
DIRECTIONS

THE NATIONAL HEALTH SERVICE ACT 2006

The National Health Service (Dental Services) (Capitation and Quality Scheme 2 Agreements) Directions 2013

The Secretary of State for Health makes the following Directions in exercise of the powers conferred by sections 114A and 272(7) and (8) of the National Health Service Act 2006(a).

PART 1

General

Citation, commencement and duration

1.—(1) These Directions may be cited as the National Health Service (Dental Services) (Capitation and Quality Scheme 2 Agreements) Directions 2013 and come into force on 1st April 2013.

(2) These Directions will cease to have effect on 1st April 2015.

(3) These Directions are given to the Board.

Interpretation

2.—(1) In these Directions—

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

“the Board” means the National Health Service Commissioning Board(b);

“Capitation and Quality Scheme” means the scheme of that name that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the Act which ended on 31st March 2013;

“Capitation and Quality Scheme Agreement” means an Agreement which formed a temporary part of a GDS contract or PDS Agreement and which was entered into as part of the Capitation and Quality Scheme introduced by the Secretary of State on 1st April 2011 and terminated on 31st March 2013, and in accordance with the National Health Service (Dental Services) (Capitation and Quality Scheme Agreements) Directions 2011(c);

“Capitation and Quality Scheme 2” means the scheme of that name, introduced by the Secretary of State on 1st April 2013, following the termination of the Capitation and Quality Scheme on 31st March 2013, that the Secretary of State has developed to assist in continuing to promote and secure improvement in the provision of dental services in accordance with the Act;

(a) 2006 c.41. By virtue of section 271(1) of the Act, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England. *See* section 275(1) for the definition of “regulations”, which are relevant to the powers being exercised.

(b) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006. Section 1H is inserted by section 9 of the Health and Social Care Act 2012 c.7.

(c) The National Health Service (Dental Services) (Capitation and Quality Scheme Agreements) Directions 2011 signed on 27th April 2011.

“Capitation and Quality Scheme 2 Agreement” means an Agreement which forms a temporary part of a GDS contract or PDS Agreement and which is entered into as part of the Capitation and Quality Scheme 2 and in accordance with these Directions;

“Capitation and Quality Scheme Statement of Financial Entitlements” means the directions made by the Secretary of State under sections 103(1) and 109(4) of the Act, which applied to payments made to a contractor where a contractor and a Primary Care Trust elected to enter into a Capitation and Quality Scheme Agreement;

“Capitation and Quality Scheme 2 Statement of Financial Entitlements” means the directions made by the Secretary of State under sections 103(1) and 109(4) of the Act, which apply where a contractor and the Board elect to enter into a Capitation and Quality Scheme 2 Agreement;

“care pathway” means the planning of the continuing primary dental services to be provided to the patient, over the time immediately following the patient’s oral health assessments or oral health reviews, which includes—

- (a) the treatment interventions proposed for a patient and advice in relation to those interventions, which will include proposals for any interim care required, and the provision of an interim care plan, if required;
- (b) advice in relation to oral health promotion and the prevention of oral disease relevant to that patient; and
- (c) the completion of a self-care plan specific to that patient, which includes—
 - (i) a plan of treatment interventions;
 - (ii) risk assessment in relation to oral health;
 - (iii) appropriate preventative advice;
 - (iv) a plan of self-care measures proposed for that patient including specified actions to be undertaken by the patient;
 - (v) referral to other services where necessary; and
 - (vi) the date of the next oral health review,

which is provided to that patient for the purposes of improving and maintaining that patient’s oral health and reducing that patient’s risk level where necessary;

“contractor” means a person other than the Board who is a party to a GDS contract or a PDS agreement;

“domain” means one of four categories of clinical disease status, which are —

- (a) caries;
- (b) periodontal disease;
- (c) non-carious tooth surface loss (erosion, attrition and abrasion); and
- (d) soft tissue conditions;

“GDS contract” means a general dental services contract;

“GDS Contracts Regulations” means the National Health Service (General Dental Services Contracts) Regulations 2005(a);

“GDS SFE 2013” means the directions made under section 103 of the Act(b);

“interim care plan” means the plan of the additional advice and preventative treatment proposed at a patient’s oral health assessment or oral health review which is recorded on a patient’s treatment plan, which includes—

- (a) proposals of any preventative treatment to be provided;

(a) S.I.2005/3361. Amendments have been made by S.I.2006/563, 2007/544, 2008/528, 1514, and 1700, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, and 2013/364.

