

2004 No. 477

HEALTH AND PERSONAL SOCIAL SERVICES

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

Made - - - - - *16th November 2004*

Coming into operation *16th December 2004*

The Department of Health, Social Services and Public Safety(a), in exercise of the powers conferred on it by Articles 15D, 17, 57E, 60 and 106(b) of, and paragraphs 1(c) and 2(3) of Schedule 10 to, the Health and Personal Social Services (Northern Ireland) Order 1972(b), and all other powers enabling it in that behalf, hereby enables the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations (Northern Ireland) 2004 and shall come into operation on 16th December 2004.

Interpretation

2.—(1) In these Regulations –

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“additional services” means one or more of –

- (a) cervical screening services,
- (b) contraceptive services,
- (c) vaccinations and immunisations,
- (d) childhood vaccinations and immunisations,
- (e) child health surveillance services,
- (f) maternity medical services, and
- (g) minor surgery;

“Board” means a Health and Social Services Board;

“core hours” means the period beginning at 8am and ending at 6.30pm on any day from, and including, Monday to Friday except a public holiday and a local holiday agreed with the Board;

“default contract” means a contract under Article 13 of the General Medical Services Transitional and Consequential Provisions (No. 1) (Northern Ireland) Order 2004(c);

(a) See S.I. 1999/283 (N.I. 1) Article 3(6)

(b) S.I. 1972/1265 (N.I. 14), Article 15D was inserted by S.I. 1997/1177 (N.I. 7) – Article 22; S.I. 2004/311 (N.I. 2) – Article 6; Article 57E was inserted by S.I. 2004/311 (N.I. 2) – Article 4; Schedule 10 was substituted by Section 55 of, and Schedule 3 to, the Health and Personal Social Services Act (Northern Ireland) 2001 (2001 c. 3 (N.I.)) and amended by S.I. 2004/311, paragraph 11

(c) S.R. 2004 No. 141

“enhanced services” are –

- (a) services other than essential services, additional services or out of hours services;
or
- (b) essential services, additional services or out of hours services or an element of such a service that a contractor agrees under the contract to provide in accordance with specifications set out in a plan, which requires of the contractor an enhanced level of service provision compared to that which it needs generally to provide in relation to that service or element of service;

“essential services” means the services required to be provided in accordance with regulation 15 of the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004(a);

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

“GMS Contracts Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004;

“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;

“out of hours services” means services required to be provided in all or part of the out of hours period which –

- (a) would be essential services if provided by a contractor to its registered patients in core hours, or
- (b) are included in the contract as additional services funded under the global sum.

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

- (a) recorded by a Board as being on a contractor’s or performer’s list of patients or on the Board’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 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).

(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 a GMS contractor

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).

(a) S.R. 2004 No. 140

Amendment of the GMS Contracts Regulations

4.—(1) In paragraph 64 of Part 4 of Schedule 5 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 his 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 he 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 restrictions on the sale of goodwill of a medical practice in Article 60 of and Schedule 10 to the 1972 Order or any Regulations made wholly or partly under those provisions.”

(2) After paragraph 106 of Part 8 of Schedule 5 to the GMS Contracts Regulations (other contractual terms), insert the following paragraph –

“Termination by the Board for unlawful sub-contracting

106A. If the contractor breaches the condition specified in paragraph 64 (10) and it comes to the Board’s attention that the contractor has done so, the Board shall serve a notice in writing on the contractor –

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

Transitional arrangements

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

6. A certificate issued under paragraph 2(3) of Schedule 10 to the 1972 Order shall be in the form set out in the Schedule.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 16th November 2004.

(L.S.)

Dr. J. F. Livingstone
Senior Officer of the Department of Health, Social Services and Public Safety

SCHEDULE

Regulation 6

CERTIFICATE OF HEALTH AND SOCIAL SERVICES BOARD

WHEREAS [insert appropriate title] has applied to the [insert appropriate title] Board under paragraph 2(2) of Schedule 10 to the Health and Personal Social Services (Northern Ireland) Order 1972 for its opinion as to whether the proposed transaction or series of transactions described in the schedule to this certificate, which sets out all the material circumstances disclosed to the [insert appropriate title] Board, involves giving of valuable consideration in respect of the goodwill of a medical practice (in contravention of paragraph 1(1) of Schedule 10 to that Order, read with the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations (Northern Ireland) 2004):

AND WHEREAS the [insert appropriate title] Board has considered the application:

NOW THEREFORE the [insert appropriate title] Board hereby certifies that it is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of the medical practice.

Dated this day of 20 .

Signed by authority of the [Insert appropriate title] Board

[Post held by signatory]

[Insert appropriate title] Board

SCHEDULES

(Here set out all material circumstances disclosed to the Board)

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 matters by general medical services contractors (Regulation 4). Regulation 5 is a transitional provision, importing the new contract terms into general medical services contracts 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 general medical services providers who are entitled to enter general medical services contracts). Regulation 6 and the Schedule set out the form of a certificate issued under paragraph 2(3) of Schedule 10 to the Health and Personal Social Services (Northern Ireland) Order 1972 relating to the possible sale of goodwill.

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