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STATUTORY INSTRUMENTS

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**2013 No. 364**

**The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013**

**PART 3**

Miscellaneous amendments of the PDS Agreements Regulations relating to the Health and Social Care Act 2012 and other amendments

**Amendment of Schedule 3**

**39.**—(1) Schedule 3 is amended as follows.

(2) In paragraph 3 (violent patients), in sub-paragraphs (1), (4), and (5), in each place, for “the Relevant Body”, substitute “the Board”.

(3) In paragraph 5 (irrevocable breakdown in relationship between contractor and patient), for “the Relevant Body” substitute “the Board”.

(4) In paragraph 6 (mandatory services), in sub-paragraph (a), for “the Relevant Body” substitute “the Board”.

(5) In paragraph 7 (course of treatment), in sub-paragraphs (5)(a)(i) and (iii), and (6), for “the Relevant Body” substitute “the Board”.

(6) In paragraph 8 (treatment plans)—

(a) in sub-paragraph (1) for “the Relevant Body” substitute “the Board”; and

(b) for sub-paragraph (7) substitute—

“(7) The summary referred to in sub-paragraph (6) shall be supplied to the patient on a form supplied for that purpose by the Board within 28 days of that request.”.

(7) In paragraph 9 (completion of courses of treatment)—

(a) for sub-paragraph (1) substitute—

“(1) The contractor shall indicate on the form supplied by the Board pursuant to paragraph 39 whether the course of treatment was completed, and if the course of treatment was not completed, provide the reason for the failure to complete the course of treatment.”; and

(b) in sub-paragraph (2) for “the Relevant Body” substitute “the Board”.

(8) In paragraph 10 (referral to another contractor, a hospital or other relevant service provider for advanced mandatory, domiciliary or sedation services), in sub-paragraph (2)(a)—

(a) for “the Relevant Body”, substitute “the Board”; and

(b) omit “(or where the contractor is the Primary Care Trust, the form it supplies to other contractors for that purpose)”.

(9) In paragraph 17 (treatment under general anaesthesia: prohibition), in sub-paragraph (2), for “a Primary Care Trust” substitute, “the Board, an”.

(10) In paragraph 20 (issue of prescription forms), for sub-paragraph (3) substitute—

“(3) For the purposes of this paragraph, “prescription form” means a form that is supplied for the purposes of paragraph (1) by the Board.”.

(11) For paragraph 22 (dental practitioners), substitute—

**“Dental Practitioners**

**22.** A dental practitioner may perform dental services under the contract provided—

- (a) that dental practitioner is included in the dental performers list held by the Board; and
- (b) that dental practitioner’s inclusion in that list is not subject to a suspension.”.

(12) In paragraph 24 (performers: further requirements), in sub-paragraph (2)(b) for “in a dental performers list”, substitute, “in the dental performers list held by the Board”.

(13) In paragraph 25 (conditions for employment and engagement: dental practitioners performing dental services), for sub-paragraph (1) substitute—

“(1) A contractor must not employ or engage a dental practitioner to perform dental services under the contract unless the contractor has checked that the practitioner meets the requirements in paragraph 22.”.

(14) For paragraph 31 (appraisal and assessment), substitute—

**“Appraisal and assessment**

**31.** The contractor shall ensure that any dental practitioner performing services under the agreement—

- (a) participates in the appraisal system (if any) provided by the Board; and
- (b) co-operates with the Board in relation to patient safety.”.

(15) In paragraph 32 (sub-contracting of clinical matters), in sub-paragraph (2)(a) and (b), for “the Relevant Body” substitute “the Board”.

(16) In paragraph 33 (patient records), in sub-paragraph (3)(d)—

- (a) for “the Relevant Body” substitute “the Board” and
- (b) omit “or, where the contractor is a Primary Care Trust, collated by that Trust”.

(17) In paragraph 35 (patient information), for sub-paragraph (1)(b) substitute—

“(b) such information relating to NHS Charges as is supplied by the Board for the purposes of providing information to patients; and”.

(18) In paragraph 36 and its heading (provision of and access to information: the Relevant Body)

- (a) in sub-paragraph (1) and (2)(a), in each place, for “the Relevant Body”, substitute “the Board”;
- (b) in sub-paragraph (2)(b), for “the Relevant Body’s” substitute “the Board’s”; and
- (c) in the heading, for “the Relevant Body” substitute “the Board”.

