
DIRECTIONS

NATIONAL HEALTH SERVICE ACT 2006

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Payments, Charges, Recovery of Charges and Penalty Charges) Directions 2015

The Secretary of State for Health gives the following directions in exercise of the powers conferred by sections 7(1), 8, 192(6), 272(7) and (8) and 273(1) of the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Directions may be cited as the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Payments, Charges, Recovery of Charges and Penalty Charges) Directions 2015 and come into force on 1st April 2015.

(2) In these Directions—

“the 2006 Act” means the National Health Service Act 2006;

“the Board” means the National Health Service Commissioning Board(b);

“the Dental Charges Regulations” means the National Health Service (Dental Charges) Regulations 2005(c);

“the NHSBSA” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005(d);

“the Penalty Charge Regulations” means the National Health Service (Penalty Charge) Regulations 1999(e);

“the Prescription Charges Regulations” means the National Health Service (Charges for Drugs and Appliances) Regulations 2015(f);

“relevant benefits” means—

(a) an exemption from or full remission of a charge payable under the Prescription Charges Regulations; and

(b) an exemption from or full or partial remission of a charge payable under the Dental Charges Regulations; and

“TERC Regulations” means the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003(g).

(a) 2006 c.41. Subsection (1) of section 7 of the National Health Service Act 2006 (“the 2006 Act”) was substituted by the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), section 21(2). Section 8 of the 2006 Act has been amended by the 2012 Act, Schedule 4, paragraph 5, and Schedule 14, paragraph 3. By virtue of section 271(1) of the 2006 Act, the functions of the Secretary of State being exercised in the making of these Directions are exercisable only in relation to England.

(b) The National Health Service Commissioning Board was established under section 1H of the 2006 Act, which was inserted by the Health and Social Care Act 2012, section 9(1).

(c) S.I. 2005/3477.

(d) S.I. 2005/2414, as amended by S.I. 2006/632, 2007/1201 and 2013/235.

(e) S.I. 1999/2794.

(f) S.I. 2015/570.

(g) S.I. 2003/2382. There are no relevant amendments.

Functions of the NHSBSA in relation to the Dental Charges Regulations

2.—(1) The Secretary of State directs the NHSBSA to exercise the functions of the Secretary of State under the following provisions of the Dental Charges Regulations—

- (a) in regulation 4(a) (calculation of charges), paragraph (8) (determining into which Schedule an appliance or treatment should fall);
- (b) in regulation 7(b) (conditions for exemption under the Act)—
 - (i) paragraph (1)(b) (requiring that specified evidence be supplied), and
 - (ii) paragraph (4) (accepting evidence other than specified evidence);
- (c) in regulation 8(e) (making and recovery of charges), paragraph (4) (recovery of a charge where a patient is not within one of the specified categories);
- (d) in regulation 10 (repayment of charges)—
 - (i) paragraph (3) (receipt of claims, allowing further period of time in a manner approved and supported by evidence required),
 - (ii) paragraph (5) (refusal to accept claims made on behalf of another), and
 - (iii) paragraph (6) (causing a repayment to be made);
- (e) in regulation 11 (charges for replacement in the course of provision of primary dental services)—
 - (i) paragraph (1) (determination in accordance with Schedule 6), and
 - (ii) paragraph (3) (considering and determining charge not payable or amount of reduction of charge); and
- (f) Schedule 6(d) (manner of determining charge for replacement).

(2) The Secretary of State directs the NHSBSA to—

- (a) process, assess and monitor the information it receives as a result of exercising the Secretary of State's functions referred to in paragraph (1); and
- (b) provide timely reports to—
 - (i) the Board in respect of that information, setting out in particular information which the NHSBSA considers might be evidence of a breach of contract, an unlawful activity or an irregularity, or which is otherwise unusual, and
 - (ii) the Secretary of State in respect of information received as a result of exercising the functions under regulation 4(8) of the Dental Charges Regulations, setting out in particular information which the NHSBSA considers would assist the Secretary of State in any review of the items listed or not listed in Schedules 1 to 4 to the Dental Charges Regulations (which relate to charges for diagnosis, treatment and care).

