

NATIONAL HEALTH SERVICE ENGLAND

Directions to NHS bodies on Counter Fraud Measures 2004

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 16D, 17 and 126(4) of the National Health Service Act 1977(a) and of all other powers enabling him in that behalf, hereby gives the following Directions:

Application, commencement and interpretation

- 1.—(1) These Directions apply to NHS bodies in England and shall come into force on 09 November 2004.
- (2) In these Directions—
 - “the CFPAB” means the Counter Fraud Professional Accreditation Board(b);
 - “the CFSMS” means the Counter Fraud and Security Management Service(c);
 - “LCFS” means a Local Counter Fraud Specialist appointed in accordance with direction 5;
 - “NHS body” means a Strategic Health Authority, Special Health Authority, Primary Care Trust or NHS trust;
 - “NHS body’s staff” means any person who is employed by or engaged to provide services to an NHS body; and
 - “the NHS Counter Fraud and Corruption Manual” means the NHS Counter Fraud and Corruption Manual published by the CFSMS(d).

General

- 2.—(1) Each NHS body must take all necessary steps to counter fraud in the National Health Service in accordance with these Directions and in accordance with—
 - (a) the NHS Counter Fraud and Corruption Manual; and
 - (b) the policy statement “Applying appropriate sanctions consistently” published by the CFSMS(e),and having regard to guidance or advice issued by the CFSMS.
- (2) Each NHS body must require its Chief Executive and Director of Finance to monitor and ensure compliance with these Directions.

(a) 1977 c.49; section 16D was substituted by section 12(1) of the Health Act 1999 (c.8) (“the 1999 Act”) and amended by sections 1(3) and 3(1) and (2) of, and paragraphs 1 and 6(a) of Part 1 of Schedule 1 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”); section 17 was substituted by section 12(1) of the 1999 Act and amended by section 1(3) of, and paragraphs 1 and 7 of Part 1 of Schedule 1 to, the 2002 Act and section 67(1) of, and paragraphs 5(1) and (3) of Part 1 of Schedule 5 to, the Health and Social Care Act 2001 (c.15) (“the 2001 Act”); section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19), by paragraph 37(6) of Schedule 4 to the 1999 Act and by paragraph 5(13)(b) of Part 1 of Schedule 5 to the 2001 Act. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the 1999 Act.

(b) The Counter Fraud Professional Accreditation Board is a regulatory body financed and run by representatives from the Department for Work and Pensions and its agencies, the Department of Health, the Inland Revenue, the Local Government Association, Abbey National, HM Customs and Excise, UK Passport Agency and the Charity Commission. Its purposes are to ensure the delivery of professional, accredited counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

(c) A Special Health Authority established by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 S.I. 2002/3039 (“the Order”).

(d) This manual is updated from time to time and issued to NHS bodies.

(e) Available at www.cfsms.nhs.uk

Co-operation with the Counter Fraud and Security Management Service

- 3.—(1) Each NHS body must co-operate with the CFSMS to enable the CFSMS efficiently and effectively to carry out its counter fraud functions^(a) and in particular each NHS body must, subject to the following paragraphs of this direction—
- (a) enable the CFSMS to have access to its premises;
 - (b) put in place arrangements which will enable the CFSMS to have access, as appropriate, to the NHS body's staff; and
 - (c) supply such information including files and other data (whether in electronic or manual form) as the CFSMS may require,
- for the purposes of the CFSMS' counter fraud functions.
- (2) In the case of information required under paragraph (1)(c) in connection with the CFSMS' responsibility for quality inspection, fraud measurement, National Proactive Exercises (NPEs)^(b) and fraud prevention reviews, inspections and instructions, an NHS body must respond to any request from the CFSMS as soon as reasonably practicable.
 - (3) In the case of information required under paragraph (1)(c) for the purposes of investigations relating to the CFSMS' counter fraud functions, an NHS body must respond to a request as soon as reasonably practicable and in any event within seven days from the date the request was made.
 - (4) Nothing in paragraph (1)(b) contravenes any right a member of staff may otherwise have to refuse to be interviewed.
 - (5) Nothing in paragraph (1)(c) or direction 7(f) obliges or permits an NHS body to supply information which is prohibited from disclosure by or under any enactment, rule of law or ruling of a court of competent jurisdiction or is protected by the common law.
 - (6) Without prejudice to the generality of direction 2(1)(a), each NHS body must comply with the requirements specified in the NHS Counter Fraud and Corruption Manual concerning—
 - (a) the arrangements for reporting fraud cases to the LCFS and to the NHS body's audit committee and auditors;
 - (b) the arrangements for agreeing to undertake a criminal prosecution and to refer a matter to the police;
 - (c) the confidentiality of information relevant to the investigation of suspected fraud;
 - (d) the arrangements for the LCFS to report weaknesses in fraud related systems to the CFSMS and the NHS body's audit committee and auditors; and
 - (e) the arrangements for gathering information to enable the Director of Finance to seek recovery of money lost through fraud.

