

POLICY NOTE

THE NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES SECTION 17C AGREEMENTS) (SCOTLAND) REGULATIONS 2018

SSI 2018/67

1. The above instrument was made in exercise of the powers conferred by sections 9(6), 17A(6), 17CA, 17D(3), 17E, 28(1), 105(7), and 106(a) of the National Health Service (Scotland) Act 1978 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Background

2. The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (“the 2018 PMS Regulations”) set out the framework for the provision of primary medical services (“PMS”) under Section 17C agreements between Health Boards and providers.

Policy Objectives

3. The Scottish Government is committed to general practice, and to supporting Scotland’s GPs to allow them to provide essential generalist care in their role as expert medical generalists in our communities.
4. Proposed changes to the PMS arrangements were detailed in a contract offer which was put to a poll of the GP profession in Scotland in December 2017. The contract offer, supported by associated wider contractual changes proposes a refocusing of the GP role as expert medical generalists. This role builds on the core strengths and values of general practice - expertise in holistic, person-centred care - and involves a focus on undifferentiated presentation, complex care, and whole system quality improvement and leadership. All aspects are equally important. The aim is to enable GPs to do the job they train to do and enable the wider needs of patients to be met by the most appropriate members of the multidisciplinary team.
5. The significant majority of current GP practices provide relevant services safely and appropriately through teams including, but not limited to general practice nurses, health care assistants and pharmacists. A key aspect of the new PMS arrangements will see more tasks carried out in more GP practices by members of a wider primary care multi-disciplinary team - where it is safe and appropriate to do so, and improves patient care. This will free up GPs time to allow them to concentrate on those patients that need to see them most.
6. Engagement with patients, and other professionals delivering primary care, is a key part of the development and delivery of this service redesign. A Memorandum of Understanding in development between Integration Authorities, the Scottish General Practitioners’ Committee (“SGPC”) of the BMA, NHS Boards and the Scottish Government, will set out agreed principles of service redesign (including patient safety and person-centred care), ring-fenced resources to enable the change to happen, new national and local oversight arrangements and agreed priorities.

7. The proposal to transfer services over the next three years will be set out in Health and Social Care Partnership Primary Care Improvement Plans. These plans will be developed in collaboration with local GPs and others (e.g. NHS Boards), and with the GP Subcommittee (or representatives of, by agreement locally) as the formally agreed advisors on primary medical service matters. The arrangements for delivering the new PMS arrangements will be agreed with the Local Medical Committee. Services will transfer only when and where it is safe and appropriate to do so. A National Oversight Group with representatives from Integration Authorities, NHS Boards, SGPC and the Scottish Government will oversee the implementation of the PMS arrangements and service transfer as set out in the Plans, which will include clear outcomes for the redistribution of GP workload and the development of effective multidisciplinary team working.
8. Once the service redesign has taken place, transferred services will not revert to being a practice responsibility without the agreement of GPs. This wider policy is more comprehensively set out in the contract offer document, “The 2018 General Medical Services Contract in Scotland”¹ published on 13 November 2017.
9. Under the 2018 PMS arrangements practices may benefit from the new funding formula that better reflects GP practice workload. Practices operating under PMS arrangements may agree with their Health Boards to be paid on different terms, but funding made available to Health Boards will be based upon the new formula. The new funding formula will be accompanied by additional investment of £23 million to improve services for patients where workload is highest.
10. The 2018 PMS Regulations consolidate previous amendments to the National Health Service (Primary Medical Services Section 17C Agreements) Regulations 2004, modernise the language and drafting, make required technical legal updates, such as the removal of outdated statutory references and makes revocations and consequential amendments as set out in Schedule 7 and 8. Key changes that are introduced by the 2018 PMS Regulations to support the wider policy objectives are:
 - i. In order to improve patient access to GP services, practices will be required under the 2018 PMS Regulations to provide online services to all patients such as appointment booking and repeat prescription ordering where the practice has the infrastructure to operate those services effectively and safely.
 - ii. Practices will also provide more clarity for patients over their core and extended opening hours to facilitate access, and will be able to provide maps to show patients the extent of their practice boundaries. The 2018 PMS Regulations will also introduce processes for the formal variation of practice areas to ensure that NHS Boards do not make unilateral decisions and patient wishes are respected.
 - iii. The new model agreement will clarify the arrangements for Out of Hours services by removing the current opt-out arrangement for those who no longer provide Out of Hours services to facilitate the introduction of a new Enhanced Service. This will

¹ <http://www.gov.scot/Resource/0052/00527530.pdf>

ensure that those practices already providing Out of Hours services can continue to do so, and will provide more flexibility for other practices to consider Out of Hours work. This is also in line with the agreed direction of travel to reduce the over-specification of services in the PMS arrangements wherever it is safe to do so. The new arrangements for Out of Hours will offer the benefit of consistency of approach to the provision of unscheduled care services across Scotland where practice-based service level agreements are currently in place.

