

2008 No. 2352

PUBLIC HEALTH, ENGLAND

**The Private and Voluntary Health Care (England) Amendment
Regulations 2008**

<i>Made</i> - - - -	<i>3rd September 2008</i>
<i>Laid before Parliament</i>	<i>8th September 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 2(4), (7) and (8), 22(1) and (2) and 118(5) to (7) of the Care Standards Act 2000(a). In accordance with section 22(9) of that Act he has consulted such persons as he considers appropriate.

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Private and Voluntary Health Care (England) Amendment Regulations 2008 and shall come into force on 1st October 2008.

(2) These Regulations apply in relation to England.

(3) In these Regulations, “the 2001 Regulations” means the Private and Voluntary Health Care (England) Regulations 2001(b).

Amendment of regulation 2 of the 2001 Regulations

2. In regulation 2 of the 2001 Regulations (interpretation), in paragraph (1), after the definition of “health care professional” insert—

““insurance provider” means—

- (a) a person regulated by the Financial Services Authority who sells insurance, or underwrites the risk of such insurance, or
- (b) the agent of such a person;

“local anaesthesia” means any anaesthesia other than general, spinal or epidural anaesthesia, and also excludes the administration of a regional nerve block;”.

Amendment of regulation 3 of the 2001 Regulations

3. In regulation 3 of the 2001 Regulations (prescribed techniques or technology and exceptions to the definition of independent hospital)—

- (a) in paragraph (1)—

(a) 2000.c.14. Section 2(4) has been amended by the National Health Service (Consequential Provisions) Act 2006, Schedule 1, paragraph 199. Section 2(7) has been modified by S.I. 2001/3968.
(b) S.I. 2001/3968.

- (i) at the end of sub-paragraph (d) insert “and”,
- (ii) for sub-paragraph (e), substitute—
 - “(e) hyperbaric therapy, being the administration of oxygen (whether or not combined with one or more other gases) through a mask to a patient who is in a sealed chamber which is gradually pressurised with compressed air, where such therapy is carried out by or under the supervision or direction of a medical practitioner, except where the primary use of that chamber is—
 - (i) pursuant to regulation 6(3)(b) of the Diving at Work Regulations 1997(a) or regulation 8 or 12 of the Work in Compressed Air Regulations 1996(b); or
 - (ii) otherwise for the treatment of workers in connection with the work which they perform.”; and
- (iii) omit sub-paragraph (f),
- (b) at the end of paragraph (2) insert—
 - “(d) in vitro fertilisation techniques, being treatment services for which a licence may be granted under paragraph 1 of Schedule 2 to the Human Fertilisation and Embryology Act 1990(c).”;
- (c) in paragraph (3)—
 - (i) at the end of sub-paragraph (g), omit “and”,
 - (ii) for sub-paragraph (h) substitute—
 - “(h) a surgery or consulting room (which is not part of a hospital) in which a medical practitioner provides medical services only under arrangements made on behalf of the patients by—
 - (i) their employer,
 - (ii) a government department or any executive agency of a government department,
 - (iii) a prison or other establishment in which the patients are held in custody, other than pursuant to any provision of the Mental Health Act 1983(d), or
 - (iv) an insurance provider with whom the patients hold an insurance policy, other than an insurance policy which is solely or primarily intended to provide benefits in connection with the diagnosis or treatment of physical or mental illness, disability or infirmity;”, and
 - (iii) after sub-paragraph (h) insert—
 - “(i) an establishment which is a hospital by virtue of section 2(7)(a) of the Act solely because it provides—
 - (i) nail surgery,
 - (ii) nail bed procedures, or
 - (iii) curettage, cautery or the cryocautery of warts, verrucae or other skin lesions, on any area of the foot and uses local anaesthesia during that procedure; and
 - (j) an establishment which is a hospital by virtue of section 2(7)(a) of the Act solely because a medical practitioner provides curettage, cautery or the cryocautery of warts, verrucae or other skin lesions and uses local anaesthesia during that procedure.”;
- (d) omit paragraph (4); and
- (e) at the end, insert—

(a) S.I. 1997/2776.
 (b) S.I. 1996/1656.
 (c) 1990 c.37.
 (d) 1983 c.20.

