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## DIRECTIONS

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# NATIONAL HEALTH SERVICE, ENGLAND

## Alternative Provider Medical Services Directions 2013

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

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<sup>(a)</sup> 2006 c.41. Section 98A is inserted by section 49 of the Health and Social Care Act 2012 (c.7) ("the 2012 Act"). By virtue of section 271(1) of the 2006 Act, the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

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PART 1  
GENERAL

**Citation, commencement and application**

1.—(1) These Directions may be cited as the Alternative Provider Medical Services Directions 2013 and come into force on 1st April 2013.

(2) These Directions are given to the Board.

**Interpretation**

2.—(1) In these Directions—

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

“additional services” has the same meaning as in the GMS Contracts Regulations;

“advanced electronic signature” means an electronic signature which is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory can maintain under their sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change of data is detectable;

“APMS” means arrangements made under section 83(2) of the 2006 Act(a) (primary medical services) for the provision of primary medical services, and includes any arrangements which are made in reliance on a combination of section 83(2) of the 2006 Act and any other powers available to the Board under Part 4 of that Act, and “APMS contract” and “APMS contractor” shall be construed accordingly;

“bank holiday” means any day that is specified or proclaimed as a bank holiday in England pursuant to section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(b);

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

“CCG” means a clinical commissioning group(d);

“core hours” means the period defined as core hours in the APMS contract, which must, as a minimum, be equivalent to the period defined as core hours in the PMS Agreements Regulations but which may, by agreement between the APMS contractor and the Board, be more extensive than the period defined as core hours in the PMS Agreements Regulations and in the absence of any such specific agreement as to the definition of core hours which is to apply in the APMS contract, core hours has the same meaning as in the PMS Agreements Regulations;

“electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000(e);

“electronic repeatable prescription” has the same meaning as in regulation 2 of the PMS Agreements Regulations;

“essential services” means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations (essential services) or services that are equivalent to those services and which are provided during core hours;

“Electronic Prescription Service” means the service of that name which is operated by the Health and Social Care Information Centre (f);

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004(g);

“health service body” means any body mentioned in section 9(4) of the 2006 Act(h);

“licensing body” means any body that licenses or regulates any profession;

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(a) Section 83(2) is amended by section 55(1) of, and paragraphs 30(1) and (2) of Schedule 4 to, the 2012 Act.

(b) 1971 c.80.

(c) 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 2012 Act.

(d) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is inserted by section 25(1) of the 2012 Act. *See also* section 11 of the 2006 Act. Section 11 is inserted by section 10 of the 2012 Act.

(e) 2000 c.7 as amended by section 406(1) of, and paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(f) The Health and Social Care Information Centre is established under section 252 of the 2012 Act.

(g) S.I. 2004/291 is amended by S.I. 2004/906 and 2694, 2005/893, 3315 and 3491, 2006/1501, 2007/3491, 2008/528 and 1700, 2009/2205 and 2230, 2010/22, 231, 234, 478 and 578, 2012/970, 1479, 1909 and 1916 and 2013/363.

(h) Section 9(4) is amended by section 95 of, and paragraph 82 of Schedule 5 to, the Health and Social Care Act 2008 and sections 55(1), 56(4), 95, 155(1), 249(1), 277 and 297 of, and paragraph 6 of Schedule 4, paragraph 82 of Schedule 5, paragraphs 17 and 18 of Schedule 7, paragraph 10 of Schedule 17, paragraph 9 of Schedule 19 and paragraphs 5 and 6 of Schedule 21 to, the 2012 Act.

“list of patients” means in relation to an APMS contractor, the list maintained in respect of that contractor by the Board under direction 15;

“national disqualification” has the same meaning as in regulation 2 of the PMS Agreements Regulations(a);

“NHS contract” has the meaning given to it in section 9 of the 2006 Act;

“out of hours period” means—

- (a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
- (b) the period between 6.30pm on Friday and 8am on the following Monday; and
- (c) Good Friday, Christmas Day and bank holidays,

except where the period defined as core hours in the APMS contract is different from the period defined as core hours in the PMS Agreements Regulations, in which case “out of hours period” in the APMS contract means those periods which fall outside the periods defined as core hours in that contract;

“out of hours services” means services required to be provided in all or part of the out of hours period which would be essential services if provided to the APMS contractor’s patients in core hours;

“patient” means a person to whom the APMS contractor is required to provide primary medical services under its APMS contract;

“Patient Choice Extension Scheme” means the scheme of that name established by the Secretary of State under which primary medical services may be provided to persons under arrangements made in accordance with directions by the Secretary of State under section 98A (exercise of functions) of the 2006 Act(b);

“Patient Choice Scheme” means the scheme of that name established by the Secretary of State under which primary medical services may be provided to persons under arrangements made in accordance with directions by the Secretary of State under section 8 of the 2006 Act and which came to an end on 31st March 2013;

“PMS Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004(c);

“prescriber” has the same meaning as in regulation 2 of the PMS Agreements Regulations;

“primary care list” has the same meaning as in regulation 2 of the PMS Agreements Regulations;

“registered patient” means a person—

- (a) who is recorded by the Board in accordance with direction 15 as being on the APMS contractor’s list of patients; or
- (b) whom the APMS contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Board and who has not been notified by the Board as having ceased to be on that list;

“repeatable prescriber” means a prescriber who is—

- (a) engaged or employed by an APMS contractor which provides repeatable prescribing services under the terms of its APMS contract, or
- (b) a party to an APMS contract under which such services are provided;

“repeatable prescribing services” means services which involve the prescribing of drugs, medicines or appliances on a repeatable prescription; and

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(a) The definition of “national disqualification” is amended by S.I. 2005/3491 and 2010/22 and 578.  
(b) The Patient Choice Extension Scheme Directions signed on 11th February 2013 and published on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk).  
(c) S.I. 2004/627 is amended by S.I. 2004/2694, 2005/893, 3315 and 3491, 2006/1501, 2007/3491, 2008/528, and 1700, 2009/2205 and 2230, 2010/22, 231, 234, 478 and 578, 2012/970, 1479, 1909 and 1916 and 2013/363.

