

Health and Social Services Committee

HSS(2)-02-06(p5)

Annex 3

Regulatory appraisal

1. Title of Proposal

The NHS (Performers Lists) (Wales) (Amendment) Regulations 2006

2. Purpose and intended effect of measure

(i) Objective

The Assembly Government's objective is to continue protection of the public and commitments made in response to the Shipman Enquiry in relation to the "listing" of dental professionals suitable to be engaged in the performance of primary dental services.

(ii) Background

The Shipman Enquiry reported in 2002 but the UK and Welsh Assembly Governments acted before then to take powers to ensure that medical, dental, ophthalmic and pharmaceutical lists held by Local Health Boards (LHBs) included all practitioners who work under NHS arrangements in primary care. The relevant "lists" include practitioners considered suitable to be engaged in the provision of the relevant service under Part 2 of The National Health Service Act 1977 (the 1977 Act).

The Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) provides the legislative framework for the establishment of primary dental services. It is intended that the new contracting arrangements will underpin modernised, locally sensitive primary dental services properly integrated with the rest of the NHS.

The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (the GDS Regulations) replace the NHS (General Dental Services) Regulations 1992 (SI 1992/661) (the 1992 Regulations) which provide for general dental services under section 35 of the National Health Service Act 1977 (the 1977 Act).

The National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (the PDS

Regulations) replace the PDS piloting regime under the National Health Service (Primary Care) Act 1997 (the 1997 Act). The policy intention is to "mainstream" the successful piloting of local contracts as a permanent part of NHS contracting.

From 1 April 2006 it is intended to establish GDS contracts and PDS agreements for high street dentists to provide primary dental services. The new contractual arrangements move away from the general dental services item of service remuneration to an annual payment no longer directly related to the dentists activity. This will enable dentists to spend more time with their patients and adopt a more preventive approach to oral health care.

Section 16CA(2) of the 1977 Act, inserted by the 2003 Act enables the LHB to provide primary dental services itself.

(iii) Reason for change

The 1992 Regulations provide for the "listing" of dental practitioners considered by the LHB to be suitable to provide or be engaged in the provision of general dental services. When primary dental services under the 2003 Act are established on 1 April 2006, the 1992 Regulations will be revoked.

The 2003 Act inserts into the 1977 Act new section 28X which provides for lists of persons performing primary medical and dental services. The National Health Service (Performers Lists) (Wales) Regulations 2004 provide for the listing of medical performers of primary medical services. The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (the Performers Lists Regulations) amend the principal regulations to include dental performers on similar terms to medical performers.

The principal regulations provide for refusal to included, conditional inclusion, disqualification, contingent removal and suspension from the relevant performers list.

3. Options

The following 2 options were considered:

Option 1. Leave things unchanged. The Regulations which underpin the listing of dental practitioners will be revoked in April 2006 with consequent loss of the listing provisions.

Option 2. Introduce new subordinate legislation under section 28X of the 1977

Act to establish performers lists for dental practitioners performing primary dental services.

4. Costs and benefits

(i). Sectors and groups affected

The 1992 Regulations already affect dental practitioners providing general dental services. The Performers Lists Regulations will have a similar effect, once they are in force. They do not impact on voluntary organisations or charities.

The policy for the new listing regime will not have any race equality impact.

Administration of the new listing arrangements will continue to be the responsibility of LHBs. Both option 1 and option 2 have similar affect on administration by these NHS bodies.

Option 1 and option 2 have a differential affect on users of the service. Under option 1 the arrangements for listing dental practitioners would be lost when the current regulations are revoked in April 2006. The gain under option 2 would be maintenance of the approval and listing of dental practitioners for the protection of NHS dental patients.

(ii) Analysis of costs and benefits

Option 1

Economic impacts

Practitioners would no longer be asked to apply to LHBs in whose area they wish to work and complete forms and obtain references in each case. LHBs would no longer process applications from applicants with the associated administrative costs.

Social impacts

The listing arrangements would not remain for the protection of NHS patients.

Environmental impacts

There are no environmental impacts from continuing with the current NHS arrangements.

Option 2

Economic impacts

Performers Lists will allow listed dental practitioners to perform primary dental services in any part of

Wales without the need for a fresh application in each area as is the case with the current dental list requirements for principal dentists. This will smooth business processes and allow dental corporations (permitted under Part 4 of the Dentists Act 1984 to carry on the business of dentistry) to move more effectively staff around to meet particular needs in different areas.

