



NHS U-turn on blanket IR35 rule for locum GPs



Plus

- What does the upcoming GDPR mean for healthcare professionals?
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Welcome to our latest Focus on Healthcare

Welcome to the latest edition of our Healthcare Bulletin, designed to keep you up to date with the very latest developments in the healthcare sector.

In this edition, we look at an apparent U-turn on IR35s for locum GPs, how GDPR will affect the healthcare profession, the impact budget cuts have had on the pharmacy profession, as well as new rules relating to dental associate fees which could have a significant impact on the sector.

For more information on any of the issues covered in this newsletter, please contact David Belbin, Philip Redhead or Neil Windley for matters relating to doctors, dentists and opticians, or care homes.

NHS U-turn on blanket IR35 rule for locum GPs

The National Health Service (NHS) has announced a U-turn on controversial plans to automatically place all locum GPs and NHS contractors inside of IR35.

Following important changes that took effect at the beginning of April, which shifted responsibility for determining IR35 status away from individual contractors and onto the public bodies and recruitment agencies that offer them work, the NHS had previously said that a 'blanket rule' would apply to all those contracting under NHS Trusts.

Under the new rule, locum GPs and NHS contractors could have potentially faced higher taxes.

However, following ongoing criticism, the regulator NHS Improvement has since announced a U-turn on the idea.

The decision comes amidst concerns that a blanket approach to IR35 determinations could prove inaccurate, and that such decisions ought to be made on a "case-by-case basis".

A statement from NHS Improvement read: "The introduction of the rules has made clear that an assessment of whether or not IR35 applies should be carried out in a fact-specific way; that is, it should be applied on a case-by-case basis, rather than by a broader classification of roles.

"Therefore, NHS providers, and all others categorised as public authorities, will need to consider whether or not an individual in their particular situation is self-employed when they determine the application of the IR35 rules in that [individual's] case."

A spokesperson from the regulator added: "Our priority is to help encourage NHS providers to ensure that agency staff pay the correct tax."

For more information about our specialist services for GPs, Pharmacists and Medical Professionals, please contact us.



What does the upcoming GDPR mean for healthcare professionals?

GPs, dentists and other healthcare providers are being warned to avoid using mobile devices such as smartphones, tablets and computers to capture and store data relating to their patients.

The concerns, which come ahead of the introduction of upcoming General Data Protection Regulation (GDPR), have been voiced by the DDU, which warns that there are increasing “legal complications” surrounding the protection and processing of personal data.

The comments also follow the recent NHS cyber-attacks – which shed light on just how easy it can be for fraudsters to access and commandeer sensitive information as part of so-called ‘ransomware attacks’.

David Lauder, of the DDU, said: “The impact that mobile devices have had on society is undeniable. As they become an increasingly common part of our daily lives, it is understandable that many practitioners [will] use them in the dental surgery.

“But because of the legal considerations associated with the

protection of personal data, and the potential for mobile devices to be lost or stolen, it would be wise to avoid taking clinical photographs on a mobile phone.”

He said: “Ideally each practice should have a dedicated clinical camera, which could be used both in the practice and when on domiciliary visits. It would need to be kept secure at all times, such as in a locked room or cabinet.

“When used to take an image of a patient, this should quickly be downloaded onto the clinical record system and then deleted from the camera [immediately].”

In coming months, dentists and dental practices will need to begin thinking more carefully about data protection, as the GDPR is due to come into force in May 2018.

All UK businesses, including primary healthcare providers that process and hold sensitive data will be expected to comply with the GDPR in full – which may involve a complete overhaul of existing workplace practices and data systems.

Reforms to Pharmacy and budget cuts have ‘had a big impact in Britain,’ says RPS

Recent reforms to Pharmacy and budget cuts have “had a big impact” on Pharmacies across England – and “a positive, constructive agenda” is needed going forward, the Royal Pharmaceutical Society (RPS) has said.

The comments come amid concerns that controversial proposals to allow Pharmacy technicians to ‘supervise’ community Pharmacies could be implemented in coming months as part of a Government review into medicines legislation.

According to reports, some 509 community Pharmacists from across the sector previously signed an official letter calling on members of the RPS Assembly to share their views around the proposed changes, ahead of meetings with Assembly members which took place earlier this month.

The letter was penned by a campaign group known as Pharmacists in Pharmacy, which believes that a qualified Pharmacist should, in all circumstances, be present in a Pharmacy at all times.

The group’s letter – which urged the RPS to take its concerns seriously – read: “With serious ongoing cuts to community pharmacy funding in England, now is not the time to play with such an important and intrinsic facet of our professional and national life.”

In response, the RPS issued a statement acknowledging that recent medicinal reforms and budget cuts have already had “a big impact” on the sector.

The RPS also stressed that it has “always believed that a community Pharmacy requires a Pharmacist to be present [at all times].”

It added that the sector should be “coming together around a positive, constructive agenda that makes it clear how Community Pharmacy will be an integral part of the reformed NHS structures across Great Britain.”

Following the RPS’ recent election for a new company president in July, it remains yet to be seen whether the controversial supervision proposals will go ahead.

New dental associate rules could lead to return to formal employment

Updated rules relating to the employment status of dental associates, could see a return to the old regime of formal employment contracts. Notwithstanding the relaxation in blanket application of the IR35 rules referred to overleaf, dentists and companies that own dental practices, who use associates operating through their own companies, should review each of those contracts to see if the rules apply.

HMRC updated its Employment Status Manual in April this year and outlined how tax and NI deductions should be dealt with. According to the latest advice from HMRC, where the legislation applies it has the following effect:

- The fee-payer is responsible for the deduction of tax and National Insurance from the gross payment, exclusive of VAT, and will account for these amounts to HMRC via RTI in the same way as for direct employees. For NICs purposes the fee-payer is also therefore treated as the secondary contributor
- The intermediary receives the chain payment from the person lowest in the chain, this is not necessarily the fee-payer
- The worker receives a payment treated as earnings from an employment which has had tax and NICs deducted from it at source by the fee-payer

David Belbin, a partner with Clemence Hoar Cummings, who specialises in accounting services to the dental sector, said: "Essentially if you are caught by the Freedom of Information Act then the rules will apply.

"Although dental practices have a contract with units of activity, they also have lists of patients registered with them to whom those interventions are provided.

"Therefore as with doctors surgeries who also have patient lists, the rules apply. The FOIA provides that public authority includes any person providing general medical and dental services and personal medical services and personal dental services. The definition therefore include GP's and DP's and there are very clear conclusions. Remember that a company is a legal person in its own right. The intermediary in this case will be the company through which each of the associates operate."



If an associate is working defined hours, using the equipment provided by the practice for patients of the practice and have been providing those services for something other than a short term cover, then this employment status will be capable of challenge.

David added: "There has been a fair amount of confusion regarding the new rules.

"However, it is the dental practice that is responsible for making appropriate deductions for tax and NI from the associates and so there is a risk that with the clarity of the new rules the likelihood of challenge increase.

"If this is indeed the case, my feeling is that the new rules will drive many back to seeking formal employment with the added protections that it gives. In such circumstances, practices need to have in place a strategy to deal with such discussions."

For more information about our specialist accounting and financial services for the dental sector, please contact us.

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