(19) In paragraph 38 (inquiries about prescription and referrals), in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”.

(20) In paragraph 39 (notification of a course of treatment, orthodontic course of treatment etc.)—

- (a) in sub-paragraph (1), for “send to the Relevant Body, on a form supplied by the Primary Care Trust” substitute “send to the Board on a form supplied by it”; and
  - (b) omit sub-paragraph (2).
- (21) In paragraph 40 (annual report and review)—
- (a) in sub-paragraphs (1) to (3), in each place, for “the Relevant Body” substitute “the Board”; and
  - (b) in sub-paragraph (1), for “that Body” substitute “the Board”.
- (22) In paragraph 41 and its heading (notification to the Relevant Body)—
- (a) in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”;
  - (b) in sub-paragraph(1)(b), for “the Relevant Body’s” substitute “the Board’s”;
  - (c) in the heading, for “the Relevant Body” substitute “the Board”.
- (23) For paragraph (42) and its heading (notice provisions specific to an agreement with a qualifying body) substitute—

**“Notice provisions specific to an agreement with a dental corporation**

**42.** Where a dental corporation is a party to the agreement, it shall give notice in writing to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts).”.

(24) after paragraph (42) (notice provisions specific to an agreement with a dental corporation), insert—

**“Notice provisions specific to an agreement with a company limited by shares**

**42A.—**(1) Where a company limited by shares is a party to the agreement, it shall give notice in writing to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
  - (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
  - (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
  - (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); or
  - (e) changes take place in relation to the ownership of shares in the company.
- (2) A notice under sub-paragraph (e) must—
- (a) provide the name of any person ceasing to own a share in the company;
  - (b) provide the name of any new person acquiring a share in the company; and

- (c) confirm that following any changes in share ownership, that the company continues to meet the conditions in section 108(1A) of the 2006 Act.

### **Notice provisions specific to an agreement with a limited liability partnership**

**42B.**—(1) Where a limited liability partnership is a party to an agreement it shall give notice to the Board forthwith when—

- (a) it passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (b) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;
- (c) circumstances arise which would enable the court to make a winding up order in respect of the contractor;
- (d) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts); or
- (e) any membership changes are notified in accordance with section 9 of the Limited Liability Partnership Act 2000(1) (registration of membership changes) to the registrar (within the meaning of that Act) in relation to a person who becomes or ceases to be a member or designated member (within the meaning of that Act) and the notice must specify the date on which that person becomes or ceases to be a member or designated member (as the case may be).

(2) A notice under sub-paragraph (e) must confirm—

- (a) that any new member joining the partnership meets the conditions imposed by regulation 4 (general conditions relating to all agreements); and
- (b) following the membership changes, that sub-sections 108(1B) or 108(1C) of the 2006 Act continue to apply to the partnership.”

(25) In paragraph 44 and its heading (entry and inspection by the Relevant Body)—

- (a) in sub-paragraphs (1) and (3)(a), for “the Relevant Body” substitute “the Board”, and
- (b) in the heading for “the Relevant Body” substitute “the Board”.

(26) For the paragraph 46A (entry and inspection by local involvement network representatives) inserted by the [Local Involvement Networks \(Miscellaneous Amendments\) Regulations \(S.I. 2008/1514\)](#)(2) substitute—

#### **“Entry and viewing by Local Healthwatch organisations**

**46A.** The contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying-on of activities on those premises in accordance with regulations made under section 225 (duties of services-providers to allow entry by Local Healthwatch organisations or contractors) of the Local Government and Public Involvement Health Act 2007(3).”

(27) Omit paragraphs 47 (complaints procedure), 48 (making of complaints), 49 (period for making complaints) and 50 (further requirements for complaints procedures).

(28) In paragraph 51 (co-operation with investigations)—

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(1) [2000 c.12](#).

(2) Another paragraph 46A is inserted into Schedule 3 to the PDS Agreements Regulations by [S.I. 2009/309](#), but has since been renumbered 46B by a correction slip.

(3) [2007 c.28](#). Section 225 is amended by section 186(6) to (11) of, and paragraphs 148 and 151 of Schedule 5 and paragraphs 103 and 106 of Schedule 14 to, the 2012 Act.