- iv. The removal of the Minor Surgery Additional Service from the 2018 PMS Regulations because the latest evidence suggests that it is no longer necessary². Minor surgeries formerly performed under the Additional Service will be provided to patients where there is a clinical need as assessed by the practice. The Enhanced Services Minor Surgery Scheme will continue.
- v. The 2018 PMS Regulations will introduce a new process for practice list closures and for local resolution of contract disputes. These processes will help to ensure that practices and NHS Boards attempt to work together, with mediation if necessary, to resolve disagreements.
- vi. The 2018 PMS Regulations remove provisions requiring GP providers to offer an appointment to patients who have not been seen within three years or are aged 75 and over. This is because those provisions are unnecessary as any patient is entitled to request an appointment regardless of their age or when they last attended.
- vii. The 2018 PMS Regulations require all GP providers to ensure where possible that the premises used for the provision of services under the agreement are suitable for the delivery of those services and sufficient to meet the reasonable needs of the provider's patients. In addition, the 2018 PMS Regulations require those providers who receive financial assistance related to their practice premises to ensure that the premises comply with specified minimum standards.
- viii. The 2018 PMS Regulations require GP providers and Health Boards to jointly exercise their responsibilities as data controllers of the information held in GP patient records. The Regulations also set out obligations for both GP providers and Health Boards to assist them with fulfilling their responsibilities as joint data controllers. This will support adherence to the Data Protection Act 1998 and help to prepare GP providers for the new General Data Protection Regulation which is due to apply to the UK on 25 May 2018. This will help to reduce the risk of GP partners being exposed to liabilities beyond their effective control, and enable safe information sharing between members of the multidisciplinary team to improve patient care.
- ix. The 2018 PMS Regulations will require practices to provide financial, workforce and patient information to Health Boards but only where the Health Board requests it in accordance with Directions issued by the Scottish Ministers. This requirement will allow improved quality planning and assurance, improved workforce planning and better information sharing to improve direct patient care. The Scottish Ministers will

² <https://cks.nice.org.uk/warts-and-verrucae>

have to consult and agree with representatives of the GP profession before making any such Directions and those directions will have to comply with data protection law.

- x. The 2018 PMS Regulations will include a new implied contract term provision to allow automatic updating of the agreements when the 2018 Regulations are amended in the future and a new provision relating to the execution of contracts to expressly allow for counterparts and electronic signing in future.
- xi. The 2018 PMS Regulations will require practices to participate in cluster working, including peer-led continuous quality improvement and planning, to improve patient care and patient experience.

Consultation

11. The 2018 Scottish Primary Medical Services arrangements (which the 2018 PMS Regulations underpin by setting out required agreement terms for each service) have been developed collaboratively through negotiation between the Scottish Government and SGPC, as the parties authorised to negotiate the PMS arrangements in Scotland.
12. The BMA, as the representative Union, led consultation with the profession on the new arrangements. This included holding roadshows in every Health Board area during 2015, which helped to inform the Primary Care Vision and the expert medical generalist Role. Updates on the development of the contract negotiations were published in *General Practice: Contract and Context. Principles of the Scottish Approach*³ on 3 November 2016. This was updated by a further publication on 11 May 2017.⁴
13. Negotiations were informed by engagement with healthcare professionals, NHS Boards, Integration Authorities and the public, including seeking public views through the Scottish Health and Care Experience Survey, Healthier Scotland National Conversation and Our Voice Citizens' Panels. This engagement helped to ensure that robust, evidence based improvements could be made to the PMS arrangements, including supporting a refocusing of the GP role as the expert medical generalist in the community, supported by an expanding multidisciplinary team, improving access for patients, and helping to mitigate health inequalities.
14. The contract offer documentation which informed the changes contained within the 2018 PMS Regulations was published jointly by the Scottish Government and SGPC on 13 November 2017⁵. This publication was followed by a series of stakeholder engagement events held across Scotland in every Health Board area to discuss the proposals with clinicians, Health Boards and Integration Authority officials. SGPC held a poll of the profession between 7 December 2017 and 4 January 2018 to seek their views on the new contract offer. On 18 January 2018 SGPC formally decided to proceed to implement the proposed changes.

³ <http://www.gov.scot/Publications/2016/11/7258/downloads#res-1>

⁴ <http://www.gov.scot/Publications/2017/05/2382>

⁵ <http://www.gov.scot/Resource/0052/00527530.pdf>

15. Engagement with the profession, the public, NHS Boards and Integration Authorities will continue throughout the implementation of the new arrangements subject to parliamentary approval.

Timing

16. Subject to parliamentary procedure, the instrument comes into force on 1 April 2018.

Impact Assessments

17. A Privacy Impact Assessment has been completed and is attached. It found that the 2018 PMS Regulations are compliant with the principles of the Data Protection Act 1998 and will help to prepare GP providers for the new General Data Protection Regulation which is due to apply to the UK on 25 May 2018.
18. An Equality Impact Assessment, encompassing health equalities, and child rights and welfare has been completed on the policy and is attached. It found that as the 2018 PMS Regulations are intended to apply equally to all those affected by its provisions it will not have a detrimental effect on people with protected characteristics or people within other assessed populations, such as those living in rural areas or areas of deprivation, on the basis of that characteristic.

Financial Effects

19. A Business and Regulatory Impact Assessment has been completed and is attached. The impact of this policy on business is beneficial. Under the new funding model £23 million is being added to practice funding. No practice will lose funding under the new formula. £110 million will be invested in 2018/19 to support the introduction of the 2018 Primary Medical Services and General Medical Services Regulations and transformational service redesign within Primary Care including the expansion of the multidisciplinary team. This will be of benefit to practices in all parts of Scotland.

Strategic Environmental Assessment (“SEA”)

20. In terms of SEA and the Scottish Government’s statutory obligations under the Environmental Assessment (Scotland) Act 2005 (the “2005 Act”), it is considered that the PMS Regulations are likely to have no or minimal effects on the environment and can be exempted under Section 7 of the 2005 Act. A pre-screening notification has therefore been submitted to the Consultation Authorities (SNH, SEPA and Historic Environment Scotland), which once processed will be added to the SEA Database.

Scottish Government
Population Health Directorate

19 February 2018