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WELSH STATUTORY INSTRUMENTS

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**2023 No. 953**

**The National Health Service (General Medical Services Contracts) (Wales) Regulations 2023**

**PART 5**

Contracts: required terms

**Parties to the contract**

**13.** A contract must specify—

- (a) the names of the parties to the contract,
- (b) in the case of each party to the contract, the address to which official correspondence and notices should be sent, and
- (c) in the case of a party to the contract which is a partnership—
  - (i) the names of the partners,
  - (ii) whether or not the partnership is a limited partnership, and
  - (iii) in the case of a limited partnership, the status of each partner as a general or limited partner.

**Health service contract**

**14.** If, by virtue of regulation 10 or 11, a contractor is to be regarded as a health service body, the contract must state that it is an NHS contract.

**Contracts with individuals practising in partnership**

**15.** Where a contract is with two or more individuals practising in partnership—

- (a) the contract is to be treated as made with the partnership as it is from time to time constituted, and the contract must make specific provision to this effect; and
- (b) the terms of the contract must require the contractor to ensure that any person who becomes a partner in the partnership after the contract has come into force is automatically bound by the contract whether by virtue of a partnership agreement or otherwise.

**Duration**

**16.—**(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or by virtue of the operation of any other legal provision.

(2) The circumstances referred to in paragraph (1) are that the Local Health Board wishes to enter into a temporary contract for a period not exceeding 24 months for the provision of services to former patients of a contractor, following the termination of that contractor's contract.

(3) Either party to a prospective contract to which paragraph (2) applies may, if it wishes to do so, invite the Local Medical Committee for the area of the Local Health Board to participate in the negotiations intending to lead to such a contract.

### **Unified services**

**17.**—(1) For the purposes of section 43(1) of the Act (requirement to provide certain primary medical services), the services which must, except in circumstances where regulation 18(7) or paragraph 124 of Schedule 3 applies, be provided under a general medical services contract (“unified services”) are the services described in paragraphs (3), (5), (6), (7) and (9), and Schedule 2, during the period specified in paragraph (2).

(2) The period specified in this paragraph is, in the case of—

- (a) paragraphs (3), (5) and (6), at all times within core hours as is appropriate to meet the reasonable needs of its patients, and
- (b) paragraphs (7) and (9), at all times within core hours.

(3) The services described in this paragraph are services required for the management of a contractor’s registered patients and temporary residents who are or believe themselves to be—

- (a) ill, with conditions from which recovery is generally expected,
- (b) terminally ill, or
- (c) suffering from chronic disease,

delivered in the manner determined by the contractor’s practice after consideration of relevant nationally agreed clinical guidance or pathways and in discussion with the patient.

(4) For the purposes of paragraph (3)—

“disease” (“*clefyd*”) means a disease included in the list of three-character categories contained in the latest publication of the International Statistical Classification of Diseases and Related Health Problems, and

“management” (“*rheoli*”) includes—

- (a) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation, and
- (b) the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient’s treatment and care.

(5) The services described in this paragraph are the provision of appropriate ongoing treatment and care to all of the contractor’s registered patients and temporary residents taking into account their specific needs including—

- (a) advice in connection with the patient’s health and relevant health promotion advice, and
- (b) the referral of a patient for services under the Act,

together with the provision of the services specified in paragraph (6).

(6) The services mentioned in paragraph (5) are—

- (a) cervical screening services,
- (b) child health surveillance services,
- (c) childhood vaccinations and immunisation services,
- (d) contraceptive services,
- (e) maternity medical services,
- (f) minor surgery services, and

(g) vaccine and immunisation services.

(7) The services described in this paragraph are primary medical services required for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in its practice area.

(8) In paragraph (7), “emergency” includes any medical emergency whether or not related to services provided under the contract.

(9) The services described in this paragraph are primary medical services required for the immediately necessary treatment of any person falling within paragraph (10) who requests such treatment for the period specified in paragraph (11).

(10) This paragraph applies to a person if—

- (a) that person’s application for inclusion in the contractor’s list of patients has been refused in accordance with paragraph 26 of Schedule 3 and that person is not registered with another provider of unified services (or their equivalent) in the area of the Local Health Board,
- (b) that person’s application for acceptance as a temporary resident has been rejected in accordance with paragraph 26 of Schedule 3, or
- (c) that person is present in the contractor’s practice area for less than 24 hours.

