

WG21-89

**THE NATIONAL HEALTH
SERVICE (WALES) ACT 2006**

**The Directions to Local Health
Boards as to the Personal Dental
Services Statement of Financial
Entitlements (Amendment) (No. 3)
Directions 2021**

Made 20 October 2021

Coming into force 21 October 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 66(4) and (5), 203(9) and (10) and 204(1) of the National Health Service (Wales) Act 2006⁽¹⁾, give the following Directions.

Title and commencement

1.—(1) The title of these Directions is the Directions to Local Health Boards as to the Personal Dental Services Statement of Financial Entitlements (Amendment) (No. 3) Directions 2021.

(2) These Directions come into force on 21 October 2021 but have effect from April 2021.

**Amendments to the Personal Dental Services
Statement of Financial Entitlements**

2. The Directions to Local Health Boards as to the Personal Dental Services Statement of Financial Entitlements 2009⁽²⁾, which came into force on 24 April 2009, are amended as follows.

(1) 2006 c.42.

(2) 2009 No. 17, as amended by 2010 No. 21, 2011 No. 34, 2012 No. 26, 2013 No. 10, 2014 No. 28, 2015 No. 24, 2016 No. 27, 2016 No. 32, 2017 No. 20, 2018 No. 72 and 2019 No. 43, WG No.21-22 and 2021 No. 84.

Amendment to Part 1 – Annual Agreement Values

3. In Section 2 (Negotiated annual agreement values) for paragraph 2.13 substitute—

“**2.13.** In response to the continuation of the COVID-19 pandemic, the Chief Dental Officer for Wales has set out an alternative payment and activity management framework⁽¹⁾ for the 2021/2022 Financial year (the “2021/22 COVID-19 Package”). This is a development of the payment and activity management framework that applied during the 2020/2021 Financial year.

2.14. Where a contractor whose PDS agreement includes the provision of units of dental activity has agreed with the RB that the 2021/22 COVID-19 Package is to apply to its PDS agreement for the 2021/2022 Financial year, that contractor’s NAAV (or, where that NAAV does not relate only to units of dental activity, that proportion of the contractor’s NAAV that relates to units of dental activity) is to be treated as being reduced for that Financial year by such percentage as may be agreed in writing between the contractor and RB in accordance with the 2021/22 COVID-19 Package or, in the absence of any such agreement, by the percentage resulting from the aggregation of the following percentage reductions—

- (a) 10%;
- (b) a further 5% where, during that Financial year, the contractor does not apply fluoride varnish in accordance with Delivering Better oral health: an evidence-based toolkit for prevention⁽²⁾ to at least—
 - (i) 75% of adults, in relation to whom an FP17W is submitted in respect of treatment provided by the contractor in that Financial year, who are at risk of decay (amber) or who have active decay (red), and
 - (ii) 75% of children, in relation to whom an FP17W is submitted in

(1) See the letters from the Chief Dental Officer dated 18 February 2021 and 6 July 2021, and the Deputy Chief Dental Officers date 20 August 2021 (and, in relation to orthodontics services, the guidance entitled “Delivery of Orthodontics in Primary Care for 2021 and 2022 in response to the Covid-19 pandemic” issued on 31 March 2021 and 31 May 2021).

(2) <https://www.gov.uk/government/publications/delivering-better-oral-health-an-evidence-based-toolkit-for-prevention>

respect of treatment provided by the contractor in that Financial year;

- (c) a further 20% where the contractor does not undertake Aerosol Generating Procedures or does not comply with the “Additional Procedures for Patients requiring AGP” and “AGP treatment protocols” within the Standard Operating Procedure for the Dental Management of non-COVID-19 Patients in Wales⁽¹⁾;
- (d) by such further percentage to be calculated as follows—

Step 1

Calculate the contractor’s target number of new patients for the period beginning with 1 July 2021 and ending with 31 March 2022 by dividing the contractor’s NAAV by £165,000 and multiplying the resulting number by 78 (rounded to the nearest whole number);

Step 2

Calculate whether the contractor has met the target number of new patients for the period in Step 1 by deducting the number of new patients the contractor has provided a course of treatment to in that period from the figure obtained in Step 1, where—

- (i) new patients are those persons who have not received services from the contractor in the—
 - (aa) 1 year period ending with the day before the date on which the course of treatment starts, in the case of child patients (those persons under the age of 18), or
 - (bb) 2 year period ending with the day before the date on which the course of treatment starts, in the case of adult patients (those persons aged 18 and over); and
- (ii) if the number of new child patients during the period in Step 1

(1) <https://gov.wales/sites/default/files/publications/2020-09/standard-operating-procedure-for-the-dental-management-of-non-covid-19-patients-in-wales.pdf>

exceeds the number of new adult patients in that period, the number of new child patients to whom the contractor has provided courses of treatment for the purposes of the calculation in this Step is limited to the number of new adult patients to whom the contractor has provided courses of treatment in that period;

Step 3

If the contractor has not met or exceeded the target number of patients under Step 2, the additional percentage reduction that applies for the Financial year is the number achieved when dividing the difference calculated under Step 2 by the target number of new patients calculated under Step 1, multiplied by 10 (where the contractor has met or exceeded the target number of patients and the calculation under Step 2 results in zero or a negative number there shall be no further reduction under this sub-paragraph); and

- (e) such further percentage as the RB considers reasonable, where the contractor does not comply in all material respects with—
 - (i) all other requirements in the 2021/22 COVID-19 Package, and
 - (ii) the contractor's obligations under its PDS agreement (other than the obligations included in its PDS agreement by virtue of regulation 13(1) of the PDS Agreements Regulations (Units of dental activity)).

