

NATIONAL HEALTH SERVICE ACT 1977

ALTERNATIVE PROVIDER MEDICAL SERVICES DIRECTIONS 2004

The Secretary of State for Health, in exercise of the powers conferred on him by section 17 of the National Health Service Act 1977(a) and of all other powers enabling him in that behalf, hereby gives the following Directions:

PART 1 GENERAL

Application, commencement and interpretation

1.—(1) These Directions, which may be cited as the Alternative Provider Medical Services Directions 2004, are given to Primary Care Trusts in England and shall come into force on 22nd April 2004.

(2) In these Directions—

“the 1977 Act” means the National Health Service Act 1977;

“additional services” has the same meaning as in the GMS Contract Regulations;

“APMS” means arrangements made under section 16CC(2)(b) of the 1977 Act (primary medical services)(b) for the provision of primary medical services and “APMS contract” and “APMS contractor” shall be construed accordingly;

“core hours” has the same meaning as in the PMS Agreement Regulations;

“the GMS Contract Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(c);

“list of patients” means in relation to an APMS contractor, the list maintained in respect of that contractor by the Primary Care Trust under direction 13;

“essential services” means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contract Regulations (essential services) or services that are equivalent to those services and which are provided during core hours;

“national disqualification” has the same meaning as in the PMS Agreement Regulations;

“NHS contract” has the meaning given to it in section 4 of the National Health Service and Community Care Act 1990(d);

“out of hours services” has the same meaning as in the PMS Agreement Regulations;

“patient” means a person to whom the APMS contractor is required to provide primary medical services under its APMS contract;

“PMS Agreement Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004(e); and

“primary care list” has the same meaning as in the PMS Agreement Regulations.

(a) 1977 c. 49. Section 17 was substituted by the Health Act 1999 (c.8), section 12 and amended by the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 5 and the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 7.

(b) Section 16CC was inserted into the 1977 Act by section 174 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(c) S.I. 2004/291 as amended by S.I. 2004/906.

(d) 1990 c. 19.

(e) S.I. 2004/ 627 as amended by S.I. 2004/906.

(3) In relation to a requirement to include terms having the effect specified in provisions of the PMS Agreement Regulations, those terms shall be read as if references in the PMS Agreement Regulations to—

- (a) “an agreement” or “the agreement” were to “an APMS contract” or “the APMS contract”;
- (b) “the contractor” or “a contractor” were to “the APMS contractor” or “an APMS contractor”;
- (c) “the relevant body” were to “the Primary Care Trust”; and
- (d) provisions of those Regulations were references to corresponding provisions of these Directions where these Directions require an equivalent term to be included in an APMS contract.

Minimum standards

2. Nothing in these Directions shall prevent a Primary Care Trust agreeing contractual terms of an APMS contract which require a higher level of performance by the APMS contractor than would otherwise be required pursuant to these Directions.

PART 2

PROVIDER CONDITIONS

Provider Conditions

3.—(1) A Primary Care Trust may not enter into an APMS contract with an individual if that individual falls within paragraph (5).

(2) A Primary Care Trust may not enter into an APMS contract with a company if that

- (a) company; or
- (b) any director or secretary of the company,

falls within paragraph (5).

(3) A Primary Care Trust may not enter into an APMS contract with a partnership if

- (a) any individual member of the partnership; or
- (b) the partnership,

falls within paragraph (5).

(4) A Primary Care Trust may not enter into an APMS contract with an industrial and provident society, a friendly society, a voluntary organisation^(a) or any other body if—

- (a) the society, organisation or body; or
- (b) any officer, trustee or any other person concerned with the management of the society, organisation or body,

falls within paragraph (5).

(5) A person, partnership or body falls within this paragraph if—

- (a) he or it is the subject of a national disqualification;
- (b) subject to paragraph (6), he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of five years prior to the signing of the APMS contract or commencement of the APMS contract, whichever is the earlier, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless he has subsequently been employed by that health service body or another health service body and paragraph (7) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;

(a) “Voluntary organisation” is defined in section 128(1) of the 1977 Act.

- (d) within the period of five years prior to signing the APMS contract or commencement of the APMS contract, whichever is the earlier, he or it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the 1977 Act respectively^(a)) unless his or its name has subsequently been included in such a list;
 - (e) he has been convicted in the United Kingdom of murder;
 - (f) he has been convicted in the United Kingdom of a criminal offence, committed on or after 1st April 2002, and has been sentenced to a term of imprisonment of over six months;
 - (g) subject to paragraph (8) he has been convicted elsewhere of an offence
 - (i) which would, if committed in England and Wales, constitute, murder,
 - (ii) committed on or after 3rd November 2003, which would, if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
 - (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933^(b) (offences against children and young persons with respect to which special provisions of the Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995^(c) (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2004;
 - (i) he or it has—
 - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled,
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986^(d),
 - (iii) made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it, or
 - (iv) an administrator, administrative receiver or receiver appointed in respect of it;
 - (j) he has been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
 - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990^(e) (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
 - (k) he is subject to a disqualification order under the Company Directors Disqualification Act 1986^(f), the Companies (Northern Ireland) Order 1986^(g) or to an order made under section 429(2)(b) of the Insolvency Act 1986^(h) (failure to pay under county court administration order).
- (6) A person shall not fall within paragraph (5)(b) where the Primary Care Trust is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—
- (a) a party to an APMS contract;