(b) Section 103 is amended by section 55(1) of, and paragraph 45 of Schedule 4 to, the Health and Social Care Act 2012.

- (b) proposals for instruction on techniques and practices required in relation to the promotion of oral health; and
- (c) proposals in respect of advice in relation to diet, hygiene, personal habits and oral health in order to prevent dental and oral disease;

“the NAAV” means the negotiated annual agreement value of a PDS Agreement determined by section 2 of the PDS SFE 2013;

“the NACV” means the negotiated annual contract value of a GDS contract determined by section 2 of the GDS SFE 2013;

“NHS Charges Regulations” has the meaning given in regulation 2 (interpretation) of the GDS Contracts Regulations;

“oral health assessment” means the initial examination at which a comprehensive and standardised assessment of a patient’s oral health and individual risk factors relating to oral health is carried out when that patient first visits a practice participating in the Capitation and Quality Scheme 2 which includes—

- (a) clinical assessment of that patient; and
- (b) a review of that patient’s medical history and clinically relevant social history, where relevant to a patient’s oral health,

during which the provider of services and the patient agree a self-care plan and a care pathway incorporating advice, actions to be undertaken by the patient and treatment for that patient that is appropriate to that patient’s need;

“oral health review” means the examination undertaken for the purposes of updating the patient’s current oral health assessment, which is scheduled according to the patient’s need and risk, at which the patient’s care pathway is reviewed and agreed with the patient;

“oral health status” means the risk status, specified as red, amber or green, which is assigned to the patient for each of the four domains following the oral health assessment and reviewed at each oral health review;

“overall business value” means the turnover of a practice in respect of the provision of dental services, whether provided as NHS services or otherwise in a financial year;

“participant” means a contractor who is a party to a Capitation and Quality Scheme 2 Agreement;

“PDS agreement” means an agreement under which primary dental services are provided under section 107 of the Act;

“PDS Agreements Regulations” means the National Health Service (Personal Dental Services Agreements) Regulations 2005(a);

“the PDS SFE 2013” means the directions made under section 109(4) of the Act(b);

“pilot type” means the remuneration model that is assigned to a group of Capitation and Quality Scheme 2 Agreements to enable the evaluation of different methods of payment for services provided under the Capitation and Quality Scheme 2 in accordance with the Capitation and Quality Scheme 2 Statement of Financial Entitlements for the purposes of the objectives of the Scheme;

“Primary Care Trust” means the Primary Care Trust which was established and which subsisted immediately before the coming into force of section 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012(c);

“treatment plan” has the same meaning as in paragraph 7 (treatment plans) of Schedule 3 to the GDS Contracts Regulations.

(a) S.I. 2005/3373; as amended by S.I. 2006/563, 2007/544, 2008/528 and 1514, 2009/309 and 462, 2010/22 and 1181, 2011/1182, 2012/502, 2273 and 2404, and 2013/364.

(b) Section 109 is amended by section 55(1) of, and paragraph 50 of Schedule 4 to, the Health and Social Care Act 2012.

(c) 2012 c7.

(2) Expressions used in Parts 3 and 4 and whichever of the GDS Contracts Regulations, the PDS Agreements Regulations or the NHS Charges Regulations applies to a participant's Capitation and Quality Scheme 2 Agreement have the same meaning in both contexts.

PART 2

Capitation and Quality Scheme 2

Directions to the Board

3.—(1) The Board must, where requested to do so, consider entering into a Capitation and Quality Scheme 2 Agreement with a contractor but may only do so where the Secretary of State has approved the proposal for the contractor and the Board to participate in the Capitation and Quality Scheme 2.

(2) The Board may only enter into a Capitation and Quality Scheme 2 Agreement where the Secretary of State's approval to enter into that Agreement has been obtained and the conditions in paragraph (3) apply.

(3) The conditions referred to in paragraph (2) are—

- (a) the Secretary of State has approved the proposed Capitation and Quality Scheme 2 Agreement as being suitable to assist in the continuing promotion and development of primary dental services in order to secure such services;
- (b) the contractor meets the eligibility conditions specified in directions 4 to 7; and
- (c) the Board satisfies itself that the contractor understands the objectives of participating in the Capitation and Quality Scheme 2 and understands the requirements being placed upon the contractor as a consequence of entering into the Capitation and Quality Scheme 2 Agreement.