- (a) in sub-paragraph (1)—
    - (i) immediately after “The contractor” omit “(other than a Primary Care Trust)”; and
    - (ii) in sub-paragraph (1)(a)(i), for “the Relevant Body” substitute “the Board”;
  - (b) in sub-paragraph (2) in the definition of NHS Body—
    - (i) for “a Primary Care Trust” substitute “the Board”; and
    - (ii) omit “a Strategic Health Authority,”; and
  - (c) in sub-paragraph (3)(a), (b) and (c), for “the Relevant Body” substitute “the Board”.
- (29) In paragraph 52 (provision of information)—
- (a) immediately after “The contractor” omit “(other than a Primary Care Trust)”; and
  - (b) for “the Relevant Body”, in each place, substitute “the Board”.
- (30) In paragraph 53 (local resolution of agreement disputes), for “the Relevant Body” substitute “the Board”.
- (31) In paragraph 54 (dispute resolution: non-NHS contracts), in sub-paragraphs (1)(a) and (b), for “the Relevant Body” substitute “the Board”.
- (32) In paragraph 58 (mid-year reviews), in sub-paragraphs (3) to (7), in each place, for “the Relevant Body”, substitute “the Board”.
- (33) In paragraph 59 and its heading (action the Relevant Body can take following a mid-year review)—
- (a) in sub-paragraphs (1), (2), (4) and (5), in each place, for “the Relevant Body”, substitute “the Board”; and
  - (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (34) In paragraph 60 (variation and termination of agreements), in each place, for “the Relevant Body”, substitute “the Board”.
- (35) In paragraph 61 (variation of an agreement: activity under the agreement), in sub-paragraphs (1) and (2), in each place, for “the Relevant Body”, substitute “the Board”.
- (36) In paragraph 62 (termination by agreement), for “the Relevant Body”, substitute “the Board”.
- (37) In paragraph 63 (termination on the death of an individual), in sub-paragraphs (1)(a) and (b), (2) and (3), for “the Relevant Body” substitute “the Board”.
- (38) In paragraph 64 (termination by the contractor), in sub-paragraph (1), for “the Relevant Body” substitute “the Board”.
- (39) In paragraph 65 (late payment notices), in sub-paragraphs (1) to (3), in each place, for “the Relevant Body”, substitute “the Board”.
- (40) In paragraph 66 and its heading (termination by the Relevant Body: general provisions)—
- (a) for “The Relevant Body” substitute “The Board”; and
  - (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (41) In paragraph 67 and its heading (termination by the Relevant Body: notice)—
- (a) in sub-paragraph (1), for “The Relevant Body” substitute “The Board”; and
  - (b) in the heading, for “the Relevant Body” substitute “the Board”.
- (42) In paragraph 68 and its heading (termination by the Relevant Body for the provision of untrue etc. information), for “the Relevant Body”, in each place, substitute “the Board”.
- (43) In paragraph 69 and its heading (termination by the Relevant Body on grounds of suitability etc.)—
- (a) in sub-paragraph (1)—

- (i) for “the Relevant Body” substitute “the Board, and
  - (ii) for sub-paragraph (1)(b), substitute—
    - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
    - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
    - (d) in the case of a limited liability partnership, any member of that partnership.”;
  - (b) in sub-paragraph (2)—
    - (i) in sub-paragraphs (2)(c) and (1), for “the Relevant Body” substitute “the Board”; and
    - (ii) in sub-paragraph (2)(j)(ii), after “(powers of the Court of Session to deal with management of charities)” insert “or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)”;
  - (c) in sub-paragraph (3)—
    - (i) for “A Relevant Body” substitute “The Board”;
    - (ii) in sub-paragraph (3)(a), omit “or”; and
    - (iii) for sub-paragraph (3)(b), substitute—
      - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
      - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
      - (d) in the case of a limited liability partnership, any member of that partnership.”;
  - (d) in sub-paragraph (4), for “a Relevant Body” and for “the Relevant Body”, substitute “the Board” respectively;
  - (e) in sub-paragraph (5)—
    - (i) for “A Relevant Body” substitute “The Board”;
    - (ii) in sub-paragraph (5)(a) omit “or”; and
    - (iii) for sub-paragraph (5)(b) substitute—
      - “(b) in the case of an agreement with a dental corporation, any director, chief executive or secretary of that corporation;
      - (c) in the case of a company limited by shares, any director, chief executive or secretary of that company; or
      - (d) in the case of a limited liability partnership, any member of that partnership.”; and
  - (f) in the heading, for “the Relevant Body” substitute “the Board”.
- (44) In paragraph 70 and its heading (termination by the Relevant Body: patient safety and material financial loss), at each place, for “the Relevant Body” substitute “the Board”.
- (45) In paragraph 71 and its heading (termination by the Relevant Body: remedial notices and breach notices)—
- (a) in sub-paragraphs (1), (2)(b) and (3) to (8), in each place, for “the Relevant Body”, substitute “the Board”;
  - (b) in sub-paragraph (4), for “a Relevant Body” substitute “the Board”; and

