



Distance selling premises and essential services

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Distance selling premises are pharmacies at which essential services are to be provided from registered premises but the means of providing those services are such that all persons receiving them do so otherwise than at those premises. They were introduced in April 2005 as one of four categories of applications that were exempt from the control of entry system and continue to exist under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

It is a condition of their inclusion in a pharmaceutical list held by NHS England that they do not offer to provide essential services face-to-face to persons who are present at the premises, and this includes persons who are in the vicinity of the premises (regulation 64(3)(a)). The means by which the contractor provides essential services are such that the person receiving them does so at a location other than the contractor's premises (regulation 64(3)(b)). Additionally the premises may not be on the same site or in the same building as the premises of a provider of primary medical services with a patient list (regulation 64(3)(c)).

Regulation 64(3) sets out further conditions that distance selling premises must comply with. In summary these require that:

- The pharmacy procedures for the premises must secure the uninterrupted provision of essential services during core and supplementary opening hours to persons anywhere in England who request those services, and
- The pharmacy procedures must also secure the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the contractor or their staff. Staff includes locums and any other persons who have been engaged on contracts for services who act like staff. It should be noted that this restriction only applies to the pharmacy premises, and does not extend to the delivery of drugs to places other than the pharmacy eg a patient's home, and
- The contractor cannot restrict service provision to certain areas of England or to certain categories of patients. Nothing in the practice leaflet, any publicity material or written or oral communications must suggest that service provision is restricted in this way.

There are a number of myths surrounding this type of pharmacy and the following points seek to provide clarification for NHS England and contractors. All references are to Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, ("the 2013 regulations") which sets out the terms of service for pharmacy contractors.

- A pharmacist is required to be present in the pharmacy throughout core and supplementary opening hours. The physical presence of a pharmacist is required under the Medicines Act 1968 to supervise every transaction involving a pharmacy or prescription only medicine. In addition, under paragraph 8(2), the dispensing of any drug or appliance ordered on an NHS prescription has to be done either by or under the direct supervision of a pharmacist.
- Distance selling premises must provide 40 core opening hours per week – paragraph 23(1)(a). They may choose to provide supplementary opening hours in addition.
- Such pharmacies may choose to close on Christmas Day, Good Friday, Easter Sunday and bank holidays and the hours they would normally open that week count towards their 40 core opening hours and any supplementary opening hours – paragraph 23(12). If such a pharmacy decides to open on those days, but for fewer than their normal opening hours, then it is the normal opening hours that are counted.
- A distance selling premises must provide all the drugs and medicines that would be available through a high street or 'bricks and mortar' pharmacy when a patient presents a prescription or a prescription is received via the electronic prescription service (EPS) – paragraph 5. Such a pharmacy cannot refuse to provide certain drugs or medicines. They must dispense all NHS prescriptions and cannot pre-select particular patient groups.
- A distance selling premises must provide all non-blacklisted drugs and medicines with reasonable promptness – paragraph 5. Where a distance selling premises provides certain appliances in their normal course of business, they must also dispense against all NHS prescriptions for those appliances with reasonable promptness – paragraph 5.
- There is no requirement in the 2013 regulations for the distance selling premises to know the prescriber in advance of prescriptions being dispensed. They are under the same obligation as other pharmacies and must dispense all prescriptions for drugs and medicines that are presented. The only exceptions to this are those outlined in paragraph 9 (refusal to provide drugs or appliances ordered) or other professional reasons for refusing to dispense an NHS prescription, such as the pharmacist reasonably believes it is not a genuine order or dispensing it would be contrary to their clinical judgement – paragraph 8.
- Where, in a case of urgency, a prescriber personally known to the distance selling premises requests them to provide a drug, the pharmacist may provide that drug before receiving a prescription form or repeatable prescription subject to the normal restrictions, for example the prescriber undertaking to provide a valid prescription within 72 hours – paragraph 6.
- Distance selling premises must provide all essential services, but cannot do so to persons who are present at, or in the vicinity of, the premises – regulation 64(3)(a).
- Distance selling premises may choose to provide appliances (paragraph 5), but where those items require measuring and fitting (paragraph 8(4)) this activity cannot

take place at the pharmacy premises. Wherever the measuring and fitting takes place it must be undertaken by a pharmacist (paragraph 8(4), Schedule 4). It is not sufficient to instruct the patient in how to measure and fit the appliance; nor is it appropriate for another healthcare professional to measure and fit the appliance even if they would otherwise be competent to do so.

- Distance selling premises may provide advanced and/or enhanced services from the premises and can provide these face to face unlike essential services. The restriction under regulation 64 only applies to essential services. NHS England would however need to ensure that no essential services are provided as a result of attendance of a patient or member of the public at the premises. NHS England should ensure that the provision of an enhanced service does not involve the provision of one or more essential services. Distance selling premises will also need to ensure that they do not provide any element of essential services in connection with the provision of services that are commissioned by a CCG or local authority. For example, the supervised consumption of methadone would require the pharmacy to dispense the methadone for subsequent consumption. The dispensing of methadone is an essential service.
- Distance selling premises may provide private services face-to-face at their premises but would need to ensure that no essential services are provided as a result of attendance of a patient or member of the public at the premises.
- Some distance selling premises promote themselves from their premises eg signs, notices, letterboxes for prescriptions to be left in. They will breach the conditions imposed as a result of regulation 64 of the 2013 regulations only if there is an actual offer to provide pharmaceutical services to patients present at the premises or in the vicinity of them, or if the means by which the patient receives those services are such that they receive them at or in the vicinity of the pharmacy premises. However, a person does not have to enter pharmacy premises to be 'at' them for the purposes of the 2013 regulations. Advice given by a person who is inside or just outside pharmacy premises to a patient who is just outside the premises is a breach of the condition, as will any transaction that is completed by a person leaving a prescription in a pharmacy letterbox and then collecting the prescribed item from somewhere in the pharmacy's immediate proximity. The degree of physical distance beyond the immediate enclosed area surrounding the premises that is necessary before the advice or transaction ceases to take place 'at' the premises is not settled in law, but a reasonable working assumption is that regard would be had in this instance to the clear intention of regulation 64, which is to provide for what are essentially distance selling premises. Where NHS England is unclear as to whether the pharmacy is in breach of regulation 64 it should seek legal advice.