(4) The Capitation and Quality Scheme 2 Agreement which the Board enters into—

- (a) must be in writing;
- (b) must contain terms that have the same effect as those terms and conditions specified in directions 8 to 18;
- (c) must be of a duration that does not extend to any period after 31st March 2015; and
- (d) must start at the beginning of a day and end at the end of a day.

Eligibility conditions relating to contractors who held a Capitation and Quality Scheme Agreement prior to 31st March 2013

4. The Board must only enter into a Capitation and Quality Scheme 2 Agreement with a contractor who held a Capitation and Quality Scheme Agreement prior to 31st March 2013—

- (a) where the Secretary of State and the Board are satisfied that the contractor has participated in the Capitation and Quality Scheme up to and including 31st March 2013; and
- (b) where the Board and the Secretary of State are satisfied that the contractor meets the eligibility conditions for holding a Capitation and Quality Scheme 2 Agreement and can comply with other relevant directions.

Eligibility conditions relating to contractors who have not previously held a Capitation and Quality Scheme Agreement

5. The Board must only enter into a Capitation and Quality Scheme 2 Agreement with a contractor who has not previously held a Capitation and Quality Scheme Agreement where the contractor had entered into a PDS Agreement or a GDS contract with a Primary Care Trust and that PDS Agreement or GDS contract subsists on 31st March 2013, and —

- (a) that PDS Agreement or, as the case may be, that GDS contract had—
 - (i) at 31st March 2013 subsisted for a period of at least 3 years, and
 - (ii) immediately before the calendar month in which the Capitation and Quality Scheme 2 Agreement is to commence a NAAV or, as the case may be, a NACV, which is at least £100,000 per year;
- (b) where at least 80% of the NAAV of that PDS Agreement or, as the case may be, the NACV of that GDS contract, is attributed to units of dental activity;
- (c) in the case of a contractor with a PDS Agreement, mandatory services are provided under that Agreement; and
- (d) where the remuneration in respect of the NHS services provided under that PDS Agreement or, as the case may be, GDS contract, amounts to at least 60% of the overall business value of the practice.

Exceptions to the eligibility conditions in direction 5 relating to certain contractors who have not previously held a Capitation and Quality Scheme Agreement

6.—(1) Where contractors who have not previously held a Capitation and Quality Scheme Agreement are providing primary dental services under a GDS contract or a PDS agreement—

- (a) commissioned to secure the provision of such services to persons who cannot easily access NHS primary dental services; or
- (b) where remuneration by the Board for such services comprises both payments made under the GDS SFE 2013 or the PDS SFE 2013 in respect of units of dental activity provided, and additional payments in respect of quality indicators,

direction 5(b) and (d) does not apply.

(2) In cases where paragraph (1) applies, the Board may exercise its discretion in relation to the percentage of the NACV of a GDS contract or the NAAV of a PDS agreement that must be attributed to units of dental activity in relation to direction 5(b) provided—

- (a) it is satisfied that the contractor can satisfy all of the other eligibility conditions set out in directions 5 to 7; and
- (b) it is satisfied that the participation of the contractor assists in the continuing promotion and development of primary dental services and the objectives of the Capitation and Quality Scheme 2.

Eligibility conditions that apply to all contractors participating in the Capitation and Quality Scheme 2

7. The Board must only enter into a Capitation and Quality Scheme 2 Agreement—

- (a) where the contractor agrees to be assigned to a particular pilot type;
- (b) where it satisfies itself that the contractor continues to be eligible to enter an agreement or a contract pursuant to the conditions referred to —
 - (i) in the case of a contractor with a PDS Agreement, in regulation 4(1) (general conditions relating to all agreements) and 5(1) (additional conditions relating to agreements with dental corporations) of the PDS Agreements Regulations,
 - (ii) in the case of a contractor with a GDS contract, in regulation 4(1) (general prescribed conditions relating to all contracts) and 5(1) (additional prescribed conditions relating to contracts with dental corporations) of the GDS Contracts Regulations; and
- (c) if it satisfies itself that the contractor has equipment, facilities and systems in place which—
 - (i) enable the electronic transmission of data—
 - (aa) for the purposes of meeting the objectives of the Capitation and Quality Scheme 2;

- (bb) in relation to the provision of dental services under the PDS agreement or the GDS contract; and
 - (cc) at such intervals as may be reasonably proposed by the Board to the NHS Business Services Authority^(a) and
- (ii) enable the effective monitoring and evaluation of the Capitation and Quality Scheme 2 and the analysis of any data provided as a consequence of the Capitation and Quality Scheme 2 Agreement.