Functions of the NHSBSA in relation to the TERC Regulations

3.—(1) The Secretary of State directs the NHSBSA to exercise the functions of the Secretary of State in relation to the provision of primary dental services under the following provisions of the TERC Regulations—

- (a) in regulation 11 (claims for repayment)—
 - (i) paragraph (2) (receipt of a claim for repayment), and
 - (ii) paragraph (3) (allowing longer period for claim for repayment); and
- (b) in regulation 12(e) (repayments)—

(a) There are no relevant amending instruments.

(b) Amended by S.I. 2013/364.

(c) There are no relevant amending instruments.

(d) Amended by S.I. 2013/364.

(e) Relevant amendments have been made by S.I. 2013/475.

- (i) paragraph (1)(a) (calculating the amount payable and notifying), and
 - (ii) paragraph (1)(c) (causing a repayment to be made).
- (2) The Secretary of State directs the NHSBSA to—
- (a) process, assess and monitor the information it receives as a result of exercising the functions referred to in paragraph (1); and
 - (b) provide timely reports to the Board in respect of that information, setting out in particular any information that the NHSBSA considers might be evidence of a breach of contract, unlawful activity or an irregularity, or which is otherwise unusual.

NHSBSA functions relating to primary medical services

4. The Secretary of State directs the NHSBSA to exercise the functions of the Secretary of State, and that it is able to enter into any arrangements that the Board decides to enter into with it, in respect of—

- (a) the examining, checking and pricing of claims for reimbursement for any drug, medicine or appliance (other than a Scheduled drug, within the meaning of the National Health Service (General Medical Services Contracts) Regulations 2004(a)) provided as part of the provision of primary medical services under Part 4 of the National Health Service Act 2006; and
- (b) providing the Board with information to assist in the calculation of remuneration due in relation to the provision of such drugs, medicines and appliances.

NHSBSA functions as a responsible authority in relation to recovery of charges and penalty charges etc.

5.—(1) Subject to paragraph (2), paragraph (3) applies, where any of the following is an amount that is recoverable pursuant to section 192(1) of the 2006 Act (recovery of charges and payments in relation to goods and services)—

- (a) a charge in respect of the provision of a medicine, drug or appliance (including a dental appliance), or a payment in respect of the cost of obtaining a medicine, drug or appliance (including a dental appliance); or
- (b) a charge in respect of dental treatment,

and the responsible body for the purposes of the recovery of that amount is the Secretary of State or the Board.

(2) Paragraph (1) does not apply to charges made under regulations under section 175 of the 2006 Act (charges in respect of non-residents).

(3) In the circumstances described in paragraph (1)—

- (a) the functions of the Secretary of State and the Board under the 2006 Act in relation to the recovery of the charges referred to in that paragraph; and
- (b) the functions of the Secretary of State and the Board under section 192 and 193 (penalties relating to charges) of the 2006 Act in relation to the amounts referred to in that paragraph (including the Board's functions under the Penalty Charge Regulations),

are to be performed by the NHSBSA, and the NHSBSA is directed accordingly.

(4) Without prejudice to the generality of paragraph (3), those functions include—

- (a) providing persons with advice, assistance and support in relation to whether or not persons are entitled to the relevant benefits (including publicising arrangements for the prevention of fraud and anti-fraud activity);

(a) S.I. 2004/291.