(a) Section 49F was inserted into the Act by section 25 of the 2001 Act and amended by the 2002 Act, section 2(5) and paragraph 21 and the 2003 Act, Schedule 14.

(b) 1933 c. 12 as amended by the Criminal Justice Act 1988 (c. 33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(c) 1995 c. 46.

(d) 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c. 40).

(e) 1990 c.40.

(f) 1986 c.46 as amended by the Insolvency Act 2000 (c..39).

(g) S.I.1986/1032 (N.I.6).

(h) 1986 c.45.

- (b) in the case of an APMS contract with a company, a director or company secretary of a company entering into an APMS contract; or
- (c) in the case of an APMS contract with an industrial and provident society, friendly society, voluntary organisation or other body, an officer, trustee or other person concerned with the management of such a society, organisation or other body entering into an APMS contract.

(7) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.

(8) A person shall not fall within paragraph (5)(g) where the Primary Care Trust is satisfied that the conviction does not make the person unsuitable to be

- (a) a party to an APMS contract;
- (b) in the case of a company, a director or company secretary of a company entering into an APMS contract; or
- (c) in the case of an APMS contract with an industrial and provident society, friendly society, voluntary organisation or other body, an officer, trustee or other person concerned with the management of such a society, organisation or other body entering into an APMS contract.

PART 3

MANDATORY TERMS FOR ALL APMS CONTRACTS

General terms

4. A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract—

- (a) states that it is an NHS contract where the contract is to be an NHS contract because the APMS contractor is an NHS body or is to be regarded as such body by virtue of regulation 9 of the PMS Agreement Regulations or regulation 10 of the GMS Contract Regulations;
- (b) specifies who the APMS contractor is to provide services to under the APMS contract, including where appropriate by reference to an area within which a person resident would be entitled to receive services under the APMS contract;
- (c) specifies that the APMS contractor shall not sell, assign or otherwise dispose of the benefit of any of its rights under the APMS contract without the prior consent of the Primary Care Trust;
- (d) subject to direction 5(1)(i), specifies the circumstances (if any) in which any obligations under the APMS contract may be sub-contracted;
- (e) specifies the grounds (in addition to those required by direction 5(1)(s), (t) and (u) in which the APMS contract may or must be terminated and any contract sanctions; and
- (f) specifies in the case of a contract which is not an NHS contract, the procedures that are to apply in the event of a contractual dispute.

Other contractual terms

5.—(1) A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract contains terms which have the effect specified in the following provisions of Schedule 5 (other contractual terms) to the PMS Agreement Regulations—

- (a) paragraph 2 (premises);
- (b) paragraph 5 (clinical reports), but as if in sub-paragraph (4) the words “which is required” to the end were omitted;
- (c) paragraphs 6 (storage of vaccines) and 7 (infection control);
- (d) paragraphs 37 (prescribing) and 38(1) and (3) to (7) and 41 (restrictions on prescribing by medical practitioners) to 44(1) (excessive prescribing) and 52 (provision of drugs, medicines and appliances for immediate treatment or personal administration), but as if

- (i) references to “repeatable prescriptions” were omitted, and
- (ii) in paragraph 41, references to “regulation 15(2)(b)” were references to “direction 9(a)(ii)”;
- (e) paragraphs 53 to 56 (qualifications of performers), but as if in paragraph 53(2)(a) were omitted;
- (f) paragraphs 60(1) and (3) (conditions for employment and engagement), 61 (training), 62 and 63 (arrangements for GP Registrars);
- (g) paragraph 66 (signing of documents), but as if the reference to “repeatable prescriptions” were omitted;
- (h) paragraph 67 (level of skill);
- (i) paragraph 69(5) (sub-contracting clinical matters)(a);
- (j) paragraphs 70(2) (patient records) and 71 (confidentiality of personal data);
- (k) paragraph 73 (provision of information);
- (l) paragraphs 75 (inquiries about prescriptions and referrals) and 76 (reports to a medical officer), but as if the reference in paragraph 75(1)(a) to “repeatable prescription” were omitted;
- (m) paragraph 77 (annual return and review) but as if in sub-paragraph (1) the words “which shall require” to the end were omitted;
- (n) paragraphs 78 and 79 (notifications to the relevant body), but as if in paragraph 78(b) the reference to paragraph 103 were omitted;
- (o) paragraph 81 (notification of deaths);
- (p) paragraphs 83 to 85 (rights of entry and inspection);
- (q) paragraph 91 (co-operation with investigations);
- (r) paragraph 98 (variation of an agreement: general), but as if
 - (i) in sub-paragraph (1), the words “and paragraphs 70(3) and 109,” were omitted, and
 - (ii) in sub-paragraph (2), the words “in addition to the specific provision made in paragraph 109,” were omitted;
- (s) paragraph 104 (termination by the relevant body for the provision of untrue etc information), but as if the reference to regulations 4 and 5 were to direction 4;
- (t) paragraph 105 (termination by the relevant body on fitness grounds) but as if sub-paragraphs (1) and (2) were substituted as follows—