Orthodontic activity

8. Where orthodontic services have been provided under the PDS Agreement or the GDS contract held by the participant immediately before the commencement of a Capitation and Quality Scheme 2 Agreement, the Board must—

- (a) agree a value for that part of the NAAV or the NACV that is attributed to orthodontic activity with the participant; and
- (b) record that value in writing in the Capitation and Quality Scheme 2 Agreement.

Finance

9.—(1) Subject to paragraph (2), the Board must make payments to a participant in accordance with directions given by the Secretary of State made under section 109(4) of the Act where primary dental services are provided under a PDS Agreement or, as the case may be, under section 103(1) of the Act where such services are provided under a GDS contract.

(2) Paragraph (1) is subject to any right the Board has to set off against an amount payable to the participant an amount that—

- (a) is owed by the participant to the Board under the Capitation and Quality Scheme 2 Agreement;
- (b) has been paid to the participant owing to an error or in circumstances when it was not due; or
- (c) may be withheld in accordance with these Directions and directions given by the Secretary of State made under section 109(4) of the Act where primary dental services are provided under a PDS Agreement or, as the case may be, under section 103(1) of the Act where such services are provided under a GDS contract.

Variation of a Capitation and Quality Scheme 2 Agreement

10.—(1) The Board must not vary the terms and conditions of the Capitation and Quality Scheme 2 Agreement without the approval of the Secretary of State.

(2) The Board may vary the terms and conditions of the Capitation and Quality Scheme 2 Agreement without the participant's consent but only to the extent that it is necessary to vary the PDS Agreement or GDS contract so as to comply with the Act, any regulations made pursuant to the Act or any directions given by the Secretary of State pursuant to the Act.

Termination of a Capitation and Quality Scheme 2 Agreement

11.—(1) The Board must give a period of not less than 3 months notice to the Secretary of State and a participant of any intention to withdraw from a Capitation and Quality Scheme 2 Agreement.

(2) Subject to direction 12, the Board must make suitable provision for arrangements on termination of the Capitation and Quality Scheme 2 Agreement.

(a) Established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005 (S.I. 2005/2414), as amended by S.I. 2006/632.

(3) The participant may withdraw from a Capitation and Quality Scheme 2 Agreement but must give a period of not less than 3 months notice to the Board and the Secretary of State of any intention to do so.

Provisions relating to cessation of the Capitation and Quality Scheme 2 and termination of a Capitation and Quality Scheme 2 Agreement

12.—(1) The Board must co-operate with the participant and take the necessary steps that are reasonably required to ensure that the participant may—

- (a) on the cessation of the Capitation and Quality Scheme 2; or
- (b) on termination of a Capitation and Quality Scheme 2 Agreement in accordance with direction 11,

and subject to paragraph (2), continue to provide primary dental services in accordance with the PDS agreement, or as the case may be, GDS contract.

(2) Notwithstanding the provisions in paragraph (1), the Board, on cessation of the Capitation and Quality Scheme 2, or termination of the Capitation and Quality Scheme 2 Agreement, must co-operate with the participant to ensure that the PDS agreement or, as the case may be, the GDS contract, continues to comply with the Act, any regulations made pursuant to the Act, or any directions given by the Secretary of State pursuant to the Act.

(3) The terms and conditions of the Capitation and Quality Scheme 2 Agreement do not override any obligations, rights, liabilities and duties which arise as a consequence of the terms and conditions of service which are required under the PDS Agreements Regulations and the GDS Contracts Regulations, except as expressly varied for the purposes of the Capitation and Quality Scheme 2.

PART 3

Other required terms by virtue of direction 3(4)(b)

Patient Information Leaflet

13. The participant must include in the participant's patient information leaflet the additional information which is set out in "Pilot – Patient Information" published by the Department of Health(a).

Records and information

14.—(1) The patient record must be kept in electronic form.

(2) The particular assessments in respect of the provision of primary dental services as specified in the Dental Quality and Outcomes Framework(b) must be returned to the NHS Business Services Authority within 5 working days of completion of the assessments.

(3) The participant must, to the Board, or at the request of the Board to a person authorised in writing by the Board, provide the information specified in paragraph (4).

