

NATIONAL HEALTH SERVICE, ENGLAND

PRIMARY CARE TRUSTS AND STRATEGIC HEALTH AUTHORITIES (WAITING TIMES) DIRECTIONS 2010

These Directions are given in exercise of the powers conferred on the Secretary of State by sections 8(1), 272(7) and (8) and 273(4) of the National Health Service Act 2006(a).

Application, commencement and interpretation

1.—(1) These Directions apply to every Primary Care Trust and Strategic Health Authority and shall come into force on 1st April 2010.

(2) These Directions apply only in relation to services provided under section 3 of the Act (Secretary of State's duty as to the provision of certain services).

(3) In these Directions—

“the Act” means the National Health Service Act 2006;

“the Functions Regulations” means the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002(b);

“consultant” means a person who has been appointed to a medical consultant post;

“general dental practitioner” means a practitioner whose name is included in the register maintained by the General Dental Council under section 14 of the Dentists Act 1984(c) (the dentists register and the registrar);

“general medical practitioner” means a medical practitioner whose name is included in the register maintained by the General Medical Council under section 34C of the Medical Act 1983(d) (the general practitioner register);

“treatment” is an intervention that is intended to manage a person's disease, condition or injury.

(4) For the purpose of these Directions, a Primary Care Trust is responsible for a person receiving, or referred for the purpose of receiving, services, if—

(a) the Trust must secure the provision of those services for the benefit of that person by virtue of—

(i) regulation 3(7) of the Functions Regulations, unless the Trust has made arrangements under regulation 10 of those Regulations for another Primary Care Trust to exercise that function, or

(ii) arrangements made by Primary Care Trusts for the exercise of functions under regulation 10 of the Functions Regulations; and

(b) those services are not provided under arrangements made by a Strategic Health Authority.

(5) For the purpose of these Directions, a Strategic Health Authority is responsible for a person receiving, or referred for the purpose of receiving, services, if that Authority makes arrangements for the provision of those services—

(a) under regulation 3(2A) of the Functions Regulations, or

(a) 2006 c. 41.

(b) S.I. 2002/2375; amendments relevant to these directions were made by S.I. 2003/1497, 2004/865, 2006/359, 2007/559, 2008/3166 and 2009/462.

(c) 1984 c. 24; section 14 was substituted by S.I. 2005/2011 and amended by S.I. 2007/3101.

(d) 1983 c. 54. Section 34C was inserted by S.I. 2010/234.

(b) by virtue of arrangements made under regulation 9 of those Regulations.

(6) For the purpose of these Directions, a “suitable provider” in relation to a person referred for assessment or treatment is a provider of health services who—

- (a) can provide services which consist of, or include, treatment which is clinically appropriate for that person in response to the referral; and
- (b) will provide those services pursuant to an arrangement with the Primary Care Trust or Strategic Health Authority responsible for that person which includes the terms and conditions specified as nationally mandated in the Guidance on the NHS Standard Contract for Acute Services 2010/11(a).

Duty to make arrangements to meet 18 week operational standards

2. Each Primary Care Trust and Strategic Health Authority must make arrangements to ensure that any provider providing services to persons for whom that Trust or Authority is responsible complies with the operational standards relating to patients on an 18 week referral to treatment pathway as set out in Annex 1 of the NHS Performance Framework: Implementation guidance published on 24th April 2009(b).

Application of duty to offer alternative provider

3.—(1) This direction applies where the conditions in paragraph (2) to (6) are met.

(2) A person has been referred to a provider of services under section 3 of the Act (“the relevant provider”) by—

- (a) an eligible referrer; or
- (b) themselves, with the approval of an eligible referrer.

(3) The referral is for assessment or treatment in the course of the provision of services under that section by—

- (a) a consultant;
- (b) a member of a consultant’s team; or
- (c) individuals providing interface services where the person may be referred on to a consultant or consultant led team.

(4) The relevant provider, or the Primary Care Trust or Strategic Health Authority that is responsible for the person referred, has been notified that the person being referred has not commenced treatment, or will not commence treatment, within 18 weeks beginning with the date on which the person’s referral request was received by the relevant provider (“the 18 week period”).

(5) The notification referred to in paragraph (4) was given by—

- (a) in the case of the relevant provider or a Trust, the person referred or a person lawfully acting on their behalf; or
- (b) in the case of an Authority, a Primary Care Trust which has been notified by the person referred or a person lawfully acting on their behalf.

