These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Dental and Medical Services

Primary Medical Services

Section 174: Provision of Primary Medical Services

373. *Section 174* inserts new *section 16CC* into the 1977 Act. The new *section 16CC* directly confers on each PCT and LHB a duty to provide or secure the provision of primary medical services within its area to the extent that it considers necessary to meet all reasonable requirements (new*section 16CC* (*1*)). This is modelled on the Secretary of State's duty in section 3 of the 1977 Act. This new duty replaces the duty in section 29 of the 1977 Act (arrangements and regulations for general medical services) which requires a PCT to make arrangements with medical practitioners for the provision of general medical services for all persons in the area who wish to take advantage of the arrangements.

374. *Section 16CC(2)* allows a PCT or LHB to provide primary medical services itself. This will enable the PCT/LHB to employ general practitioners. Alternatively, it can make other arrangements as it sees fit, for example, through contractual arrangements with voluntary organisations or a commercial provider.

375. *Section 16CC(3)* places a duty on PCTs and LHBs to publish information about the primary medical services that they commission or provide. This will assist patients in identifying providers of primary medical services in the PCT's or LHB's area and the range of services they offer.

376. *Section 16CC(4)* imposes a duty on PCTs and LHBs to co-operate with other PCTs and LHBs and each other in making arrangements for primary medical services. In particular they will need to co-operate where practices straddle PCT and/or LHB boundaries, including practices that straddle the England/Wales border.

377. *Section 16CC(5)* and *(6)* provide regulation powers to clarify what should, or should not, be considered as primary medical services for which PCTs and LHBs have the duty to secure provision.

Section 175: General Medical Services contracts

378. *Section 175* inserts seven new *sections 28Q to 28W*, into the 1977 Act providing for new general medical services contracts ("GMS contracts") to replace arrangements made under section 29 of the 1977 Act.

379. *Section 28Q(1)* gives a power for PCTs and LHBs to enter into GMS contracts. A GMS contract is a contract for primary medical services, but it may also include services

which are not primary medical services, for example, enhanced services that are on the boundaries of primary and secondary care such as certain more specialised services in areas like drug and alcohol misuse, sexual health or depression. The GMS contract replaces the arrangements for the provision of general medical services in sections 29 to 34A of the 1977 Act and the National Health Service (General Medical Services) Regulations 1992 (S.I. 1992/635). *Section 28Q(3)* provides for PCTs and LHBs to negotiate the terms of a GMS contract with individual practices seeking to provide medical services under a GMS contract.

380. *Section 28R* provides a regulation-making power for the Secretary of State or the Assembly to prescribe the services that must be provided under a GMS contract.

381. *Section 28R(2)* would allow the services to be prescribed by reference to the manner or circumstances in which they are provided. So, for example, the regulations could provide for certain services provided outside certain times (say, before 8 am and after 6:30 pm on weekdays) not to count as prescribed services that must be provided under a GMS contract.

382. *Section 28S* provides for the PCT or LHB to enter into a GMS contract either with a medical practitioner, a group of individuals practising in partnership or a company. Where the contract is with members of a partnership at least one member of the partnership must be a medical practitioner. *Section 28S* provides that regulations may place conditions on persons who may enter into GMS contracts. *Section 28S(1)* and *(3)* provides that limited companies can hold a GMS contract subject to at least one share being legally and beneficially owned by a medical practitioner and secondly, that any shares not so owned by medical practitioners must be legally and beneficially owned by an individual who could otherwise enter into a GMS contract, for example a health care professional.

383. *Section 28S(2)(b)* provides that where any partner is not a medical practitioner that person must either be a health care professional as defined in *section 28M* who is engaged in the provision of NHS services, an NHS employee as defined in *section 28D* , a person employed by a provider of primary medical or primary dental services under *section 28C* (or Scottish and Northern Irish equivalents) or an individual who is (or within a prescribed period, was) providing services under a general medical services contract, a general dental services contract, under a PMS arrangement or under a PDS arrangement (or Scottish and Northern Irish equivalents). This will enable persons who are not medical practitioners to be a party to a GMS contract.

384. *Section 28S(4)* allows for the Secretary of State or the Assembly to make regulations to make provision about the effect on a GMS contract of a change in the membership of the partnership. For example, such provision may allow a partnership to continue where over time partners come and go due to routine events such as a career change or retirement.

385. *Sections 28Q(3) and 28T* replaces the system of remuneration for medical practitioners providing general medical services under section 29 of the 1977 Act.