2.15. Subject to paragraph 2.16, where a contractor whose PDS agreement includes the provision of units of orthodontic activity has agreed with the RB that the 2021/22 COVID-19 Package is to apply to its PDS agreement for the 2021/2022 Financial year, that contractor's NAAV (or, where that NAAV does not relate only to units of orthodontic activity, that proportion of the contractor's NAAV that relates to units of orthodontic activity) is to be treated as being reduced for that Financial year by—

- (a) 5% where during the course of the 2020/2021 Financial year and 2021/2022 Financial year the contractor delivers at least 50% of the

aggregate of the required minimum number of case starts for those Financial years, and in both of those Financial years complies in all material respects with—

- (i) the requirements in the COVID-19 Package and 2021/22 COVID-19 Package, as appropriate, and
 - (ii) with the contractor's obligations under its PDS agreement (other than the obligations included in its PDS agreement by virtue of regulation 14(1) of the PDS Agreements Regulations (Units of orthodontic activity));
- (b) 10% where the contractor delivers at least 38.75% (but less than 50%) of the aggregate of the required minimum number of case starts in the 2020/21 Financial year and 2021/22 Financial year, and in both of those Financial years complies in all material respects with—
- (i) the requirements in the COVID-19 Package and 2021/22 COVID-19 Package, as appropriate, and
 - (ii) with the contractor's obligations under its PDS agreement (other than the obligations included in its PDS agreement by virtue of regulation 14(1) of the PDS Agreements Regulations (Units of orthodontic activity));
- (c) 10% and then also reduced by a further sum equal to the case start shortfall multiplied by the price per UOA where the contractor does not comply with sub-paragraph (a) or (b) because there was a case start shortfall; or
- (d) such percentage in excess of the percentage reductions that would apply under sub-paragraphs (a), (b) or (c) as the RB considers reasonable, where at any point during the 2020/21 Financial year or 2021/22 Financial year the contractor does not comply in all material respects with—
- (i) the requirements in the COVID-19 Package or 2021/22 COVID-19 Package, as appropriate, or
 - (ii) the contractor's obligations under its PDS agreement (other than the obligations included in its GDS contract by virtue of regulation

18(1) of the GDS Contracts Regulations (Units of orthodontic activity)).

2.16. Paragraph 2.15 sets out how the proportion of the contractor's NAAV that relates to orthodontic services is to be reduced for the 2021/2022 Financial year where the contractor has agreed with the RB that the 2021/22 COVID-19 Package is to apply to its PDS agreement for that Financial year. Pending the calculation of that reduction (at which point there will be a reconciliation pursuant to Part 3) and during the course of the 2021/22 Financial year the RB must treat the proportion of the contractor's NAAV that relates to orthodontic services as being reduced by 10% for the Quarters ending with 31 July 2021 and 30 September 2021 and then, for the Quarters ending with 31 December 2021 and 31 March 2022, by—

- (a) 0% if, following the Quarter ending with 30 September 2021, the RB reasonably believes that the contractor will deliver at least 50% of the aggregate of the required minimum number of case starts for the 2020/2021 Financial year and 2021/2022 Financial year, or
- (b) 10% if sub-paragraph (a) does not apply.

2.17. In paragraphs 2.15 and 2.16—

“case start shortfall” means the figure calculated by adding 25% of the required minimum number of case starts for the 2020/21 Financial year to 50% of the required minimum number of case starts for the 2021/22 Financial year, then deducting from that figure the aggregate number of case starts achieved by the contractor during the 2020/21 Financial year and 2021/22 Financial year (except that there shall be no case start shortfall where that calculation results in a negative number);

“price per UOA” means the proportion of the contractor's NAAV that relates to orthodontic services for the 2020/21 Financial year and 2021/22 Financial year combined, divided by the number of units of orthodontic activity that would have been required to be provided under the contractor's PDS agreement during the 2020/21 Financial year and 2021/22 Financial year combined but for the relaxation under the COVID-19 Package and the 2021/22 COVID-19 Package;

“required minimum number of case starts” means the number of case starts which is equal to the units of orthodontic activity that would have been required to be provided under the contractor’s PDS agreement during the relevant Financial year (but for the relaxation under the COVID-19 Package or 2021/22 COVID-19 Package, as appropriate) divided by 22.

2.18. Any reduction applied to the contractor’s NAAV in accordance with paragraphs 2.12, 2.13, 2.14, 2.15 and 2.16 is without prejudice to any other remedies the RB may have under the PDS agreement or any other deductions that may be made pursuant to this SFE including, but not limited to, those in paragraphs 3.8 to 3.17.”.

4. In Section 3 (Payment of monthly annual agreement value payments) for paragraph 3.19(aa) substitute—

“(aa) during the Quarters ending with 30 June 2020, 30 September 2020, 31 December 2020, 31 March 2021, 30 June 2021, 30 September 2021, 31 December 2021 and 31 March 2022, where the contractor has agreed with the RB that the COVID-19 Package or 2021/22 COVID-19 Package is to apply to its PDS agreement for the relevant Financial year the contractor must comply with—

- (i) the conditions specified in the COVID-19 Package or 2021/22 COVID-19 Package (as appropriate) which correspond to the level of payment the contractor is receiving under paragraph 2.12, 2.13, 2.14, 2.15 or 2.16, and
- (ii) any other conditions agreed in writing with the RB;”.

A handwritten signature in black ink, appearing to read 'A Slade', with a stylized initial 'A'.

Signed by Alex Slade, Deputy Director, Primary Care Division under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date: 20 October 2021