(6) The Primary Care Trust or Strategic Health Authority that is responsible for the person referred is satisfied that the person has not or will not commence treatment within the 18 week period.

(7) In this direction—

“an eligible referrer” means—

- (a) a general dental practitioner,

(a) http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_111203 published 18th January 2010.

(b) http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098525.

- (b) a general medical practitioner,
- (c) any person approved to make a referral specified in paragraph (3) under arrangements made by the Primary Care Trust or Strategic Health Authority which is responsible for the person being referred, and
- (d) any other person whose request to refer is accepted by the person falling within paragraph (3)(a) to (c) who is to provide the assessment or treatment required;

“interface service” means a service that is not consultant led which provides clinical triage, assessment and treatment services other than mental health services or primary care services;

“primary care services” means—

- (a) primary medical services,
- (b) pharmaceutical services,
- (c) primary dental services, or
- (d) primary ophthalmic services.

Duty to offer alternative provider

4.—(1) Subject to direction 5, where direction 3 applies, the Primary Care Trust or Strategic Health Authority which is responsible for the person referred (“the patient”) must take all reasonable steps to ensure that the patient is offered an appointment in accordance with the following paragraphs.

(2) The appointment must be with a consultant, or a member of a consultant’s team, at a suitable provider other than the relevant provider.

(3) The appointment must be an appointment to commence treatment earlier than the patient would have commenced treatment if they had continued to wait for treatment at the relevant provider.

(4) If there is more than one suitable provider the patient must be offered an appointment falling within paragraphs (2) and (3) at more than one provider.

Exceptions to the duty

5.—(1) Direction 4 does not apply in the circumstances described in paragraphs (2) to (10).

(2) The patient did not attend an appointment made by the relevant provider in response to the referral where—

- (a) the date for the appointment was reasonable;
- (b) that patient had been made aware of the consequences of not attending appointments; and
- (c) that patient had not requested in advance that the date for that appointment be re-arranged.

(3) The patient did not attend a re-arranged appointment made by the relevant provider in response to the referral where—

- (a) that patient had re-arranged the date of the appointment;
- (b) the original date for the appointment had been reasonable; and
- (c) that patient had been made aware of the consequences of not attending appointments.

(4) The patient chose to commence treatment on a date falling after the end of the 18 week period where—

- (a) that patient had been offered a reasonable appointment date falling within that period, or
- (b) they decided that they did not want to be offered any appointment dates within that period.

(5) The patient decided that they did not want to commence treatment.

- (6) The patient was unable to commence treatment during the 18 week period for reasons not related to the relevant provider or the Trust or Authority which was responsible for them where—
- (a) that patient had been offered a reasonable appointment date falling within that period, or
 - (b) they decided that they did not want to be offered any appointment dates within that period.
- (7) A person falling within direction 3(3)(a) to (c) has assessed the patient and decided—
- (a) that it is in the best clinical interests of that patient to commence treatment after the end of the 18 week period;
 - (b) that the patient does not need treatment; or
 - (c) to refer the patient back to primary care services prior to any treatment commencing.
- (8) A person falling within direction 3(3)(a) or (b) has assessed the patient and decided that the patient requires a period of monitoring which consists of or includes being re-assessed at intervals within that period.
- (9) The patient is placed on the national transplant waiting list.
- (10) The patient is referred for the purpose of receiving maternity services.
- (11) In this direction, “maternity services” includes services relating to female patients from the start of the pregnancy to 6 weeks after the birth but does not include services provided to such patients which relate to—
- (a) the diagnosis and treatment of any medical condition unrelated to pregnancy;
 - (b) the diagnosis and treatment of any medical condition which does not usually occur in the ordinary course of pregnancy; or
 - (c) medical termination of the pregnancy within the meaning of section 1 of the Abortion Act 1967.
- (12) For the purposes of this direction, an appointment date is reasonable if it falls at least 3 weeks after the date on which the offer of the appointment was made.

Duty to have regard to the guidance

- 6.** In carrying out its duties under directions 2 and 4 each Primary Care Trust and Strategic Health Authority must have regard to—
- (a) the documents entitled “The 18-Week Rules Suite” published on 5th March 2010(a); and
 - (b) the guidance document entitled “Implementation of the right to access services within maximum waiting times” published on 8th March 2010(b).

