
WELSH STATUTORY INSTRUMENTS

2006 No. 358

**The National Health Service (Primary Medical Services)
(Miscellaneous Amendments) (Wales) Regulations 2006**

PART 2

AMENDMENT OF THE GMS CONTRACTS (WALES) REGULATIONS

Amendment of Schedule 6 to the GMS Contracts (Wales) Regulations

11.—(1) Schedule 6 (other contractual terms) to the GMS Contracts (Wales) Regulations shall be amended as provided in the following paragraphs.

(2) After paragraph 1 (premises), insert—

“Telephone services

1A.—(1) From 1 April 2006 the contractor shall not be a party to any contract or other arrangements under which the number for telephone services to be used—

- (a) by patients to contact the practice for any purpose related to the contract; or
- (b) by any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”.

(3) In paragraph 7 (clinical reports), at the end insert—

“(3) This paragraph does not apply in relation to out of hours services provided by a contractor on or after 1 March 2006.”.

(4) In paragraph 11 (standards for out of hours services) after the word “must” insert the words “have regard to and omit “meet”.

(5) After paragraph 11 (standards for out of hours services), insert—

“Supply of medicines etc. by contractors providing out of hours services

11A.—(1) In this paragraph—

“the Charges Regulations” means the National Health Service (Charges for Drugs and Appliances) (Wales) Regulations 2001(1);

(1) S.I.2001/1358 (W.86). Relevant amending instruments are S.I.2001/2539 (W.196), 2004/1018 (W.115), 2004/1605 (W.164), 2005/427 (W.44) and 2005/1915 (W.158)

“complete course” means the course of treatment appropriate to the patient’s condition, being the same as the amount that would have been prescribed if the patient had been seen during core hours;

“necessary drugs, medicines and appliances” means those drugs, medicines and appliances which the patient requires and for which, in the reasonable opinion of the contractor, and in the light of the patient’s medical condition, it would not be reasonable in all the circumstances for the patient to wait until such time as he or she could obtain them during core hours;

“out of hours performer” means a prescriber, a person acting in accordance with a Patient Group Direction or any other health professional employed or engaged by the contractor who can lawfully supply a drug, medicine or appliance, who is performing out of hours services under the contract;

“Patient Group Direction” has the same meaning as in the Prescription Only Medicines (Human Use) Order 1997(2); and

“supply form” means a form provided by a Local Health Board and completed by or on behalf of the contractor for the purpose of recording the provision of drugs, medicines or appliances to a patient during the out of hours period.

(2) Where a contractor whose contract includes the provision of out of hours services has agreed with the Local Health Board that its contract should also include the supply of necessary drugs, medicines and appliances to patients at the time that it is providing them with out of hours services, the contractor shall comply with the requirements in sub-paragraphs (3) to (5).

(3) The contractor shall ensure that an out of hours performer—

- (a) only supplies necessary drugs, medicines and appliances;
- (b) supplies the complete course of the necessary medicine or drug required to treat the patient; and
- (c) does not supply—
 - (i) drugs, medicines or appliances which he or she could not lawfully supply,
 - (ii) appliances which are not listed in Part IX of the Drug Tariff,
 - (iii) restricted availability appliances, except where the patient is a person, or it is for a purpose, specified in the Drug Tariff, or
 - (iv) a drug, medicine or other substance listed in Schedule 1 to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) (Wales) Regulations 2004(3), or a drug, medicine or other substance listed in Schedule 2 to those Regulations other than in the circumstances specified in that Schedule.

(4) The out of hours performer shall record on a separate supply form for each patient any drugs, medicines or appliances supplied to the patient provided that a single supply form may be completed where the out of hours performer supplies necessary drugs, medicines or appliances to two or more persons in a school or other institution in which at least 20 persons normally reside, when the out of hours performer may write on the supply form the name of the school or institution rather than the name of the individual patient.

(5) The out of hours performer shall—

(2) S.I. 1997/1830; relevant amending instruments are S.I. 2000/1917 and 2003/2915.

(3) S.I. 2004/1022 (W.119) as amended by S.I. 2005/366 (W.32).

- (a) ask any person who makes a declaration that the patient does not have to pay the charges, specified in or payable by virtue of regulation 4(1) of the Charges Regulations(4), by virtue of either—
 - (i) entitlement to exemption under regulation 8(1) of the Charges Regulations, or
 - (ii) entitlement to remission of charges under regulation 3 of the National Health Service (Travelling Expenses and Remission of Charges) Regulations 1988(5),to produce satisfactory evidence of such entitlement, unless the declaration is in respect of entitlement to exemption by virtue of regulation 8(1) of the Charges Regulations, and at the time of the declaration the out of hours performer already has such evidence available to him or her; and
- (b) if no satisfactory evidence is produced to him or her (and, where it is relevant, none is already available to him or her as mentioned in paragraph (a)), endorse the supply form to that effect.

