STATUTORY INSTRUMENTS

2015 No. 1728

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Primary Dental Services) (Miscellaneous Amendments) (No. 2) Regulations 2015

Made - - - -	*28th September 2015*
Laid before Parliament	*5th October 2015*
Coming into force - -	*1st November 2015*

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 7(1), 104, 109, 176, 272(7) and (8) and 273(4) of the National Health Service Act 2006(**1**).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Primary Dental Services) (Miscellaneous Amendments) (No. 2) Regulations 2015 and come into force on 1st November 2015.

(2) In these Regulations—

"the BSA Functions Regulations" means the Functions of the National Health Service Commissioning Board and the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Primary Dental Services) (England) Regulations 2013(**2**);

"the Dental Charges Regulations" means the National Health Service (Dental Charges) Regulations 2005(**3**);

(**1**) 2006 c.41. Section 7(1) was substituted by section 21(2) of the Health and Social Care Act 2012 (c.7) ("the 2012 Act"). Section 104 has been amended by paragraph 46 of Schedule 4 to the 2012 Act. Section 109 has been amended by paragraph 50 of Schedule 4 to the 2012 Act. Section 176 has been amended by paragraph 94 of Schedule 4 to the 2012 Act. *See* section 275(1) of the National Health Service Act 2006 for the definitions of "prescribed" and "regulations" which are relevant to the powers being exercised. By virtue of section 271(1) of the National Health Service Act 2006, the functions of the Secretary of State being exercised in the making of these Regulations are exercisable only in relation to England.

(**2**) S.I. 2013/469.

(**3**) S.I. 2005/3477; as amended by S.I. 2006/1837, 2007/544, 2008/547, 2009/407, 2011/519, 2013/364 and 711, 2014/443 and 545 and 2015/417.

"the GDS Regulations" means the National Health Service (General Dental Services Contracts) Regulations 2005(**4**); and

"the PDS Regulations" means the National Health Service (Personal Dental Services Agreements) Regulations 2005(**5**).

PART 2

Amendment of the GDS Regulations

Amendment of the GDS Regulations

2. The GDS Regulations are amended in accordance with this Part.

Amendment of regulation 2 of the GDS Regulations

3. In regulation 2(1) (interpretation)—

(a) in the definition of "banded course of treatment", after "means" insert ", subject to regulation 18C,";

(b) after the definition of "bridge" insert—

""capitated patient" has the meaning given in regulation 18C;";

(c) in the definition of "course of treatment" for "where the course of treatment is an interim care course of treatment provided under a Capitation and Quality Scheme 2 Agreement in the context of regulation 13A of the NHS Charges Regulations (charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement)" substitute—

"where the course of treatment is an interim care course of treatment provided under a prototype agreement(**6**) or a Capitation and Quality Scheme 2 Agreement in the context of regulation 12A of the NHS Charges Regulations (charges in respect of primary dental services provided under a prototype agreement or under a Capitation and Quality Scheme 2 Agreement)"; and

(d) after the definition of "professional registration number" insert the following definitions—

""prototype agreement" means a contract temporarily varied as part of the Prototype Agreements Scheme(**7**) which contains—

(a) the terms and conditions required under the Prototype Directions(**8**); and

(b) the terms and conditions required under these Regulations;";

"the Prototype Directions" means the National Health Service (Dental Services) (Prototype Agreements) Directions 2015;

(**4**) S.I. 2005/3361; as amended by S.I. 2006/563, 2007/544, 2008/528, 1514 and 1700, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.

(**5**) S.I. 2005/3373; as amended by S.I. 2006/563, 2007/544, 2008/528 and 1514, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, 2013/364, 2014/443 and 1887 and 2015/137 and 416.

(**6**) For further information on prototype agreements *see*https://www.gov.uk/government/publications/dental-reform-next-step. A hard copy of this document can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(**7**) The Prototype Agreements Scheme is the Scheme of that name, introduced by the Secretary of State on 1st November 2015, that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the National Health Service Act 2006 (c.41).

(**8**) The National Health Service (Dental Services) (Prototype Agreements) Directions 2015, signed on 23rd September 2015, are available on the www.gov.uk website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

"the Prototype SFE" means the Prototype Agreements Scheme Statement of Financial Entitlements(**9**);".

Amendment of regulation 17 of the GDS Regulations

4. In regulation 17 (units of dental activity), in paragraphs (1) and (2), for "regulation 24B" substitute "regulations 24B and 24C".

Insertion of new regulations 18A, 18B and 18C into the GDS Regulations

5. After regulation 18 (units of orthodontic activity), insert—

"**Units of dental activity for contractors who elect to enter into a prototype agreement**

18A.—(1) Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of units of dental activity to be provided by the contractor—

(a) where the prototype agreement begins on 1st April, in each financial year; or

(b) where the prototype agreement begins on a date other than 1st April, in the remainder of the financial year in which the prototype agreement begins, and in each financial year thereafter.

(2) A prototype agreement must contain terms which have the effect of those specified in Schedule 2A in relation to the calculation of the number of units of dental activity to be provided by the contractor under the prototype agreement.

Capitated patient figures for contractors who elect to enter into a prototype agreement

18B. Where a contractor has elected to enter into a prototype agreement, the prototype agreement must specify the number of capitated patients to whom the contractor is expected to have provided primary dental services (known as the capitated patient figure) by the end of each financial year.