There will also, after the transitional exercise, be less administrative burden on LHBs as a practitioner on one performers list will be able to perform in any LHB area. This will mean that LHBs will no longer consider applications from individuals who wish to work in their areas provided they are on a performers list in another area. As these practitioners will be on a performers list LHBs will be assured that another NHS body has considered and accepted the dental practitioner.

Newly qualified practitioners undertaking vocational training will be able to practice under the direction of a trainer for a period of two months before inclusion in the list.

Social impacts

Following an oral examination a dentist will set out for the patient the type and extent of dental work required and which charge band that falls into. The patient would then be entitled to, within that course of treatment, all proper and necessary dental care and treatment which the patient is willing to undergo. Since the payment is set in advance the patient knows exactly what the course of treatment will cost and can plan accordingly. Payment can be made up-front, during the course of treatment or at the end.

The new contracting regime and associated charging system may help encourage dentists to do more NHS dental work because it is simpler to operate, calculate charges and to explain to patients.

Environmental impacts

There are no environmental impacts from this measure.

Summary of Costs and Benefits

Option	Total benefit: economic, environmental, social and administrative	Total cost per annum: economic, environmental, social and administrative
Option 1 Do nothing	Some saving of any additional costs to LHBs administrative systems. Possible savings upgrading DPB/BSA payment and monitoring systems.	Social cost to loss of suitability testing and listing of dental practitioner and NHS patients at greater risk. Administrative arrangements of BSA remain as now.

<p>Option 2</p> <p>Implement new listing arrangements</p>	<p>Retain ability for LHBs to scrutinise dentists' applications for inclusion in lists of dentists suitable to be engaged in the provision of primary dental services.</p> <p>More clinically effective cost effective and safer dental care for patients.</p>	<p>There is already a listing system and these Regulations have no impact on payments.</p> <p>The number of persons on lists will be reduced by not having to be listed in each LHB where a dentists is a provider.</p>
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5. Impact on Small Firms

Of the 533 dental practice addresses in Wales which would qualify as small businesses, some will be providing general dental services and others, around 80, personal dental services. A small number of these practices may be owned by dental corporations. A dental corporation means a body corporate which in accordance with the provisions of the Dentists Act 1984 is entitled to carry on the business of dentistry. No dental corporation has more than 10% market share in Wales.

The Performers Lists Regulations will replace the 1992 Regulations and will slightly reduce the burden on small businesses by removing the need for multiple listing.

6. Competition assessment

These Regulations introduce new requirements for dentists employed by LHBs who intend performing primary dental services. The Performers Lists Regulations provide for individual dental practitioners only to meet the prescribed conditions and not for businesses.

7. Consultation

The National Assembly has new powers pursuant to the amendments made to the 1977 Act by the 2003 Act to make regulations providing for listing of dental practitioners considered suitable to perform primary dental services under general dental services contracts, arrangements under section 28C of the 1977 Act (personal medical services and personal dental services agreements) and where the LHB is providing primary dental services itself.

The proposal is not new policy and there has therefore been no public consultations. The British Dental Association (Wales) have been involved in the planning of local commissioning under GDS contracts and PDS agreements. Following consideration of comments received, amendments were made to the draft Regulations to address concerns raised. The views of BDA Wales and the British Orthodontic Society have also been sought on the draft Regulations.

In addition to amendments for clarification of definitions in regulation 28 and to improve drafting, the

main policy changes include:

insertion of new regulation 18A making provisions in relation to a national disqualification by the 1977 Act; remove reference to hospital training post from regulation 31(5)(b); reduce from 4 years to 2 years the requirement under regulation 31(5)(b); and revise previous Schedule paragraph 15 in relation to employed dentists.

8. Enforcement, Monitoring and Review

The transitional provisions in the schedule to the Performers Lists Regulations require LHBs to reassign dentists to the new lists and to consider applications and supporting information from dentists not already listed. LHBs must currently ensure that only practitioners on the dental list practise in their areas. Failure to comply with the regulations can lead to LHBs removing individuals from their lists, which will mean that they cannot perform primary dental services under NHS arrangements. There is an appeal against decisions of the LHB to the Family Health Services Appeal Authority established by section 49S of the 1977 Act.

The transitional provisions have been included to maintain continuity of service whilst LHBs reconfigure listing.

Once the new arrangements for contracting are in place data will be submitted by contractors on the treatment provided and the persons to whom services have been provided. The data will be submitted to the NHS Business Services Authority (successor body to the Dental Practice Board) acting on behalf of the commissioning LHBs. That data will be identifiable by performer and so the BSA will have a national view of the location and relevant LHB listing each performer.