(6) Subject to paragraph (7), nothing in this paragraph shall prevent an out of hours performer supplying a Scheduled drug or a restricted availability appliance in the course of treating a patient under a private arrangement.

(7) The provisions of regulation 24 (fees and charges) apply in respect of the supply of necessary drugs, medicines and appliances as they apply in respect of prescriptions for drugs, medicines and appliances. ”.

(6) In paragraph 19 (removal from the list at the request of the patient) in sub-paragraph (5), for “(9), 21(6) and (7), 23 and 26,” substitute “(10), 21(6) and (7), 23, 26 and 28”.

(7) In paragraph 31 (rejection of closure notice by the Local Health Board), after sub-paragraph (8) insert—

“(8A) Subject to sub-paragraph (8B), the contractor’s list of patients shall remain closed for the period specified by the assessment panel in accordance with sub-paragraph (8)(b).

(8B) The contractor’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (8A) if—

- (a) the number of the contractor’s registered patients falls to the number specified by the assessment panel in accordance with sub-paragraph (8)(b) as the number of registered patients which, if that number were reached, would trigger the re-opening of the contractor’s list of patients; or
- (b) the Local Health Board and the contractor agree that the list of patients should re-open.

(8C) If the contractor’s list of patients has re-opened pursuant to sub-paragraph (8B)(a), it shall nevertheless close again if, during the period specified by the assessment panel as the period for which the list should remain closed, the number of the contractor’s registered patients rises to the number specified by the assessment panel in accordance with sub-paragraph (8)(b) as the number of registered patients which, if that number were reached, would trigger the re-closure of the contractor’s list of patients.

(8D) Except in cases where the contractor’s list of patients is already open pursuant to paragraph (8B), the Local Health Board shall notify the contractor in writing between seven and fourteen days before the expiry of the closure period specified in paragraph (8A), confirming the date on which the contractor’s list of patients will re-open.”.

(4) Regulation 4(1) was amended by S.I. 2005/427 (W.44) and 2005/1915 (W.158) which contains additional prospective amendments to regulation 4(1) with effect from 1st April 2006..

(5) S.I. 1988/551 as amended by S.I. 1989/394, 517 and 614, 1990/548, 918 and 661, 1991/557, 1992/1104, 1993/608, 1995/642 and 2352, 1996/410, 1346 and 2362, 1997/748 and 2393, 1998/417, 1999/767 and 2840, 2001/1397 and 3322 a 2003/975.

(8) In paragraph 36 (assignments to closed lists NHS dispute resolution procedure relating to determinations of the assessment panel), in sub-paragraph (13) for “him” substitute “it”.

(9) In paragraph 40 (repeatable prescribing services), in sub-paragraph (2), omit paragraph (a).

(10) In paragraph 43 (restrictions on prescribing by supplementary prescribers) omit sub-paragraphs (2)(b), (4)(c) and (f) and (6).

(11) In paragraph 48 (consent to dispense), in sub-paragraph (6)(a), for “paragraph (2)” substitute “paragraph (1)(c)”.

(12) In paragraph 49 (terms relating to the provision of dispensing services), for sub-paragraph (8) substitute—

“(8) A contractor providing dispensing services shall comply with paragraph 36 (terms of service for doctors who provide pharmaceutical services) of Schedule 2 to the Pharmaceutical Regulations, as if modified as follows—

(a) for “paragraph 34(1)” substitute “paragraph 49(4) of Schedule 6 to the GMS Regulations”;

(b) for “paragraph 35(a)” substitute “paragraph 49(2)(a) of Schedule 6 to the GMS Regulations”;

(c) for “a doctor who is authorised or required by the Local Health Board under regulation 20 to provide drugs and appliances to a patient”, substitute “a contractors providing dispensing services to a patient”; and

(d) for “doctor”, in both places where it appears substitute “medical practitioner”.

(13) In paragraph 52 (qualifications of performers), in sub-paragraph (2)—

(a) for paragraph (c) substitute—

“(c) a GP Registrar who has applied to a Local Health Board to have his or her name included in its medical performers list until the first of the following events arises—

(i) the Local Health Board notifies him or her of its decision on that application;
or

(ii) the end of a period of two months, starting with the date on which his or her vocational training scheme began.”; and

(b) at the end, add—

“(3) In this paragraph, “vocational training scheme” has the meaning given in regulation 21(2) of the National Health Service (Performers Lists) (Wales) Regulations 2004(6).”.

