STATUTORY RULES OF NORTHERN IRELAND

2005 No. 174

HEALTH AND PERSONAL SOCIAL SERVICES

The Independent Health Care Regulations (Northern Ireland) 2005

Made - - - - *25th March 2005*

Coming into operation *1st April 2005*

The Department of Health, Social Services and Public Safety, in exercise of powers conferred on it by Articles 2(2), (7) to (9), 23(1), (2)(a) to (d), (f) to (j) (3), (5), (7)(a) to (h), (j) and (k), 25(1), 30, 31(1), 32 and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2004(**1**) and of all other powers enabling it in that behalf, having consulted such persons as it considers appropriate as required by Article 23(8) of that Order, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and extent

1. These Regulations may be cited as the Independent Health Care Regulations (Northern Ireland) 2005 and shall come into operation on 1st April 2005.

Interpretation

2.—(1) In these Regulations –

"agency" means an independent medical agency;

"dentist" means dental practitioner;

"establishment" means an independent hospital, or an independent clinic;

"ethics committee" has the same meaning as in the Medicines for Human Use (Clinical Trials) Regulations 2004(**2**);

(**1**) S.I.2003/431 (N.I. 9)
(**2**) S.I. 2004/1031

"Fire Authority" means the Fire Authority for Northern Ireland within the meaning of the Fire Services (Northern Ireland) Order 1984(**3**);

"general practitioner" means a medical practitioner providing primary medical services;

"health care professional" means a person who is registered as a member of any profession which is regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 or who is a clinical psychologist or child psychotherapist(**4**);

"medical device" has the same meaning as in the Medical Devices Regulations 2002(**5**);

"the Order" means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972(**6**);

"organisation" means a body corporate or any unincorporated association other than a partnership;

"patient", in relation to any establishment or agency, means a person for whom treatment is provided in or for the purposes of the establishment, or for the purposes of the agency;

"patient's guide" means the guide compiled in accordance with regulation 8;

"practising privileges" in relation to a medical practitioner, refers to the grant to a person who is not employed in an independent hospital of permission to practise in that hospital;

"registered manager", in relation to an establishment or agency, means a person who is registered under Part III of the Order as the manager of the establishment or agency;

"registered person", in relation to an establishment or agency, means any person who is the registered provider or the registered manager of the establishment or agency;

"registered provider" in relation to an establishment or agency, means a person who is registered under Part III of the Order as the person carrying on the establishment or agency;

"responsible individual" shall be construed in accordance with regulation 10(2)(c)(i);

"statement of purpose" means the written statement compiled in accordance with regulation 7;

"treatment" includes palliative care and nursing and listed services within the meaning of Article 2 of the Order.

(2) In these Regulations, references to employing a person include employing a person whether under a contract of service or a contract for services.

Exceptions to the definition of independent hospital

3. For the purposes of Article 2 of the Order, establishments of the following descriptions are excepted from being independent hospitals –

(a) an establishment which is a hospital by virtue of Article 2(2) of the Order solely because its main purpose is to provide medical or psychiatric treatment for illness or mental disorder but which provides no overnight beds for patients;

(b) an establishment which is a service hospital within the meaning of section 13(9) of the Armed Forces Act 1981(**7**);

(**3**) S.I. 1984/1821 (N.I. 11)
(**4**) 2002 c. 17
(**5**) S.I. 2002/618
(**6**) S.I. 1972/1265 (N.I. 14)
(**7**) 1981 c. 55

(c) an establishment which is, or forms part of, a prison, within the meaning of the Prison Act (Northern Ireland) 1953(**8**) or a Remand Centre or Young Offenders Centre within the meaning of the Treatment of Offenders Act (Northern Ireland) 1968(**9**);

(d) an establishment which is an independent clinic by virtue of regulation 5;

(e) an establishment (not being a hospital which is vested in the Department or managed by an HSS trust) which has as its sole or main purpose the provision by a general practitioner of primary medical services; and such an establishment shall not become an independent hospital as a result of the provision of listed services to a patient by such a general practitioner;

(f) the private residence of a patient in which treatment is provided to such patient, but to no one else;

(g) sports grounds and gymnasia where health professionals provide treatment to persons taking part in sporting activities and events; and

(h) a surgery or consulting room, not being part of a hospital, where a medical practitioner provides medical services solely under arrangements made on behalf of the patients by their employer or another person.

Prescribed techniques or technology

4.—(1) Subject to paragraph (2), for the purposes of Article 2 of the Order, "listed services" include treatment using any of the following techniques or technology –

(a) a Class 3B or Class 4 laser product, as defined in Part I of British Standard EN 60825-1 (Radiation safety of laser products and systems)(**10**);

(b) an intense light, being broadband non-coherent light which is filtered to produce a specified range of wavelengths; such filtered radiation being delivered to the body with the aim of causing thermal, mechanical or chemical damage to structures such as hair follicles and skin blemishes while sparing surrounding tissues;

(c) endoscopy; and

(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(**11**).

