



STATUTORY INSTRUMENTS

2004 No. 1017 (W.114)

NATIONAL HEALTH SERVICE, WALES

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

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 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 primary medical services providers who are entitled to enter into general medical services contracts).

2004 No. 1017 (W.114)

NATIONAL HEALTH SERVICE, WALES

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

Made

31st March 2004

Coming into force

1st April 2004

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 28V, 54(1)(c) and 126(4) of, the National Health Service Act 1977(a), 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) (Wales) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply in relation to Wales only.

Interpretation

2.-(1) In these Regulations-

"the 1977 Act" means the National Health Service Act 1977;

"APMS contractor" means a person with whom a Local Health Board has made arrangements under section 16CC(2)(b) of the 1977 Act(b) (primary medical services) for the provision of primary medical services;

"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(c) (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;

(a) 1977 c. 49; Section 28V was inserted by section 175 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act"). Section 54 was substituted by the National Health Service (Primary Care) Act 1997 (c.46) ("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 Health Act 1999 (c.8) ("the 1999 Act"), Schedule 4, paragraph 37(6) and the Health and Social Care Act 2001 (c.15) ("the 2001 Act"), Schedule 5, paragraph 5(13)(b).

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

(c) 2003 c. 43.

"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 Local Health Board has entered into a general medical services contract or a default contract;

"GMS Contracts Regulations" means the National Health Services (General Medical Services Contracts) (Wales) Regulations 2004(a); and

"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 or her medical practice is taken into account and the value of the share when the goodwill of his or her medical practice is not taken into account.

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

- (a) recorded by a Local Health Board as being on the contractor's or performer's list of patients or on the Local Health 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) an APMS contractor that has a registered patient list; and
- (c) 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 or her medical practice; and
- (b) which is-
 - (i) a GMS contractor, or
 - (ii) 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 or her medical practice in any circumstances (and no other person may sell that share in his or her stead).

Amendment of the GMS Contracts Regulations

4.-(1) In paragraph 68 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

(a) S.I.2004/478(W.48).

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 112 of Schedule 6 to the GMS Contracts Regulations (other contractual terms), insert the following paragraph-

"Termination by the Local Health Board for unlawful sub-contracting

112A. If the contractor breaches the condition specified in paragraph 68(10) and it comes to the Local Health Board's attention that the contractor has done so, the Local Health Board 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 Local Health 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, the contract shall apply for all purposes as if it had been varied to include the terms which, by virtue of regulation 4 must be included in it.

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

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a).

31st March 2004

D. Elis-Thomas

The Presiding Officer of the National Assembly

(a) 1998 c.38.

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