

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Licensing and Pricing)
Regulations 2013**

Made - - - - 2013

Coming into force in accordance with regulation 1(1)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 100(7) to (9), 105(4), 118(14)(b), 120(2) and (6), 150(1) and 304(9) and (10) of the Health and Social Care Act 2012(a).

A draft of these Regulations was laid before Parliament in accordance with section 304(5)(d), (e) and (g) of the Health and Social Care Act 2012, and was approved by a resolution of each House of Parliament.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Licensing and Pricing) Regulations 2013, and come into force on the day after the day on which these Regulations are made.

(2) In these Regulations—

“the Act” means the Health and Social Care Act 2012;

“business year” means—

- (a) in relation to an NHS foundation trust or an NHS trust, a financial year(b); and
- (b) in relation to any other person who provides health care services for the purposes of the NHS(c), a period of more than six months in respect of which that person or, if applicable, the business of which it forms part, prepares or is required to prepare accounts;

“relevant year” means—

(a) 2012 c. 7. See section 150(1) of the Health and Social Care Act 2012 (“the Act”) for the meaning of “prescribed”.

(b) See section 150(1) of the Act for the meaning of “financial year”.

(c) See section 64(3) and (4) of the Act for the meaning of “health care services” and “the NHS”.

- (a) for the purposes of regulation 2, the last complete financial year preceding the date on which Monitor publishes a notice under section 100(2) of the Act (modification of standard conditions), or, where figures are not available for that financial year, the one immediately preceding it; and
- (b) for the purposes of regulation 5, the last complete financial year preceding the date on which Monitor publishes a notice under section 118(2) of the Act (consultation on proposals for the national tariff), or, where figures are not available for that financial year, the one immediately preceding it.

PART 2

Licensing

Licence modifications

2.—(1) The percentage prescribed for the purposes of section 100(7)(b) of the Act (modification of standard conditions - “objection percentage”) is 20 per cent.

(2) The percentage prescribed for the purposes of section 100(7)(c) of the Act (“share of supply percentage”) is 20 per cent.

(3) The services prescribed for the purposes of section 100(8)(b) of the Act (meaning of “share of supply percentage”) are health care services for the purposes of the NHS provided by relevant licence holders^(a).

(4) For the purposes of section 100(7)(c) of the Act, a relevant licence holder’s share of supply is the proportion (expressed as a percentage) of the total income received by relevant licence holders for the provision by them of health care services for the purposes of the NHS for the relevant year which is—

- (a) received by that licence holder, and
- (b) attributable to services provided by that licence holder—
 - (i) during that financial year, or
 - (ii) during that financial year and a following financial year where payment for the provision of the services becomes payable at the time that such provision first commences.

Calculation of turnover for the purposes of section 105(4) of the Act

3.—(1) For the purposes of section 105(4) of the Act (maximum amount of a variable monetary penalty), the turnover of a person (other than the National Health Service Commissioning Board or a clinical commissioning group) on whom a variable monetary penalty is imposed (P) is to be the applicable turnover in England—

- (a) during the business year preceding the date on which Monitor gives notice of a proposed variable monetary penalty to P under paragraph 1(1) of Schedule 11 to the Act (procedure for discretionary requirements); or
- (b) if figures are not available for that business year, the one immediately preceding it.

(2) Where the business year preceding the date of the notice is more or less than 12 months, the turnover is to be the applicable turnover in that business year divided by the number of months in that business year and multiplied by 12.

(3) Where there is no preceding business year, the turnover is to be the applicable turnover of P for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(a) See section 100(11) of the Act for the meaning of “relevant licence holder”.

(4) Where in the application of paragraph (3) the period for which P has applicable turnover is less than 12 months, the turnover is to be the applicable turnover in that period divided by the number of months in that period and multiplied by 12.

