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STATUTORY INSTRUMENTS

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**2007 No. 3491**

**The National Health Service (Primary Medical Services)  
(Miscellaneous Amendments) Regulations 2007**

**PART 3**

**AMENDMENT OF THE PMS AGREEMENTS REGULATIONS**

**Amendment of Schedule 5 to the PMS Agreements Regulations**

7. In Schedule 5 (other contractual terms) to the PMS Agreements Regulations—
- (a) in paragraph 14 (application for inclusion in a list of patients)—
    - (i) for sub-paragraph (4)(b), substitute—
      - “(b) on behalf of any adult who lacks the capacity to make such an application, or to authorise such an application to be made on their behalf, by a relative of that person, the primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005(1).”, and
    - (ii) in sub-paragraph (6)(b), for “incapable adult”, substitute “an adult who lacks capacity”;
  - (b) in paragraph 16(3) (which relates to the refusal of applications for inclusion in the list of patients or for acceptance as a temporary resident), for “incapable adult”, substitute “an adult who lacks capacity”;
  - (c) in paragraph 17(1)(a) (which relates to patient preference of practitioner), for “incapable adult”, substitute “an adult who lacks capacity”;
  - (d) for paragraph 18(5)(b) (which relates to removal from the list at the request of the patient), substitute—
    - “(b) in the case of an adult patient who lacks the capacity to make the relevant request or receive the relevant advice, information or notification, a relative of that person, the primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.”;
  - (e) for paragraph 37(1) (which relates to prescribing), substitute—
    - “**37.—**(1) The contractor shall ensure that—
      - (a) any prescription form or repeatable prescription for drugs, medicines or appliances issued or created by a prescriber; and
      - (b) any home oxygen order form issued by a health care professional,

- complies as appropriate with the requirements in paragraphs 38, 38A and 40 to 43.”;
- (f) in paragraph 38 (which relates to prescribing)—
- (i) in sub-paragraph (1), after “Subject to” insert “sub-paragraph (1A) and to”,
  - (ii) after sub-paragraph (1) insert—
    - “(1A) A health care professional shall order any home oxygen services which are needed for the treatment of any patient who is receiving treatment under the contract by issuing a home oxygen order form.”, and
  - (iii) after sub-paragraph (3B), insert—
    - “(3C) A home oxygen order form shall be signed by a health care professional.”;
- (g) in paragraph 38A (electronic prescriptions)—
- (i) after sub-paragraph (1) insert—
    - “(1A) A health care professional may not order home oxygen services by means of an electronic prescription.”,
  - (ii) in sub-paragraph (2), for “an adult incapable of nominating a dispenser”, substitute “an adult who lacks the capacity to nominate a dispenser”, and
  - (iii) for sub-paragraph (2)(b), substitute—
    - “in the case of an adult, that patient’s relative, primary carer, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.”;
- (h) in paragraph 45 (dispensing services: general), for “paragraph 49”, substitute “paragraphs 49 and 49A”;
- (i) for paragraph 49 (provision of dispensing services by Primary Care Trusts), substitute—
- “**49.** A Primary Care Trust may provide dispensing services to its registered patients under the agreement only if one or more of the medical practitioners performing services under the agreement is authorised or required to provide pharmaceutical services under regulation 60 of the Pharmaceutical Regulations (arrangements for provision of pharmaceutical services by doctors) and only to the extent of such authorisation or requirement.”;
- (j) after paragraph 49, insert—

**“Primary Care Trusts who have previously provided dispensing services with the consent of the Strategic Health Authority**

**49A.**—(1) This paragraph (which shall cease to have effect on 30th October 2009) applies where a Primary Care Trust, immediately prior to 28th January 2008, was providing dispensing services to some or all of its patients under the agreement with the consent of the Strategic Health Authority.

(2) In a case to which this paragraph applies the Primary Care Trust shall be regarded as providing such dispensing services in accordance with paragraph 49, and as though one or more of the medical practitioners performing services under the agreement were authorised or required to provide pharmaceutical services under regulation 60 of the Pharmaceutical Regulations (arrangements for provision of pharmaceutical services by doctors), to any patient—

- (i) to whom, immediately before 28th January 2008, the Primary Care Trust provided dispensing services with the consent of the Strategic Health Authority, and

- (ii) who wishes the Primary Care Trust to continue to provide him with such services.”;
- (k) for paragraph 66(2)(b) (which relates to the signing of documents), substitute—
  - “(b) any other clinical documents, apart from—
    - (i) home oxygen order forms, and
    - (ii) those documents specified in sub-paragraph (3).”;
- (l) in paragraph 87(b) (which relates to the making of complaints), for “is incapable of making a complaint”, substitute “lacks the capacity to make a complaint”;
- (m) in paragraph 105(3)(i)(ii) (which relates to termination by the relevant body on fitness grounds), after “Insolvency Act 1986” insert “or Schedule 2A to the Insolvency (Northern Ireland) Order 1989”;
- (n) in paragraphs 107(1) and (5) (which relate to termination by the relevant body: remedial notices and breach notices), for “specified in paragraphs 104 to 106” substitute “specified in paragraphs 104 to 106A”;
- (o) in paragraph 112(1) (which relates to clinical governance), after “effective system of clinical governance” insert “which shall include appropriate standard operating procedures in relation to the management and use of controlled drugs”; and
- (p) after paragraph 112 (clinical governance), insert—

“**112A.** The contractor (other than a contractor which is a Primary Care Trust) shall cooperate with the Primary Care Trust in the discharge of any obligations of the Primary Care Trust or its accountable officer under the Controlled Drugs (Supervision of Management and Use) Regulations 2006(2).”.