
STATUTORY INSTRUMENTS

1997 No. 1014

The National Health Service (Fund-Holding Practices) (Scotland) Regulations 1997

PART V

ALLOTTED SUM-AUTHORISED PURPOSES

Payment for drugs, medicines and listed appliances

17.—(1) The members of a fund-holding practice shall, in respect of each month, pay to the relevant Health Board out of the allotted sum an amount determined in accordance with the following paragraphs of this regulation as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice.

- (2) The amount referred to in paragraph (1) shall, subject to paragraph (5), be—
- (a) the net ingredient cost of the drugs, medicines or listed appliances calculated in accordance with paragraphs (3) and (4); minus
 - (b) an amount representing a percentage of the price of the drugs, medicines or listed appliances, which—
 - (i) the Common Services Agency, in its calculation of the remuneration payable to pharmacists in accordance with the Drug Tariff, has determined is the total discount value applicable to items dispensed in that month divided by the total net ingredient cost of those items, multiplied by 100, and
 - (ii) has been published by the Secretary of State.

(3) The net ingredient cost referred to in paragraph (2)(a) of a drug or medicine shall be—

- (a) where the name of the drug or medicine is listed in a list in the Drug Tariff which specifies a price for a specified quantity of that drug or medicine, the price so specified;
- (b) where the name of the drug or medicine is not so listed, the manufacturer's list price.

(4) The net ingredient cost referred to in paragraph (2)(a) of a listed appliance shall be the price of the appliance specified in the Drug Tariff.

(5) Where an amount calculated under paragraph (2)(a) or (b) is in any month not an exact number of pounds sterling, any amount of fifty pence or more shall be rounded up, and any amount less than fifty pence shall be rounded down, to the nearest whole pound sterling.

(6) In this regulation—

“the Common Services Agency” means the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act;

“the Drug Tariff” means the statement published under regulation 9 of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(1);

“listed appliance” means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 27(1) of the Act⁽²⁾;

“manufacturer’s list price” means the price which the manufacturer of a drug or medicine or his agent publishes as being the price of that drug or medicine;

“medicine” includes such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 27(1) of the Act.

Payment for goods and services

18.—(1) Subject to paragraphs (3) to (9) the members of a fund-holding practice shall apply the allotted sum to secure the purchase of such goods and services, other than general medical services, referred to in paragraph (2) as are necessary for the proper treatment of individuals on the lists of patients of the members of the practice and are appropriate in all the circumstances having regard, in particular, to the needs of all those individuals.

(2) The goods and services referred to in paragraph (1) are the goods and services specified, in the case of standard fund-holding practices in Part I, in the case of primary care purchasing practices in Part II, and in the case of purchasing co-operatives in Part III, of a list approved from time to time by the Secretary of State for the purposes of this regulation.

(3) Where—

- (a) the list mentioned in paragraph (2) includes services in connection with the termination of pregnancy; and
- (b) the members of a fund-holding practice do not wish to purchase such services in any financial year,

they may give notice to that effect to the Health Board not later than 6 months from the date on which their grant of recognition had effect, or in any other case by 30th September in the preceding year.

(4) Where—

- (a) the members of the practice have given notice as mentioned in paragraph (3); or
- (b) a patient of a member of a practice either refers herself for such services to a Health Board or an NHS Trust or is referred by a doctor who is not a member of the fund-holding practice,

the cost of any such services as are provided to individuals on the lists of patients of members of the practice in the financial year in question shall be met by the Health Board whose primary functions include the provision of goods and services to those individuals.

(5) The members of a fund-holding practice shall enter into at least one contract for the purchase of such community nursing services as are specified in the list mentioned in paragraph (2) and shall obtain the written consent of the relevant Health Board to that contract.

(6) The relevant Health Board shall consent to a contract for the purchase of the community nursing services mentioned in paragraph (5) if it is satisfied that the proposed provider—

- (a) is either a Health Board or an NHS Trust; and
- (b) has either itself provided, or has assumed responsibility for the relevant establishments or facilities of a body which provided, such community nursing services, whether under an NHS contract or not and whether to the patients of the members of the fund-holding practice or not, for the whole of the calendar year ending on the date from which the proposed services are to be purchased.

(2) 1978 c. 29; section 27(1) was amended by the Health Services Act 1980, section 20(2) and by the National Health Service and Community Care Act 1990, Schedule 9, paragraph 19(7).

