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## DIRECTIONS

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# NATIONAL HEALTH SERVICE, ENGLAND

## The Alternative Provider Medical Services (Amendment) (No. 2) Directions 2021

The Secretary of State for Health and Social Care gives the following Directions in exercise of the powers conferred by sections 98A(3), 272(7) and (8) and 273(1) of the National Health Service Act 2006<sup>(a)</sup>.

### Citation, commencement, extent and application

1.—(1) These Directions may be cited as the Alternative Provider Medical Services (Amendment) (No. 2) Directions 2021.

(2) These Directions come into force on 1st October 2021.

(3) These Directions extend to England and Wales, but apply to England only<sup>(b)</sup>.

(4) These Directions are given to the National Health Service Commissioning Board<sup>(c)</sup>.

### Amendment of the Alternative Provider Medical Services Directions 2020

2. The Alternative Provider Medical Services Directions 2020<sup>(d)</sup> are amended in accordance with directions 3 to 5.

### New directions 7A and 7B

3. After direction 7, insert—

#### **“Disclosure of information about NHS earnings: APMS contractors and sub-contractors**

7A.—(1) The Board must ensure that any APMS contract which it enters into with an individual or a partnership contains the term specified in paragraph (2).

(2) The term is—

(a) if the APMS contract is with an APMS contractor who is an individual, a term which requires the APMS contractor to comply with the disclosure obligation for each relevant financial year in which—

(i) they are an APMS contractor, and

(ii) their NHS earnings exceed the relevant threshold;

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- (a) 2006 c. 41. Section 98A of the National Health Service Act 2006 (“the Act”) was inserted by section 49(1) of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). The powers conferred by sections 98A, 272 and 273 of the Act are exercisable by the Secretary of State only in relation to England (see section 271(1) of the Act).
- (b) By virtue of section 271(1) of the Act, the powers being exercised by the Secretary of State in making these Directions are exercisable only in relation to England.
- (c) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the Act. Section 1H of the Act was inserted by section 9(1) of the 2012 Act.
- (d) The Alternative Provider Medical Services Directions 2020 were amended by the Alternative Provider Medical Services (Amendment) (No. 2) Directions 2020 and the Alternative Provider Medical Services (Amendment) Directions 2021.

- (b) if the APMS contract is with an APMS contractor who is partnership, a term which requires each partnership member to comply with the disclosure obligation for each relevant financial year in which—
  - (i) the partnership is an APMS contractor, and
  - (ii) the partnership member’s NHS earnings exceed the relevant threshold.
- (3) In this direction—
  - (a) the disclosure obligation, in relation to a relevant financial year, is the requirement for an individual (“I”) to submit the following information for publication to the Health and Social Care Information Centre<sup>(a)</sup> by the disclosure date—
    - (i) I’s name,
    - (ii) I’s job title,
    - (iii) the details of each organisation from which I has derived NHS earnings in that financial year, and
    - (iv) the amount of I’s NHS earnings for that financial year;
  - (b) “relevant financial year” means a financial year<sup>(b)</sup> ending—
    - (i) on or after 31st March 2020, but
    - (ii) on or before 31st March 2024;
  - (c) “relevant threshold” means—
    - (i) for the financial year ending on 31st March 2020, £150,000;
    - (ii) for the financial year ending on 31st March 2021, £153,000;
    - (iii) for the financial year ending on 31st March 2022, £156,000;
    - (iv) for the financial year ending on 31st March 2023, £159,000;
    - (v) for the financial year ending on 31st March 2024, £163,000.
- (4) For the purposes of paragraph (3)(a) “the disclosure date” is—
  - (a) in relation to the financial year ending on 31st March 2020, 12th November 2021;
  - (b) in relation to any subsequent financial year, 30th April in the financial year which begins immediately after the end of the next financial year.
- (5) For the purposes of paragraph (4) “the next financial year”, in relation to a financial year (“FY1”), is the financial year which begins immediately after the end of FY1 (this means, for example, that “the next financial year”, in relation to the financial year ending 31st March 2021, is the financial year ending 31st March 2022).
- (6) The Board must ensure that any APMS contract which it enters into which permits any obligations to provide clinical services under that contract to be sub-contracted in accordance with direction 6(1)(d) (a “permitting contract”) also contains a term which prevents the APMS contractor from sub-contracting any of those obligations unless—
  - (a) where the sub-contractor is an individual, the sub-contract entered into by the APMS contractor requires the individual to comply with the disclosure obligation for each relevant financial year in which the individual’s NHS earnings exceed the relevant threshold;
  - (b) where the sub-contractor is a partnership, the sub-contract entered into by the APMS contractor requires each sub-contractor partnership member to comply with the disclosure obligation for each relevant financial year in which the sub-

