EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD AND CLINICAL COMMISSIONING GROUPS (RESPONSIBILITIES AND STANDING RULES) (AMENDMENT) (No. 2) REGULATIONS 2016

2016 No. 867

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument amends the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (SI 2012/2996) ("the 2012 Regulations"), which provide for a range of matters relating to the functioning and commissioning responsibilities of the National Health Service Commissioning Board (known as NHS England) and Clinical Commissioning Croups (CCGs). The amendment updates the 2012 Regulations (as amended) to reflect revised rates of NHS-funded Nursing Care payable by the relevant body (NHS England or CCGs).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 6E of the National Health Service Act 2006 (the 2006 Act) was inserted by section 20 of the Health and Social Care Act 2012. It enables the Secretary of State to impose requirements by regulations on NHS England and Clinical Commissioning Groups ("CCGs") when they are exercising their functions of commissioning health services. These requirements are known as the "Standing Rules" because they are intended to set core, ongoing requirements for the health service. The first set of Standing Rules was made as part of the 2012 Regulations.

5. Extent and Territorial Application

5.1 This instrument extends to England.

5.2 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

What is being done and why

7.1 NHS-funded Nursing Care is the funding provided by the NHS to care homes providing nursing, to support the provision of nursing care by a registered nurse for those assessed as eligible. If an individual does not qualify for NHS CHC, the need for care from a registered nurse should be determined. If the individual has such a need and it is determined that the individual's overall needs would be most appropriately met in a care home providing nursing care, then this would consequently lead to eligibility for NHS-funded Nursing Care. Once the need for such care is agreed, the relevant body's responsibility to pay a flat rate contribution to the care home towards registered nursing care costs arises.

7.2 There are two rates of NHS-funded Nursing Care payable, the flat rate and the higher band. The flat rate of NHS-funded nursing care was introduced on 1 October 2007 and replaced the previous low, medium and high bands of nursing care. The flat rate is a contribution towards the cost of services provided by a registered nurse, involving either the provision of care or the planning, supervision or delegation of the provision of care, but it does not cover services which do not need to be provided or supervised by a registered nurse. All individuals newly eligible for NHS-funded nursing care since 1st October 2007 have been placed on the flat rate. The NHS is responsible for this funding. Accommodation and social care costs are the responsibility of either the LA and/or the individual (subject to the outcome of a community care assessment and financial assessment). Individuals who were in receipt of the higher band of NHS-funded Nursing Care under the three-band system that was in force until 30 September 2007 are entitled to continue on the higher band until:

a) on review, it is determined that they no longer have any need for nursing care;

b) on review, it is determined that their needs have changed, so that under the previous three-band system, they would have moved onto the medium or low bands. In this situation, the individual should be moved onto the flat rate;

c) they are no longer resident in a care home that provides nursing care;

d) they become eligible for NHS Continuing Healthcare; or

e) they die.

CCGs must continue to make NHS-funded Nursing Care contributions in respect of those individuals who were deemed eligible for this funding prior to 1st April 2013, until such time as any of the circumstances listed above apply.

7.3 The rates currently set out in the 2012 Regulations (as amended) are £112.00 per week for the flat rate payment and £154.14 per week for the high band payment. These Regulations increase the rates set out in the Standing Rules from 1 October 2016 to £156.25 per week and £215.04 per week respectively. The Secretary of State announced these increases to the rates on 13th July 2016 with effect from 1 April 2016 for the financial year 2016/17. In practice, health care bodies pay for NHS-funded Nursing Care at the new rates published by the Secretary of State, before these

formal changes to the regulations are made. These Regulations provide the first opportunity to insert the published rates for 2016/17 in the 2012 Regulations.

Consolidation

7.4 None

8. Consultation outcome

8.1 There is no statutory requirement to consult on this amendment.

8.2 There was no formal consultation on the amendment to the rates of NHS-funded Nursing Care. However, following an independent review of the FNC rates a report was published by the reviewers setting out the results of their work. The amendment follows the recommendations of the independent review and increases the rates on an interim basis pending further work on the agency costs component of the rate. The outcome of this further work could result in another change to the rate from as early as January 2017.

9. Guidance

9.1 Guidance on NHS-funded Nursing Care is available in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised) and in the NHS-funded Nursing Care Practice Guide July 2013 (Revised).

10. Impact

10.1 NHS-funded Nursing Care is an existing policy and is not subject to change. Following the first major review of the rate since 2001, the rates have been increased to ensure that they reflect the current costs of providing the nursing element of care in a registered nursing home. The rates are being increased on an interim basis pending the further work described in paragraph 8.2 above. There is a positive impact, through increased revenues, on registered nursing care homes as a result of the interim increases to the rates of FNC (these mainly comprise of private sector, voluntary bodies or charities). The rate rise is believed to be necessary to enable them to remain financially viable in the future and for them continue to be able to provide this service.

10.2 There is a financial impact on the public sector through higher costs on Clinical Commissioning Groups following the review of the rates, to reflect paying the current costs of providing FNC by registered care homes. This is being managed through routine financial management arrangements.

10.3 An Impact Assessment has not been prepared for this instrument as there has been no change to policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The standing rules will be reviewed annually and updated as required.

13. Contact

13.1 NHS-funded Nursing Care: Anna Kershaw at the Department of Health

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