“repeatable prescription” has the same meaning as in regulation 2 of the PMS Agreements Regulations;

(2) In relation to the definitions referred to in direction 2 and to a requirement in these Directions to include terms having the effect specified in provisions of the PMS Agreements Regulations, those definitions and terms shall be read as if references in the PMS Agreements Regulations to—

- (a) “an agreement” or “the agreement” were to “an APMS contract” or “the APMS contract”;
- (b) “the contractor” or “a contractor” were to “the APMS contractor” or “an APMS contractor”; and
- (c) provisions in those Regulations were to corresponding provisions of these Directions where these Directions require an equivalent term to be included in an APMS contract.

### **Minimum standards**

3. Nothing in these Directions shall prevent the Board agreeing terms of an APMS contract which require a higher level of performance by the APMS contractor than would otherwise be required under these Directions.

## **PART 2**

### **PROVIDER CONDITIONS**

#### **Provider Conditions**

4.—(1) The Board may not enter into an APMS contract with an individual if that individual falls within paragraph (5).

(2) The Board may not enter into an APMS contract with a company if<sup>≠</sup>

- (a) that company; or
- (b) any director or secretary of the company,

falls within paragraph (5).

(3) The Board may not enter into an APMS contract with a partnership if<sup>≠</sup>

- (a) any individual member of the partnership; or
- (b) the partnership,

falls within paragraph (5).

(4) The Board may not enter into an APMS contract with an industrial and provident society<sup>(a)</sup>, a friendly society, a voluntary organisation<sup>(b)</sup> or any other body if—

- (a) the society, organisation or body; or
- (b) any officer, trustee or any other person concerned with the management of the society, organisation or body,

falls within paragraph (5).

(5) An individual, partnership or body falls within this paragraph if—

- (a) they are the subject of a national disqualification;
- (b) subject to paragraph (6), they are disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;

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(a) An industrial and provident society is an organisation registered under the Industrial and Provident Societies Act 1965 (c.12). To register, a society must be conducting an industry, business or trade; and must either be a co-operative society or the business of the society must be conducted for the benefit of the community.

(b) “Voluntary organisation” is defined in section 275(1) of the 2006 Act.

- (c) within the period of five years prior to the signing of the APMS contract or commencement of the APMS contract, whichever is the earlier, they have been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless they have subsequently been employed by that health service body or another health service body and paragraph (7) applies to them or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
- (d) within the period of five years prior to signing the APMS contract or commencement of the APMS contract, whichever is the earlier, they have been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning given in section 151(2), (3) and (4) (disqualification of practitioners) of the 2006 Act respectively) unless their name has subsequently been included in such a list;
- (e) they have been convicted in the United Kingdom of murder;
- (f) they have been convicted in the United Kingdom of a criminal offence other than murder, committed on or after 1st April 2002, and have been sentenced to a term of imprisonment of over six months;
- (g) subject to paragraph (8) they have been convicted elsewhere of an offence<sup>≠</sup>
  - (i) which would, if committed in England and Wales, constitute murder, or
  - (ii) committed on or after 3rd November 2003, which would, if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (h) they have been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933<sup>(a)</sup> (offences against children and young persons with respect to which special provisions of the Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(b)</sup> (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2004;
- (i) they have—
  - (i) been adjudged bankrupt or had sequestration of their estate awarded unless (in either case) they have been discharged or the bankruptcy order has been annulled,
  - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(c)</sup> or Schedule 2A to the Insolvency (Northern Ireland) Order 1989<sup>(d)</sup> unless that order has ceased to have effect or has been annulled, or
  - (iii) made a composition or arrangement with, or granted a trust deed for, their creditors unless they have been discharged in respect of it;
- (j) an administrator, administrative receiver or receiver is appointed in respect of it;
- (k) within the period of five years prior to signing the APMS contract or commencement of the APMS contract, whichever is the earlier, they have been—
  - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which they were

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(a) 1933 c.12 as amended by the Sexual Offences Act 1956 (c.69), sections 48 and 51 and Schedules 3 and 4; the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 8 and Schedule 16; the Sexual Offences Act 2003 (c.42), section 139 and Schedule 6, paragraph 7; the Domestic Violence, Crime and Victims Act 2004 (c.28), section 58 and Schedule 10, paragraph 2; the Coroners and Justice Act 2009 (c.25), section 177 and Schedule 21, paragraph 53; the Protection of Freedom of Information Act 2012 (c.9), section 115, Schedule 9, paragraph 135; and as modified by the Criminal Justice Act 1988, section 170(1) and Schedule 15, paragraph 9.