(7) The members of a fund-holding practice shall not purchase any of the goods or services specified in a list approved under paragraph (2) for an individual who is on the list of patients of a member of the practice from any person or body in relation to which any member of the practice has a conflict of interest unless—

- (a) the relevant Health Board has consented in writing to the purchase of those goods or services from that person or body, or
- (b) it is impracticable, having regard to the condition of the patient, to obtain the consent and no alternative is available, or
- (c) the body is a health service body other than a fund-holding practice.

(8) The relevant Health Board shall not consent to the purchase of any goods or services from any person or body in relation to which any member of the practice has a conflict of interest unless it is satisfied that no member of the practice will receive any payment from the allotted sum, whether directly or indirectly, which is wholly or mainly attributable to treatment given to individuals who are on the lists of patients of members of the practice otherwise than in accordance with regulation 19.

(9) Where the members of a practice have obtained the consent of the relevant Health Board under paragraph (6) or (7), the members of the practice shall notify that Board in writing forthwith—

- (a) in the case of consent under paragraph (6), of any change in the nature or level of the services in respect of which the consent was given; and
- (b) in the case of consent under paragraph (7), of any change either in the facilities made available, or the charges made for the services provided by the person or body in respect of which the consent was given.

(10) Where a Health Board receives notice as mentioned in paragraph (9), it shall either confirm or withdraw that consent.

(11) For the purposes of this regulation—

- (a) “community nursing services” means—
 - (i) services provided by a health visitor, or
 - (ii) services provided by a nurse;
- (b) a member of a fund-holding practice shall be treated as having a conflict of interest in relation to a body if—
 - (i) he is a director of, or is in the employment of, the body, or
 - (ii) he is a partner of, or is in the employment of, or is a close relative of, a person who is a director of the body, or
 - (iii) where the body is a fund-holding practice, he is a close relative of a member of the practice, or
 - (iv) he is a close relative of a person in the employment of the body, or
 - (v) he has a beneficial interest in the securities of the body, or
 - (vi) he provides or has provided any services to that body;
- (c) a member of a fund-holding practice shall be treated as having a conflict of interest in relation to a person if—
 - (i) he is a close relative of the person, or
 - (ii) he is a partner of the person, or
 - (iii) he is in the employment of the person, or
 - (iv) he provides or has provided any services to the person;
- (d) “close relative” means a husband, wife, brother, sister, father, mother, son or daughter.

Payments to members of the practice

19.—(1) The members of a fund-holding practice may apply the allotted sum for the purposes of paying a medical practitioner who is a member of the practice only—

- (a) in accordance with an arrangement made in pursuance of paragraph (2);
- (b) pursuant to regulation 21(8)(c)(ii); or
- (c) pursuant to regulation 22(2)(d) or (e).

(2) Subject to paragraphs (3) and (4), the members of a fund-holding practice may enter into an arrangement with a medical practitioner who is a member of the practice for the provision by that medical practitioner of services referred to in regulation 18(2) to patients who are on the lists of patients of members of the practice.

(3) No arrangement under paragraph (2) may be made unless the members of the fund-holding practice have obtained the written consent of the relevant Health Board.

(4) The relevant Health Board shall not consent to an arrangement made under paragraph (2) unless it is satisfied that—

- (a) the services to be provided are included in the list referred to in regulation 18(2);
- (b) the medical practitioner with whom the arrangement is to be made to provide those services is suitably qualified, competent and experienced;
- (c) the facilities, including premises, for the provision of those services pursuant to the arrangement are suitable;
- (d) the payments which it is proposed shall be made in respect of the provision of those services are—
 - (i) reasonable,
 - (ii) represent value for money, and
 - (iii) to be made directly to the medical practitioner who provided the services or to the partnership of which he is a member but not to any third party.

(5) Where the members of a practice have obtained the consent of the relevant Health Board under paragraph (3) they shall give notice to that Board of any change in the matters specified in paragraph (4) upon which the consent was based.

(6) Where a relevant Health Board receives notice as mentioned in paragraph (5), it shall either confirm or withdraw the consent.

Payment of salaries

20.—(1) Subject to paragraphs (2) and (3), the members of a fund-holding practice may apply the allotted sum for the purpose of making payments (including any redundancy payments which a member of the practice is required to make by virtue of the Employment Protection (Consolidation) Act 1978(3)) to those employees of members of the practice who are employed—

- (a) to provide treatment to the patients of the practice; or
- (b) in connection with the management or administration of the practice.

