



Health Act 1999

1999 CHAPTER 8

PART I

THE NATIONAL HEALTH SERVICE

Evasion of charges, fraud etc.

39 Evasion of charges etc

(1) After section 122 of the 1977 Act there is inserted—

“122A Recovery of other charges and payments

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment, or
 - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services, but that person is not entitled to, or to the benefit of, the payment,
- the amount mentioned in subsection (2) below is recoverable summarily as a civil debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a) above, is the amount of the charge or (where it has been reduced) reduction,
 - (b) in a case within subsection (1)(b) above, is the amount of the payment.
- (3) Where two or more persons are liable under section 122(1) above or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

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- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description,
 - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it,
 - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 122B below, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 122(1) above in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable,
 - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable,
 - (c) in a case within subsection (1)(b) above, the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies,
 - (b) the functions of any responsible authority under this section and section 122B below,
- to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act,
 - (b) drugs and medicines provided in pursuance of this Act,
 - (c) the testing of sight,
 - (d) optical appliances,
 - (e) any other appliances provided in pursuance of this Act.

122B Penalties

- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 122(1) above in respect of the provision of goods or services to which section 122A above applies, or
 - (b) any amount recoverable from him under section 122A above,
- a notice (referred to in this section as a penalty notice) may be served on the person by the responsible authority requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

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- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
 - (a) £100,
 - (b) the amount referred to in subsection (1)(a) or (b) above multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) above to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b) above) may be recovered by the responsible authority summarily as a civil debt.
- (7) But a person is not liable by virtue of a penalty notice—
 - (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) above for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other, or
 - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) In spite of section 126(1) below, no order is to be made under subsection (3) above unless a draft has been laid before, and approved by resolution of, each House of Parliament.

122C Offences

- (1) A person is guilty of an offence if he does any act mentioned in subsection (2) below with a view to securing for himself or another—
 - (a) the evasion of the whole or part of any charge under this Act in respect of the provision of goods or services to which section 122A above applies,
 - (b) the reduction, remission or repayment of any such charge, where he or (as the case may be) the other is not entitled to the reduction, remission or repayment,
 - (c) a payment under this Act (whether to, or for the benefit of, himself or the other) in respect of the cost of obtaining such goods or services, where he or (as the case may be) the other is not entitled to, or to the benefit of, the payment.
- (2) The acts referred to in subsection (1) above are—

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- (a) knowingly making, or causing or knowingly allowing another to make, a false statement or representation, or
 - (b) in the case of any document or information which he knows to be false in a material particular, producing or providing it or causing or knowingly allowing another to produce or provide it.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A person, although he is not a barrister or solicitor, may conduct any proceedings under this section before a magistrates' court if he is authorised to do so by the Secretary of State.
- (5) Proceedings for an offence under this section may be begun within either of the following periods—
- (a) the period of three months beginning with the date on which evidence, sufficient in the opinion of the Secretary of State to justify a prosecution for the offence, comes to his knowledge,
 - (b) the period of 12 months beginning with the commission of the offence.
- (6) For the purposes of subsection (5) above, a certificate purporting to be signed by or on behalf of the Secretary of State as to the date on which such evidence as is mentioned in paragraph (a) of that subsection came to his knowledge is conclusive evidence of that date.
- (7) Where, in respect of any charge or payment under this Act—
- (a) a person is convicted of an offence under this section, or
 - (b) a person pays any penalty charge, and any further sum by way of penalty, recoverable from him under section 122B above,
- he shall not, in a case within paragraph (a) above, be liable to pay any such penalty charge or further sum by way of penalty or, in a case within paragraph (b) above, be convicted of such an offence.
- (8) Subsection (4) of section 122A above applies for the purposes of this section as it applies for the purposes of that.”
- (2) Any power conferred by section 37 of the 1977 Act or section 17 of the National Health Service (Primary Care) Act 1997 to confer functions on the Dental Practice Board includes, in particular, power to confer functions relating to the prosecution of offences concerning charges for the provision of dental treatment and appliances.
- (3) Sections 122A to 122C of the 1977 Act apply to charges which may be made and recovered under section 20 of the National Health Service (Primary Care) Act 1997 as they apply to charges under the 1977 Act which may be recovered under section 122(1) of that Act; and the reference in section 122A(7)(a) to the 1977 Act includes a reference to a pilot scheme (within the meaning of the 1997 Act).

