
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the 2012 Regulations”). Regulations 2 to 5 are made under section 6E of the National Health Service Act 2006 (c. 41) (“the Act”), which provides for requirements to be imposed on the National Health Service Commissioning Board (“NHS England”) and clinical commissioning groups (“CCGs”) in the exercise of their functions. These regulations come into force on 1st April 2014. Regulation 6 is made under section 3(1B) of the Act, which allows regulations to prescribe additional persons for whom a CCG has responsibility. The amendment made by regulation 6 comes into force on 16th December 2013.

Regulation 2 amends Part 6 of the 2012 Regulations, which imposes obligations on NHS England and CCGs in relation to NHS Continuing Healthcare. The amendments deal with several different aspects. Firstly, they require NHS England and CCGs to carry out an assessment for NHS Continuing Healthcare before issuing a delayed discharge notice to a local authority in respect of a patient under section 2(2) of the Community Care (Delayed Discharges etc) Act 2003 (c. 5) (regulation 2(1)(a)). Secondly, they enable NHS England and CCGs to rely on recommendations of NHS trusts in relation to NHS Continuing Healthcare made in accordance with the Delayed Discharges (Continuing Care) Directions 2013 (regulation 2(1)(b) and (d)). Thirdly, they amend Schedule 5 to the 2012 Regulations, which lists the people who are disqualified from being members of review panels (regulation 2(2)). Paragraph 2 of Schedule 5 is omitted, meaning that people who provide commissioning support for CCGs, or who work for organisations which do so, may be CCG members of review panels.

Regulation 3 inserts a new Part 6A into the 2012 Regulations, which deals with personal health budgets. These are defined in new regulation 32A of the 2012 Regulations as an amount of money which is identified by NHS England or a CCG as being appropriate for the commissioning of a person’s NHS Continuing Healthcare (for adults) or Continuing Care for Children, the application of which is planned and agreed with the person or their representative. New regulation 32B imposes a duty on NHS England and CCGs to be in a position to commission such services by means of a personal health budget, which can be managed in one or more of three ways. They may take the form of a direct payment (within the meaning of section 12A of the Act), a notional budget (described in new regulation 32B(2)(b) as NHS England or a CCG applying a personal health budget in accordance with the outcome of discussions with the person or their representative as to how best to arrange for the services to be provided to that person), or a real budget (described in new regulation 32B(2)(c) as the transfer of a personal health budget by NHS England or a CCG to a body which then arranges for the services to be provided to the person following discussions with them or their representative, and with the agreement of NHS England or the CCG). NHS England and CCGs have a duty to publicise and promote the availability of personal health budgets and to provide information, advice and other support about them (new regulation 32B(3)). They have to give due consideration to requests for them, and if they decide to offer one, they must decide which is the most appropriate way in which to manage it (new regulation 32B(4)). They also have to provide information, advice and support in relation to the management of a personal health budget which is not a direct payment (the obligations in relation to management of a direct payment are found in the Direct Payments Regulations 2013 (S.I. 2013/1617)) (new regulation 32B(5) and (6)).

Regulation 4 amends Part 8 of the 2012 Regulations, which imposes obligations on NHS England and CCGs in relation to offering patients a choice of provider and consultant led team. The amendments

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to this Part of the 2012 Regulations are also made under section 75 of the Health and Social Care Act 2012 (c. 7), which enables the Secretary of State to make regulations imposing requirements on NHS England and CCGs for the purpose of securing that they protect and promote the right of patients to make choices with respect to treatment or other health care services. The effect of this is that, by virtue of section 76 of the 2012 Act, enforcement powers may be conferred on Monitor in relation to the provisions of Part 8, and these are contained in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500).

Regulation 40 of the 2012 Regulations exempts mental health services from certain of the obligations in relation to choice, and the amendments made by regulation 1 remove this exemption. This means that a patient who requires an elective referral for mental health services is able from 1st April 2014 to choose any clinically appropriate health service provider as regards the first outpatient appointment with a consultant or a consultant led team (or a health care professional or a team led by such a professional), as long as NHS England or a CCG has a commissioning contract with such a provider for the service required.

Regulation 5 amends Part 9 of the 2012 Regulations, which imposes requirements on NHS England and CCGs in relation to waiting times. It amends the reference in regulation 50 of the 2012 Regulations to the Referral to Treatment Consultant-led Waiting Times Rules Suite guidance. This is updated with effect from 1st April 2014 by the removal of a case study which is now no longer applicable as it relates to comprehensive sexual health services, which are commissioned by local authorities under section 2B of the Act.

Regulation 6 amends Schedule 1 to the 2012 Regulations, which identifies the persons for whom a CCG has responsibility in addition to those mentioned in section 3(1A) of the Act. Regulation 6 amends paragraphs 3 and 5 of Schedule 1 to the 2012 Regulations to provide that where the requirements of those paragraphs are satisfied, a CCG is responsible for commissioning NHS Continuing Healthcare services for a person whom it places in a care home or independent hospital situated in the area of a Local Health Board in Wales.

A full impact assessment was produced in respect of the provisions of the Health and Social Care Act 2012 (sections 13 and 20 of which inserted sections 3(1B) and 6E, respectively, into the Act) and a copy is available at: <https://www.gov.uk/government/publications/health-and-social-care-bill-2011-combined-impact-assessments>. No separate impact assessment has been prepared in respect of regulations 2, 5 and 6, as these regulations have no impact on the private sector or civil society organisations. Copies of the impact assessments relating to the provisions of regulations 3 and 1 are annexed to the Explanatory Memorandum which is available alongside these Regulations on the [legislation.gov](https://www.legislation.gov) website.