(b) 1995 c.46 as amended by the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8), section 7; the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), paragraph 2 of the Schedule; the Sexual Offences (Scotland) Act 2009 (asp 9), section 61 and Schedule 5, paragraph 2(8); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 41.

(c) 1986 c.45. Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

(d) S.I. 1989/2405 (N.I. 19). Schedule 2A was inserted by article 13 of, and Schedule 5 to, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455) (N.I. 10).

responsible or to which they were privy, or which they by their conduct contributed to or facilitated, or

(ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(a) (powers of the Court of Session to deal with management of charities) or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(b) (powers of Court of Session) from being concerned in the management or control of any body; or

(l) they are subject to a disqualification order under the Company Directors Disqualification Act 1986(c), the Companies (Northern Ireland) Order 1986(d) or to an order made under section 429(2)(b) of the Insolvency Act 1986(e) (failure to pay under county court administration order).

(6) A person shall not fall within paragraph (5)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—

(a) a party to an APMS contract;

(b) in the case of an APMS contract with a company, a director or company secretary of a company entering into an APMS contract; or

(c) in the case of an APMS contract with—

(i) an industrial and provident society,

(ii) a friendly society,

(iii) a voluntary organisation, or

(iv) another body,

an officer, trustee or other person concerned with the management of such a society, organisation or other body entering into an APMS contract.

(7) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.

(8) A person shall not fall within paragraph (5)(g) where the Board is satisfied that the conviction does not make the person unsuitable to be—

(a) a party to an APMS contract;

(b) in the case of a company, a director or company secretary of a company entering into an APMS contract; or

(c) in the case of an APMS contract with—

(i) an industrial and provident society,

(ii) a friendly society,

(iii) a voluntary organisation, or

(iv) another body,

an officer, trustee or other person concerned with the management of such a society, organisation or other body entering into an APMS contract.

(9) For the purposes of paragraph (5)(c), a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of section 33 (abolition of Strategic Health Authorities) or 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012.

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(a) 1990 c. 40.

(b) 2005 asp 10 as amended by section 122 of the Public Services Reform (Scotland) Act 2010 asp 8.

(c) 1986 c. 46 as amended by the Insolvency Act 2000 (c.39).

(d) S.I.1986/1032 (N.I.6).

(e) 1986 c. 45 as amended by section 269 of, and paragraphs 1 and 15 of Schedule 23 to, the Enterprise Act 2002 (c.40).

## PART 3

### MANDATORY TERMS FOR APMS CONTRACTS

#### General terms

- 5.—(1) The Board must ensure that any APMS contract it enters into—
- (a) states that it is an NHS contract where the contract is to be an NHS contract because the APMS contractor is a health service body or is to be regarded as such a body by virtue of regulation 9 of the PMS Agreements Regulations(a) or regulation 10 of the GMS Contracts Regulations(b);
  - (b) specifies who the APMS contractor is to provide services to under the APMS contract, including where appropriate by reference to an area within which a person resident would be entitled to receive services under the APMS contract;
  - (c) specifies that the APMS contractor must not sell, assign or otherwise dispose of the benefit of any of its rights under the APMS contract without the prior consent of the Board;
  - (d) subject to direction 6(1)(j), specifies the circumstances (if any) in which any obligations under the APMS contract may be sub-contracted;
  - (e) specifies the grounds (in addition to those required by direction 6(1)(u), (v) and (w)) on which the APMS contract may or must be terminated and any contract sanctions; and
  - (f) specifies in the case of a contract which is not an NHS contract, the procedures that are to apply in the event of a contractual dispute.
- (2) The Board must ensure that any APMS contract it enters into contains a term which has the effect of requiring—
- (a) the APMS contractor, if that contractor provides essential services to patients on its list of patients, to be a member of a CCG; and
  - (b) the APMS contractor to appoint one individual who is a health care professional to act on its behalf in the dealings between it and the CCG to which it belongs.

#### Other contractual terms

- 6.—(1) The Board must ensure that any APMS contract it enters into contains terms which have the effect specified in the following provisions of Schedule 5 (other contractual terms) to the PMS Agreements Regulations—
- (a) paragraph 2 (premises);
  - (b) paragraph 2A (telephone services)(c) and paragraph 2B (cost of relevant calls)(d);
  - (c) paragraph 5 (clinical reports)(e), but as if in sub-paragraph (4) the words from “which is required” to the end were omitted;
  - (d) paragraphs 6 (storage of vaccines) and 7 (infection control);
  - (e) paragraphs 37 and 38 (prescribing)(f), 38A (electronic prescriptions)(g), 38B (nomination of dispensers for the purpose of electronic prescriptions)(h), 39 (repeatable prescribing services), 40 (repeatable prescriptions)(i), 41 (restrictions on prescribing by medical

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(a) Regulation 9 is amended by S.I. 2004/2694 and 2013/363.  
(b) Regulation 10 is amended by 2013/363.  
(c) Paragraph 2A is inserted by S.I. 2005/893.  
(d) Paragraph 2B is inserted by S.I. 2010/578.  
(e) Paragraph 5 is amended by S.I. 2004/2694 and 2013/363.  
(f) Paragraphs 37 and 38 are amended by S.I. 2004/2694, 2005/893, 2007/3491, 2009/2230 and 2013/363.  
(g) Paragraph 38A is inserted by S.I. 2005/893 and amended by S.I. 2007/3491 and 2013/363.  
(h) Paragraph 38B is inserted by S.I. 2005/893 and amended by 2013/363.  
(i) Paragraphs 39 and 40 are amended by S.I. 2005/893 and 2013/363.

