STATUTORY INSTRUMENTS

2017 No. 756

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017

Made - - - - *17th July 2017*

Laid before Parliament *19th July 2017*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 175 and 272(7) and (8) of the National Health Service Act 2006(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2017.

(2) These Regulations come into force—

(a) for the purposes of regulations 2 to 4, 7 to 9 and 10(c) on 23rd October 2017; and

(b) for all other purposes on 21st August 2017.

(3) In these Regulations, "the Principal Regulations" means the National Health Service (Charges to Overseas Visitors) Regulations 2015(**2**).

Amendment of regulation 2

2.—(1) Regulation 2 of the Principal Regulations (interpretation) is amended as follows.

(2) Omit the definition of "relevant NHS body".

(3) At the appropriate places, insert—

""actual charge" has the meaning given in regulation 3(7);

"advance payment sum" has the meaning given in regulation 3(7);";

""relevant body" means—

(a) an NHS foundation trust;

(**1**) 2006 c.41. By virtue of section 271(1), the powers of the Secretary of State exercised in making these Regulations are exercisable only in relation to England. See section 275(1) for the definitions of "prescribed" and "regulations".

(**2**) S.I. 2015/238, amended by S.I. 2015/2025 and 2016/211.

(b) an NHS trust;

(c) a local authority within the meaning of section 2B of the 2006 Act(**3**) (functions of local authorities and Secretary of State as to improvement of public health) exercising public health functions (within the meaning of that Act(**4**)); or

(d) any other person providing relevant services,

except in respect of regulation 6A, for which purposes a person mentioned in paragraph (d) is not a "relevant body";.".

Substitution of the term "relevant NHS body"

3.—(1) In regulations 2, 3, 6, 6A and 7 of the Principal Regulations, in each place that it occurs, for "relevant NHS body", substitute "relevant body".

(2) In regulation 7(6), for "the NHS body", substitute "the relevant body".

Amendment of regulation 3

4.—(1) Regulation 3 of the Principal Regulations (obligation to make and recover charges) is amended as follows.

(2) After paragraph (1), insert—

"(1A) Where the condition specified in paragraph (2) is met, before providing a relevant service in respect of an overseas visitor, a relevant body must secure payment for the estimated amount of charges to be made under paragraph (1) for that relevant service unless doing so would prevent or delay the provision of—

(a) an immediately necessary service; or

(b) an urgent service.

(1B) The person from whom payment is to be secured under paragraph (1A) in respect of a relevant service is the person who it appears to the relevant body, at the time that the request for that payment is made, will be the person to whom a charge will be made under paragraph (1) in respect of that relevant service at the time that it is provided.".

(3) For paragraphs (3) and (4), substitute—

"(3) Where more than one relevant body is to provide relevant services to an overseas visitor, each relevant body must secure the advance payment sum in respect of each relevant service that it is to provide.

(3A) Where more than one relevant body provides relevant services to an overseas visitor, each relevant body must make and recover the actual charge in respect of each relevant service that it provides.

(4) A relevant body that makes and recovers a charge in accordance with paragraph (1) or secures payment in accordance with paragraph (1A) must give or send to the person making the payment a receipt for the amount paid.

(4A) In making and recovering an actual charge from a person in respect of a relevant service, a relevant body must—

(a) deduct any advance payment sum secured by the relevant body from that person in respect of that relevant service; and

(**3**) 2006 c.41. Section 2B was inserted by section 12 of the Health and Social Care Act 2012 (c.7).
(**4**) The meaning of a reference to the public health functions of local authorities is given by section 1H(5)(b) of the National Health Service Act 2006 (c. 41), which was inserted by section 9(1) of the Health and Social Care Act 2012.

(b) refund any amount by which an advance payment sum secured by the relevant body from that person in respect of that relevant service exceeds the amount of the actual charge that person is liable to pay.".

