

NATIONAL HEALTH SERVICE ACT 1977

Directions as to the functions of the Family Health Services Appeal Authority (Special Health Authority) (PMS Agreement Disputes) 2004

The Secretary of State for Health, in exercise of powers conferred by sections 16D, 17 and 18 of the National Health Service Act 1977(a), and all other powers enabling him in that behalf, hereby gives the following Directions:-

Commencement and extent

- 1.-(1) These Directions shall come into force on 19th March 2004.
- (2) These Directions apply to England only.

Interpretation

2. In these Directions—

“agreement” means an agreement for primary medical services made under section 28C of the National Health Service Act 1977(b);

“the Authority” means the Family Health Services Appeal Authority (Special Health Authority) established by article 2 of the Family Health Services Appeal Authority (Establishment and Constitution) Order 1995(c);

“contractor” means a party to an agreement;

“FHSAA” means the Family Health Services Appeal Authority established by section 49S of the National Health Service Act 1977(d);

“mixed dispute” means a dispute that falls within direction 4(1)(a) or (b) where that dispute-

- (a) will also involve the determination of matters that are not specified in direction 4(1)(a) or (b); or

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- (a) Section 16D was substituted by the Health Act 1999 (c.8), section 12(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 3(2) and Schedule 1, paragraph 6; section 18, subsections (1) to (1B) were substituted by the Health Act 1999 (c.8), section 21(3) and amended by the National Health Service Reform and Health Care Professions Act 2002, Schedule 1, paragraph 9. Section 17 was substituted by section 12 of the Health Act 1999 (c.8) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 1, paragraph 7. As respects Wales, the powers to give directions under these sections have been transferred to the National Assembly for Wales, *see* article two of, and the entry in relation to, the National Health Service Act 1977 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672.
 - (b) Section 28C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(1), and was amended by the Health Act 1999 (c.8), section 65(1) and Schedule 4, paragraphs 4 and 15; the Health and Social Care Act 2001 (c.15), section 40 and Schedule 5, paragraph 11; the National Health Service Reform and Health Care Professions Act 2002, section 4(3) and Schedule 3, paragraphs 1 and 7; and by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 196 and Schedule 14, and section 184 and Schedule 11, paragraphs 7 and 14.
 - (c) S.I.1995/621. The name of the Family Health Services Appeal Authority was changed to the Family Health Services Appeal Authority (Special Health Authority) by S.I. 2001/3562.
 - (d) 1977 c.49. Section 49S was inserted by the Health and Social Care Act 2001 (c.15), section 27(4) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 1(3) and Schedule 1, paragraphs 1 and 18.

- (b) involves, or is likely to involve, a claim by either party for a direction from the adjudicator that payments should be made by either party to the other party;

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

“closure notice”, “contractor’s list of patients” and “relevant body” have the meanings assigned to them in the Regulations.

Functions exercisable by the Authority

3. The functions of the Secretary of State set out in—

- (a) regulation 8 of the Regulations (pre-agreement disputes); and
- (b) paragraphs 95 and 96 of Schedule 5 to the Regulations (dispute resolution), except in relation to the matters specified in direction 4,

shall be exercised on his behalf by the Authority.

4.—(1) The Authority shall not, except in relation to a mixed dispute, exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute that arises in relation to—

- (a) the rejection of a closure notice by a Primary Care Trust pursuant to a term of the agreement that gives effect to paragraph 30 of Schedule 5 to the Regulations (rejection of closure notice); or
- (b) the assignment of a patient to a contractor’s list of patients pursuant to a term of the agreement that gives effect to paragraph 31 (assignment of patients to lists: open lists) or 32 (assignment of patients to lists: closed lists) of Schedule 5 to the Regulations.

(2) The Authority shall not exercise the Secretary of State’s functions pursuant to the provisions specified in direction 3(b) in respect of any dispute that arises in relation to—

- (a) a term of the agreement that gives effect to paragraph 103 (termination by the relevant body for breach of conditions in regulation 4) or 104 (termination by the relevant body for the provision of untrue etc. information) of Schedule 5 to the Regulations, insofar as the dispute requires a determination as to whether—
 - (i) pursuant to paragraph 103—
 - (aa) a medical practitioner who is a party to the agreement no longer satisfies the condition specified in regulation 4(1) of the Regulations, or
 - (bb) a qualifying body which is a party to the agreement no longer satisfies the condition specified in regulation 4(2) of the Regulations; or
 - (ii) pursuant to paragraph 104, written information provided to the relevant body by the contractor before the agreement was entered into was, when given, untrue or inaccurate in a material respect; or
- (b) a term of the agreement that gives effect to paragraph 105 of Schedule 5 to the Regulations, but only insofar as that dispute requires a determination as to whether any of the persons specified in paragraph 105(1) or (2) falls within paragraph 105(3) during the existence of the agreement, including a determination in respect of any dispute relating to a decision a relevant body has taken pursuant to paragraph 105(4) to (6) (where those sub-paragraphs apply).

Co-operation with the FHSAA and Strategic Health Authorities

(a) S.I. 2004/627.

5. In exercising functions pursuant to these Directions in relation to a particular agreement, the Authority shall co-operate with the FHSAA or any Strategic Health Authority (as the case may be) in respect of any function to be exercised by either of those bodies pursuant to-

- (a) the Directions as to the functions of Strategic Health Authorities (PMS Agreement Disputes) 2004 which came into force on 19th March 2004; and
- (b) the Directions as to the functions of the Family Health Services Appeal Authority (PMS Agreement Disputes) 2004 which came into force on 19th March 2004,

insofar as it is necessary to ensure the just, expeditious, economical and final determination of any dispute arising in relation to an agreement.

Signed by authority of the Secretary of State

18th March 2004

Richard Armstrong

Department of Health

A Member of the Senior Civil Service