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To: Chief Executives of Health Authorities
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Regional Directors
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Regional Primary Care Leads

2 April 1996

Dear Colleague

**National Health Service (General Medical Services) Amendment Regulations 1996:
Transfer of Out of Hours Responsibility / Practice Complaints Procedures.**

1. The National Health Service (General Medical Services) Amendment Regulations 1996 set out the legal requirements and are the only authoritative statement of the law. This guidance is intended to reflect those requirements accurately, and to assist health authorities in discharging their responsibilities under the law. Authorities are asked to send a copy of the SFA amendments attached to each practitioner on their medical list.

Background

Transfer of Responsibility

2. As part of the proposals for changes to GPs' out of hours services, it was agreed between the Department of Health and the BMA that GPs would be allowed to transfer their out of hours responsibility, in full or in part, to another GP on a health authority list and that health authorities would only withhold approval in exceptional circumstances and after consulting the LMC. The text of the agreement is attached. Health authorities will wish to keep this agreement in mind when administering the Regulations. On 1 April 1996, amendments to the NHS (General Medical Services) Regulations came into force to enable this to happen. The terms of service changes relating to the transfer of out of hours responsibility are explained below.

Practice Complaints Procedures

3. In line with the implementation of "Acting on Complaints", the Amendment Regulations also include new terms of service paragraphs which require GPs to establish and operate practice-based procedures for handling complaints made about any aspect of the service they provide, as part of the Local Resolution process. They also require practitioners to cooperate with complaints procedures operated by health authorities as part of Independent Review. Guidance on the new complaints procedures has already been issued to health authorities and directly to practitioners in the form of a booklet "Practice-based Complaints Procedures : Guidance for General Practice".

Changes to the GPs' Terms of Service to allow the Transfer of Out of Hours Responsibility

4. The new paragraph 18A of the GPs' Terms of Service allows a GP to transfer some or all of his or her out of hours responsibility to another doctor or doctors on a health authority list.
5. It is for the GP who wishes to transfer his or her responsibility to find and make arrangements with another GP or GPs to take on this responsibility. Health authorities are not responsible for doing this.
6. Paragraph 18A(3) allows a GP to make more than one arrangement to transfer his or her out of hours responsibility to more than one doctor, if the GP so wishes. He or she may also make arrangements for the transfer of responsibility in respect of different patients, different times and different parts of the practice area. Health authorities should look particularly carefully at arrangements of this kind, to ensure that they meet the criteria set out in paragraph 18A(9).
7. Where a GP is on an obstetric list, he or she may only transfer responsibility for the provision of maternity medical services to patients for whom the doctor provides those services to another doctor on an obstetric list.
8. Health authorities should note that a GP is not allowed, under the terms of the new Regulations, to transfer any of his or her out of hours responsibility to an organisation of any kind, whether a GP co-operative or a commercial deputising service. There must always be one named individual GP principal, responsible for each of the transferor GP's patients at any particular time.
9. Paragraph 18A(7) sets out the information which the GP needs to include in any application to the health authority for approval to transfer his or her out of hours responsibility. Health authorities should note, in particular, that under 18A(7)(c), they should ascertain the address of any location at which the transferee GP proposes to offer consultations out of hours.

10. GPs are allowed to transfer all or part of their responsibility to a doctor on a different health authority list. The health authority approving the arrangement should note that the GP must provide additional information in these circumstances as set out in paragraph 18A(7)(a) and (h).

Financial Arrangements

11. Health authorities should note that the financial arrangements between the transferor and transferee GP or GPs are entirely a private matter between themselves. The health authority should not be involved in these discussions, nor do they need to know the details of any financial arrangements in order to approve the transfer of responsibility.
12. Night payments, both the annual fees and night consultation fees will continue to be paid to the patient's own GP, whether or not he or she has transferred all or part of his or her out of hours responsibility under Paragraph 18A to another GP or GPs. The SFA amendment attached makes this clear. (Existing arrangements as detailed in SFA 82 will continue to apply in those cases where a practitioner was relieved of his or her responsibility to provide out of hours services before 1990, under Paragraph 18(2) of the Terms of Service.)