(4) In paragraph (5)(a)—

(a) at the end of sub-paragraph (ii), omit "or";

(b) at the end of sub-paragraph (iii), insert "or";

(c) after sub-paragraph (iii), insert—

"(iv) regulation 14 (reciprocal health care agreements);".

(5) After paragraph (6), insert—

"(7) In this regulation—

"actual charge" means a charge to be made under paragraph (1);

"advance payment sum" means a sum to be secured under paragraph (1A);

"immediately necessary service" means—

(a) antenatal services provided in respect of a person who is pregnant;

(b) intrapartum and postnatal services provided in respect of—

(i) a person who is pregnant;

(ii) a person who has recently given birth; or

(iii) a baby; and

(c) any other relevant service that the treating clinician determines the recipient needs promptly—

(i) to save the recipient's life;

(ii) to prevent a condition becoming immediately life-threatening; or

(iii) to prevent permanent serious damage to the recipient from occurring;

"urgent service" means a service that the treating clinician determines is not an immediately necessary service but which should not wait until the recipient can be reasonably expected to leave the United Kingdom.".

Insertion of new regulation 3A

5. After regulation 3 of the Principal Regulations, insert—

"**Obligation to record information against an overseas visitor's consistent identifier**

3A.—(1) An NHS foundation trust or an NHS trust that, in meeting its obligations under regulation 3, determines that a person is an overseas visitor must, as soon as it is practicable to do so, record against the overseas visitor's consistent identifier—

(a) the fact that the person has been determined to be an overseas visitor;

(b) the date on which that determination was made; and

(c) whether Part 4 (overseas visitors exempt from charges) provides for no charge to be made.

(2) In this regulation, "consistent identifier" means a consistent identifier specified in regulation 2 of the Health and Social Care Act 2012 (Consistent Identifier) Regulations 2015(**5**).".

(**5**) S.I. 2015/1439.

Amendment of regulation 4

6. In regulation 4 of the Principal Regulations (liability for payment of charges), after paragraph (4), insert—

"(4A) Where, due to a change in circumstances occurring during the period in which a relevant service is provided, more than one person is liable under paragraphs (1) to (4) to pay charges under these Regulations in respect of that relevant service, each such person is liable to pay charges only in respect of relevant services provided during the period during which those paragraphs apply to that person.".

Substitution of regulation 5

7. For regulation 5 of the Principal Regulations (repayment of charges made and recovered by relevant NHS bodies), substitute—

"**Repayment of a sum recovered or secured by a relevant body**

5.—(1) A claim to a relevant body for repayment of a sum—

(a) recovered in respect of charges made; or

(b) secured in respect of an estimated amount of charges to be made,

under these Regulations may be made by the person who paid the sum to the relevant body ("the claimant").

(2) When making a claim under paragraph (1), the claimant must provide to the relevant body—

(a) the receipt for payment of the sum or other evidence of the claimant's having paid the sum;

(b) a declaration in support of the claim signed by or on behalf of the claimant; and

(c) such other evidence in support of the declaration as the relevant body may require.

(3) Where a claimant makes a claim under paragraph (1) and the relevant body is satisfied that any sum was paid to it by the claimant in respect of—

(a) a charge that should not have been made and recovered under these Regulations;

(b) a relevant service that was not, or will not in the reasonably foreseeable future be, provided by the relevant body;

(c) an advance payment sum, which was paid by or on behalf of a person who is not liable to pay an actual charge in respect of the relevant service to which the advance payment sum relates; or

(d) a charge that should not have been recovered as a consequence of regulation 6A(2)(b) (provision relating to victims of female genital mutilation and supported individuals),

the relevant body must repay that sum to the claimant.".

Amendment of regulation 6

8. In regulation 6(3)(c) of the Principal Regulations (provision relating to recovery of charges in respect of refugees and victims of modern slavery), for "(repayment of charges made and recovered by relevant NHS bodies)", substitute "(repayment of a sum recovered or secured by a relevant body)".