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(a) The Health and Social Care Information Centre (known as NHS Digital) is a body corporate established under section 252(1) of the Health and Social Care Act 2012. The information must be submitted to NHS Digital through its Strategic Data Collection Service, available at <https://datacollection.sdcs.digital.nhs.uk>.

(b) “Financial year” is defined in section 275(1) of the National Health Service Act 2006. A “financial year” is a period of 12 months ending with 31st March in any year.

contractor partnership member's NHS earnings exceed the relevant financial threshold;

(c) in all cases, the sub-contract prohibits the sub-contractor ("S") from sub-contracting, where such further sub-contracting is permitted by the APMS contract, any of the clinical services S has agreed with the APMS contractor to provide under the sub-contract unless—

(i) where the sub-contractor is an individual ("I"), the sub-contract entered into by S requires I to comply with the disclosure obligation for each financial year in which I's NHS earnings exceed the relevant threshold;

(ii) where the sub-contractor is a partnership, the sub-contract entered into by S requires each sub-contractor partnership member of that partnership to comply with the disclosure obligation for each relevant financial year in which the sub-contractor partnership member's NHS earnings exceed the relevant threshold.

(7) The Board must also ensure that any permitting contract which it enters into contains a term which requires the APMS contractor to use reasonable endeavours to ensure that any relevant sub-contract is amended to contain the terms specified in paragraph (9).

(8) For the purposes of paragraph (7) "relevant sub-contract" means a sub-contract—

(a) for the provision of any of the clinical services which the APMS contractor is required to provide under the APMS contract by any other person, and

(b) which is in force at the time when this direction comes into force.

(9) The terms are—

(a) a term which requires—

(i) the sub-contractor ("S"), where S is an individual, or

(ii) each sub-contractor partnership member, where S is a partnership,

to comply with the disclosure obligation for each relevant financial year in which the individual's, or as the case may be, sub-contractor partnership member's NHS earnings exceed the relevant threshold, and

(b) a term which prevents S from sub-contracting obligations to provide clinical services under the contract, where permitted by the permitting contract, unless—

(i) where the sub-contractor is an individual ("I"), the sub-contract entered into by S requires I to comply with the disclosure obligation in relation to each financial year in which I's earnings exceed the relevant threshold;

(ii) where the sub-contractor is a partnership, the sub-contract entered into by S requires each sub-contractor partnership member of that partnership to comply with the disclosure obligation in relation to each relevant financial year in which the sub-contractor partnership member's NHS earnings exceed the relevant threshold.

(10) Nothing in paragraph (6), (7) or (9) requires any individual to comply with the disclosure obligation for any relevant financial year which—

(a) ends before the individual or partnership (as the case may be) enters into a sub-contract with the APMS contractor or a sub-contractor;

(b) begins after the individual's, or, as the case may be, partnership's, sub-contract with the APMS contractor or sub-contractor has terminated.

(11) In this direction—

"locum practitioner" has the meaning given in Schedule 15 to the National Health Service Pension Scheme Regulations 2015(a);

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(a) S.I. 2015/94. The definition of "locum practitioner" was amended by S.I. 2016/245.

“NHS earnings” has the meaning given in direction 7B;

“partnership member”, in relation to a contractor who is a partnership, means an individual who is a partner in that partnership;

“sub-contractor” means a person to whom any rights or duties under the contract in relation to clinical matters are, or have been, sub-contracted under a permitting contract, and includes an individual who is a locum practitioner;

“sub-contractor partnership member”, in relation to a sub-contractor who is a partnership, means an individual who is a partner in that partnership.

### **Calculation of NHS earnings for the purposes of direction 7A**

**7B.**—(1) This direction sets out how an individual’s NHS earnings are to be calculated for the purposes of direction 7A.

(2) An individual’s NHS earnings for a relevant financial year are those earnings which constitute relevant income in respect of that financial year.