(4) The information required under paragraph (3) is—

- (a) details of any dental services provided privately to patients receiving services under the PDS agreement or, as the case may be, the GDS contract that are associated with services that are provided under the agreement or contract;
- (b) costs of any appliances supplied or otherwise provided to patients receiving services under the PDS agreement or, as the case may be, the GDS contract; and

(a) "Pilot – Patient Information" may be obtained from the Department of Health website address www.dh.gov.uk.

(b) The Dental Quality and Outcomes Framework is revised. The revised version published on the Department of Health website address www.dh.gov.uk on 1st April 2013 applies to the Capitation and Quality Scheme 2.

- (c) details relating to laboratory costs associated with services provided under the PDS agreement or, as the case may be, the GDS contract.

Dental Quality and Outcomes Framework

15. The participant must meet the requirements set out in the document entitled “Dental Quality and Outcomes Framework” published by the Department of Health.

Provision of treatment

16. In order to enable the Secretary of State to evaluate the Capitation and Quality Scheme 2 pilots, the contractor, if he commences to provide services to a patient under the Capitation and Quality Scheme 2, commits to continuing to provide such services to that patient for the duration of the scheme.

Breach

17. The Capitation and Quality Scheme 2 Agreement must provide that breach of the terms or the conditions specified in these Directions by the Board or the participant may lead to termination of the Capitation and Quality Scheme 2 Agreement.

PART 4

Provision of services

Interim care course of treatment

18.—(1) The additional advice and preventative treatment proposed for a patient in an interim care plan at a patient’s oral health assessment or oral health review known as an interim care course of treatment (within the meaning of regulation 13A (charges in respect of primary dental services provided under a Capitation and Quality Scheme 2 Agreement) of the NHS Charges Regulations(a)) is to be provided by the participant as a new course of treatment.

(2) All of the services proposed for a patient, and agreed with that patient, in the interim care plan, must be provided to a patient in accordance with the Capitation and Quality Scheme 2 Agreement.

PART 5

Miscellaneous transitional provisions

Application of transitional provisions

19. This Part applies—

- (a) following the termination of the Capitation and Quality Scheme on 31st March 2013, and
- (b) where a contractor who has held a Capitation and Quality Scheme Agreement up to that date enters into a Capitation and Quality Scheme 2 Agreement on 1 April 2013.

Continuity of forms

20. Any forms supplied by a Primary Care Trust in respect of the Capitation and Quality Scheme continue to be valid for the purposes of the Capitation and Quality Scheme 2, until they are withdrawn or cancelled by the Board.

(a) Regulation 13A is inserted into the NHS Charges Regulations by S.I. 2013/364.

Transitional provision relating to notifications and agreements

21. Notifications given by either a Primary Care Trust or a participant of the Capitation and Quality Scheme in respect of that scheme, or understandings reached between Primary Care Trusts and participants of the Capitation and Quality Scheme, are to be treated as notifications provided to the Board, and by the Board, or understandings reached between the Board and the participants of the Capitation and Quality Scheme 2. Notwithstanding this provision, the Board may request such further information as it needs, or review such understandings as it requires, but only to the extent that it considers just and necessary.

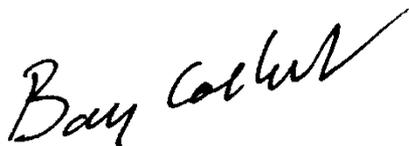
Transitional provision relating to finance

22. Where before 1st April 2013, a Primary Care Trust was entitled to recover an overpayment or any part of it, or withhold a payment, or part of a payment, from a participant of a Capitation and Quality Scheme Agreement in accordance with sections 16.7 and 32.7 (overpayments and withheld amounts) of the Capitation and Quality Scheme Statement of Financial Entitlements(a) but the overpayment, or any part of it, had not been recovered, or the payment, or part of a payment, had not been withheld before 1st April 2013, notwithstanding the revocation of the Capitation and Quality Scheme Statement of Financial Entitlements, that overpayment must continue to be recoverable by the Board, and must be treated by that participant as a debt owed by that participant to the Board on or after 1st April 2013.

Transitional provision relating to continuity of care

23. Any treatment provided under the Capitation and Quality Scheme continues under the Capitation and Quality Scheme 2.

Signed by authority of the Secretary of State for Health



Barry Cockcroft
A member of the Senior Civil Service
Department of Health

Date: 13th March 2013

(a) The Capitation and Quality Scheme Statement of Financial Entitlements signed on 24th May 2011 is published on the Department of Health website www.dh.gov.uk.