Capitated patients

18C.—(1) Where a contractor has elected to enter into a prototype agreement, on any day ("the relevant day") a patient is a capitated patient if that patient has been provided with a banded course of treatment by the contractor (C1) within a period of three years immediately preceding that day, provided that—

(a) the banded course of treatment has not been provided by a foundation trainee;

(b) the patient has not been referred to C1 for the banded course of treatment by another primary dental services contractor; and

(c) the patient was not subsequently provided with a banded course of treatment before the relevant day by another primary dental services contractor (C2), unless the patient was referred to C2 by C1 for that banded course of treatment.

(2) For the purposes of this regulation—

(**9**) The Prototype Agreements Scheme Statement of Financial Entitlements signed on 23rd September 2015 is available on the www.gov.uk website. A hard copy of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(a) a banded course of treatment does not include the provision of an urgent course of treatment; and

(b) "foundation trainee" has the meaning given in Section 12 of the General Dental Services Statement of Financial Entitlements 2013(**10**) (glossary of terms).".

Amendment of regulation 21 of the GDS Regulations

6. In regulation 21 (finance), in paragraphs (1) and (3), for "Subject to regulation 24B," substitute "Subject to regulations 24B and 24C,".

Insertion of new regulation 24C into the GDS Regulations

7. After regulation 24B (variation of contractual terms in respect of election to enter into a Capitation and Quality Scheme 2 Agreement), insert—

"**Variation of contractual terms in respect of election to enter into a prototype agreement**

24C.—(1) This regulation applies where the contractor and the Board elect to enter into a prototype agreement.

(2) Where this regulation applies, the terms of the contract which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraphs (4) and (5) with effect from the day on which the prototype agreement commences and for the period ending at the end of the day which is the date of termination of the prototype agreement, which must be no later than 31st March 2018.

(3) The provisions specified in this paragraph are—

(a) regulation 17 (units of dental activity);

(b) regulation 19 (under provision of units of dental activity or units of orthodontic activity), in relation to units of dental activity only;

(c) regulation 21 (finance);

(d) Part 1 of Schedule 2 (units of dental activity); and

(e) in Schedule 3 (other contractual terms)—

(i) paragraph 32(2) (patient records), which is a contractor's discretion to keep patient records in electronic form,

(ii) paragraph 58 (mid-year reviews), and

(iii) paragraph 61(1)(a) and (3)(a) (variation of a contract: activity under the contract), which relate to units of dental activity.

(4) The contract must include terms that have the effect of temporarily releasing the contractor and the Board from all of the obligations, conditions, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3), including any right to enforce those terms.

(**10**) The General Dental Services Statement of Financial Entitlements 2013, signed on 28th March 2013, was amended by: the Primary Dental Services Statements of Financial Entitlements (Amendment) Directions 2014, signed on 16th April 2014; and the Primary Dental Services Statement of Financial Entitlements (Amendment) Directions 2015 signed on 30th July 2015. All of the aforementioned sets of Directions are available on www.gov.uk. Hard copies of these Directions can be obtained by writing to Dental and Eye Care Services, Policy and Legislation Unit, NHS Group, Room 201 Richmond House, 79 Whitehall, London, SW1A 2NS.

(5) The contract must also include terms that have the effect of providing that, immediately after the date of the termination of the prototype agreement, the terms of the contract that subsisted between the parties immediately before—

(a) in the case of a contractor who held both a Capitation and Quality Scheme Agreement and a Capitation and Quality Scheme 2 Agreement, the Capitation and Quality Scheme Agreement commenced;

(b) in the case of a contractor who held a Capitation and Quality Scheme 2 Agreement but not a Capitation and Quality Scheme Agreement, the Capitation and Quality Scheme 2 Agreement commenced; or

(c) if neither sub-paragraph (a) nor (b) applies, the prototype agreement commenced,

and from which the parties were temporarily released in accordance with paragraph (4), must apply from the day after the date of termination, and all obligations, conditions, payments, rights and liabilities relating to those terms are to be enforceable from that day.".

Insertion of new Schedule 2A into the GDS Regulations

8. After Schedule 2 (provision of services: units of dental activity and units of orthodontic activity), insert—

"SCHEDULE 2A Regulation 18A

Provision of services: units of dental activity where a contractor has elected to enter into a prototype agreement

1.—(1) Where a contractor holding a Blend A prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table A.

(2) Where a contractor holding a Blend B prototype agreement provides a banded course of treatment, for the purposes of the agreement the contractor is to be regarded as providing the number of units of dental activity specified in the appropriate row of Table B.

(3) Where a banded course of treatment is commenced under a prototype agreement but not completed for whatever reason, the appropriate number of units of dental activity provided is to be calculated on the basis of the components of the course of the treatment which have been—

(a) completed; and

(b) commenced but not completed.

(4) Where a patient is referred by the contractor for advanced mandatory services to another provider of primary dental services, the appropriate number of units of dental activity provided by—

(a) that contractor; and

(b) the other provider of primary dental services, if that provider is also a contractor,

must be calculated on the basis of the components of the course of treatment which each contractor actually provides, notwithstanding that the treatment constitutes a single banded course of treatment for charging purposes.

(5) Where the contractor provides a charge exempt course of treatment, for the purposes of the prototype agreement the contractor provides the number of units of dental activity specified in the appropriate row of Table C.

(6) For the purposes of this paragraph, "Blend A prototype agreement" and "Blend B prototype agreement" have the same meaning as in the Prototype SFE.