practitioners), 42 (restrictions on prescribing by supplementary prescribers)(a), 43 (bulk prescribing)(b), 44(1) (excessive prescribing)(c) and 52 (provision of drugs, medicines and appliances for immediate treatment or personal administration), but as if—

- (i) in paragraph 41, references to “regulation 15(2)(b)” were references to “direction 9(a)(ii)”, and
  - (ii) any requirement for a repeatable prescription to include the name of the contractor were omitted;
- (f) paragraphs 53(d) to 56 (qualifications of performers), but as if in paragraph 53 sub-paragraph (2)(a) were omitted;
  - (g) paragraphs 60(1) and (3) (conditions for employment and engagement), 61 and 62 (training) and 63 (arrangements for GP Registrars)(e);
  - (h) paragraph 66 (signing of documents)(f);
  - (i) paragraph 67 (level of skill);
  - (j) paragraph 69(5) (sub-contracting of clinical matters)(g);
  - (k) paragraphs 70(2) (patient records) and 71 (confidentiality of personal data);
  - (l) paragraph 73 (provision of information)(h);
  - (m) paragraphs 75 (inquiries about prescriptions and referrals)(i) and 76 (provision of information to a medical officer etc.)(j);
  - (n) paragraph 77 (annual return and review)(k), but as if in sub-paragraph (1) the words from “which shall require” to the end were omitted;
  - (o) paragraphs 78 (notifications to the Board)(l);
  - (p) paragraph 81 (notification of deaths)(m);
  - (q) paragraphs 83 (entry and inspection by the Board)(n), 85 (entry and inspection by the Care Quality Commission)(o) and 85B (entry and viewing by Local Healthwatch organisations)(p);
  - (r) paragraphs 86 (complaints procedure) and 91 (co-operation with investigations)(q);
  - (s) paragraph 98 (variation of an agreement: general)(r), but as if—
    - (i) in sub-paragraph (1), the words “and paragraphs 69(3) and 109,” were omitted(s), and
    - (ii) in sub-paragraph (2), the words “In addition to the specific provision made in paragraph 109,” were omitted;

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(a) Paragraphs 41 and 42 are amended by S.I. 2005/893, 2009/2230 and 2013/363 and paragraph 42 is also amended by S.I. 2012/1916.

(b) Paragraph 43 is amended by S.I. 2005/893.

(c) Paragraph 44(1) is amended by S.I. 2010/578.

(d) Paragraph 53 is amended by S.I. 2004/2694, 2006/1501, 2010/234 and 2013/363.

(e) Paragraph 63 is amended by S.I. 2004/2694 and 2013/363.

(f) Paragraph 66 is substituted by 2005/3315 and amended by S.I. 2007/3491.

(g) Paragraph 69(5) is inserted by S.I. 2004/906 and paragraph 69(2) is amended by S.I. 2013/363.

(h) Paragraph 73 is amended by S.I. 2004/2694 and 2013/363.

(i) Paragraph 75 is amended by S.I. 2005/893 and 2013/363

(j) Paragraph 76 is substituted by S.I. 2010/578 and amended by S.I. 2012/1479.

(k) Paragraph 77 is amended by S.I. 2004/2694 and 2013/363.

(l) Paragraph 78 is amended by S.I. 2005/893 and 2013/363.

(m) Paragraph 81 is amended by S.I. 2013/363.

(n) Paragraph 83 is amended by S.I. 2013/363.

(o) Paragraph 85 is amended by S.I. 2010/578 and 2013/363.

(p) Paragraph 85B is inserted by S.I. 2013/363.

(q) Paragraph 86 is substituted and paragraph 91 is amended by S.I. 2009/309 and both paragraphs 86 and 91 are amended by 2013/363.

(r) Paragraph 98 is amended by S.I. 2013/363.

(s) A reference to paragraph 69(3) was substituted for the reference to paragraph 70(3) in paragraph 98(1) of the PMS Agreements Regulations by S.I. 2004/2694, regulation 15(17).

- (t) paragraph 99A (termination on death)(a), but as if the reference in sub-paragraph (2) to “paragraphs 104 to 107” were to the terms included in the APMS contract in accordance with sub-paragraphs (u) to (w) of this paragraph;
- (u) paragraph 104 (termination by the Board for the provision of untrue etc information)(b), but as if—
  - (i) for the words from “by the contractor” to “paragraph 80(2) or (3)” there were substituted “by the contractor before the agreement was entered into”, and
  - (ii) the reference to regulation 5 was to direction 4;
- (v) paragraph 105 (termination by the Board on fitness grounds)(c) but as if sub-paragraphs (1) and (2) were substituted as follows—

“105.—(1) The Board may serve notice in writing terminating the APMS contract forthwith, or from such date as may be specified in the notice if—

- (a) in the case of an APMS contract with an individual, the individual;
- (b) in the case of an APMS contract with a company—
  - (i) the company, or
  - (ii) any director or company secretary of the company;
- (c) in the case of an APMS contract with a partnership—
  - (i) any individual member of the partnership, or
  - (ii) the partnership; or
- (d) in the case of an APMS contract with an industrial and provident society, a friendly society, a voluntary organisation or any other body—
  - (i) the society, organisation or other body, or
  - (ii) an officer, trustee or any other person concerned with the management of the society, organisation or body,

falls within sub-paragraph (3) during the existence of the APMS contract.”

