
STATUTORY INSTRUMENTS

2015 No. 1862

The National Health Service (General Medical Services Contracts) Regulations 2015

PART 12

Dispute resolution

Local resolution of contract disputes

81.—(1) The contractor and the Board must make reasonable efforts to communicate and cooperate with each other with a view to resolving any dispute which arises out of or in connection with the contract before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) Paragraph (1) does not apply to a dispute relating to the assignment of patients to a closed list which falls to be determined under the NHS dispute resolution procedure by virtue of paragraph 42(1) of Schedule 3 where it is not practicable for the parties to attempt local resolution before the expiry of the period of seven days specified in paragraph 42(4) of that Schedule.

(3) The contractor or the Board may invite the Local Medical Committee (if any) for the area in which the contractor is providing services under the contract to participate in discussions which take place by virtue of paragraph (1).

Dispute resolution: non-NHS contracts

82.—(1) Where a contract is not an NHS contract, any dispute arising out of or in connection with the contract, except matters dealt with under the complaints procedure under Part 11, may be referred for consideration and determination to the Secretary of State—

- (a) if it relates to a period when the contractor was treated as a health service body, by the contractor or the Board; or
- (b) in any other case, by the contractor or, if the contractor agrees in writing, by the Board.

(2) Where a dispute is referred to the Secretary of State under paragraph (1)—

- (a) the procedure to be followed is the NHS dispute resolution procedure; and
- (b) the parties are to be bound by any determination made by the adjudicator.

NHS dispute resolution procedure

83.—(1) The procedure specified in this regulation and in regulation 82 applies to a dispute arising out of, or in connection with, the contract which is referred to the Secretary of State in accordance with—

- (a) section 9(6) of the Act (where the contract is an NHS contract); or
- (b) regulation 82(1) (where the contract is not an NHS contract).

Status: Point in time view as at 01/04/2020.

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(2) The procedure referred to in paragraph (1) does not apply where the contractor refers a matter for determination in accordance with paragraph 42 of Schedule 3 and, in such a case, the procedure specified in that paragraph applies instead.

(3) Where a party wants to refer a dispute for determination under the procedure specified in this regulation, it must send to the Secretary of State a written request for dispute resolution which must include or be accompanied by—

- (a) the names and addresses of the parties to the dispute;
- (b) a copy of the contract; and
- (c) a brief statement of the nature of, and circumstances giving rise to, the dispute.

(4) Where a party wants to refer a dispute, it must send a request under paragraph (3) to the Secretary of State before the end of the period of three years beginning with the date on which the matter giving rise to the dispute occurred or should reasonably have come to the attention of that party.

(5) Where the dispute relates to a contract which is not an NHS contract, the Secretary of State may—

- (a) determine the dispute; or
- (b) if the Secretary of State considers it appropriate, appoint one or more persons to consider and determine the dispute.

(6) Before reaching a decision about who should determine the dispute, either under paragraph (5) or section 9(6) of the Act, the Secretary of State must send a written request to the parties, before the end of the period of seven days beginning with the date on which the dispute was referred, inviting them to make any written representations that they would like to make about the matter under dispute before the end of a specified period.

(7) The Secretary of State must give to a party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution together with the notice under paragraph (6).

(8) The Secretary of State must—

- (a) give a copy of any representations received from a party to the other party to the dispute; and
- (b) request in writing each party to whom a copy of the representations is given to make, within a specified period, any written observations which that party would like to make regarding those representations.

(9) If the Secretary of State decides to appoint a person or persons (“the adjudicator”) to hear the dispute the Secretary of State must—

- (a) inform the parties in writing of the name or names of the adjudicator whom the Secretary of State has appointed; and
- (b) pass to the adjudicator any documents received from the parties under or by virtue of paragraph (3), (6) or (8).

(10) The Secretary of State must comply with the requirement in paragraph (9)—

- (a) following receipt of any representations received from the parties; or
- (b) if no such representations are received before the end of the period for making those representations specified in the request sent under paragraph (6) or (8), at the end of that period.

(11) The adjudicator may, for the purpose of assisting in the consideration of the subject matter of the dispute—

- (a) invite representatives of the parties to appear before, and make oral representations to, the adjudicator either together or, with the agreement of the parties, separately;
 - (b) in advance of hearing any oral representations, provide the parties with a list of matters or questions that the adjudicator would like the parties to give special consideration to; or
 - (c) consult such other persons whose expertise the adjudicator considers is likely to assist in the consideration of the matter.
- (12) Where the adjudicator consults another person under paragraph (11)(c), the adjudicator must—
- (a) give notice in writing to the parties accordingly; and
 - (b) where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.
- (13) In considering the matter, the adjudicator must have regard to—
- (a) any written representations made in response to a request under paragraph (6), but only if they are made before the end of the specified period;
 - (b) any written observations made in response to a request under paragraph (8), but only if they are made before the end of the specified period;
 - (c) any oral representations made in response to an invitation under paragraph (11)(a);
 - (d) the results of any consultation under paragraph (11)(c); and
 - (e) any observations made in accordance with an opportunity given under paragraph (12).
- (14) In this regulation, “specified period” means—
- (a) such period as the Secretary of State specifies in the request being a period of not less than two or not more than four weeks beginning with the date on which the notice referred to is given; or
 - (b) such longer period as the Secretary of State may allow if the Secretary of State considers that there are good reasons for extending the period referred to in sub-paragraph (a) (even after that period has expired), and where the Secretary of State does so allow, a reference in this regulation to the specified period is to the period as so extended.
- (15) The adjudicator may determine the procedure which is to apply to the dispute resolution in such manner as the adjudicator considers appropriate in order to ensure the just, expeditious, economical and final determination of the dispute subject to—
- (a) the other provisions of this regulation;
 - (b) regulation 84; and
 - (c) any agreement between the parties.

Determination of the dispute

84.—(1) The adjudicator's determination and the reasons for it must be recorded in writing and the adjudicator must give notice in writing of that determination (including the record of the reasons) to the parties.

(2) Where a dispute in relation to a contract is referred for determination in accordance with regulation 82(1)—

- (a) section 9(12) and (13) of the Act apply in the same manner as those provisions apply to a dispute referred for determination in accordance with section 9(6) and (7) of the Act; and

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- (b) section 9(5) of the Act applies to any dispute referred for determination in relation to a contract which is not an NHS contract as if it were referred for determination in accordance with section 9(6) of the Act.

Interpretation of this Part

85.—(1) In this Part, “any dispute arising out of or in connection with the contract” includes any dispute arising out of or in connection with the termination of the contract.

(2) A term of the contract which makes provision in respect of the requirements of this Part is to survive even where the contract has terminated.

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