

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC HEALTH
AUTHORITIES AND PRIMARY CARE TRUSTS AND ADMINISTRATION
ARRANGEMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2006

2006 No. 359

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements (England) Regulations 2002 (S.I. 2002/2375) (“the principal Regulations”). The principal Regulations make provision, amongst other things, for establishing which Primary Care Trust (“PCT”) is responsible for exercising the functions of the Secretary of State relating to the health service which are exercisable by PCTs by virtue of those Regulations. This instrument adds a further exception to the usual rules so that where a PCT (“the placing PCT”) has entered into an arrangement to place an adult with long-term care needs in residential care in the area of another PCT, the placing PCT retains responsibility for meeting those needs.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 Under the principal Regulations, the PCT responsible for providing or commissioning a patient’s care is mainly determined by G.P registration. The purpose of this instrument is to change the PCT responsible for meeting high cost packages of health care where a PCT arranges long-term residential care in another PCT area, so that the cost no longer falls solely on the PCT where the accommodation is located.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Currently, PCTs must, subject to certain exceptions, provide health care for the benefit of the patients of G.P. practices drawn from the area of the trust. PCTs and their counterparts in social services frequently commission long-term packages of care for adults with a diverse range of needs in care homes or independent hospitals in other PCT areas. These packages may need to be funded by both the NHS and social services and they tend to be costly packages of care.

7.2 Most patients will register with a G.P in the PCT area where these specialist care homes and independent hospitals are located. PCTs have identified this as an increasing problem where specialist homes are concentrated in the areas of a few PCTs. The changes made by this instrument will mean that the cost of these care packages will not fall solely on those PCTs, and will serve to align the legal position with preferred PCT practice. The changes are also intended to promote corporate thinking and to encourage PCTs to consider the local market for placements, as well as promoting closer working between PCTs and local authorities. The Department of Health also believes that they will put commissioning of these packages of care on a basis that will work to the benefit of patients.

7.3 The Department of Health published the *Establishing the Responsible Commissioner: Guidance for PCT Commissioners* in October 2003 concerning the framework of responsibilities for commissioning an individual's care within the NHS. The guidance raised the possibility of amending the principal Regulations governing the commissioning of packages of NHS care in residential settings for persons with long-term health needs.

7.4 A consultation exercise held between 31 March and 29 June 2005 on the Department of Health's proposals was overwhelmingly in favour of the change. There were 63 responses in total: 56 from PCTs, Strategic Health Authorities and NHS Trusts; and 7 from other interested organisations including Age Concern, the Parliamentary and Health Services Ombudsman, the Royal College of Nursing and the Royal College of General Practitioners. The consultation did not attract any media attention. The general view of those who responded was that the proposals would result in easier commissioning of services for those requiring continuing care. In its published response to the consultation exercise, the Department clarified how patients who only receive nursing care from the NHS would be affected by the changes. Other concerns relating to the need for a transparent complaints procedure and the process for carrying out care reviews and maintaining standards of care will be addressed in accompanying guidance. A report on the consultation response has been published on the Department of Health website on www.dh.gov.uk/Consultations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is to change the way that PCT functions under the principal Regulations are exercised but not the services for which PCTs are responsible.

9. Contact

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pam.nixon@dh.gsi.gov.uk can answer any queries regarding the instrument.