- (w) paragraphs 106 (termination by the Board where there is a serious risk to the safety of patients etc)(d) and 106A (termination by the Board for unlawful sub-contracting)(e);
- (x) paragraphs 112 and 112A (clinical governance)(f);
- (y) paragraph 112B (duty as to education and training)(g);
- (z) paragraphs 113(h) and 114(i) (insurance);
- (aa) paragraph 115 (compliance with legislation and guidance)(j);
- (bb) paragraph 116 (third party rights); and
- (cc) paragraph 117 (gifts)(k), but as if<sup>≠</sup>
  - (i) in sub-paragraph (2)<sup>≠</sup>
    - (aa) paragraphs (a) and (b) were omitted; and
    - (bb) in paragraphs (e) and (f), references to “paragraphs (b) to (d)” were to “paragraphs (c) and (d)”, and

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(a) Paragraph 99A is inserted by S.I. 2005/893 and amended by 2013/363.

(b) Paragraph 104 is amended by S.I. 2005/893 and 2013/363.

(c) Paragraph 105 is amended by S.I. 2005/893, 2007/3491, 2010/578, 2012/2404 and 2013/363.

(d) Paragraph 106 is amended by S.I.2013/363.

(e) Paragraph 106A is inserted by S.I. 2004/906 and amended by 2013/363.

(f) Paragraph 112 is amended by S.I. 2007/3491. Paragraph 112A is inserted by S.I. 2007/3491 and amended by 2013/363.

(g) Paragraph 112B is inserted by S.I. 2013/363.

(h) Paragraph 113 is amended by S.I. 2004/2694.

(i) Paragraph 114 is amended by S.I. 2005/893.

(j) Paragraph 115 is amended by S.I. 2013/363.

(k) Paragraph 117 is amended by S.I. 2005/3315 and 2013/363.

- (ii) in sub-paragraph (4), the reference to “sub-paragraph (2)(b) to (f)” were to “sub-paragraph (2)(c) to (f)”.

(2) The Board must consider whether an APMS contract it enters into should require the contractor to keep a register of gifts given to the following persons (in addition to the persons who the APMS contractor is required to record gifts given to in accordance with paragraph (1)(cc))<sup>±</sup>

- (a) the APMS contractor;
- (b) where the APMS contractor is a company, any director or company secretary of the company;
- (c) where the APMS contractor is a partnership, any member of the partnership; or
- (d) where the APMS contractor is an industrial and provident society, a friendly society, a voluntary organisation or any other body, an officer, trustee or any other person concerned with the management of the society, organisation or body.

### **Certificates**

7. The Board must ensure that any APMS contract it enters into contains terms having the effect specified in regulation 12 (certificates)(a) of, and Schedule 2 (list of prescribed medical certificates) to, the PMS Agreements Regulations.

### **Appraisal and assessment of performers of APMS**

8. The Board must ensure that any APMS contract it enters into requires the APMS contractor to ensure that any medical practitioner performing medical services under the APMS contract—

- (a) participates in an appropriate appraisal system; and
- (b) co-operates with the Board in relation to the Board’s patient safety functions.

### **Charges**

9. The Board must ensure that any APMS contract it enters into—

- (a) prohibits the APMS contractor, either itself or through any other person, from demanding or accepting from any of its registered patients a fee or other remuneration, for its own or another’s benefit for—
  - (i) the provision of any treatment whether under the APMS contract or otherwise, or
  - (ii) any prescription or repeatable prescription for any drug, medicine or appliance, except in the circumstances set out in Schedule 3 to the PMS Agreements Regulations;
- (b) prohibits the APMS contractor, either itself or through any other person, from demanding or accepting from any of its patients other than registered patients a fee or other remuneration, for its own or another’s benefit for—
  - (i) the provision of any treatment under the APMS contract; or
  - (ii) any prescription or repeatable prescription for any drug, medicine or appliance in connection with that treatment;
- (c) contains terms having the same effect as those specified in regulation 15(3) and (4) of the PMS Agreements Regulations (fees and charges)(b); and
- (d) requires the APMS contractor in the provision of services to patients under the APMS contract—
  - (i) to provide information regarding services it provides otherwise than under the APMS contract only where appropriate,

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(a) Regulation 12(2) is substituted by S.I. 2010/578.

(b) Regulation 15 is amended by S.I. 2013/363.

- (ii) where it does provide such information, to ensure that the information provided is fair and accurate, and
- (iii) where the other services are available to the patient as part of the health service established under section 1(1) of the 2006 Act<sup>(a)</sup>, to inform the patient—
  - (aa) that the services are so available;
  - (bb) of any charge that applies to that health service and, if no such charge applies, that the service is free; and
  - (cc) how to access those health services.

### **Financial interests**

**10.**—(1) The Board must ensure that any APMS contract it enters into requires the APMS contractor in making a decision—

- (a) to refer a patient for other services under the 2006 Act; or
- (b) to prescribe any drug, medicine or appliance to a patient,

to do so without regard to its own financial interests.

(2) The Board must ensure that any APMS contract it enters into contains a term having the effect of prohibiting the APMS contractor from informing patients that any prescription or repeatable prescription for any drug, medicine or appliance must be dispensed only by the APMS contractor or a person with whom the APMS contractor is associated.