Health Authority Approval

13. Health authority approval depends on the criteria in paragraph 18A(9) being met. Health authorities must satisfy themselves that the arrangement is reasonable, having regard to the interests of patients; that the arrangement is practicable and will work satisfactorily; that it will be clear to patients how to contact the doctor out of hours; and that, should the arrangement break down, the patients' own GP has made arrangements to resume his or her responsibilities immediately.
14. In particular, health authorities must satisfy themselves that where a transferee GP proposes to use a rota, GP co-operative or commercial deputising service to provide some or all of the out of hours cover for patients that, should these arrangements fail, the transferee GP can satisfactorily discharge that responsibility personally if need be, to the same extent as is normal for a GP who has not transferred responsibility.
15. Health authorities will also need to be satisfied that, should the arrangement break down, for whatever reason (for example, death or illness of the transferee doctor) patient care is guaranteed in those circumstances, to the same extent as is normal for a GP who has not transferred responsibility. The transferor doctor may have fall-back arrangements in place for another GP to take on the responsibility, but approval from the health authority must be sought for a change of transferee GP.

16. We would expect GPs to want to ensure these conditions are met for their patients before making any proposals. We do not, therefore, expect that proposals will be refused other than exceptionally. If a health authority intends to withhold approval for any reason it must consult the Local Medical Committee before reaching a final decision. Paragraph 18A(10) gives a doctor the right of appeal to the Secretary of State against refusal to grant approval.
17. Paragraph 18B allows a health authority to review arrangements if it considers that the arrangement is not satisfying the criteria set out in 18A(9). Paragraph 18C allows the health authority to withdraw its approval either after a review under paragraph 18B or immediately, if it considers that this is necessary in the interests of patients.
18. If you have any queries about this guidance or the attached SFA amendments, health authorities should, in the first instance, contact their Regional Offices (a list of contact names is attached). Regional Offices with queries should contact Gill Littlehales on 01132 545850 about transfer of responsibility, and Theresa Burke on 01132 545841 about practice complaints procedures.

Yours sincerely

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Bill McCarthy
Primary Care Directorate - General Medical Services Branch

Text of the agreement between the Department of Health and the BMA on Transfer of Out of Hours Responsibility

1. This proposal would enable a GP to transfer his or her full out of hours responsibility to another GP on the medical list of an FHSA. The proposal is for the full out of hours period extending from 7 pm to 8 am on weekdays, and from 1 pm on Saturdays to 8 am on Mondays; or for a subset of this period, provided that the times involved are sensible, clear and consistent. The hours of availability requirements in paragraph 29 of the GP Terms of Service will not be affected for either GP involved.
2. The original GP would have to find another individual GP prepared to take on responsibility for the out of hours care of his or her patients. The two GPs would need to:
 - i. agree between them a price for the new arrangements, to be paid privately between the GPs without FHSA involvement;
 - ii. agree the hours (within the total out of hours period) to which the transfer of responsibility would relate;
 - iii. agree adequate means of easy communication for the patient to get in touch with the new doctor or his or her deputy;
 - iv. agree between them, and specify, how long the new arrangements will last; and the condition (if any) under which responsibility would revert to the original GP;
 - v. secure the approval of the FHSA for the proposed arrangement.
3. FHSA approval shall normally be given, and only withheld in exceptional circumstances. In such cases the FHSA shall consult the LMC before reaching a final decision. There would be a right of appeal to the Secretary of State by the doctor.
4. The original GP would now be free of responsibility for his or her patients' care, during the specified hours within the out of hours period, for the duration of the agreement. The out of hours GP would be able to make use of deputies subject to paragraphs 18-26 of the GP Terms of Service.
5. This proposal would be set out in amendments to the GP Terms of Service.