(11) The period specified in this paragraph is, in the case of a person to whom—

- (a) paragraph (10)(a) applies, 14 days beginning with the date on which that person’s application was refused or until that person has been subsequently registered elsewhere for the provision of unified services (or their equivalent), whichever occurs first,
- (b) paragraph (10)(b) applies, 14 days beginning with the date on which that person’s application was rejected or until that person has been subsequently accepted elsewhere as a temporary resident, whichever occurs first, and
- (c) paragraph (10)(c) applies, 24 hours or such shorter period as the person is present in the contractor’s practice area.

### **Services: general**

**18.—**(1) A contract must specify—

- (a) the services to be provided,
- (b) subject to paragraph (4), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services,
- (c) the persons to whom such services are to be provided,
- (d) the area (the contractor’s “practice area”) as respects which persons resident in it are, subject to any other terms of the contract relating to patient registration, entitled to—
  - (i) register with the contractor, or
  - (ii) seek acceptance by the contractor as a temporary resident, and
- (e) whether, beginning with the date on which the contract comes into force, the contractor’s list of patients is open or closed.

(2) A contract must also—

- (a) contain a term which requires the contractor to—
  - (i) make appointments for unified services available to its patients for such proportion of the core hours on each working day as is appropriate to meet the reasonable needs of those patients,
  - (ii) have in place arrangements for its patients to access unified services throughout the core hours in case of emergency,

- (iii) ensure that all practice premises, other than any practice premises specified in paragraph (3), are open and physically accessible to patients—
  - (aa) at all times between 8.30am and 6.00pm on each working day, and
  - (bb) for such other periods in core hours as may be required to enable the contractor to comply with the requirements in regulation 17, regulation 18 and Schedule 3, and
- (b) state the period (if any) for which any services, other than unified services, are to be provided.
- (3) The practice premises specified in this paragraph are those for which the Local Health Board has agreed, in writing with the contractor, more limited opening hours because the practice premises are not one of the contractor's main sites.
- (4) The premises referred to in paragraph (1)(b) do not include—
  - (a) the homes of patients, or
  - (b) any other premises where services are provided on an emergency basis.
- (5) Where, on the date on which the contract is signed, the Local Health Board is not satisfied that all or any of the premises specified in accordance with paragraph (1)(b) meet the requirements set out in paragraph 1 of Schedule 3, the contract must include a plan, drawn up jointly by the Local Health Board and the contractor, which specifies—
  - (a) the steps taken by the contractor to bring the premises up to the relevant standard,
  - (b) any financial support that may be available from the Local Health Board, and
  - (c) the timescale in which the steps referred to in sub-paragraph (a) are to be taken.
- (6) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor's list of patients is closed the contract must also specify in relation to that closure each of the items listed in paragraph 39(2) of Schedule 3.
- (7) The Local Health Board may, in exceptional circumstances or for protected learning time, give prior written agreement for contractors to temporarily reduce the hours during which they provide unified services on a working day, subject to the contractor having in place arrangements for its patients to maintain access to unified services throughout the core hours on that working day in case of emergency.

## **Certificates**

**19.—(1)** A contract must contain a term which has the effect of requiring the contractor to issue, free of charge to a patient or patient's representative, any medical certificate of a description prescribed in column 1 of Schedule 1, which is reasonably required under, or for the purposes of, the enactments specified in relation to the certificate in column 2 of that Schedule, subject to paragraph (2).

(2) A certificate must not be issued where, for the condition to which the certificate relates, the patient is—

- (a) being attended to by a medical practitioner who is not—
  - (i) employed or engaged by the contractor,
  - (ii) in the case of a contract with two or more persons practising in a partnership, one of those persons, or
  - (iii) in the case of a contract with a company limited by shares, one of the persons legally or beneficially owning shares in that company, or
- (b) not being treated by or under the supervision of a health care professional.

(3) The exception in paragraph (2)(a) does not apply where the certificate is issued in accordance with—

- (a) regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976<sup>(1)</sup> (evidence of incapacity for work, limited capability for work and confinement), or
- (b) regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985<sup>(2)</sup> (medical information).