(2) Where a Health Board has, before the date on which the members of a fund-holding practice were granted recognition as a fund-holding practice, reimbursed a member of the practice in respect of a proportion of the expenses of employing an employee of his, then the members of the fund-holding practice may apply the allotted sum for the purpose of paying, in respect of periods after that date, only that proportion of the salary of that employee or any person employed in place of that employee to perform substantially the same functions.

(3) The members of a fund-holding practice may apply the allotted sum for the purpose of paying fees to persons engaged to provide services which are necessary for the proper treatment of individuals who are on the lists of patients of the members of the practice, provided that such persons are engaged to provide those services at the practice premises.

(4) The members of a fund-holding practice shall not apply the allotted sum for the purpose of employing or engaging the services of a registered medical practitioner except for the purposes of providing to individuals who are on the lists of patients of members of the practice such services as are included in the list mentioned in regulation 18(2) or as mentioned in regulation 21(8)(c).

(5) The members of the fund-holding practice may apply the allotted sum for the purpose of training employees of members of the practice, provided that the training will be beneficial to the patients of the members of the practice and its cost represents value for money.

Payment for management expenses

21.—(1) Where the allotted sum is determined wholly or partly by reference to the management expenses of the members of the fund-holding practice as the case may be, the amount so determined (in this regulation referred to as the “management allowance”) may be applied in accordance with this regulation.

(2) The management allowance shall be applied only for the purposes of management expenses.

(3) The amount applied out of the allotted sum for the purposes of management expenses shall not exceed the management allowance and no more than 25% (or in the preparatory period 50%) of the management allowance may be applied for the purpose mentioned in paragraph (8)(d).

(4) Where the members of the practice propose to spend the management allowance in accordance with either paragraph (8)(d) for the purpose of buying computers or paragraph 8(i) they shall first obtain the written consent of the Health Board.

(5) The Health Board shall consent to the fund-holding practice’s proposals to buy computers provided it is satisfied that the equipment proposed is suitable for the needs of the fund-holding practice and represents value for money.

(6) The Health Board shall consent to the fund-holding practice’s proposals to spend its management allowance on rent provided it is satisfied that existing accommodation is being properly used, the proposed accommodation is suitable and that the proposed rent represents value for money.

(7) Where the cost of a computer is less than that agreed with the Health Board, any savings shall be spent only in accordance with regulation 22.

(8) For the purposes of this regulation, “management expenses” are—

- (a) the cost of employing staff in connection with the management of the allotted sum;
- (b) the cost of training members of the practice or their staff in connection with the management of the allotted sum;
- (c) the cost, not exceeding such sum as the Secretary of State may specify in directions under section 87B(1) of the Act, of either—
 - (i) employing or engaging (as an assistant or deputy) a registered medical practitioner to provide general medical services to the patients of a member of the practice who is engaged in the management of the allotted sum, or
 - (ii) paying a member of the practice for his time in connection with the management of the allotted sum;
- (d) the cost of acquiring office equipment (including computers);
- (e) the upkeep and running costs of office equipment required for the purposes of the management of the allotted sum, including computer hardware and software running costs not exceeding such sum as the Secretary of State may specify in directions as aforesaid;

- (f) the cost of specialist advice required in connection with the management of the allotted sum;
- (g) the cost of minor internal modifications to any premises from which the members of the practice carry on their practice which are required to provide office accommodation for staff employed in connection with the management of the allotted sum;
- (h) office expenses, including postage, stationery and telephone charges, which are necessarily incurred in connection with the management of the allotted sum; and
- (i) the rent payable on practice premises used by staff employed in connection with the management of the allotted sum.

Savings from the allotted sum

22.—(1) The members of the fund-holding practice may discharge their obligations under regulations 17 and 18 and exercise their powers under regulations 19 and 20 in such a way as to take into account any benefit to individuals on the lists of patients of the members of the practice, which in their opinion, would be derived from making savings to be applied in accordance with the following provisions of this regulation and regulations 17, 18, 19 and 20 shall be construed accordingly.