### **Consequences of termination of an APMS contract**

**11.** The Board must ensure that any APMS contract it enters into makes suitable provision for the arrangements on termination of an APMS contract, including the consequences (whether financial or otherwise) of the APMS contract ending.

## **PART 4**

### **MANDATORY TERMS OF AN APMS CONTRACT UNDER WHICH ESSENTIAL SERVICES ARE TO BE PROVIDED**

#### **Mandatory terms of an APMS contract under which essential services are to be provided**

**12.**—(1) The Board must ensure that any APMS contract it enters into under which essential services are to be provided (in addition to the requirements specified in directions 5 to 11) contains terms which have the effect specified in the following provisions of Schedule 5 (other contractual terms) to the PMS Agreements Regulations—

- (a) paragraph 3 (attendance at practice premises);
- (b) paragraphs 10 and 11 (duty of co-operation)<sup>(b)</sup>;
- (c) paragraph 17 (patient preference of practitioner)<sup>(c)</sup>;
- (d) paragraph 70(1) and (3) to (10) (patient records)<sup>(d)</sup>;
- (e) paragraph 72 (contractor’s leaflet); and
- (f) paragraph 82 (notifications to patients following variation of the agreement)<sup>(e)</sup>, but as if the words “in accordance with Part 8 of this Schedule” were omitted.

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(a) The term “health service” is defined in section 275(1) of the 2006 Act. A relevant amendment is made to section 275(1) by section 55(1) of, and paragraph 138 of Schedule 4 to, the 2012 Act.  
 (b) Paragraphs 10 and 11 are amended by S.I. 2013/363.  
 (c) Paragraph 17 is amended by S.I. 2007/3491.  
 (d) Paragraph 70 is amended by S.I. 2010/578, 2012/970 and 2013/363.  
 (e) Paragraph 82 is amended by S.I. 2013/363.

(2) The Board must ensure that any APMS contract it enters into contains a term requiring the APMS contractor to make available to the Board a copy of the leaflet referred to in paragraph 72 of Schedule 5 to the PMS Agreements Regulations and any subsequent updates of that leaflet.

(3) The Board must ensure that any APMS contract it enters into makes provision as to the circumstances (if any) in which the Board may assign patients to the contractor and where appropriate, as to whether the APMS contractor's list of patients is to be regarded as open or closed and in what circumstances the status of the list may change.

(4) The Board must ensure that any APMS contract it enters into makes provision as to the circumstances (if any) in which the APMS contractor is required to attend a patient otherwise than at the contractor's premises.

## PART 5

### MANDATORY TERMS FOR AN APMS CONTRACT UNDER WHICH OUT OF HOURS SERVICES ARE TO BE PROVIDED

#### **Mandatory term for an APMS contract under which out of hours services are to be provided**

13. The Board must ensure that any APMS contract it enters into under which out of hours services are to be provided, (in addition to the requirements specified in directions 5 to 11) requires the APMS contractor, in the provision of such services, to meet the quality requirements set out in the document entitled "National Quality Requirements in the Delivery of Out of Hours Services" published on 20th July 2006(a).

## PART 6

### MANDATORY TERM FOR AN APMS CONTRACT UNDER WHICH PATIENT CHOICE EXTENSION SCHEME ARRANGEMENTS ARE TO BE PROVIDED

#### **Mandatory terms for an APMS contract under which Patient Choice Extension Scheme arrangements are to be provided**

14.—(1) This direction applies where the APMS contractor and the Board enter into arrangements under the Patient Choice Extension Scheme.

(2) The terms of the APMS contract—

(a) which have the same effect as the provisions specified in paragraph (3) must be varied in accordance with paragraph (4); and

(b) must be varied to include terms which have the same effect as the provisions specified in paragraphs (5) to (6),

but only to the extent that such variations relate to the provision of primary medical services to patients who received such services under the Patient Choice Scheme and wish to continue to do so under arrangements made in accordance with the Patient Choice Extension Scheme with effect from the start of the day on which such arrangements commence and for the period ending at the end of the day which is the date of the termination of those arrangements, which must be no later than 31st March 2014.

(3) The terms of the APMS contract specified in this paragraph are—

(a) the terms which require the APMS contractor to provide essential services;

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(a) The document "National Quality Requirements in the Delivery of Out of Hours Services" published on 20th July 2006 can be accessed on the website [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4137271](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4137271).

- (b) the terms which require the APMS contractor to provide out of hours services to patients to whom it provides essential services; and
  - (c) the terms referred to in direction 12(1)(a) (mandatory terms of an APMS contract under which essential services are to be provided - attendance at practice premises).
- (4) The APMS contract must include terms which have the effect of temporarily releasing the contractor and the Board from all obligations, payments, rights and liabilities relating to those terms (and only those terms) which have the same effect as the provisions specified in paragraph (3)—
- (a) including any right to enforce those terms only in respect of the provision of primary medical services to patients who wish to receive such services under arrangements made in accordance with the Patient Choice Extension Scheme; and
  - (b) only where, in the opinion of the APMS contractor, it is not clinically appropriate or practical to provide the services or access to such services in accordance with those terms, or comply with those terms, under arrangements made under the Patient Choice Extension Scheme.
- (5) The APMS contract must include a term which has the effect of requiring the APMS contractor to notify a person in writing that where the APMS contractor is minded to continue to accept that person onto its list of patients in accordance with the Patient Choice Extension Scheme the APMS contractor is under no obligation to provide—
- (a) essential services and any other service in core hours, in a case where at the time treatment is required, it is not clinically appropriate or practical to provide such services given the particular circumstances of the patient; and
  - (b) out of hours services, in a case where at the time treatment is required, it is not clinically appropriate or practical to provide such services given the particular circumstances of the patient.
- (6) The APMS contract must also include terms which have the effect of providing that immediately after the date of the termination of the arrangements under the Patient Choice Extension Scheme, the variations made as a consequence of paragraph (2) must terminate save to the extent necessary in respect of enforcing any obligation, condition, payment, right and liability arising from those terms prior to the date of termination.

