
STATUTORY INSTRUMENTS

1999 No. 2541

**The Health Act 1999 (Fund-holding Practices)
(Transfer of Assets, Savings, Rights and Liabilities
and Transitional Provisions) Order 1999**

PART IV

FINAL BALANCE

Calculation and apportionment of final balance

7.—(1) When a Health Authority is satisfied that all liabilities and costs transferred to the Health Authority or due to be met by it, have been discharged in accordance with articles 4, 5 and 6, the Health Authority shall determine whether there remains any part of the assets transferred under article 2.

(2) The Health Authority shall inform each former member of a fund-holding practice by notice of the unspent proportion of the transferred assets which, including any savings of a residual fund-holding practice for the part financial year 1999–2000, is referred to in this Order as the final balance of the former members of the fund-holding practice.

(3) Where one or more of the former members of the fund-holding practice are included on the medical lists of one or more Health Authorities other than the relevant Health Authority, the final balance of that fund-holding practice shall be apportioned between the relevant Health Authority and such other Health Authority or Authorities in accordance with paragraphs (5) to (7) and, where any such other Health Authority is in England, the relevant Health Authority shall transfer to such other Health Authority or Authorities that proportion of the final balance to which each is entitled.

(4) Where the final balance of a former fund-holding practice is apportioned between Health Authorities the relevant Health Authority shall inform each Health Authority concerned and each former member of the fund-holding practice by notice of the apportionment and the amount of each former member's portion.

(5) The entitlement of each Health Authority shall be the portion of each former member of the fund-holding practice who is on its medical list calculated in accordance with paragraphs (6) and (7).

(6) Where there was a written agreement in force on 30th September 1999 between the former members of the fund-holding practice which made specific provision for the apportionment of savings between those members, the final balance shall be apportioned in accordance with that agreement.

(7) Where there was no such agreement in force on 30th September 1999, the final balance shall be apportioned between the former members of the fund-holding practice so that in respect of each former member of the fund-holding practice his portion of the final balance shall be the same proportion of the total final balance of the practice as the proportion which his list size bore to the sum of all the list sizes of the former members of the fund-holding practice on the apportionment date.

(8) Where a former member of a fund-holding practice dies or retires or leaves the practice following the apportionment of the practice's final balance—

- (a) where there is provision for the relevant contingency in an agreement under paragraph (6), the portion of the former member shall be dealt with in accordance with that agreement;
 - (b) where there is no agreement under paragraph (6) or such an agreement makes no provision for the relevant contingency, the portion of the former member shall be at the disposal of the Health Authority and article 8 shall not apply to that portion.
- (9) In this article, “apportionment date” means—
- (a) in the case of former fund-holding practices which were not recognised fund-holding practices on 30th September 1999, the date on which the former fund-holding practice ceased to be recognised as a fund-holding practice; and
 - (b) 30th September 1999, in the case of residual fund-holding practices which were still recognised on that date.

Influence over final balance

8.—(1) Subject to the remaining paragraphs of this article, the Health Authority shall apply any final balance of the former members of a fund-holding practice as follows—

- (a) for the purposes specified in a balance agreement between itself and the former members, or
- (b) where no balance agreement has been entered into before the agreement date, in discharging liabilities incurred by the former members of the fund-holding practice for the purposes specified in paragraph (4) but only up to a maximum for each financial year of £25,000 or 25% of the total final balance of those members, whichever is the less, such sum to be made available—
 - (i) except where paragraph (9)(b) applies, in each of the financial years 1999–2000 to 2002–2003;
 - (ii) where paragraph (9)(b) applies, in each of the financial years 2000–2001 to 2002–2003, with the sum for the financial year 1999–2000 added to the sum made available in any of those years.

(2) Except where there is still a balance agreement in force on that date, where any part of the final balance is unspent on 1st April 2003 the Health Authority shall no longer be required to spend it in discharging liabilities incurred by the former members of a fund-holding practice.