## **Finance**

**20.**—(1) The contract must contain a term which has the effect of requiring payments to be made under the contract promptly and in accordance with—

- (a) the terms of the contract, and
- (b) any other conditions relating to payment contained in directions given by the Welsh Ministers under section 12 (exercise of functions) or section 45 of the Act (GMS contracts: payments).

(2) The contract must contain a term to the effect that where, in accordance with directions given by the Welsh Ministers under section 12 (exercise of functions) or section 45 (GMS contracts: payments) of the Act, the Local Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions must be a term of the contract.

(3) The obligation referred to in paragraph (1) is subject to any right the Local Health Board may have to set off against any amount payable to the contractor under the contract any amount—

- (a) that is owed by the contractor to the Local Health Board under the contract; or
- (b) that the Local Health Board may withhold from the contractor in accordance with the terms of the contract or any applicable provisions contained in directions given by the Welsh Ministers under section 45 of the Act.

## **Fees, charges and financial interests**

**21.**—(1) The contract must contain terms relating to fees, charges and financial interests which have the same effect as those set out in paragraphs (2) to (9).

(2) The contractor must not, either for itself or through any other person, demand or accept from any of its patients a fee or other remuneration for its own benefit or for the benefit of another person in respect of—

- (a) the provision of any treatment whether under the contract or otherwise, or
- (b) any prescription or repeatable prescription for any drug, medicine or appliance,

except in the circumstances set out in regulation 22.

(3) The contractor must not, either for itself or through any other person, demand or accept from any of its patients a fee or other remuneration for its own benefit or for the benefit of another person, for the completion, in relation to the patient's mental health, of—

- (a) the debt and mental health evidence form, or
- (b) any examination of the patient or of the patient's medical record in order to complete the form, the purpose of which is to assist creditors in deciding what action to take where the debtor has a mental health problem.

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(1) S.I. 1976/615. Regulation 2(1) was substituted by S.I. 2010/137.

(2) S.I. 1985/1604. Regulation 2(1) was substituted by S.I. 2010/137.

(4) The contractor must not, either for itself or through any other person, demand or accept from any of its patients a fee or other remuneration for its own benefit or for the benefit of another person, for the preparation or provision of—

- (a) evidence that the individual is, or is at risk of being, a victim of domestic abuse which is intended to support an application by the individual for civil legal services, or
- (b) any other evidence that the individual is, or is at risk of being, a victim of domestic abuse which is of a description specified in regulations made by the Welsh Ministers or Secretary of State.

(5) Subject to paragraph (6), where—

- (a) a person—
  - (i) applies to a contractor for the provision of unified services, and
  - (ii) claims to be on that contractor's list of patients, and
- (b) the contractor has reasonable doubts about that person's claim,

the contractor must give any necessary treatment to that person and may demand and accept from that person a reasonable fee in accordance with regulation 22(e).

(6) Where—

- (a) a person from whom the contractor has received a fee under regulation 22(e) applies to the Local Health Board for a refund within 14 days beginning with the date of the payment of the fee (or within such longer period not exceeding 4 weeks as the Local Health Board may allow if it is satisfied that the failure to apply within 14 days was reasonable); and
- (b) the Local Health Board is satisfied that that person was on the contractor's list of patients when the treatment was given,

the Local Health Board may recover the amount of the fee from the contractor, by deduction from the contractor's remuneration or otherwise, and must pay the amount recovered to the person who paid the fee.

(7) The contractor must in the provision of services to patients under the contract—

- (a) provide information regarding services it provides otherwise than under the contract only where appropriate and in accordance with the restriction on advertising private services in paragraph 134 of Schedule 3,
- (b) where it does provide such information, ensure that the information provided is fair and accurate, and
- (c) where the other services are available to the patient as part of the health service established under section 1(1) of the Act (Welsh Ministers' duty to promote health service), to inform the patient—
  - (i) that the services are so available,
  - (ii) of any charge that applies to that health service and, if no such charge applies, that the service is free, and
  - (iii) how to access that health service.

(8) The contractor must in making a decision—

- (a) to refer a patient for other services under the Act, or
- (b) to prescribe any drug, medicine or appliance to a patient,

make that decision without regard to its own financial interests.