(2) Subject to paragraph (3) where the accounts relating to the allotted sum paid to members of a fund-holding practice in respect of a financial year have been audited in accordance with section 86(1A) of the Act⁽⁴⁾, the members of the fund-holding practice may continue to apply any part of the allotted sum paid to them in respect of that financial year, for a period of four years after the end thereof, for the purposes specified in regulations 17, 18, 19 and 20 and, in addition, with the consent of the Health Board for any one or more of the following purposes:—

- (a) the purchase of material or equipment which—
 - (i) can be used for the treatment of patients of the practice; or
 - (ii) enhances the comfort or convenience of patients of the practice; or
 - (iii) enables the practice to be managed more effectively and efficiently; or
 - (iv) relates to health education;
- (b) in relation to any premises from which the members of the practice carry on their practice—
 - (i) improvements to the premises, including alterations to or decoration of the premises and the purchase of furniture and furnishings; and
 - (ii) building an extension provided that no acquisition of land is involved;
- (c) the purchase of services in connection with an audit of clinical practice which relates to any of the goods and services which are included in the relevant part of the list of goods and services mentioned in regulation 18(2);
- (d) commissioning research which relates to any of the goods and services included in the relevant part of the list mentioned in regulation 18(2); or
- (e) training for members or employees of the practice which is required in connection with their membership of the practice or, in the case of employees, their duties arising in the course of their employment.

(3) The Health Board shall not consent to the application of any part of an allotted sum for any of the purposes specified in paragraph (2)(a) to (e) unless it is satisfied that the expenditure would—

- (a) be for the benefit of the patients of the members of the practice; and
- (b) represent value for money.

(4) Section 86(1A) was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 36(4).

(4) Where the Health Board refuses its consent under paragraph (3), it shall send to the members of the fund-holding practice a notice stating the reasons for its refusal and informing them of their right to appeal to the Secretary of State under paragraph (5).

(5) The members of the fund-holding practice may, within 28 days beginning with the day on which the notice referred to in paragraph (4) was sent, appeal to the Secretary of State against the Health Board's refusal of consent under paragraph (3).

(6) an appeal to the Secretary of State shall be made in writing and shall include a statement of the grounds of appeal.

(7) On any appeal under paragraph (5), the Secretary of State—

- (a) may, if he thinks fit, hold an oral hearing of the appeal and in such a case shall—
 - (i) appoint one or more persons to hear the appeal and to report to him on it; and
 - (ii) not less than 14 days before the date fixed for the hearing, give notice in writing to the members of the fund-holding practice and to the Health Board; and
- (b) in determining the appeal, shall either confirm or reverse the decision of the Health Board and shall communicate his decision, together with the reasons for it, to the members of the fund-holding practice and to the Health Board.

Recovery of mis-applied amounts

23.—(1) Where it appears to a Health Board that any part of an allotted sum has been applied by the members of a fund-holding practice (or any one or more of them) otherwise than in accordance with regulations 17, 18, 19, 20, 21 or 22, it shall send to each member of the practice notice in writing informing them of the amount which it is alleged has been misapplied and the nature and circumstances of the alleged misapplication and that they may make representations to the Board concerning the matter, either orally or in writing.

(2) Where the members of a fund-holding practice wish to make representations in writing, they shall do so within 2 months of the date on which the notice referred to in paragraph (1) was sent.

(3) Where the members of the practice wish to make representations orally they shall, within 2 weeks of the date on which the notice referred to in paragraph (1) was sent, give notice to that effect to the Health Board and the Board shall, within 6 weeks of the date on which the members of the fund-holding practice sent notice under this paragraph, give them an opportunity of appearing before the Board or a committee, sub-committee, or officer of the Board appointed for the purpose.

(4) Where the Health Board, having taken into account any representations made by the members of the fund-holding practice, is satisfied that any part of an allotted sum has been mis-applied as mentioned in paragraph (1), it shall—

- (a) send to each member of the practice a notice of its determination to that effect;
- (b) include in the notice a statement of the reasons for its decision; and
- (c) inform each member of the practice of the right to appeal to the Secretary of State.

(5) The members of a fund-holding practice may appeal to the Secretary of State against the determination of a Health Board that any part of an allotted sum has been mis-applied as mentioned in paragraph 1(1).

(6) Regulation 5(2) to (12) shall apply in relation to an appeal under paragraph (5) as if—

- (a) a reference to the members of the practice were a reference to the members of the fund-holding practice; and
- (b) a reference to a decision to grant a practice recognition were a reference to a decision that any part of the allotted sum had been mis-applied as mentioned in paragraph (1).

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(7) An amount equal to that part of the allotted sum which the Health Board or, on appeal, the Secretary of State has determined has been mis-applied as mentioned in paragraph (1) shall be recoverable by the Health Board as a debt.