“(5) Subsection (7) of section 2 of the 2000 Act^(a) shall be modified by inserting the words “intravenously administered” before “sedation” in paragraph (a).”.

Amendment of regulation 4 of the 2001 Regulations

4. In regulation 4 of the 2001 Regulations (meaning of independent clinic)—

(a) in paragraph (1), for sub-paragraph (b) substitute—

“(b) unless paragraph (1A) applies, a surgery or consulting room in which a medical practitioner who provides no services in pursuance of the NHS Act provides medical services of any kind (including psychiatric treatment).”; and

(b) after paragraph (1), insert—

“(1A) Paragraph (1)(b) does not apply if the medical services are provided only under arrangements made on behalf of the patients by—

- (a) their employer;
- (b) a government department or any executive agency of a government department;
- (c) a prison or other establishment in which the patients are held in custody, other than pursuant to any provision of the Mental Health Act 1983; or
- (d) an insurance provider with whom the patients hold an insurance policy, other than an insurance policy which is solely or primarily intended to provide benefits in connection with the diagnosis or treatment of physical or mental illness, disability or infirmity.”.

Amendment of regulation 5 of the 2001 Regulations

5. For regulation 5 of the 2001 Regulations (exception of undertaking from the definition of independent medical agency), substitute—

“5. For the purposes of the Act, any undertaking which consists of the provision of medical services by a medical practitioner only under arrangements made on behalf of the patients by—

- (a) their employer;
- (b) a government department or any executive agency of a government department;
- (c) a prison or other establishment in which the patients are held in custody, other than pursuant to any provision of the Mental Health Act 1983; or
- (d) an insurance company with whom the patients hold an insurance policy, other than an insurance policy which is solely or primarily intended to provide benefits in connection with the diagnosis or treatment of physical or mental illness, disability or infirmity,

is to be excepted from being an independent medical agency.”.

Amendment of regulation 26 of the 2001 Regulations

6. In regulation 26 of the 2001 Regulations (visits by registered provider), in paragraph (3), for the words “at least once every six months” substitute “from time to time”.

Signed by authority of the Secretary of State for Health

3rd September 2008

Ben Bradshaw
Minister of State
Department of Health

(a) Section 2(7) was amended by S.I. 2001/3968.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Care Standards Act 2000 (“the Act”) and they amend the Private and Voluntary Health Care (England) Regulations 2001 (“the 2001 Regulations”): they apply to England.

Regulation 2 amends regulation 2 of the 2001 Regulations to insert new definitions into the 2001 Regulations.

Regulation 3 amends regulation 3 of the 2001 Regulations in two ways.

First, it amends the definition of services whose provision requires an establishment to register as an independent hospital (“listed services”). Paragraph (a)(ii) removes from listed services hyperbaric oxygen therapy which is not carried out by or under the supervision or direction of a medical practitioner; paragraphs (a)(iii) and (b) remove fertility treatments that are already regulated under the Human Fertilisation and Embryology Act 1990; paragraph (e) removes medical treatment under sedation which is not intravenously administered.

Second, paragraph (c) amends the exemptions to the definition of independent hospital by clarifying the scope of the exemption in regulation 2(3)(h) of the 2001 Regulations relating to medical services provided solely under arrangements made by another person and by adding a new exemption for establishments which carry out certain minor surgery under local anaesthesia.

Regulations 4 and 5 amend the meaning of “independent clinic” and “independent medical agency” in regulations 4 and 5 of the 2001 Regulations by clarifying the scope of the exemption in those regulations relating to medical services provided solely under arrangements made by another person.

Regulation 6 amends regulation 26 of the 2001 Regulations to change the frequency at which the registered provider must undertake unannounced visits to an establishment or agency.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from The NHS Medical Directorate of the Department of Health, Standard and Healthcare Commission Relations Unit at Wellington House, London SE1 8UG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.