## PART 7

### PATIENT LISTS

#### **Patient Lists**

**15.** Where an APMS contract requires an APMS contractor to provide essential services and to have a list of patients, the Board must prepare and keep up to date a list of the patients—

- (a) who have been accepted by the APMS contractor for inclusion in the APMS contractor's list of patients in accordance with the terms of the APMS contract and who have not subsequently been removed from that list in accordance with the terms of the APMS contract; and
- (b) where applicable, who have been assigned to the APMS contractor in accordance with the terms of the APMS contract and whose assignment has not been rescinded.

## PART 8

### TRANSITIONAL PROVISIONS AND REVOCATIONS

#### **Application of Part 8**

**16.** This Part applies to an APMS contract which is entered into before the appointed day in accordance with the 2010 Directions and the parties to the APMS contract on or after the appointed day are the APMS contractor and the Board as a consequence of a property transfer scheme made under section 300 of the 2012 Act.

#### **Interpretation**

**17.** In this Part—

“2012 Act” means the Health and Social Care Act 2012(a);

“2010 Directions” means the Alternative Provider Medical Services Directions 2010 signed on 13th April 2010 as amended by the Alternative Provider Medical Services (Amendment) Directions 2012 signed on 26th April 2012(b);

“the appointed day” means 1st April 2013;

“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 2012 Act; and

“Strategic Health Authority” means a Strategic Health Authority which was established and which subsisted immediately before the coming into force of section 33 (abolition of Strategic Health Authorities) of the 2012 Act.

#### **General transitional provision relating to the terms of an APMS contract**

**18.—**(1) The APMS contractor and the Board must as soon as is reasonably practicable on or after the appointed day, enter into discussions with each other with a view to agreeing variations to the APMS contract in order to ensure that the contract complies with these Directions on or after the appointed day.

(2) Where the terms of the APMS contract have not been varied so as to include the terms which have the same effect as those terms specified in these Directions, the APMS contract is deemed to have been so varied only to the extent that such terms are to have the same effect as those terms specified in these Directions that have effect on or after the appointed day.

(3) The APMS Contractor and the Board may not agree any variation to the APMS contract that is contrary to these Directions on or after the appointed day.

#### **Continuing validity of forms**

**19.** A form supplied by a Primary Care Trust in respect of matters which relates to any requirement in the 2010 Directions continues to be a valid form in relation to the Board until it is cancelled or withdrawn by the Board.

#### **Arrangements for GP Registrars**

**20.** An APMS contractor which employs a GP Registrar in accordance with direction 6(1)(g) (terms which have the effect specified in paragraph 63 (arrangements for GP Registrars)) of the 2010 Directions immediately before the appointed day must continue to employ that GP Registrar and may only vary the terms and conditions to the extent necessary to comply with direction

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(a) 2012 c.7.

(b) Both these Directions are published on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk).

6(1)(g) of these Directions and any other relevant provision relating to the 2006 Act as amended and which have effect on or after the appointed day.

### **Continuing application of published guidance and other documents**

**21.** Where as a consequence of direction 6(1)(aa) (compliance with legislation and guidance) or direction 13 (mandatory term for an APMS contract under which out of hours are to be provided) of these Directions, an APMS contractor is required to meet requirements set out in a document or have regard to, or comply with, guidance published before the appointed day which has effect immediately before that day, that contractual term continues to apply in respect of such documents and guidance on or after the appointed day—

- (a) as if references to a Primary Care Trust or Strategic Health Authority in that document or guidance were to the Board; and
- (b) until such time as the Board, or as the case may be Secretary of State, cancels or withdraws the document or guidance.

### **Records, information, notifications and rights of entry**

**22.—(1)** Where a Primary Care Trust has given consent, authorisation or notification or made a request under a term of the APMS contract that has the same effect as the provisions referred to in direction 6(1)(k) to (q) (records, information, notification and rights of entry) of the 2010 Directions, such consent, authorisation, notification or request is to be deemed to be that of the Board for the purposes of the application of direction 6(1)(k) to (q) of these Directions on or after the appointed day.

(2) The reference to a request and authorisation in paragraph (1) respectively includes any inquiries made in writing from the Primary Care Trust and appointments by the Primary Care Trust in accordance with the terms of the APMS contract before the appointed day.

### **Complaints**

**23.—(1)** This paragraph applies where an investigation of a complaint under the provisions referred to in direction 6(1)(r) (complaints procedure) of the 2010 Directions is not completed before the appointed day.

