
STATUTORY INSTRUMENTS

2013 No. 1617

**The National Health Service (Direct
Payments) Regulations 2013**

PART 2

Direct Payments

Direct payments in respect of persons who lack capacity

5.—(1) A direct payment may be made in respect of a person, other than a child, who lacks capacity to consent to the making of a direct payment to them, if that person—

- (a) is a person for whose benefit anything may or must be provided or arranged by a health body—
 - (i) under the 2006 Act, or
 - (ii) in the case of a CCG or the Board, under any other enactment;
- (b) is not a person described in the Schedule (persons excluded from direct payments); and
- (c) has a representative who consents to the making of direct payments in respect of that person.

(2) In determining whether a direct payment should be made in respect of a person falling within paragraph (1), a health body must have regard to—

- (a) whether it is appropriate for a person with that person's condition;
- (b) the impact of that condition on that person's life; and
- (c) whether a direct payment represents value for money.

(3) This paragraph applies to a person, other than a child, who lacks capacity to consent to the making of a direct payment to them but is a person in respect of whom there is no representative.

(4) Where paragraph (3) applies to a person, a health body may appoint another person it considers appropriate to receive and manage a direct payment in respect of that person.

(5) A representative to whom a direct payment is made in respect of a patient must—

- (a) agree to act on the patient's behalf in relation to the direct payment;
- (b) act in the best interests of the patient when securing the provision of services in respect of which the direct payment is made;
- (c) be responsible as a principal for all contractual arrangements entered into for the benefit of the patient and secured by means of the direct payment;
- (d) use the direct payment in accordance with the care plan; and
- (e) comply with the relevant provisions of these Regulations.

(6) Where a patient has been receiving direct payments on the basis that they were eligible to do so under regulation 3 (persons to whom a direct payment may be made), but the patient no longer has

capacity to consent to the making of a direct payment to them, or a health body reasonably believes that the patient no longer has the necessary capacity, paragraph (7) applies.

(7) Where this paragraph applies, a health body may continue to make direct payments in respect of that patient if—

- (a) the health body is reasonably satisfied that the patient’s lack of capacity is likely to be temporary;
- (b) a representative or nominee in respect of the patient agrees pursuant to paragraph (5)(a) or regulation 6(4)(a), to receive direct payments on behalf of the patient; and
- (c) direct payments are made subject to the condition that the representative or nominee must allow the patient to manage the direct payments themselves for any period in respect of which a health body is satisfied that the patient has capacity to consent to the making of the direct payments and is capable of managing direct payments.

(8) Where a patient without capacity gains or regains capacity to consent to the making of a direct payment to them—

- (a) if the patient and their representative or nominee consents, the health body may continue to make direct payments to the representative or nominee of the patient in accordance with the care plan; or
- (b) if the patient does not consent to the continued making of direct payments to the representative or nominee, the health body must stop making the direct payments; and
- (c) the health body must as soon as reasonably possible review the making of the direct payments in accordance with regulation 14 (monitoring and review of direct payments).