(9) The contractor must not inform patients that any prescription for any drug, medicine or appliance must be dispensed only by the contractor or by a person with whom the contractor is associated.

## **Circumstances in which fees and charges may be made**

- 22.** The contractor may demand or accept (directly or indirectly) a fee or other remuneration—
- (a) from any statutory body for services rendered for the purposes of that body’s statutory functions;
  - (b) from any body, employer or school for—
    - (i) a routine medical examination of persons for whose welfare the body, employer or school is responsible, or
    - (ii) examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;
  - (c) for treatment which is not primary medical services or otherwise required under the contract and which is given—
    - (i) at accommodation made available in accordance with the provisions of paragraph 11 of Schedule 5 to the Act (accommodation and services for private patients), or
    - (ii) in a registered nursing home which is not providing services under the Act,if, in either case, the person administering the treatment is serving on the staff of a hospital providing services under the Act as a specialist providing treatment of the kind the patient requires and if, within 7 days of giving the treatment, the contractor or the person providing the treatment supplies the Local Health Board, on a form provided by the Local Health Board for that purpose, with such information as the Local Health Board may require;
  - (d) under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);
  - (e) when the contractor treats a patient under regulation 21(5), in which case the contractor is entitled to demand and accept a reasonable fee (recoverable in certain circumstances under regulation 21(6) for any treatment given, if the contractor gives the patient a receipt;
  - (f) for attending and examining (but not otherwise treating) a patient—
    - (i) at a police station, at the patient’s request, in connection with possible criminal proceedings against the patient;
    - (ii) for the purpose of creating a medical report or certificate, at the request of a commercial, educational or not-for-profit organisation;
    - (iii) for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the patient;
  - (g) for treatment consisting of an immunisation for which no remuneration is payable by the Local Health Board and which is requested in connection with travel abroad;
  - (h) for a medical examination—
    - (i) to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or
    - (ii) for the purpose of creating a report—
      - (aa) relating to a road traffic accident or criminal assault, or
      - (bb) that offers an opinion as to whether a patient is fit to travel;
  - (i) for testing the sight of a person to whom none of paragraphs (a), (b) or (c) of section 71(2) of the Act (arrangements for general ophthalmic services) applies (including by reason of regulations under sections 71(8) and (9) of the Act).

### **Activity and Appointment Data**

**23.**—(1) A contract must contain a term requiring contractors to—

- (a) maintain their mapped appointments in the relevant section of the Primary Care Information Portal;
- (b) review their submission data at least once a month;
- (c) ensure the mapped categories are up-to-date; and
- (d) ensure their server is at all times switched on, maintained and available to enable the relevant software to extract the data.

(2) The activity and appointment data across the GP Collaborative must be discussed at GP Collaborative meetings by the authorised representatives from the member practices comprising the GP Collaborative, with the aim of developing measures across those member practices to manage demand and standardise good practice and, where applicable, data quality.

### **Dataset and Business Rules**

**24.** A contract must contain a term requiring contractors to provide data, where applicable, in accordance with the business rules utilised within the Assurance Framework.

### **Contract assurance**

**25.**—(1) A contract must contain, in addition to the requirements in Schedule 3, a term requiring contractors to engage with the Local Health Board in the processes outlined in the latest published Assurance Framework by—

- (a) providing returns and data, or facilitating the supply of data, as required for management of the contract and to satisfy contract assurance requirements,
- (b) as required by the Assurance Framework, engaging with the Local Health Board in formal contract and governance practice review processes,
- (c) following each formal contract and governance practice review, producing a Practice Contract and Governance Framework Response Plan to address within an agreed period any concerns raised by the Local Health Board, and
- (d) if concerns need to be addressed through the escalation ladder levels of the Assurance Framework, working positively with the Local Health Board to resolve concerns.

(2) A contract must contain a term requiring the Local Health Board to follow the processes and take account of the principles outlined in the latest published Assurance Framework by—

- (a) using the Assurance Framework's nationally agreed indicators together with the self-reported assessment from the contractor, to identify the priorities in the contract assurance and governance process,
- (b) determining the nature and depth of the formal contract and governance practice review taking account of the priorities identified in the contract assurance and governance process,
- (c) engaging and working positively with the contractor to resolve concerns,
- (d) giving verbal feedback to the contractor during the visit, including any requirements for the contractor to address any immediate concerns,
- (e) sending written feedback in a Contract and Governance Visit Report to the contractor within 20 working days of the visit,
- (f) evaluating a Practice Contract and Governance Framework Response Plan within 20 working days of receipt,



- (g) agreeing any date for follow up with the contractor, including to review whether any immediate concerns had been addressed satisfactorily, and
- (h) notifying the contractor if concerns need to be addressed through use of the escalation ladder levels of the Assurance Framework.