(5) Where P's business consists of two or more parts that each prepare accounts, the applicable turnover shall be calculated by adding together the applicable turnover of each of those parts, save that no account shall be taken of any turnover resulting from the supply of services by one part to the other.

(6) In this regulation—

“applicable turnover” means the amounts, calculated in conformity with accounting practices and principles which are generally accepted in England, which are derived by P from the provision of health care services for the purposes of the NHS (whether or not a licence is required to provide such services), after deduction of trade discounts, value added tax and other taxes based on such amounts.

Calculation of turnover for the purposes of section 105(4) of the Act: NHS Commissioning Board and clinical commissioning groups

4.—(1) For the purposes of section 105(4) of the Act, the turnover of the National Health Service Commissioning Board or of a clinical commissioning group is to be the revenue resource use by the Board or the group—

- (a) during the financial year preceding the date on which Monitor gives notice of a proposed variable monetary penalty to the Board or that group (as the case may be) under paragraph 1(1) of Schedule 11 to the Act (procedure for discretionary requirements); or
- (b) if figures are not available for that financial year, the one immediately preceding it.

(2) Where the period during the preceding financial year for which the Board or a group has revenue resource use is less than 12 months, the turnover is to be the revenue resource use in that period divided by the number of months in that period and multiplied by 12.

(3) Where there is no preceding financial year for a group, the turnover is to be the revenue resource use of the group in the relevant period, divided by the number of months in that period and multiplied by 12.

(4) In this regulation—

“relevant period” means the period in the financial year in which the date of the notice falls ending on the last day of the month preceding the month in which that date falls;

“revenue resource use” means the expenditure of the Board or a clinical commissioning group which is attributable to the matters relating to administration prescribed in regulation 57 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012(a).

PART 3

Pricing

Consultation on the proposed national tariff

5.—(1) The percentage prescribed for the purposes of section 120(2)(a) of the Act (responses to consultation) (meaning of “objection percentage” for clinical commissioning groups) is 51 per cent.

(a) S.I. 2012/2996.

(2) The percentage prescribed for the purposes of section 120(2)(b) of the Act (“objection percentage” for relevant providers^(a)) is 51 per cent.

(3) The percentage prescribed for the purposes of section 120(2)(c) of the Act (“share of supply percentage”) is 51 per cent.

(4) A relevant provider’s share of supply, for the purposes of section 120(2)(c) of the Act, is to be calculated in accordance with paragraphs (5) to (8).

(5) A relevant provider’s share of supply is the proportion (expressed as a percentage) of total tariff income for the relevant year which is—

- (a) received by that provider, and
- (b) attributable to services provided by that provider—
 - (i) during that financial year, or
 - (ii) during that financial year and a following financial year where payment for the provision of the services becomes payable at the time that such provision first commences.

(6) For the purposes of this regulation—

“total tariff income” means the total amount of income received by relevant providers for the delivery of health care services by them for the purposes of the NHS for which there is a national price specified in the national tariff, less—

- (a) any income which is attributable to such of the variations to national prices specified in the national tariff under section 116(4)(a) of the Act (the national tariff) as Monitor considers are intended to reflect unavoidable costs of a person who provides health care services for the purposes of the NHS relative to each other such person; and
- (b) any income which is attributable to the difference in the price for a service determined in accordance with the national tariff and the price payable for that service as modified under section 124 or section 125 of the Act (local modification of prices: agreements and applications).

(7) In paragraph (6)—

- (a) the reference to the “national tariff” is a reference to the version of the national tariff which had effect for the time when payment for the service became due; and
- (b) “unavoidable costs” means costs (including elements of land, building and staff costs) that Monitor considers a person who provides health care services for the purposes of the NHS is unable to influence significantly.

