

2004 No. 906

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The Primary Medical Services (Sale of Goodwill and
Restrictions on Sub-contracting) Regulations 2004**

<i>Made</i> - - - -	<i>24th March 2004</i>
<i>Laid before Parliament</i>	<i>25th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 28E, 28V, 54(1)(c) and 126(4) of, and paragraph 1(3) of Schedule 10 to, the National Health Service Act 1977(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply in relation to England only except regulation 7 and the Schedule which apply to England and Wales.

Interpretation

2.—(1) In these Regulations—

“the 1977 Act” means the National Health Service Act 1977;

“APMS contractor” means a person with whom a Primary Care Trust has made arrangements under section 16CC(2)(b) of the 1977 Act(b) (primary medical services) for the provision of primary medical services;

(a) 1977 c. 49; section 28E was inserted by the National Health Service (Primary Care) Act 1997 (“the 1997 Act”), section 22(1), and amended by: the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 5; the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), section 27(5)(a); and the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”), section 177. Section 28V was inserted by section 175 of the 2003 Act. Section 54 was substituted by the 1997 Act, section 34(1), and was amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2, Part 1, paragraph 29 and the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 26. Section 126(4) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 65(2), the 1999 Act, Schedule 4, paragraph 37(6) and the 2001 Act, Schedule 5, paragraph 5(13)(b). Paragraph 1(3) of Schedule 10 was amended by the 1997 Act, section 41(10) and (12) and Schedule 2, paragraph 30(2) and Schedule 3, Part 1 and the 2001 Act, section 14(3). Functions under paragraph 1(3) of Schedule 10 were not transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(b) Section 16CC was inserted into the National Health Service Act 1977 (c. 49) by section 174 of the 2003 Act.

“core hours” means the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays;

“default contract” means a contract entered into pursuant to an Order made under section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003^(a) (general medical services: transitional);

“enhanced services”, with regard to—

- (a) a GMS contractor, has the meaning given in regulation 2(1) of the GMS Contracts Regulations (interpretation), or
- (b) any other performer or provider of primary medical services, means services which, if performed or provided by a GMS contractor, would be enhanced services within the meaning given in regulation 2(1) of the GMS Contracts Regulations;

“essential services” means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations (essential services) or services that are equivalent to those services;

“GMS contractor” means a person with whom a Primary Care Trust has entered into a general medical services contract or a default contract;

“GMS Contracts Regulations” means the National Health Services (General Medical Services Contracts) Regulations 2004^(b);

“goodwill factor”, with regard to a share in a company of a performer or provider of primary medical services, means the difference between the value of the share when the goodwill of his medical practice is taken into account and the value of the share when the goodwill of his medical practice is not taken into account;

“PMS Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004^(c);

“PMS contractor” means a person with whom a Primary Care Trust has entered into section 28C arrangements, other than a Strategic Health Authority.

(2) For the purposes of these Regulations, a contractor or performer has a registered patient list if there are patients—

- (a) recorded by a Primary Care Trust as being on the contractor’s or performer’s list of patients or on the PCT’s list of patients in respect of the contractor or performer; and
- (b) to whom the contractor or performer must provide essential services during core hours other than under an arrangement to provide enhanced services.

Prohibition on the sale of goodwill in certain primary medical services practices

3.—(1) The following performers or providers of primary medical services—

- (a) a GMS contractor;
- (b) a PMS contractor that has a registered patient list;
- (c) an APMS contractor that has a registered patient list; and
- (d) a medical practitioner who is a performer, with a registered patient list, of essential services during core hours, other than—
 - (i) solely under arrangements to provide enhanced services,
 - (ii) solely as a locum, or
 - (iii) only under arrangements to provide enhanced services and as a locum,

may not sell the goodwill of their medical practices in any circumstances (and no other person may sell that goodwill in their stead).

^(a) 2003 c. 43.
^(b) S.I.2004/291.
^(c) S.I.2004/627.

- (2) A performer or provider of primary medical services who is a shareholder in a company—
- (a) which is, or part of which is, all or part of his medical practice; and
 - (b) which is—
 - (i) a GMS contractor,
 - (ii) a PMS contractor that has a registered patient list, or
 - (iii) an APMS contractor that has a registered patient list,

may not sell a share in that company that includes a goodwill factor that relates to his medical practice in any circumstances (and no other person may sell that share in his stead).