Counter fraud role of non-executive director or non-officer member of NHS bodies

- 4.—(1) Within six weeks of the date on which these Directions come into force each NHS body must designate a person to undertake specific responsibility for the promotion of counter fraud measures; in the case of an NHS trust he is to be one of the trust's non-executive directors and in the case of an NHS body other than an NHS trust, he is to be one of that body's non-officer members.
- (2) A further designation must be made within 3 months of the date on which an NHS body learns that there is to be a vacancy for a person referred to in paragraph (1).
 - (3) Each NHS body must ensure that such person receives appropriate training in connection with counter fraud measures provided by the CFSMS.

^(a) For the functions of the CFSMS in relation to counter fraud see the Order and the Directions to the Counter Fraud and Security Management Service 2003.

^(b) NPE is a series of exercises initiated by the CFSMS for LCFSs for the purpose of uncovering or preventing fraud and corruption within current systems or highlighting policy weaknesses.

Appointment of Local Counter Fraud Specialists

- 5.—(1) Each NHS body must nominate at least one person that it proposes to appoint as the body's LCFS within six weeks of the date on which these Directions come into force.
- (2) A person nominated under paragraph (1) may be either employed by the NHS body or a person whose services are supplied to it by an outside organisation.
- (3) The name of the nominee must be notified to the CFSMS together with the information specified in the NHS Counter Fraud and Corruption Manual within 7 days of the nomination.
- (4) Without prejudice to the generality of direction 2(1), before making a nomination each NHS body must take into account any guidance issued by the CFSMS on the suitability criteria for an LCFS.
- (5) After a nominee has—
- (a) been approved by the CFSMS as a person suitable for appointment;
 - (b) successfully completed any training required by the CFSMS; and
 - (c) been accredited by the CFPAB,
- the NHS body may appoint the person as its LCFS.
- (6) Where an NHS body nominates a person whose services are provided to it by an outside organisation, it must—
- (a) comply with the requirements of the CFSMS as to the suitability of the organisation in question;
 - (b) satisfy itself and the CFSMS that the terms on which those services are provided are such as to enable the LCFS to carry out his functions effectively and efficiently and in particular that he will be able to devote sufficient time to that NHS body; and
 - (c) give to the CFSMS a copy of the contract under which the services of the LCFS are supplied to it.
- (7) A further nomination must be made within 3 months of the date on which an NHS body learns that there is to be a vacancy for an LCFS.
- (8) The procedures in paragraphs (3) to (6) also apply to a person nominated under paragraph (7).

Responsibilities and functions of the Local Counter Fraud Specialist

- 6.—(1) Each NHS body must specify a job description for its LCFS which includes the operational and liaison responsibilities specified by the CFSMS.
- (2) The job description under paragraph (1) must include a requirement that the LCFS must adhere to the CFPAB Principles of Professional Conduct as set out in the NHS Counter Fraud and Corruption Manual.
- (3) An LCFS must report directly to the NHS body's Director of Finance.
- (4) An LCFS must not undertake responsibility for or be in any way engaged in the management of security for any NHS body.

Responsibilities of NHS bodies in relation to Local Counter Fraud Specialist

- 7.— Each NHS body must—
- (a) require that in addition to the job description mentioned in direction 6(1), the LCFS and the Director of Finance agree, at the beginning of the financial year a written work plan which outlines the LCFS' projected work for that financial year by reference to the seven generic areas of counter fraud activity set out in the NHS Counter Fraud and Corruption Manual;
 - (b) enable its LCFS to attend the NHS body's audit committee meetings;

- (c) require its LCFS to keep full and accurate records of any instances of fraud or suspected fraud;
- (d) require its LCFS to report to the CFSMS any weaknesses in fraud related systems of the NHS body and any other matters which may have fraud related implications for the NHS;
- (e) ensure that its LCFS has all necessary support including access to the CFSMS secure intranet site to enable him efficiently and effectively to carry out his responsibilities;
- (f) subject to any contractual or legal constraint, require all of its staff to co-operate with the LCFS and in particular that those responsible for human resources disclose information which arises in connection with any matters (including disciplinary matters) which may have implications in relation to the investigation, prevention or detection of fraud;
- (g) enable its LCFS to receive training recommended by the CFSMS;
- (h) require its LCFS, its other employees and any persons whose services are provided to the NHS body in connection with counter fraud work to have regard to guidance and advice on media handling of counter fraud matters which may be issued by the CFSMS;
- (i) enable its LCFS to participate in activities in which the CFSMS is engaged, including national anti-fraud measures, where he is requested to do so by the CFSMS;
- (j) enable its LCFS to work in conditions of sufficient security and privacy to protect the confidentiality of his work; and
- (k) enable its LCFS generally to perform his functions effectively, efficiently and promptly.

8.— The following Directions are hereby revoked:

- (a) Directions to Health Authorities regarding counter-fraud measures dated 3rd December 1999;
- (b) Directions to NHS trusts regarding counter-fraud measures dated 3rd December 1999;
- (c) Directions to Primary Care Trusts regarding counter-fraud measures dated 2nd September 2002; and
- (d) in the Directions to the Prescription Pricing Authority including counter-fraud measures dated 23rd July 2001—
 - (i) in direction 1(3), all definitions except the definitions of the National Health Service Act 1977 and the Prescription Pricing Authority, and
 - (ii) directions 2(1)(q), 2(2), 3, 4, 5, 6, 7, and 8.

Signed by authority of the Secretary of State



A member of the Senior Civil Service
Department of Health

08 November 2004