
STATUTORY INSTRUMENTS

2013 No. 1617

The National Health Service (Direct Payments) Regulations 2013

PART 2

Direct Payments

Decision to make a direct payment

7.—(1) A health body must make any decision to make a direct payment to, or in respect of, a patient in accordance with this regulation.

(2) Before deciding whether to make a direct payment to a patient, a health body—

(a) may consult the following persons—

- (i) anyone identified by the patient as a person to be consulted for the purpose,
- (ii) if the patient is a person aged 16 or over but under the age of 18, a person with parental responsibility for the patient,
- (iii) the person primarily involved in the care of a patient,
- (iv) any other person who provides care for the patient,
- (v) any independent mental capacity advocate⁽¹⁾ or independent mental health advocate⁽²⁾ appointed for the patient,
- (vi) any health care professional or other professional person who provides health services to the patient,
- (vii) any local authority social care team that is responsible for ensuring that the patient's social care needs are met, or
- (viii) any other person who appears to a health body to be able to provide information of relevance;

(b) may require the patient to provide information relating to—

- (i) the patient's state of health,
- (ii) any health condition of the patient in respect of which a direct payment is contemplated, and
- (iii) any bank, building society, post office or other account into which a direct payment may be made; and

(c) must be satisfied that the patient is capable of managing a direct payment by themselves or with the assistance that may be available to them.

(1) See section 35 of the Mental Capacity Act 2005 (c.9). Section 35 has been amended by section 50(7) of, and Schedule 9 to, the Mental Health Act 2007 (c.12) (“the 2007 Act”), section 55(2) of, and paragraphs 133 and 134 of Schedule 5 to, the 2012 Act, and by S.I. 2010/813, regulation 17.

(2) See section 130A of the Mental Health Act 1983 (c.20), as inserted by section 30(1) and (2) of the 2007 Act.

(3) Before deciding whether to make a direct payment in respect of a patient to the representative of the patient, a health body may consult—

- (a) the patient;
- (b) any deputy appointed in respect of the patient by the Court of Protection under section 16(2)(b) of the 2005 Act (powers to appoint deputies) who lacks authority to make decisions on behalf of the patient in relation to matters in respect of which direct payments may be made;
- (c) any donee of a lasting power of attorney within the meaning of section 9 of the 2005 Act (lasting powers of attorney) in respect of the patient but who lacks authority to make decisions on behalf of the patient in relation to matters in respect of which direct payments may be made;
- (d) the persons mentioned in paragraph (2)(a)(iii) to (viii); and
- (e) anyone named by the patient, when the patient had capacity, as a person to be consulted for this purpose.

(4) Before deciding whether to make a direct payment in respect of a patient to the representative of the patient, a health body—

- (a) may require the representative to provide information relating to any bank, building society, post office or other account into which the direct payment may be made; and
- (b) must be satisfied that the representative is capable of managing a direct payment by themselves or with the assistance that may be available to them.

(5) When deciding whether to make a direct payment in respect of a patient to a representative, a health body may, in particular, consider—

- (a) whether the patient has in the past, when the patient had capacity, expressed in writing, or by other means which are understandable, a wish for direct payments to be made to them or for their benefit;
- (b) so far as reasonably ascertainable, the beliefs and values that would be likely to influence the patient's decision as to whether or not to consent to receive a direct payment if the patient had capacity; and
- (c) any other factors that the patient would be likely to consider on the issue of whether to consent to receive a direct payment if the patient were able to do so, including the patient's wishes and feelings.

(6) Before deciding whether to make a direct payment in respect of a patient to a nominee, a health body may—

- (a) consult the persons mentioned in paragraphs (2)(a) and (3)(a) to (c) and, where relevant, (e);
- (b) require a patient with the necessary capacity or competence to provide information relating to the patient's state of health or any health condition in respect of which the direct payment is contemplated; and
- (c) require the nominee to provide information relating to any bank, building society, post office or other account into which the direct payment may be made.

(7) Before deciding whether to make a direct payment in respect of a patient to a nominee, a health body must—

- (a) be satisfied that the nominee is capable of managing a direct payment by themselves or with the assistance that may be available to them;

- (b) where the nominee is an individual, require the nominee to apply for an enhanced criminal record certificate issued under section 113B of the Police Act 1997(3) including suitability information relating to vulnerable adults under section 113BB of that Act(4), unless the nominee is an individual living in the same household as the patient, a family member mentioned in paragraph (8) or a friend involved in the provision of the patient's care; and
 - (c) where the nominee is a body corporate or an unincorporated body of persons, require that the individual whom the nominee has decided will, on behalf of the nominee, have overall responsibility for the day-to-day management of the patient's direct payments, applies for an enhanced criminal record certificate issued under section 113B of the Police Act 1997 including suitability information relating to vulnerable adults under section 113BB of that Act.
- (8) The family members referred to in paragraph (7)(b) are—
- (a) the spouse or civil partner of the patient;
 - (b) a person who lives with the patient as if their spouse or civil partner;
 - (c) a person who is the patient's—
 - (i) parent or parent-in-law,
 - (ii) son or daughter,
 - (iii) son-in-law or daughter-in law,
 - (iv) stepson or stepdaughter,
 - (v) brother or sister,
 - (vi) aunt or uncle, or
 - (vii) grandparent;
 - (d) the spouse or civil partner of any person specified in sub-paragraph (c); and
 - (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.
- (9) In deciding whether a patient, representative or nominee is capable of managing a direct payment, a health body may, in particular, consider whether—
- (a) the patient, representative or nominee would be a suitable person to arrange with any person or body to provide, or assist in providing, any services secured by means of direct payments for the patient;
 - (b) the patient, representative or nominee has not been able to manage a direct payment or a direct payment to secure relevant services for social care under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009(5); or
 - (c) the patient, representative or nominee is capable of taking all reasonable steps to prevent fraudulent use of the direct payment.
- (10) If a health body considers making a direct payment to a patient in accordance with this regulation and decides not to make such a payment, they must inform the patient and any representative or nominee in writing of the decision, and state the reasons for the decision.

(3) [1997 c.50](#). Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act [2005 \(c.15\)](#). Section 113B is amended by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act [2006 \(c.47\)](#); section 378(1) of, and paragraph 149 of Schedule 16 to, the Armed Forces Act [2006 \(c.52\)](#); sections 97(2) and 112(2) of, and Schedule 8 to, the Policing and Crime Act [2009 \(c.26\)](#); [S.I. 2009/203](#); [S.I. 2010/1146](#); sections 79(2), 80(1), 82(1) to (3) and 115 of, and Schedules 9 and 10 to, the Protection of Freedoms Act [2012 \(c.9\)](#), and [S.I. 2012/3006](#).

(4) Section 113BB was inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006. Subsection (2), paragraphs (b) to (d) were repealed in relation to England by section 115(1) and (2) of, and Schedules 9 and 10 to, the Protection of Freedoms Act 2012. Section 113BB is subject to the modifications set out in [S.I. 2009/2610](#).

(5) [S.I. 2009/1887](#), as amended by [S.I. 2010/2246](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
