medical practitioner who is not a limited partner, the Board shall serve notice on the contractor terminating the contract forthwith.”

(c) in sub-paragraphs (5) and (6), for “(4)(b)” substitute “(4)”; and

(d) after sub-paragraph (7), add—

“(8) In this paragraph, “general medical practitioner” has the same meaning as in regulation 4(1).”.

(9) After paragraph 99 (termination by agreement), insert—

“Termination on the death of an individual medical practitioner

99A.—(1) Where the contract is with an individual medical practitioner and that practitioner dies, the contract shall terminate at the end of the period seven days after the date of his death unless, before the end of that period—

- (a) the Board has agreed in writing with the contractor’s personal representatives that the contract should continue for a further period , not exceeding 28 days after the end of the period of seven days; and
- (b) the contractor’s personal representatives have consented in writing to the Board employing or supplying one or more general medical practitioners to assist in the provision of clinical services under the contract throughout the period for which it continues.

(2) In sub-paragraph (1), “general medical practitioner” has the same meaning as in regulation 4(1).

(3) Sub-paragraph (1) does not affect any other rights to terminate the contract which the Board may have under paragraphs 104 to 107.”.

(10) In paragraph 103 (termination by the Board for breach of conditions in regulation 4)—

- (a) in sub-paragraph (1), insert at the beginning “Subject to sub-paragraph (1A),”;
- (b) after sub-paragraph (1) insert—

“(1A) Where the failure of an individual medical practitioner to continue to satisfy the condition specified in regulation 4(1) is the result of a suspension specified in sub-paragraph (3B), sub-paragraph (1) shall not apply unless—

- (a) the contractor is unable to satisfy the Board that it has in place adequate arrangements for the provision of clinical services under the contract for as long as the suspension continues; or
- (b) the Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—
 - (i) the safety of the contractor’s patients is at serious risk, or
 - (ii) the Board is at risk of material financial loss.”;

(c) in sub-paragraph (2), insert at the beginning “Except in a case to which paragraph 98(4) applies,”;

(d) in sub-paragraph (3)(b), for “up to six months” substitute “in accordance with paragraph (3A)”;

(e) after sub-paragraph (3) insert—

“(3A) The period specified by the Board under sub-paragraph (3)(b) shall not exceed—

- (a) six months; or
- (b) in a case where the failure of the contractor to continue to satisfy the condition in regulation 4(2)(a) or, as the case may be, 4(3)(a), is the result of a suspension referred to in sub-paragraph (3B), the period for which that suspension continues.

(3B) The suspensions referred to in sub-paragraphs (1A) and (3A)(b) are suspension—

- (a) by a Fitness to Practise Panel under—
 - (i) section 35D (functions of a fitness to practice panel) of the Medical Act 1983(a) in a health case, other than an indefinite suspension under section 35D(6), or
 - (ii) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of the Act; or

(a) 1983 c. 54; relevant amending instrument is S.I. 2002/3135

(b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A (interim orders) of that Act.

(3C) In paragraph (3B), “health case” has the meaning given in section 35E(4) of the Medical Act 1983.”; and

(f) after sub-paragraph (6) add—

“(7) In sub-paragraphs (3) and (5), “general medical practitioner” has the same meaning as in regulation 4(1).”.

(11) In paragraph 104 (termination by the Board for the provision of untrue etc. information) for the words “by the contractor before the contract” to the end substitute—

“by the contractor—

- (a) before the contract was entered into; or
- (b) pursuant to paragraph 79(2) or (3) or 80(2),

in relation to the conditions set out in regulations 4 and 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.”.

(12) In paragraph 105 (other grounds for termination by the Board), in sub-paragraph (1) after “the existence of the contract” insert “or, if later, on or after the date on which a notice in respect of his compliance with the conditions in regulation 5 was given under paragraph 79(2) or (3) or 80(2).”.

PART 3

AMENDMENT OF THE PERFORMERS LISTS REGULATIONS

Amendment of Schedule 1 of the Performers Lists Regulations

4.—(1) Schedule 1 of the Performers Lists Regulations (information, declarations and undertakings to be included in an application for inclusion in a primary medical services performers list) shall be amended as provided in the following paragraphs.

(2) For paragraph 2(f) and (g) substitute—

- “(f) has in summary proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995(a) discharging him absolutely;
- (g) has accepted and agreed to pay a penalty under section 109A of the Social Security Administration (Northern Ireland) Act 1992(b) (penalty as alternative to prosecution), agreed to pay a penalty under 115A of the Social Security Administration Act 1992(c) (penalty as an alternative to prosecution) or has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal);”.