(14) In paragraph 63 (arrangements for GP Registrars), in sub-paragraph (1), omit “for the purpose of being trained by a GP Trainer with the agreement of the Assembly and”.

(15) In paragraph 67 (appraisal and assessment, in sub-paragraph (1)(b), for “NCAA” substitute “NPSA”.

(16) In paragraph 71, for sub-paragraph (2) substitute—

“(2) A notice served under sub-paragraph (1) shall take effect on the date on which it is received by the contractor.”.

(17) In paragraph 72 (patient records), in sub-paragraph (4)(c), for ““Good Practice Guidelines for General Practice Electronic Patient Records” published on 26 September 2003”, substitute, ““Good

Practice Guidelines for General Practice Electronic Patient Records (Version 3.1)” published on 29 July 2005(7).”

(18) Omit paragraph 73 (access to records for the purpose of the Quality Information Preparation Scheme).

(19) In paragraph 76 (provision of information), at the end insert—

“(3) The contractor shall produce the information requested, or, as the case may be, allow access to it—

(a) by such date as has been agreed as reasonable between the contractor and the Local Health Board; or

(b) in the absence of such agreement, within 28 days of the request being made.”.

(20) In paragraph 79 (annual return and review)—

(a) after sub-paragraph (1), insert—

“(1A) Subject to article 50 (annual returns and reviews) of the General Medical Services Transitional and Consequential Provisions (Wales) (No.2) Order 2004(8), one such return may be requested by the Local Health Board at any time during each financial year in relation to such period (not including any period covered by a previous annual return) as may be specified in the request.

(1B) The contractor shall submit the completed return to the Local Health Board—

(a) by such date as has been agreed as reasonable between the contractor and the Local Health Board; or

(b) in the absence of such agreement, within 28 days of the request being made.”; and

(b) at the end insert—

“(6) In this paragraph, “financial year” means the twelve months ending with 31 March.”.

(21) In paragraph 83 (notice provisions specific to a contract with a company limited by shares)—

(a) in sub-paragraph (1), after paragraph (a) insert—

“(aa) a new director or secretary is appointed;” and

(b) after sub-paragraph (2), insert—

“(3) A notice under sub-paragraph (1)(aa) shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.”.

(22) In paragraph 89 (entry and inspection by the Commission for Healthcare Audit and Inspection and by the National Assembly for Wales) for “enter and inspect the premises in accordance with section 66 and 73” substitute “exercise their functions in accordance with sections 66, 67, 72 and 73”.

(23) In paragraph 96 (provision of information about complaints)—

(a) renumber the existing provision as sub-paragraph (1); and

(b) after that provision, insert—

“(2) This paragraph does not apply in relation to out of hours services provided by a contractor on or after 1 March 2006.”.

(7) This document is available on the following website address: www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/PrimaryCare/PrimaryCareComputing.

(8) S.I. 2004/1016 (W.113).

(24) In paragraph 99 (NHS dispute resolution procedure), in sub-paragraph (6), after “the matter”, in both places where it occurs, insert “under dispute”.

(25) In paragraph 102 (variation of a contract : general) in sub-paragraph (1) insert a comma after “Schedule 3” and the words “of this Schedule” after “115”.

(26) In paragraph 103 (variation provisions specific to a contract with an individual medical practitioner) in sub-paragraph (2), before “proposing” insert “is”.

(27) In paragraph 104 (variation provisions specific to a contract with two or more individuals practising in partnership)—

(a) in sub-paragraph (4), omit the words from “sub-paragraphs (1), (2) and (3)” to the end and substitute “the remaining individual shall notify the Local Health Board in writing as soon as is reasonably practicable of the death of his or her partner and sub-paragraph (4A) or (4B) shall apply.”;

(b) after sub-paragraph (4), insert—

“(4A) If the remaining individual is a general medical practitioner, the contract shall continue with that individual.

(4B) If sub-paragraph (4A) does not apply, the Local Health Board may, if it thinks fit, serve notice in writing on the remaining individual confirming that the Local Health Board will allow the contract to continue with that individual, for a period specified by the Local Health Board of up to six months (the “interim period”) provided that he or she consents to the Local Health Board employing or supplying a general medical practitioner to him or her for the interim period to assist in the provision of clinical services under the contract.

(4C) Before deciding whether to serve a notice pursuant to paragraph (4B), the Local Health Board shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for its area.

(4D) If, during the interim period, the contractor withdraws his or her consent to the Local Health Board employing or supplying a general medical practitioner, the Local Health Board shall serve notice in writing on the contractor terminating the contract forthwith.