- (b) examining and checking a proportion of claims for exemption and remission of prescription charges, including those made under the Prescription Charges Regulations and the TERC Regulations;
 - (c) identifying possible cases of fraud or error;
 - (d) contacting patients to establish whether loss has occurred;
 - (e) where a person has failed to pay any charge which is a recoverable amount as referred to in section 193(1)(a) or (b) of the 2006 Act, preparing and serving penalty notices and calculating and determining a penalty charge, and surcharge, in accordance with the Penalty Charge Regulations;
 - (f) recovering such charges as are recoverable, including penalty charges and surcharges;
 - (g) taking enforcement action—
 - (i) in relation to the recovery of such charges that are recoverable in accordance with section 192 of the 2006 Act and the Penalty Charge Regulations, and
 - (ii) to recover the relevant charges, penalties or surcharges as civil debts; and
 - (h) publicising the arrangements for the prevention of fraud and anti-fraud activity undertaken under the Penalty Charge Regulations and the Prescription Charges Regulations, but before any publicity material is published by the NHSBSA pursuant to this sub-paragraph, that publicity material must be approved by the Secretary of State.
- (5) The NHSBSA is directed to—
- (a) process, assess and monitor the information it receives as a result of exercising the Secretary of State's or the Board's functions mentioned in paragraph (3); and
 - (b) provide timely reports to the Board in respect of that information, setting out in particular information which the NHSBSA considers might be evidence of unlawful activity or an irregularity, or which is otherwise unusual.
- (6) Where the functions of the NHSBSA under this direction make it necessary or desirable for NHSBSA to have access to data held by HMRC or the Veterans Agency for the purposes of establishing whether an amount was payable, it is to be assumed for the purposes of section 35(1) of the Data Protection Act 1998(a) (disclosure required by law or made in connection with legal proceedings) that the disclosure of personal data to the NHSBSA is required for the purposes of establishing legal rights.
- (7) Paragraph (8) applies where, in the course of—
- (a) exercising functions of the Board of recovering any charges under the 2006 Act in respect of the provision of goods or services to which section 192 of the 2006 Act (recovery of charges and payments in relation to goods and services) applies; or
 - (b) exercising functions of the Board under, or by virtue of, section 192 or 193 of the 2006 Act (penalties relating to charges),

NHSBSA obtains information about actual or possible patient fraud which is identified as taking place at the premises of a provider of services under Parts 4, 5 or 7 of the 2006 Act and which is relevant to functions of the Board in relation to the health service in England in respect of providing that provider of services with information and advice.

(8) Where this paragraph applies, the NHSBSA is directed to exercise those functions of the Board in relation to the health service in England in respect of providing that provider of services with information and advice.

Data sharing

6.—(1) The NHSBSA is directed to exercise the functions of the Secretary of State that the Secretary of State may exercise by virtue of being prescribed as a qualifying person by regulation

(a) 1998 c.29.

3(1)(a) of the Social Security (Information-sharing) (NHS Payments and Remission of Charges etc.) (England) Regulations 2015(a).

(2) The functions which the NHSBSA is directed to exercise under paragraph (1) include the functions under regulation 9 of those Regulations (which relate to disclosure of personal data by qualifying persons to the Secretary of State for Work and Pensions).

(3) This paragraph applies where personal data is shared between NHSBSA and Her Majesty's Revenue and Customs or the Veterans Agency ("relevant data holders") where the sharing of that data is for the purpose of facilitating the performance by the NHSBSA of a requirement, by virtue of these Directions, to determine whether or not persons are entitled to relevant benefits.

(4) Where paragraph (3) applies, it is to be assumed that the sharing of personal data is processing that satisfies paragraph 5(d) of Schedule 2 to the Data Protection Act 1998(b) (the processing is necessary for the exercise of functions of a public nature exercised in the public interest), whether or not the sharing of that data also satisfies another condition of that Schedule.

Revocations

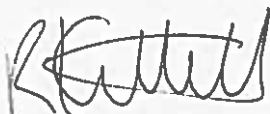
7.—(1) The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services and Primary Medical Services) Directions 2013(c) are revoked.

(2) The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Recovery of Prescription Charges) Directions 2014(d) are revoked.

Transitional provision for existing cases

8. Cases that are already under investigation or subject to proceedings before these Directions come into force may be investigated and proceeded against as if these Directions had not been made.

Signed by authority of the Secretary of State for Health



25th March 2015

Robert Kettell
A member of the Senior Civil Service
Department of Health

(a) S.I. 2015/124.
(b) 1998 c.29.
(c) It has not been possible to ascertain the date on which these Directions were signed.
(d) Signed on 12th September 2014.