(3) In paragraph 3, for sub-paragraph (b) (iv) and (v) substitute—

- “(iv) has in summary proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
- (v) has accepted and agreed to pay a penalty under section 109A of the Social Security Administration (Northern Ireland) Act 1992 (penalty as alternative to prosecution), agreed to pay a penalty under 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution) or has

(a) 1995 c. 46

(b) 1992 c. 8. Section 109A was inserted by Article 14 of S.I. 1997/1182 (N.I. 11)

(c) 1992 c. 5. Section 115A was inserted by Section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal);”.

PART 4 TRANSITIONAL PROVISIONS

Transitional arrangements in relation to telephone services and general medical services contracts

5.—(1) Where—

- (a) pursuant to paragraph 96 (variation of a contracts: General) of Schedule 5 to the GMS Contracts Regulations, a general medical services contract has been varied to include a term which gives effect to paragraph 1A of Schedule 5 to the GMS Contracts Regulations (as inserted by regulation 3(2) of these Regulations); and
- (b) as a result of that variation, a contractor is, by virtue of a contract or other arrangement for the provision of telephone services which it entered into before the date on which that variation took effect, in breach of its general medical services contract,

no action shall be taken against the contractor by the Board in respect of that breach, provided that it complies with conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the contractor—

- (a) provides, within the time specified in the request, such details of the contract or other arrangement for telephone services as the Board may request; and
- (b) varies or terminates that contract or other arrangement when required to do so by the Board in accordance with directions from the Department under Article 17 of the Order.

Sealed with the Official Seal of the Department of Health Social Services and Public Safety on 4th August 2005



Dr J F Livingstone

A senior officer of the Department of Health, Social Services and Public Safety

Sealed with the Official Seal of the Department of Finance and Personnel on 4th August 2005



M McIvor

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Order)

These regulations make amendments to certain regulations relating to primary medical services.

Part 2 amends the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 (“the GMS Contracts Regulations”). In particular, it:

Regulation 2(2) amends the definition of supplementary prescriber to include further health professionals;

Regulation 3(2) bans the use of telephone services for the purposes of general medical services contracts which make use of national rate numbers (starting with 087), premium rate numbers (starting with 090) or personal numbers starting with 070;

Regulation 3(3) inserts provisions to enable the supply of medicines to patients by providers of out of hours services where certain conditions are met;

Regulation 3(4) extends the requirements for supply by instalments to diazepam;

Regulation 3(5) removes the restrictions preventing supplementary prescribers from prescribing controlled drugs or unlicensed medicines;

Regulation 3(6) removes the provision relating to the Quality Information Preparation Scheme which ceased to exist on 31st March 2005;

Regulation 3(7) requires contractors who are companies limited by shares to notify the Board of a change of director or secretary and enables the Board to terminate the contract if untrue information is given about the compliance of that director or secretary with the conditions in regulation 5 of the GMS Contracts Regulations;

Regulation 3(8) enables a Board to vary a contract to allow it to continue at least for an interim period after the death of a partner in a two-handed partnership even where the remaining individual is not a medical practitioner;

Regulation 3(9) provides that a contract with an individual medical practitioner shall terminate seven days after that practitioner’s death unless before then, arrangements have been made for it to continue for a further short period;

Regulation 3(10) enables a Board to continue a contract for a limited period with a medical practitioner who no longer meets the conditions in regulation 4 if:

- (i) the reason for that failure is an immediate or interim suspension or health suspension under the Medical Act 1983,
- (ii) adequate arrangements are in place to provide clinical services during the period of suspension, and
- (iii) immediate termination is not necessary on grounds of patient safety or to protect public funds;

Regulation 3(12) clarifies that the grounds for termination of the contract in paragraph 105 of Schedule 5 to the GMS Contracts Regulations only apply to partners, shareholders and directors who join the contracting body after the start of the contract in respect of circumstances which arise after they have so joined (prior circumstances being covered by paragraphs 79 and 104)(regulation 3(12)).

Part 3 of the Regulations amends the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004. Regulation 4 amends references to Scottish legislation in Schedule 1 of those Regulations.

Part 4 makes transitional arrangements in relation to general medical services contracts where the contractor has, before the coming into operation of these Regulations entered into a contract or

other arrangement for the provision of telephone services which will breach the ban on certain types of telephone services inserted by regulation 3(2) of these Regulations. Such contractors will be required to vary or terminate their existing telephone arrangements in accordance with directions from the Department.

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