Amendment of the GMS Contracts Regulations

4.—(1) In paragraph 69 of Schedule 6 to the GMS Contracts Regulations (other contractual terms – sub-contracting of clinical matters), after sub-paragraph (9) add the following sub-paragraph—

“(10) The contractor shall not sub-contract any of its rights or duties under the contract in relation to the provision of essential services to a company or firm—

- (a) owned wholly or partly by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;
- (b) formed by or on behalf of the contractor, or from which it derives or may derive a pecuniary benefit; or
- (c) formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where that company or firm is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of the goodwill of a medical practice in section 54 of the Act or any Regulations made wholly or partly under that section.”.

(2) After paragraph 114 of Schedule 6 to the GMS Contracts Regulations (other contractual terms), insert the following paragraph—

“Termination by the Primary Care Trust for unlawful sub-contracting

114A. If the contractor breaches the condition specified in paragraph 69(10) and it comes to the Primary Care Trust’s attention that the contractor has done so, the Primary Care Trust shall serve a notice in writing on the contractor—

- (a) terminating the contract forthwith; or
- (b) instructing it to terminate the sub-contracting arrangements that give rise to the breach forthwith, and if it fails to comply with the instruction, the Primary Care Trust shall serve a notice in writing on the contractor terminating the contract forthwith.”.

Amendment of the PMS Agreements Regulations

5.—(1) In paragraph 69 of Schedule 5 to the PMS Agreements Regulations (other contractual terms – sub-contracting of clinical matters), after sub-paragraph (4) add the following sub-paragraph—

“(5) The contractor, if it has a list of registered patients or a list of registered patients is held in respect of it, shall not sub-contract any of its rights or duties under the agreement in relation to the provision of essential services to a company or firm—

- (a) owned wholly or partly by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;
- (b) formed by or on behalf of the contractor, or from which it derives or may derive a pecuniary benefit; or

- (c) formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where that company or firm is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of the goodwill of a medical practice in section 54 of the Act or any Regulations made wholly or partly under that section.”.

(2) After paragraph 106 of Schedule 5 to the PMS Agreements Regulations (other contractual terms – termination by the relevant body where there is a serious risk to the safety of patients etc), insert the following paragraph—

“Termination by the relevant body for unlawful sub-contracting

106A. If the contractor breaches the condition specified in paragraph 69(5) and it comes to the relevant body’s attention that the contractor has done so, the relevant body shall serve notice in writing on the contractor—

- (a) terminating the agreement forthwith; or
- (b) instructing it to terminate the sub-contracting arrangements that give rise to the breach forthwith, and if it fails to comply with the instruction, the relevant body shall serve a notice in writing on the contractor terminating the agreement forthwith.”.

Transitional arrangements

6.—(1) Pending the variation of a contract or agreement so as to include the terms which, by virtue of regulation 4 or 5, must be included in it, for all purposes the contract or agreement shall apply as if it had been varied to include the terms which, by virtue of regulation 4 or 5, must be included in it.

(2) For all purposes, default contracts shall apply as if they included the terms set out in regulation 4 for general medical services contracts.

Certificate that a transaction does not involve a sale of goodwill

7. A certificate issued under paragraph 1(3) of Schedule 10 to the 1977 Act shall be in the form set out in the Schedule.

Signed by authority of the Secretary of State

24th March 2004

John Hutton
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations restrict the sale of goodwill by certain primary medical services performers or providers in all circumstances (regulation 3). They also, in effect, prohibit certain forms of sub-contracting of clinical services by general medical services and personal medical services contractors (regulations 4 and 5). Regulation 6 is a transitional provision, importing the new contract terms into general medical services contracts and personal medical services agreements which have not yet been varied to take account of them – and it also imports the new terms into default contracts (which are transitional arrangements for primary medical services providers who are entitled to enter into general medical services contracts). Regulation 7 and the Schedule set out the form of a certificate issued under paragraph 1(3) of Schedule 10 to the National Health Service Act 1977 relating to the possible sale of goodwill.

STATUTORY INSTRUMENTS

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