
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 115

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004

PART 5

Contracts: Mandatory Terms

Parties to the contract

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

NHS contracts

12. If the contractor is to be regarded as a health service body pursuant to regulation 10, the contract must state that it is an NHS contract.

Contracts with a partnership

13.—(1) Where the contract is with a partnership, the contract shall be treated as made with the partnership as it is from time to time constituted, and the contract shall make specific provision to this effect.

(2) Where the contract is with a partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

Duration

14.—(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 the general law.

(2) The circumstances referred to in paragraph (1) are that the Health Board wishes to enter into a temporary contract for a period not exceeding twelve months for the provision of services to the 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 they wish to do so, invite the area medical committee for the area of the Health Board to participate in the negotiations intended to lead to such a contract.

Essential services

15.—(1) For the purposes of section 17K(1) of the Act (Mandatory contract terms: provision of prescribed primary medical services)(1), the services which must be provided under a general medical services contract (“essential services”) are the services described in paragraphs (3), (5), (6) and (8).

(2) Subject to regulation 20, a contractor must provide the services described in paragraphs (3) and (5) throughout core hours.

(3) The services described in this paragraph are services required for the management of its 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 practice in discussion with the patient.

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

- (a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems(2); and
- (b) “management” includes—
 - (i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
 - (ii) 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 registered patients and temporary residents taking account of their specific needs including—

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

(6) A contractor must provide primary medical services required in core hours 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.

(7) In paragraph (6), “emergency” includes any medical emergency whether or not related to services provided under the contract.

(8) A contractor must provide primary medical services required in core hours for the necessary treatment of any person falling within paragraph (9) who requests such treatment, for the period specified in paragraph (10).

(9) A person falls within this paragraph if he or she is a person—

(1) Section 17K was inserted by the 2004 Act, section 4.

(2) World Health Organisation, 1992 ISBN 92 4 1544 198 (v.1) NLM Classification WB 15.

- (a) whose application for inclusion in the contractor's list of patients has been refused in accordance with paragraph 17 of Schedule 5 and who is not registered with another provider of essential services (or their equivalent) in the area of the Health Board;
 - (b) whose application for acceptance as a temporary resident has been refused under paragraph 17 of Schedule 5; or
 - (c) who is present in the contractor's practice area for less than 24 hours.
- (10) The period referred to in paragraph (8) is—
- (a) in the case of paragraph (9)(a) 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 essential services (or their equivalent), whichever occurs first;
 - (b) in the case of paragraph (9)(b), 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) in the case of paragraph (9)(c), 24 hours or such shorter period as the person is present in the contractor's practice area.

Additional services

- 16.** A contract which includes the provision of any additional services must—
- (a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 1 of Schedule 1; and
 - (b) in relation to each such service, contain terms which have the same effect as those specified in Schedule 1, which are relevant to that service.

Opt outs of additional and out of hours services

17.—(1) Where a contract provides for the contractor to provide an additional service that is to be funded through the global sum, the contract must contain terms relating to the procedure for opting out of additional services which have the same effect as those specified in paragraphs 1, 2, 3 and 6 of Schedule 2, except paragraphs 3(12) to (17).

(2) Where a contract which is entered into before 1st October 2004 provides for the contractor to provide out of hours services pursuant to regulation 30 or 31, the contract must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 4, 5 and 6 of Schedule 2, except paragraphs 4(8) and 5(17) in so far as those paragraphs relate to paragraph 3(12) to (17).

(3) Where a contract which is entered into on or after 1st October 2004 provides for the contractor to provide out of hours services pursuant to regulation 30 or 31, the contract must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 4 and 6 of Schedule 2, except paragraph 4(8) in so far as that paragraph relates to paragraph 3(12) to (17).

(4) Paragraphs 3(12) to (17) and paragraphs 4(8) and 5(17), in so far as those paragraphs relate to paragraph 3(12) to (17), of Schedule 2, shall have effect in relation to the matters set out in those paragraphs.

Services generally

- 18.—(1)** A contract must specify—
- (a) the services to be provided;

- (b) subject to paragraph (2), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services;
 - (c) to whom such services are to be provided;
 - (d) the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to—
 - (i) register with the contractor, or
 - (ii) seek acceptance by the contractor as a temporary resident; and
 - (e) whether, at the date on which the contract comes into force, the contractor’s list of patients is open or closed.
- (2) 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.
- (3) Where, on the date on which the contract is signed, the 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 5, the contract must include a plan, drawn up jointly by the Health Board and the contractor, which specifies—
- (a) the steps to be taken by the contractor to bring the premises up to the relevant standard;
 - (b) any financial support that may be available from the Health Board; and
 - (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.
- (4) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor’s list of patients is closed, it must also specify in relation to that closure each of the items listed in paragraph 29(8)(a) to (d) of Schedule 5.

Services generally

- 19.**—(1) Except in the case of the services referred to in paragraph (2), the contract must state the period (if any) for which the services are to be provided.
- (2) The services referred to in paragraph (1) are—
- (a) essential services;
 - (b) additional services funded under the global sum; and
 - (c) out of hours services provided pursuant to regulations 30 and 31.

Services generally

- 20.** A contract must contain a term which requires the contractor in core hours—
- (a) to provide—
 - (i) essential services, and
 - (ii) additional services funded under the global sum,
 at such times, within core hours, as are appropriate to meet the reasonable needs of the contractor’s patients; and
 - (b) to have in place arrangements for the contractor’s patients to access such services throughout the core hours in case of emergency.

Certificates

21.—(1) A contract must contain a term which has the effect of requiring the contractor to issue free of charge to a patient or a patient’s personal representatives any medical certificate of a description prescribed in column 1 of Schedule 3, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that Schedule, except where, for the condition to which the certificate relates, the patient—

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

(2) The exception in paragraph (1)(a) shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations 1976⁽³⁾ (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor).

Finance

22.—(1) Subject to paragraph (2), the contract must contain a term which has the effect of requiring the Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Scottish Ministers under section 17M of the Act⁽⁴⁾.

(2) The obligation referred to in paragraph (1) is subject to any right the 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 Health Board under the contract; or
- (b) that the Health Board may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Scottish Ministers under section 17M of the Act.

Finance

23. The contract must contain a term to the effect that where, pursuant to any directions of the Scottish Ministers under section 17M of the Act, a Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

Fees and charges

24.—(1) The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

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

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

except in the circumstances set out in Schedule 4.

⁽³⁾ S.I.1976/615. Regulation 2 was amended by S.I. 1982/699, 1992/247, 1994/2975, 1995/987 and 2000/590.

⁽⁴⁾ Section 17M was inserted into the Act by section 4 of the 2004 Act.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor's list of patients, but fails to produce that person's medical card on request and the contractor has reasonable doubts about that person's claim, the contractor shall give any necessary treatment and shall be entitled to demand and accept a reasonable fee in accordance with paragraph (e) of Schedule 4, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under paragraph (e) of Schedule 4 applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding one month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the contractor's list of patients when the treatment was given, the Health Board may recover the amount of the fee from the contractor, by deduction from the contractor's remuneration or otherwise, and shall pay that amount to the person who paid the fee.

Arrangements on termination

25. A contract shall make suitable provision for arrangements on termination of a contract, including the consequences (whether financial or otherwise) of the contract ending.

Other contractual terms

26.—(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 5, except paragraphs 31(5) to (7), 35(5) to (9), 36 (3), 91(5) to (15) and 92.

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