(3) The final balance shall not be applied in accordance with either sub-paragraph (a) or (b) of article 8(1) until—

- (a) except in the case of the former members of a fund-holding practice which was no longer recognised as a fund-holding practice on 1st April 1998, the annual accounts for the financial year 1998–1999, and in the case of residual fund-holding practices, the part financial year 1999–2000, have been submitted to the Health Authority and audited, in accordance with articles 9 and 10; and
- (b) where apportionment of the final balance is necessary in accordance with article 7, the Health Authority has sent out the notices required by article 7(4).

(4) The final balance may only be applied for one or more of the following purposes—

- (a) the purchase of material or equipment which—
 - (i) is to be used for the treatment (including diagnostic treatment) of patients of the former members of the fund-holding practice, or
 - (ii) enhances the comfort or convenience of patients of the former members of the fund-holding practice,
- (b) payments to—

- (i) dieticians, or
- (ii) counsellors providing advice on diet, alcohol consumption, smoking or other personal health matters,
- (c) the purchase of computers, including hardware and software,
- (d) payments to staff other than salaries and other payments permitted by paragraph 52(3) of the Statement published in accordance with regulation 34 of the National Health Service (General Medical Services) Regulations 1992(1),
- (e) initiatives to improve prescribing,
- (f) payments for—
 - (i) the purchase of health education materials or equipment,
 - (ii) advice on the dissemination of health education to patients,
- (g) in relation to any premises from which the former members carry on their practice—
 - (i) improvements to the premises including alterations to or decoration of the premises and the purchase of furniture and furnishings,
 - (ii) building an extension,

where the proposed improvement or extension is consistent with any investment plan adopted by the Health Authority which exercises functions in relation to the patients of the former fund-holding practice.

(5) Subject to paragraph (7), where a former member of a fund-holding practice withdrew from the fund-holding practice before 1st April 1999 in circumstances other than death or retirement and a proportion of the savings of the fund-holding practice was transferred to the Health Authority in accordance with regulation 9(5) of the 1996 Regulations(2), any such savings which remain with the Health Authority on 1st October 1999 may be spent for any of the purposes set out in paragraph (4) which the former member may require and paragraph (1) shall not apply.

(6) Subject to paragraph (7), where savings of a fund-holding practice from which recognition was removed were transferred to a Health Authority in accordance with regulation 17 of the 1996 Regulations, any such savings which remain with the Health Authority on 1st October 1999 may be spent for any of the purposes set out in paragraph (4) which the former members of that practice may require, and paragraph (1) shall not apply.

(7) Notwithstanding paragraphs (5) and (6) and the repeal of the fund-holding provisions, where the Health Authority has already entered a commitment to spend savings pursuant to regulation 9(5) or 17(3) of the 1996 Regulations for one of the purposes specified in regulation 25 of those Regulations, it may apply those savings for that purpose and this article shall not apply to those savings.

(8) Where the final balance of a former fund-holding practice is apportioned in accordance with article 7, and the relevant Health Authority transfers to another Health Authority an amount representing the portion of a former member of that fund-holding practice, it shall be the Health Authority which receives that portion which shall apply that final balance in accordance with paragraph (1) and enter any balance agreement with that former member.

(9) In this article, “agreement date” means—

- (a) in the case of former members of fund-holding practices other than residual fund-holding practices, 31st October 1999, or

(1) S.I.1992/635, to which there are amendments not relevant to this article.

(2) Regulation 9(5) of the 1996 Regulations was amended by S.I. 1997/747, regulation 7 and 1998/693, regulation 4. Paragraphs (2) to (6) of regulation 9 were revoked by S.I. 1999/261, regulation 13, but by virtue of regulation 29(1) of that instrument continue to apply where a member of a fund-holding practice withdrew from that practice in circumstances other than death or retirement before 1st April 1999.

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- (b) in the case of former members of fund-holding practices which were residual fund-holding practices, 1st October 2000.