### **Sub-contracting**

**26.** A contract must contain terms which prevent a contractor from sub-contracting any of its obligations under the contract in relation to clinical matters, or non-clinical matters directly affecting patients, except in the circumstances provided for by paragraph 76 of Schedule 3.

### **Variation of contracts**

**27.—(1)** Subject to paragraph (2), a variation of, or amendment to, the contract may only be made in the circumstances provided for in Part 11 of Schedule 3.

(2) Paragraph (1) does not prevent a variation of, or amendment to, a contract in the circumstances provided for in paragraphs 76(8), 109, 110, 111 and 124 of Schedule 3.

### **Termination of a contract**

**28.—(1)** A contract may only be terminated as provided for by Part 11 of Schedule 3.

(2) A contract must make suitable provision for the arrangements which are to have effect on termination of the contract, including the consequences (whether financial or otherwise) of the contract ending.

(3) The provisions dealing with the financial consequences of termination must include at least provisions having the effect specified in paragraphs (4), (5), (6), (7) and (8) and must provide for those provisions to survive the termination of the contract.

(4) Subject to paragraphs (5), (6), (7) and (8), the Local Health Board's obligation to make payments to the contractor in accordance with the contract ceases on the date of termination of the contract.

(5) On termination of the contract or termination for any reason, the Local Health Board must perform a reconciliation of the payments made by the Local Health Board to the contractor and the extent to which the contractor has performed the obligations under the contract to which those payments relate (and the Local Health Board must also, in the event that the contractor has terminated the contract pursuant to paragraph 114 of Part 11 of Schedule 3 but has not performed its obligations under the contract for the duration of the notice period (or such shorter period as the Local Health Board and contractor have agreed in writing), be entitled to reflect in the reconciliation any additional costs that the Local Health Board has incurred in securing alternative services for the duration of that notice period).

(6) The Local Health Board must serve the contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than 28 days after the termination of the contract.

(7) If the contractor disputes the accuracy of the reconciliation, the contractor may refer the dispute to the NHS dispute resolution procedure within 28 days beginning on the date on which the Local Health Board served the contractor with written details of the reconciliation. That determination of the dispute is binding on the parties.

(8) Each party must pay the other any monies due within 3 months of the date on which the Local Health Board served the contractor with written details of the reconciliation, or the conclusion of the NHS dispute resolution procedure, as the case may be.

(9) The provisions dealing with the non-financial consequences of termination must include at least the provisions in paragraphs (10) and (11) and must provide for those provisions to survive the termination of the contract.

(10) The contract must provide that the termination of the contract, for whatever reason, is without prejudice to the accrued rights of either party under the contract.

(11) The contract must provide that on termination of the contract for any reason, the contractor must—

- (a) subject to the requirements of this paragraph (11), cease performing any work or carrying out any obligations under the contract,
- (b) co-operate with the Local Health Board to enable any outstanding matters under the contract to be dealt with or concluded in a satisfactory manner,
- (c) co-operate with the Local Health Board to enable the contractor's patients to be transferred to one or more other contractors or providers of unified services (or their equivalent), which must include—
  - (i) providing reasonable information about individual patients, and
  - (ii) delivering patient recordsto such other appropriate person or persons as the Local Health Board specifies, and
- (d) deliver up to the Local Health Board all property belonging to the Local Health Board including all documents, forms, computer hardware and software, drugs, appliances or medical equipment which may be in the contractor's possession or control.

**Other contractual terms**

**29.**—(1) A contract must, unless it is of a type or nature to which a particular provision does not apply, contain, other terms which have, the same effect as those specified in Schedule 3 except paragraphs 45(5) to (9), 46(5) to (17), 106(5) to (14), and 107.

(2) The paragraphs specified in paragraph (1) have effect in relation to the matters set out in those paragraphs.