(3) In this direction “relevant income”—

(a) in relation to an individual who is an active member of the Scheme and is a medical practitioner (other than a locum practitioner) or a non-GP provider, means income (including any form of remuneration and any salary, wages, fees, director’s remuneration or dividends) which is practitioner income as determined under Schedule 10 to the NHS Pension Scheme Regulations, as modified in accordance with paragraph (4), in respect of the financial year in question;

(b) in relation to a person (“P”) who is an active member of the Scheme and a locum practitioner, means—

(i) any income which is locum practitioner income as determined under paragraph 7 of Schedule 10 to the NHS Pension Scheme Regulations in respect of the financial year in question, and

(ii) any income (including any form of remuneration and salary, wages, fees, director’s remuneration or dividends) received by P in the financial year in question from any organisation which would have been treated as practitioner income under Schedule 10 to the NHS Pension Scheme Regulations, as modified in accordance with paragraph (4), if P had been a medical practitioner but not a locum practitioner;

(c) in relation to any other person (“P”), means income (including any form of remuneration and any salary, wages, fees, director’s remuneration or dividends) received by P in the financial year in question from any organisation which would have been treated as practitioner income under Schedule 10 to the NHS Pension Scheme Regulations, as modified in accordance with paragraph (4), if P had been—

(i) an active member of the Scheme, and

(ii) a medical practitioner or non-GP provider.

(4) For the purposes of determining a person’s relevant income under paragraph (3)(a), (b)(ii) or (c), Schedule 10 to the NHS Pension Scheme Regulations applies as if the following provisions of that Schedule were omitted—

(a) paragraph 2(1)(b) and the “and” immediately preceding it,

(b) paragraph 3, and

(c) paragraph 7.

(5) In this direction—

“the NHS Pension Scheme Regulations” means the National Health Service Pension Scheme Regulations 2015, and “active member”, “locum practitioner”, “medical

practitioner”, “member” and “non-GP provider” have the meanings given for the purposes of those Regulations;

“relevant financial year” has the meaning given in direction 7A;

“the Scheme” means the National Health Service Pension Scheme established by the NHS Pension Scheme Regulations.”.

#### **New direction 8A**

4. After direction 8 insert—

**“Patients who should not be tested for, or vaccinated against, coronavirus: confirmation of exemption**

**8A.** The Board must ensure that any APMS contract which it enters into contains terms which have the effect specified in regulation 15A (patients who should not be tested for coronavirus etc.: confirmation of exemption) of the PMS Agreements Regulations(a).”.

#### **Amendment of direction 14**

5. In direction 14 (mandatory terms of an APMS contract under which essential services are to be provided), in paragraph (1)—

(a) after sub-paragraph (e) insert—

“(ea) regulation 62A (transfer of patient records between GP practices: time limits);”;

(b) after sub-paragraph (gb) insert—

“(gba) regulation 64ZC (patient online services: providing and updating personal or contact information);

(gbb) regulation 64ZD (patient online services: provision of an online consultation tool);

(gbc) regulation 64ZE (secure electronic communications);

(gbd) regulation 64ZF (video consultations);”;

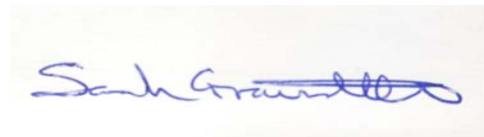
(c) after sub-paragraph (h) insert—

“(ha) regulation 67I (collection of data concerning use of online consultation tools and video consultations);”;

(d) after sub-paragraph (pa) insert—

“(pb) paragraphs 31D to 31G of Schedule 2 (inclusion in list of patients: Crown servants posted overseas and their family members)(b);”.

Signed by authority of the Secretary of State for Health and Social Care



Sarah Gravenstede, Deputy Director General Practice  
Member of the Senior Civil Service  
Department of Health and Social Care

Date: 1st October 2021

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(a) Regulation 15A of the National Health Service (Personal Medical Services Agreements) Regulations 2015 (“the 2015 Regulations”) was inserted by S.I. 2021/995.

(b) Regulations 62A, 64ZC to 64ZG and 67I of, and Part 2A of Schedule 2 to, the 2015 Regulations were inserted by S.I. 2021/995. Part 2A of Schedule 2 to the 2015 Regulations makes various provision regarding the registration of patients who are Crown servants returning to the United Kingdom from an overseas posting, as well as various family members who have accompanied such a person on an overseas posting.