(2) A complaint of a kind referred to in paragraph (1) must continue to be dealt with in accordance with the Local Authority Social Services and National Complaints (England) Regulations 2009<sup>(a)</sup> as if any reference to a Primary Care Trust in a document or form relating to the complaint were a reference to the Board.

### **Co-operation with investigations**

**24.** The APMS contractor must continue to co-operate with an investigation of a complaint which is on-going immediately before the appointed day in accordance with the terms of the APMS contract that give effect to direction 6(1)(r) (co-operation) of these Directions as if any act or omission by, or reference to a Primary Care Trust or Strategic Health Authority were an act or omission by, or reference to the Board.

### **Disputes**

**25.** Any dispute arising out of or in connection with an APMS contract in respect of an APMS contractor and the Primary Care Trust that is on-going immediately before the appointed day is deemed to be a dispute in respect of that contractor and the Board.

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(a) S.I.2009/309, relevant amendment is 2013/235.

### **Variation and termination of APMS contracts**

**26.**—(1) This paragraph applies where a Primary Care Trust or an APMS contractor has taken any steps in accordance with or in connection with a matter referred to in direction 6(1)(s) to (w) (variation and terminations) of the 2010 Directions before the appointed day and had it not been for the coming into force of section 33 (abolition of Strategic Health Authorities) or section 34 (abolition of Primary Care Trusts) of the 2012 Act that matter would continue to fall to the Primary Care Trust to be dealt with in accordance with the provisions referred to in that direction.

(2) Any action taken or omission by a Primary Care Trust in accordance with or in connection with any of the provisions in direction 6(1)(s) to (w) of the 2010 Directions is deemed to be action taken or omitted by the Board for the purposes of the continuity of the application of direction 6(1)(s) to (w) of these Directions on or after the appointed day.

(3) Where an agreement has been reached between an APMS contractor and a Primary Care Trust in accordance with or in connection with the provisions in direction 6(1)(s) to (w) of the 2010 Directions before the appointed day, that agreement is deemed to be an agreement made by that contractor and the Board.

(4) Where notice has been given by the APMS contractor to the Primary Care Trust or notice has been given by the Primary Care Trust to the APMS contractor in accordance with or in connection with the provisions in direction 6(1)(s) to (w) of the 2010 Directions, that notice is deemed to have been given by that contractor to the Board, or as the case may be, notice given by the Board to that contractor.

(5) Notwithstanding the above paragraphs, the Board may, if it thinks necessary or desirable in order to dispose of a matter justly, review a decision or action taken that it is deemed to have been made or taken as a consequence of this paragraph.

### **Leaflets**

**27.**—(1) This paragraph applies where an APMS contractor has compiled a practice leaflet which complies with the requirement in direction 12(1)(e) (contractor's leaflets) immediately before the appointed day.

(2) Notwithstanding the requirement in direction 12(1)(e) of these Directions as in force on or after the appointed day, an APMS contractor must review its leaflet and make any amendments necessary so as to include the information required as a consequence of the requirements in direction 12(1)(e) of these Directions not later than 1st July 2013.

### **Supplementary transitional provision**

**28.**—(1) Subject to the preceding provisions in this Part, any act or omission by, or in relation to, the Primary Care Trust before the appointed day in respect of—

- (a) the exercise of any functions of the Primary Care Trust under Part 4 of the 2006 Act; or
- (b) any rights or liabilities of the Primary Care Trust transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

in relation to an APMS contract, is deemed to have been an act or omission by, or in relation to the Board.

(2) Anything which, when these Directions take effect, is in the process of being done by, or in relation to, the Primary Care Trust in respect of, or in connection with—

- (a) the exercise by the Primary Care Trust of any of its functions under Part 4 of the 2006 Act; or
- (b) any rights or liabilities of the Primary Care Trust transferred as a consequence of a property transfer scheme made under section 300 of the 2012 Act,

is deemed to have effect as if done by, or in relation to, and may be continued by, or in relation to, the Board.

(3) Where it is necessary for the APMS contractor or the Board—

- (a) to take account of a period of time; or
- (b) to calculate a period of time which is required in accordance with these Directions, any period of time that occurred before the appointed day and which is relevant to the matter under consideration is to be taken into account or used in order to calculate any time period for the purposes of that consideration or applying provisions in these Directions on or after the appointed day only if that period of time could have been taken into account or used in a calculation of a time period in respect of those mirror provisions as in force immediately before the appointed day.

### **Revocations**

**29.**—(1) The Alternative Provider Medical Services Directions 2010(a) and the Alternative Provider Medical Services (Amendment) Directions 2012(b) are revoked.

(2) Notwithstanding the revocation provided for in paragraph (1), the Alternative Provider Medical Services Directions 2010 as in force on 31st March 2013 continue to apply to the extent necessary to assess any entitlement to payment or recovery of payment arising under the terms of an APMS contract.

(3) For the purposes of paragraph (2) and for the resolution of any matter which is necessary as at 31st March 2013—

- (a) the Board may do or continue to do anything which a Primary Care Trust could have done in relation to the Alternative Provider Medical Services Directions 2010 as in force on that date; and
- (b) the transitional provisions in this Part apply in so far as is necessary.

Signed by authority of the Secretary of State for Health



A Member of the Senior Civil Service  
Department of Health

Date: 25<sup>th</sup> March 2013

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(a) These Directions were signed on 13th April 2010.  
(b) These Directions were signed on 26th April 2012.