- (c) in the heading, for “the Relevant Body”, substitute “the Board”.
- (46) In paragraph 72 and its heading (termination by the Relevant Body: additional provisions specific to contracts with qualifying bodies)—
- (a) in sub-paragraph (1)—
- (i) for “qualifying body”, at each place, substitute, “dental corporation, company limited by shares, or limited liability partnership”; and
- (ii) for “the Relevant Body”, at each place, substitute “the Board”;
- (b) in sub-paragraph (2)—
- (i) for “qualifying body”, at each place, substitute “dental corporation or company limited by shares; and
- (ii) for “the Relevant Body” substitute “the Board”;
- (c) after sub-paragraph (2) insert—
- “(3) Where the contractor is a company limited by shares and the company ceases—
- (a) to be a company limited by shares; or
- (b) to satisfy the conditions in section 108(1A) of the 2006 Act,
- the Board shall serve notice in writing on the contractor terminating the contract forthwith.
- (4) Where the contractor is a limited liability partnership and—
- (a) the partnership ceases to be a limited liability partnership; or
- (b) section 108(1B) or (1C) of the 2006 Act ceases to apply in respect of that partnership,
- the Board shall serve notice in writing on the contractor terminating the contract forthwith.”; and
- (d) for the heading, substitute “Termination by the Board: additional provisions specific to contracts with dental corporations, companies limited by shares and limited liability partnerships”.
- (47) In paragraph 73 (agreement sanctions), in sub-paragraphs (2) to (5), in each place, for “the Relevant Body” substitute “the Board”.
- (48) In paragraph 74 (agreement sanctions and the NHS dispute resolution procedure), in sub-paragraphs (1) to (4), in each place, for “the Relevant Body”, substitute “the Board”.
- (49) In paragraph 75 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) to (3)(c), (4)(a) and (5), in each place, for “the Relevant Body”, substitute “the Board”.
- (50) In paragraph 77 (clinical governance arrangements)—
- (a) in sub-paragraph (1) for “the Relevant Body”, substitute “the Board”; and
- (b) omit sub-paragraph (2).
- (51) After paragraph 77 (clinical governance arrangements), insert—

**“Duty as to education and training**

**77A.** The contractor must co-operate with the Secretary of State in the discharge of the Secretary of State’s duty under section 1F of the 2006 Act (duty as to education and training), or co-operate with Health Education England where Health Education England is discharging that duty by virtue of a direction under section 7 of that Act.”

- (52) In paragraph 81 (gifts)—
- (a) in sub-paragraph (2)(b), for “qualifying body”, substitute “dental corporation”;

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**Changes to legislation:** *There are currently no known outstanding effects for the The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013, Section 39. (See end of Document for details)*

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(b) after sub-paragraph (2)(b), insert—

“(ba) where the agreement is with a company limited by shares, a director, chief executive or secretary of the company;

(bb) where the agreement is with a limited liability partnership, a member of the partnership;” and

(c) in sub-paragraph (6), for “the Relevant Body” substitute “the Board”.

(53) In paragraph 82 (compliance with legislation and guidance), for sub-paragraph (b) substitute—

“(b) have regard to all relevant guidance issued by the Board and the Secretary of State.”.

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**Commencement Information**

**II** [Reg. 39](#) in force at 1.4.2013, see [reg. 1\(1\)](#)



**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service (Primary Dental Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013, Section 39.