

PRIVATE HEALTHCARE MARKET INVESTIGATION

Explanatory note to accompany the Private Healthcare Market Investigation (Variation and Commencement) Order 2017

On 10 October 2016, the Competition and Markets Authority (CMA) gave Notice of Intention to vary the Private Healthcare Market Investigation Order 2014 and to bring article 22 of the Order into force.

The CMA has carefully considered the representations made in response to that Notice and has decided to make the following variations to the Order.

Nothing in this explanatory note is legally binding. In the event of a conflict between this explanatory note and any provision of the Order, the Order shall prevail.

1. Duty on operators of private healthcare facilities to supply information to The Information Organisation (PHIN)

The information supplied by operators of private healthcare facilities to PHIN in accordance with article 21 must include a patient's National Health Service or equivalent patient identification number, but article 21.2(b) has been varied and simplified, by removing the option of providing alternative information from which a patient's identification number could be derived.

2. Duty on consultants to provide fee information to the Information Organisation (PHIN)

Article 22.1 has been varied so that the duty of consultants to provide PHIN with fees information now applies no later than **31 December 2018**.

Article 22.1 has also been varied to make it clear that it is permitted for PHIN to require information on a lower number of standard procedure fees than the 50 specified in article 22.1, having regard to the performance information PHIN will publish under article 21 of the Order.

3. Duty to provide private patients with information letters, prior to outpatient consultations, and prior to further tests or treatment

Article 22.2 has been varied so that the duty to provide letters to patients prior to outpatient consultations setting out the estimated cost, potential conflicts of interest and other relevant information, arises as from **31 December 2017**.

Article 22 has been further varied so that the duty to provide letters to private patients prior to further test or treatment, giving reasons for the relevant tests or treatment, an estimate of cost and other relevant information, arises as from **28 February 2018**.

For the avoidance of doubt the Order does not require a universal standard letter template common to all hospital operators.

Hospital operators may supply private patients with the information specified on behalf of consultants.

4. Duty on operators of private healthcare facilities to ensure compliance

Article 22 has been varied by substituting a new article 22.7 and adding a new article 22.8 to make it clear that the responsibility of operators of private healthcare facilities to ensure that patients undergoing any procedure sign a form confirming that they have received the required information as to costs etc from their consultant, extends to all procedures – whether inpatient, day-case or outpatient procedure (including diagnostic scans and tests). However, article 22.8 clarifies that this duty does not apply to operators in the case of a private patient attending a consultation at premises, which are not part of the relevant operator's facilities, and so long as the patient does not thereafter have treatment at the operator's facilities pursuant to the consultation.

5. Duties of the Information Organisation (PHIN)

Article 24.6 has been varied to make it clear that the duty on PHIN to publish information on its website extends both to performance information and fees information. The deadline by which fees information must be published has been changed to **30 April 2019**.

6. Commencement

The Variation Order (and so the changes made by the Variation Order) will come into force on the day the Variation Order is made. Article 22 in its amended form will come into force two months later. However, the specific duties and obligations created by article 22 will have effect as from the dates specified in the Order which are outlined above.