40 Disqualification etc. of Part II practitioners

- (1) For section 46 of the 1977 Act (disqualification of practitioners) there is substituted—

“46 The NHS tribunal

- (1) The tribunal constituted in accordance with Schedule 9 to this Act shall continue under the name of “the NHS Tribunal”; and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Authority representations that—
 - (a) a person who is included in any list meets either of the conditions for disqualification, or
 - (b) a person who has applied to be included in any list meets the second condition for disqualification,the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
 - (a) in the prescribed manner, and
 - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.
- (5) Subsections (6) to (11) below apply for the purposes of this group of sections.
- (6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.
- (7) The second condition for disqualification is that the person concerned—
 - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
 - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
 - (a) a list of medical practitioners undertaking to provide general medical services,
 - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
 - (c) a list of dental practitioners undertaking to provide general dental services,
 - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
 - (e) a list of persons undertaking to provide pharmaceutical services,prepared (in each case) under this Part of this Act.
- (9) “Health scheme” means—
 - (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and

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(b) any prescribed scheme;

and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 46A to 49E below—
- (a) “this group of sections” means this and those sections and Schedule 9 to this Act, and
 - (b) the NHS Tribunal is referred to as the Tribunal.

46A The NHS Tribunal: supplementary

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).
- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
 - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 46(8) above on the practitioner’s behalf, meets that condition, and
 - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 46(7)(a) above occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part of this Act) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—

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- (a) if the Tribunal determine not to disqualify, or conditionally disqualify, him, when they make that determination,
 - (b) if they determine to disqualify, or conditionally disqualify, him and no appeal is brought against the determination, at the end of the period for bringing an appeal,
 - (c) if they determine to disqualify, or conditionally disqualify, him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 46 above is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

46B Powers of NHS Tribunal

- (1) Subsection (2) below applies where the Tribunal are of the opinion—
- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification,
 - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
- (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates, and
 - (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 46(8) above as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when proceedings in the case are finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Authority, the Authority must not enter him in the list and (if he is already included in the list) must remove him from the list.

46C Conditional disqualification etc

- (1) The functions of making disqualifications under section 46B above include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 47 below) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
- (2) Conditions may be imposed by virtue of subsection (1) above with a view to—
- (a) removing any prejudice to the efficiency of the services in question, or

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- (b) preventing any acts or omissions within section 46(7)(a) above, (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Section 46B(4) above applies to a conditional disqualification as it applies to a disqualification.
- (5) The Tribunal may by directions—
 - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part),
 - (b) confer functions on any Health Authority,
 for the purpose of or in connection with the imposition of any conditions by virtue of this section.
- (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”
- (2) For section 47 of the 1977 Act (removal of disqualification) there is substituted—

“47 Review etc. of disqualification

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—
 - (a) if the disqualified or conditionally disqualified person requests a review, or
 - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1) above, the Tribunal may—
 - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect,
 - (b) make a disqualification conditional,
 - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,
 and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (3) If any Health Authority request a review of a conditional disqualification on the ground that—
 - (a) there has been a change in the circumstances by reference to which the conditions were imposed,
 - (b) the person concerned has failed to comply with the conditions, or
 - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,
 the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing services in Scotland or Northern Ireland, the reference in subsection (3) above to a Health Authority includes any corresponding authority under the provisions in force in Scotland or Northern Ireland corresponding to this Part of this Act.

- (5) On a review under subsection (3) above of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
 - (a) there is a national disqualification which the Tribunal do not remove or make conditional,
 - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional, or
 - (c) the Tribunal make a national disqualification,they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
 - (a) in the case of a conditional disqualification, make it unconditional or vary the conditions,
 - (b) make any further disqualification or conditional disqualification, or
 - (c) make a declaration of unfitness,if they are of the opinion that it would be unjust to do so.
- (8) A determination of the Tribunal under this section shall have effect—
 - (a) if no appeal is brought against it, at the end of the period for bringing an appeal,
 - (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”