“**105.**—(1) The Primary Care Trust may service notice in writing terminating the APMS contract forthwith, or from such date as may be specified in the notice if—

- (a) in the case of an APMS contract with an individual, the individual;
- (b) in the case of an APMS contract with a company—
 - (i) the company, or
 - (ii) any director or company secretary of the company;
- (c) in the case of an APMS contract with a partnership—
 - (i) any individual member of the partnership, or
 - (ii) the partnership; or
- (d) in the case of an APMS contract with an industrial and provident society, a friendly society, a voluntary organisation or any other body—
 - (i) the society, organisation or other body, or
 - (ii) an officer, trustee or any other person concerned with the management of the society, organisation or body,

falls within sub-paragraph (3) during the existence of the APMS contract.”;

(a) Paragraph 69(5) was inserted into Schedule 5 to the PMS Agreement Regulations by S.I. 2004/609.

- (u) paragraphs 106 (termination by the relevant body where there is a serious risk to the safety of patients etc) and 106A (termination by the relevant body for unlawful sub-contracting);
- (v) paragraph 112 (clinical governance);
- (w) paragraphs 113 and 114 (insurance), but as if the definition of “insurance” in paragraph 113(3)(a) applied to paragraph 114;
- (x) paragraph 115 (compliance with legislation and guidance);
- (y) paragraph 116 (third party rights); and
- (z) paragraph 117 (gifts), but as if
 - (i) in sub-paragraph (2)
 - (aa) paragraphs (a) and (b) were omitted;
 - (bb) references to “paragraphs (b) to (d)” were to “paragraphs (c) and (d)”, and
 - (ii) in sub-paragraph (4), the reference to “sub-paragraph (2)(b) to (f)” were to “sub-paragraph (c) to (f)”.

(2) A Primary Care Trust which wishes to enter into an APMS contract shall consider whether the APMS contract should require the contractor to keep a register of gifts given to the following persons (in addition to the persons who the APMS contractor is required to record gifts given to pursuant to paragraph (1)(y))

- (a) the APMS contractor;
- (b) where the APMS contractor is a company, to any director or company secretary of the company;
- (c) where the APMS contractor is a partnership, to member of the partnership; or
- (d) where the APMS contractor is an industrial and provident society, a friendly society, a voluntary organisation or any other body, to an officer, trustee or any other person concerned with the management of the society, organisation or body.

Certificates

6. A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract contains terms having the effect specified in regulation 12 (certificates) of, and Schedule 2 (list of prescribed medical certificates) to, the PMS Agreement Regulations.

Appraisal and assessment of performers of APMS

7. A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract requires the APMS contractor to ensure that any medical practitioner performing medical services under the APMS contract—

- (a) participates in an appropriate appraisal system; and
- (b) co-operates with the National Clinical Assessment Authority when requested to do so by the Primary Care Trust.

Charges

8. A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract —

- (a) prohibits the APMS contractor, either itself or through any other person, from demanding or accepting from any registered patient of its a fee or other remuneration, for its own or another’s benefit for
 - (i) the provision of any treatment whether under the APMS contract or otherwise; or
 - (ii) any prescription for any drug, medicine or appliance,
 - except in the circumstances set out in Schedule 3 to the PMS Agreement Regulations;

- (b) prohibits the APMS contractor, either itself or through any other person, from demanding or accepting from any patient of its other than a registered patient a fee or other remuneration, for its own or another's benefit for
 - (i) the provision of any treatment under the APMS contract; or
 - (ii) any prescription for any drug, medicine or appliance in connection with that treatment;
- (c) contains terms having the same effect as those specified in regulation 15(3) and (4) of the PMS Agreement Regulations; and
- (d) requires the APMS contractor in the provision of services to patients under the APMS contract—
 - (i) to provide information regarding other services it provides otherwise than under the APMS contract only where appropriate,
 - (ii) where it does provide such information, to ensure that the information provided is fair and accurate, and
 - (iii) where the other services are available to the patient as part of the health service established pursuant to section 1 of the 1977 Act, to inform the patient—
 - (aa) that the services are so available;
 - (bb) of any charge that applies to that health service and, if no such charge applies, that the service is free; and
 - (cc) how to access those health services.