(8) Until, in respect of a financial year, income from the provision of health care services for the purposes of the NHS which are specified in the national tariff (whether published by the Secretary of State under section 2 of the National Health Service Act 2006^(b), or by Monitor under section 116(1) of the Act) is derived only in accordance with a national tariff so published by Monitor—

- (a) references to the national tariff in paragraph (6) (except sub-paragraph (b)) and paragraph (7)(a) are to be read as including a reference to the national tariff published by the Secretary of State;
- (b) references in paragraph (6) to national prices are to be read as including a reference to prices specified in the national tariff published by the Secretary of State; and
- (c) the reference in paragraph (6)(a) to “under section 116(4)(a) of the Act (the national tariff)” is omitted insofar as the variations concerned are specified in the national tariff published by the Secretary of State.

(a) As to “relevant provider” see regulation 6.

(b) 2006 c. 41.

Meaning of “relevant provider”

6.—(1) For the purposes of sections 118(14)(b) and 120(2)(b) and (3)(a) of the Act, “relevant provider” means a person who provides a health care service for the purposes of the NHS for which there is a proposed national price specified in the notice sent by Monitor under section 118(1) of the Act.

(2) For the purposes of section 120(2)(c) and (3)(b) of the Act, “relevant provider” means a person who provides a health care service for the purposes of the NHS for which there is—

- (a) a national price specified in the edition of the national tariff which has effect at the time when the notice is sent, and
- (b) a proposed national price specified in the notice sent by Monitor under section 118(1) of the Act.

(3) For the purposes of section 121 of, and Schedule 12 to, the Act (determination and procedure on reference under section 120)—

- (a) where the objection percentage for relevant providers is equal to or exceeds the percentage prescribed by regulation 5(2) (whether or not the share of supply percentage is equal to or exceeds the percentage prescribed by regulation 5(3)), “relevant provider” has the same meaning as in paragraph (1);
- (b) where the share of supply percentage is equal to or exceeds the percentage prescribed by regulation 5(3) and the objection percentage for relevant providers is less than the percentage prescribed by regulation 5(2), “relevant provider” has the same meaning as in paragraph (2).

(4) In the case of the first notice sent by Monitor under section 118(1) of the Act—

- (a) the reference to the national tariff in paragraph (2)(a) is to be read as a reference to the national tariff published by the Secretary of State under section 2 of the National Health Service Act 2006; and
- (b) the reference to national prices in that provision is to be read as a reference to prices specified in such national tariff.

Signed by authority of the Secretary of State for Health

Parliamentary Under-Secretary of State
Department of Health

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to certain matters to be prescribed for the purposes of Chapters 3 and 4 of Part 3 of the Health and Social Care Act 2012 (“the Act”) (Monitor: licensing and pricing).

Part 2 of these Regulations prescribes certain matters for the purposes of Chapter 3 of Part 3 of the Act. Regulation 2 prescribes the percentages for the purposes of the “objection percentage” and the “share of supply percentage”, as well as prescribing what services are relevant for the purposes of the share of supply percentage and how a relevant licence holder’s share of supply is to be calculated, for the purposes of section 100(7) of the Act (modification of standard conditions of a licence).

Regulations 3 and 4 prescribe how turnover is to be calculated for the purposes of section 105(4) of the Act, which provides that a variable monetary penalty imposed by Monitor must not exceed 10% of the turnover in England of the person on whom it is imposed.

Part 3 of these Regulations prescribes certain matters for the purposes of Chapter 4 of Part 3 of the Act. Regulation 5 prescribes the percentages for the purposes of the “objection percentage” and

the “share of supply percentage”, as well as prescribing how a relevant provider’s share of supply is to be calculated for the purposes of the share of supply percentage, for the purposes of section 120(2) of the Act (responses to consultation on proposals for the national tariff).

Regulation 6 prescribes who is a “relevant provider” for the purposes of sections 118, 120 and 121 of, and Schedule 12 to, the Act (consultation on proposals for the national tariff and determination of references under section 120).

A full impact assessment has not been produced for this instrument as these Regulations have no impact on the private sector or civil society organisations. A full Impact Assessment has been produced in relation to the provisions of the Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

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