(4E) If, at the end of the interim period, the contractor has not entered into partnership with a general medical practitioner who is not a limited partner, the Local Health Board shall serve notice on the contractor terminating the contract forthwith.”;

(c) in sub-paragraphs (5) and (6), for “(4)(b)” substitute “(4)”; and

(d) after sub-paragraph (7), add—

“(8) In this paragraph, “general medical practitioner” has the same meaning as in regulation 4(1).”.

(28) After paragraph 105 (termination by agreement), insert—

“Termination on the death of an individual medical practitioner

105A.—(1) Where the contract is with an individual medical practitioner and that practitioner dies, the contract shall terminate at the end of the period of seven days after the date of the practitioner’s death unless, before the end of that period—

(a) the Local Health Board has agreed in writing with the contractor’s personal representatives that the contract should continue for a further period, not exceeding 28 days after the end of the period of seven days; and

(b) the contractor’s personal representatives have consented in writing to the Local Health Board employing or supplying one or more general medical practitioners to

assist in the provision of general medical services under the contract throughout the period for which it continues.

(2) In sub-paragraph (1), “general medical practitioner” has the same meaning as in regulation 4(1).

(3) Sub-paragraph (1) does not affect any other rights to terminate the contract which the Local Health Board may have under paragraphs 112 to 115.”.

(29) In paragraph 109 (termination by the Local Health Board for breach of conditions in regulation 4)—

(a) in sub-paragraph (1), insert at the beginning “Subject to sub-paragraph (1A),”;

(b) after sub-paragraph (1) insert—

“(1A) Where the failure of an individual medical practitioner to continue to satisfy the condition specified in regulation 4(1) is the result of a suspension specified in sub-paragraph (3B), sub-paragraph (1) shall not apply unless—

(a) the contractor is unable to satisfy the Local Health Board that it has in place adequate arrangements for the provision of clinical services under the contract for so long as the suspension continues; or

(b) the Local Health Board is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith—

(i) the safety of the contractor’s patients is at serious risk, or

(ii) the Local Health Board is at risk of material financial loss.”;

(c) in sub-paragraph (2), insert at the beginning “Except in a case to which paragraph 106(4) applies,”;

(d) in sub-paragraph (3), for “of up to six months” substitute “in accordance with paragraph (3A)”;

(e) after sub-paragraph (3) insert—

“(3A) The period specified by the Local Health Board under sub-paragraph (3)(b) shall not exceed—

(a) six months; or

(b) in a case where the failure of the contractor to continue to satisfy the condition in regulation 4(2)(a) or, as the case may be, 4(3)(a), is the result of a suspension referred to in subparagraph (3B), the period for which that suspension continues.

(3B) The suspensions referred to in sub-paragraphs (1A) and (3A)(b) are suspension—

(a) by a Fitness to Practise Panel under—

(i) section 35D (functions of a fitness to practise panel) of the Medical Act 1983⁽⁹⁾ in a health case, other than an indefinite suspension under section 35D(6), or

(ii) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or

(b) by a Fitness to Practise Panel or an Interim Orders Panel under section 41A (interim orders) of that Act.

(3C) In paragraph (3B), “health case” has the meaning given in section 35E(4) of the Medical Act 1983”; and

(f) after sub-paragraph (6), add—

(9) 1983 c. 54; section 35D was inserted by and sections 38(1) and 41A substituted by S.I. 2002/3135.

“(7) In sub-paragraphs (3) and (5), “general medical practitioner” has the same meaning as in regulation 4(1).”.

(30) In paragraph 110 (termination by the Local Health Board for the provision of untrue etc. information) for the words “by the contractor before the contract” to the end substitute—

“by the contractor—

(a) before the contract was entered into; or

(b) pursuant to paragraph 85(2) or (3) or 86(2),

in relation to the conditions set out in regulations 4 and 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.”.

(31) In paragraph 111 (other grounds for termination by the Local Health Board)—

(a) in sub-paragraph (1) after “the existence of the contract” insert “or, if later, on or after the date on which a notice in respect of his or her compliance with the conditions in regulation 5 was given under paragraph 85(2) or (3) or 86(2)”.

(b) in sub-paragraph (2)(e) for “efficiency” substitute “inefficiency”.

(32) In paragraph 117 (termination and the NHS dispute resolution procedure), in sub-paragraph (1), for “or 113(4) or (6)” substitute “113(4) or (6) or 114(2)”.

(33) In paragraph 120 (insurance), in sub-paragraph (3)(b) for “an employee of its in connection with clinical services which that employee” substitute “a person employed or engaged by it in connection with clinical services which that person”.

(34) In paragraph 122 (gifts), in sub-paragraph (2)(f), after “spouse” insert “or civil partner”.