(2) Listed services shall not include treatment using the following techniques or technology –

(a) treatment for the relief of muscular and joint pain using an infra-red heat treatment lamp;

(b) treatment using a Class 3B laser where such treatment is carried out by or under the supervision of a health care professional; and

(c) the use of an apparatus (not being an apparatus falling within paragraph (1)(b), for acquiring an artificial suntan, consisting of a lamp or lamps emitting ultraviolet rays.

(3) Paragraph (7) of Article 2 of the Order shall be modified by adding at the end of sub-paragraph (d) (cosmetic surgery) the following –

"other than –

(i) ear and body piercing;

(ii) tattooing;

(iii) the subcutaneous injection of a substance into the skin for cosmetic purposes; and

(**8**) 1953 c. 18
(**9**) 1968 c. 29
(**10**) Copies of BS EN 60825-1 may be obtained from BSI Customer Services, 389 Chiswick Road, London W4 4AL
(**11**) 1990 c. 37

(iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current."

Meaning of independent clinic

5.—(1) For the purposes of the definition of independent clinic under Article 2(2) of the Order, establishment of the following kinds are prescribed –

(a) a walk-in centre, in which one or more medical practitioners provide services of a kind which, if provided in pursuance of the 1972 Order, would be provided as primary medical services; and

(b) a surgery or consulting room in which a medical practitioner who provides no services in pursuance of the 1972 Order provides medical services of any kind (including psychiatric treatment) otherwise than under arrangements made on behalf of the patients by their employer or another person.

(2) Where two or more medical practitioners use different parts of the same premises as a surgery or consulting room, or use the same surgery or consulting room at different times, each of the medical practitioners shall be regarded as carrying on a separate independent clinic unless they are in practice together.

Exception of undertaking from the definition of independent medical agency

6. For the purposes of the Order any undertaking which consists of the provision of medical services by a medical practitioner solely under arrangements made on behalf of the patients by their employer or another person shall be excepted from being an independent medical agency.

Statement of purpose

7.—(1) The registered person shall compile in relation to the establishment or agency written statement which shall consist of a statement as to the matters listed in Schedule 1.

(2) The registered person shall supply a copy of the statement of purpose to the Regulation and Improvement Authority and shall make the statement available for inspection by every patient and any person acting on behalf of a patient.

(3) Nothing in regulation 15(1) or 25(1) and (2) shall require or authorise the registered person to contravene, or not to comply with –

(a) any other provision of these Regulations; or

(b) the conditions for the time being in operation in relation to the registration of the registered person under Part III of the Order.

Patient's guide

8.—(1) The registered person shall produce a written guide to the establishment or agency which shall consist of –

(a) a summary of the statement of purpose;

(b) the terms and conditions in respect of services to be provided for patients, including as to the amount and method of payment of charges for all aspects of their treatment;

(c) a standard form of contract for the provision of services and facilities by the registered provider to patients;

(d) a summary of the complaints procedure established under regulation 23;

(e) a summary of the results of the consultation conducted in accordance with regulation 17(3);

(f) the address and telephone number of the Regulation and Improvement Authority; and

(g) the most recent inspection report prepared by the Regulation and Improvement Authority or information as to how a copy of that report may be obtained.

(2) The registered person shall supply a copy of the patient's guide to the Regulation and Improvement Authority, and shall make the patient's guide available for inspection by every patient and any person acting on behalf of a patient.

Review of statement of purpose and patient's guide

9. The registered person shall –

(a) keep under review and, where appropriate, revise the statement of purpose, and the content of the patient's guide; and

(b) notify the Regulation and Improvement Authority of any such revision.

PART II

REGISTERED PERSONS

Fitness of registered person provider

10.—(1) A person shall not carry on an establishment or agency unless he is fit to do so.

(2) A person is not fit to carry on an establishment or agency unless the person –

(a) is an individual, who carries on the establishment or agency –

(i) otherwise than in partnership with others, and he satisfies the requirements set out in paragraph (3);

(ii) in partnership with others, and he and each of his partners satisfies the requirements set out in paragraph (3);

(b) is a partnership, and each of the partners satisfies the requirements set out in paragraph (3);

(c) is an organisation and –

(i) the organisation has given notice to the Regulation and Improvement Authority of the name, address and position in the organisation of an individual who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the establishment or agency; and

(ii) that individual satisfies the requirements set out in paragraph (3).

(3) The requirements are that –

(a) he is of integrity and good character;

(b) he is physically and mentally fit to carry on the establishment or agency; and

(c) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 2.

(4) A person shall not carry on an establishment or agency if –

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded; or