Duty to notify

- 7.**—(1) This direction applies where a Strategic Health Authority is responsible for a person referred for assessment or treatment who meets the conditions set out in direction 3(2) and (3).
- (2) A Primary Care Trust which receives notification from that person that they have not, or will not, commence treatment within 18 weeks beginning with the date on which the person’s referral request was received by the relevant provider must notify the Authority of that information.

Duty to make arrangements to meet 2 week operational standards for cancer appointment

- 8.** Each Primary Care Trust must make arrangements to ensure that any provider providing services to persons for whom that Trust is responsible complies with the operational standards relating to patients on an urgent 2 week referral as set out in the letter relating to operational

(a) http://www.dh.gov.uk/en/Publicationsandstatistics/Statistics/Performanceandstatistics/18WeeksReferraltoTreatmentstatistics/DH_089757.

(b) http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113078.

standards for cancer waiting time commitments sent to the Chief Executives of Strategic Health Authorities, Primary Care Trusts, and NHS Trusts published on 30th July 2009^(a).

Duty to offer alternative provider for cancer right

9.—(1) This paragraph applies where—

- (a) a person has been referred urgently for assessment or treatment for suspected cancer to a provider of services under section 3 of the Act (“the relevant provider”);
- (b) the referral is by—
 - (i) a general medical practitioner or a person authorised to act on their behalf, or
 - (ii) a general dental practitioner or a person authorised to act on their behalf;
- (c) the referral is for an appointment in the course of the provision of services under that section with a specialist with a view to diagnosis or treatment of cancer;
- (d) that person, or a person lawfully acting on their behalf, notifies the relevant provider or the Primary Care Trust that is responsible for the person referred that they have not had an appointment, or will not have an appointment, within 2 weeks beginning with the date on which the person’s referral request is received by the relevant provider (“the 2 week period”); and
- (e) the relevant provider or Trust is satisfied that the person referred has not or will not have an appointment within the 2 week period.

(2) Subject to paragraph (6), where paragraph (1) applies, the Primary Care Trust which is responsible for the person referred (“the patient”) must take all reasonable steps to ensure that the person is offered an appointment in accordance with paragraphs (3) to (5).

(3) The appointment must be with a consultant, or member of a consultant’s team, at a suitable provider other than the relevant provider.

(4) The appointment must be at an earlier date than the appointment the person would have had if they had continued to wait for an appointment at the relevant provider.

(5) If there is more than one suitable provider the patient must be offered an appointment falling within paragraphs (2) and (3) at more than one provider.

(6) Paragraph (2) does not apply if the patient—

- (a) was made aware of the consequences of not attending appointments and did not attend an appointment made by the relevant provider in response to the referral; or
- (b) chose to attend an appointment on a date falling after the end of the 2 week period following—
 - (i) the offer of an appointment date falling within that period, or
 - (ii) a decision by the patient that they did not want to be offered any appointment dates within that period.

(7) In this direction—

“specialist” means a registered healthcare professional working as a consultant, or as part of a consultant led team, who specialises in the area of professional practice which is most appropriate for the diagnosis and treatment of the type of suspected cancer in question;

“registered healthcare professional” means a person who is a member of a profession regulated by one of the following bodies—

- (a) the General Medical Council;
- (b) the Nursing and Midwifery Council; or
- (c) the Health Professions Council.

(a) http://www.dh.gov.uk/dr_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_103431.pdf.

Duty to have regard to the guidance for cancer right

10. In carrying out its duties under direction 9 a Trust must have regard to the guidance document entitled "Implementation of the right to access services within maximum waiting times" published on 8th March 2010(a).

Advice and assistance

11.—(1) Each Primary Care Trust must—

- (a) establish a service for the purpose of providing advice and assistance to persons referred for assessment or treatment who meet the conditions set out in direction 3(2) and 3 or 9(1)(a) to (c) ("relevant persons");
- (b) publish the name and contact details of that service; and
- (c) take reasonable steps to communicate the name and contact details of that service to any relevant persons for which it is responsible.

(2) Each Primary Care Trust must make arrangements to ensure that any relevant provider providing services for persons for which that Trust is responsible—

- (a) establishes a service for the purpose of providing advice and assistance to relevant persons referred to the provider;
- (b) publishes the name and contact details of that service; and
- (c) takes reasonable steps to communicate the name and contact details of that service to any relevant persons referred to the provider for whom the Trust is responsible.

Signed by authority of the Secretary of State for Health



Andrew Sanderson
Member of the Senior Civil Service
Department of Health

8 March 2010

(a) http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113078.