Financial interests

9.—(1) A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract requires the APMS contractor in making a decision—

- (a) to refer a patient for other services under the 1977 Act; or
- (b) to prescribe any drug, medicine or other appliance to a patient,

to do so without regard to its own financial interests.

(2) The Primary Care Trust shall further ensure that an APMS contract contains a term having the effect of prohibiting the APMS contractor from informing patients that any prescription for any drug, medicine or other appliance must be dispensed only by the APMS contractor or a person with whom the APMS contractor is associated.

Consequences of termination of an APMS contract

10. A Primary Care Trust which wishes to enter into an APMS contract shall ensure that the APMS contract makes suitable provision for the arrangements on termination of an APMS contract, including the consequences (whether financial or otherwise) of the APMS contract ending.

PART 4

MANDATORY TERMS OF AN APMS CONTRACT UNDER WHICH ESSENTIAL SERVICES ARE TO BE PROVIDED

Mandatory terms of an APMS contract under which essential services are to be provided

11.—(1) A Primary Care Trust which wishes to enter into an APMS contract under which essential services are to be provided shall ensure (in addition to the requirements specified in directions 4 to 10) that the APMS contract contains terms which have the effect specified in the following provisions of Schedule 5 (other contractual terms) to the PMS Agreement Regulations—

- (a) paragraph 3 (attendance at practice premises);
- (b) paragraphs 10 and 11 (duty of co-operation);
- (c) paragraph 17 (patient preference of practitioner);

- (d) paragraph 63 (arrangements for GP Registrars);
- (e) paragraph 70(1) and (3) to (10) (patient records);
- (f) paragraph 72 (contractor's leaflet), but as if the words "and to the relevant body" were added at the end of paragraph (c) and Schedule 10; and
- (g) paragraph 82 (notifications to patients following variation of the agreement), but as if the words "in accordance with Part 8 of this Schedule" were omitted.

(2) The Primary Care Trust shall further ensure that such an APMS contract makes provision as to the circumstances (if any) in which the Primary Care Trust may assign patients to the contractor and where appropriate, as to whether the APMS contractor's list of patients is to be regarded as open or closed and in what circumstances the status of the list may change.

(3) The Primary Care Trust shall further ensure that such an APMS contract makes provision as to the circumstances (if any) in which the APMS contractor is required to attend a patient otherwise than at the contractor's premises.

PART 5

MANDATORY TERM FOR AN APMS CONTRACT UNDER WHICH OUT OF HOURS SERVICES ARE TO BE PROVIDED

Mandatory term for an APMS contract under which out of hours services are to be provided

12. Where a Primary Care Trust wishes to enter into an APMS contract under which out of hours services are to be provided it shall ensure (in addition to the requirements specified in directions 4 to 10) that the APMS contract shall require the APMS contractor to meet the quality standards set out in the document entitled "Quality Standards in the Delivery of GP Out of Hours Services" published on 20th June 2002^(a).

PART 6

PATIENT LISTS

Patient Lists

13. Where an APMS contract requires an APMS contractor to provide essential services and to have a list of patients, the Primary Care Trust shall prepare and keep up to date a list of the patients—

- (a) who have been accepted by the APMS contractor for inclusion in the APMS contractor's list of patients in accordance with the terms of the APMS contract and who have not subsequently been removed from that list in accordance with the terms of the APMS contract; and
- (b) where applicable, who have been assigned to the APMS contractor in accordance with the terms of the APMS contract and whose assignment has not been rescinded.

PART 7

MISCELLANEOUS

APMS contracts entered into before the coming into force of these Directions

14.—(1) Where a Primary Care Trust has entered into an APMS contract before the coming into force of these Directions which does not comply with these Directions, it shall enter into negotiations with the

(a) The document "Quality Standards in the delivery of GP Out of Hours Services" is published on the Department of Health's website at www.doh.gov.uk/pricare/qualitystandards.htm

APMS contractor with a view to agreeing variations to the APMS contract to make it compatible with these Directions.

(2) Where a Primary Care Trust has power under an APMS contract to impose a variation of the APMS contract, it shall where necessary (and in particular where the negotiations envisaged under paragraph (1) have failed) exercise that power so as to ensure that the APMS contract is compatible with these Directions.

Signed by authority of the Secretary of State for Health

A handwritten signature in black ink, appearing to be 'J. U. A. C.', written on a light blue background.

21st April 2004

Department of Health
A member of the Senior Civil Service