

SCHEDULE 3

Other contractual terms

PART 5

Sub-contracting

Sub-contracting out of hours services

45.—(1) A contractor must not sub-contract all or part of its duty to provide out of hours services under the contract to a person other than those specified in sub-paragraph (2) without the prior written approval of [F1NHS England].

(2) The persons specified in this sub-paragraph are—

- (a) a person who holds a general medical services contract with [F1NHS England] which includes out of hours services;
- (b) a section 92 provider who is required to provide the equivalent of essential services to its patients during all or part of the out of hours period;
- (c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or
- (d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota agreements.

(3) The requirement in sub-paragraph (1) to obtain prior written approval does not apply in any case where a contractor sub-contracts all or part of its duty to provide out of hours services under the contract on a short term or occasional basis.

(4) An application for approval under sub-paragraph (1) may be made by the contractor in writing to [F1NHS England] and must state—

- (a) the name and address of the proposed sub-contractor;
- (b) the address of any premises to be used [F2as practice premises] under the sub-contract;
- (c) the duration of the proposed sub-contract;
- (d) the services to be covered by the sub-contract; and
- (e) the manner in which the sub-contractor proposes to meet the contractor's obligations under the contract in respect of the services to be covered by the sub-contract.

(5) [F1NHS England] may request such further information relating to arrangements under the proposed sub-contract as appears to it to be reasonable before the end of the period of seven days beginning with the date on which [F1NHS England] received the application under sub-paragraph (4).

(6) Where [F1NHS England] receives an application which meets the requirements specified in sub-paragraph (4), or receives any further information requested under sub-paragraph (5) in relation to an application, [F1NHS England] must, before the end of the period of 28 days beginning with the date on which it received the application or that information (whichever is the latest)—

- (a) approve the application;
- (b) approve the application subject to conditions; or
- (c) refuse the application.

Changes to legislation: The National Health Service (General Medical Services Contracts) Regulations 2015, Paragraph 45 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(7) [F1NHS England] must not refuse the application if it is satisfied that the arrangements covered by the proposed sub-contract would, in respect of the services to be provided, enable the contractor to satisfactorily meet its obligations under the contract and would not—

- (a) put the safety of the contractor's patients at serious risk; or
- (b) put [F1NHS England] at risk of material financial loss.

(8) [F1NHS England] must give notice in writing to the contractor of its decision on the application and, where it refuses an application, it must include in the notice a statement of the reasons for its refusal.

(9) Where [F1NHS England] approves an application under this paragraph, the parties to the contract are deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises, for the purposes of the provision of services in accordance with that application, any premises the address of which was notified to [F1NHS England] under sub-paragraph (4)(b) and, in these circumstances, paragraph 57(1) of Schedule 3 does not apply.

(10) Sub-paragraphs (1) to (9) also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(11) A sub-contract entered into by a contractor must prohibit the sub-contractor from sub-contracting the out of hours services that it has agreed with the contractor to provide under the sub-contract.

Textual Amendments

- F1** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), **Sch. para. 1**
- F2** Words in Sch. 3 para. 45(4)(b) substituted (1.10.2022) by [The National Health Service \(General Medical Services Contracts and Personal Medical Services Agreements\) \(Amendment\) \(No. 3\) Regulations 2022 \(S.I. 2022/935\)](#), reg. 1(b), **Sch. 1 para. 7(7)**

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 para. 2(3)(4) inserted by [S.I. 2024/575 Sch. 1 para. 7\(a\)\(ii\)](#)
- Sch. 3 para. 18(3)(3A) substituted for Sch. 3 para. 18(3) by [S.I. 2024/575 Sch. 1 para. 10](#)