386. *Section 28T(1)* will allow the Secretary of State or the Assembly to give directions regarding payments to be made under the new contract. Where directions are made, the GMS contract must require that payments are made under the contract in accordance with the directions (*subsection (2)*). In this way, payments in respect of any particular matter under the contract can be set on a national basis. Directions may relate to payments to be made by a PCT to a GMS provider or by a GMS provider to a PCT.

387. *Section 28T(3)* sets out how the power to make directions may be exercised. It will enable directions to provide for payments to be determined by reference, for example, to the meeting of standards. Directions may also be made in respect of individual practitioners and so would enable, for example, payments to be made that relate to the seniority of a medical practitioner.

388. *Section 28T(4)* recreates the requirement in section 43B of the 1977 Act for the Secretary of State or the Assembly to consult representative bodies on remuneration matters. Given that other health care professionals will be able to become GMS providers, *section 28T(4)(a)* does not confine the duty to consult only to bodies representative of medical practitioners.

389. *Section 28T* provides for directions to be made by regulation or by instruments in writing and provides for them to be revoked or varied where directions are made by an instrument in writing. Where directions are made by regulations the Interpretation Act 1978 makes equivalent provision.

390. *Section 28T(6)* sets out some examples of what payments under this section include, namely fees, allowances, reimbursements, loans and repayments.

391. *Section 28U* provides that a GMS contract must require the contractor to comply with any directions given by the Secretary of State or the Assembly as to the drugs, medicines or other substances which may or may not be prescribed for patients being treated under the terms of the contract. This allows the new contractual provisions to replicate the controls on prescribing set out in *paragraph 44* of *Schedule 2* and *Schedules 10* and *11*to, the National Health Service (General Medical Services) Regulations 1992. Directions under this section will normally be made by regulations but may be made by instrument in writing following a request by a holder of a marketing authorisation.

392. *Section 28V* provides for the Secretary of State or the Assembly to make regulations to determine terms, which the contract must include, or what the contract must make provision about. *Section 28V(2)* gives examples of what the regulations *may* cover, such as the persons who perform services, the circumstances in which, and the manner in which, the contract may be terminated and the dispute resolution procedure.

393. *Section 28V(3)* provides that the regulations must make provisions setting out the circumstances under which a contractor may or must accept a person as a patient for whom services are to be provided under the contract, the circumstances in which they can decline to accept such a person and how the contractor can terminate their responsibility for a patient.

394. *Section 28V(4)* and *(5)* provide for the regulations to set out the circumstances under which a PCT or LHB may impose a variation to a GMS contract and the circumstances under which any duty under the contract may be suspended or terminated. This will, for example, allow GMS contractors to seek to opt out of providing certain services, such as minor surgery, child health surveillance and contraceptive services in accordance with a prescribed procedure.

395. *Section 28W(1)* provides for regulations concerning the resolution of pre-contract disputes. In particular, the regulations may provide for the Secretary of State or the Assembly or a person appointed by him or it to determine the terms on which any GMS contract may be entered into. Section 4(4) of the National Health Service and Community Care Act 1990 makes similar provision in relation to NHS contracts entered into by health service bodies.

396. *Section 28W(3)* allows contractors to elect to be treated as a health service body for contracting purposes. The effect is that any contract is treated as a health service contract under section 4 of the 1990 Act, and any dispute arising under the GMS contract once it has been entered into will be determined by the Secretary of State or the Assembly or his or their appointee. *Section 28W(5)* provides for regulations to make payments relating to NHS contracts enforceable through the courts. No GMS contractor will be forced to have health service body status (and therefore an NHS contract). If a contractor does not have the status of a health service body, then the contract is enforceable as an ordinary legal contract before the courts unless the contract itself sets out an alternative route for the resolution of disputes.

397. *Section 28W(4)* allows regulations under *section 28W(3)* to make provision about the effect of a change in the partnership of a GMS contractor. The purpose would be, for example, to ensure that a routine change in the partnership should not affect the health service body status of the contractor.

398. *Section 175(2)* repeals the GMS provisions contained in sections 29 to 34A of the 1977 Act.

Section 176: General medical services: transitional

399. *Subsection (1)* requires the Secretary of State or the Assembly to make an Order in respect of medical practitioners who are providing GMS under section 29 of the 1977 Act immediately prior to the coming into force of *section 175*. An Order may require a PCT to enter into a new GMS contract with such a person. An Order under *section 176(3)* may also require a PCT to enter into a different sort of contract for the provision of medical services. A contract under *subsection (3)* may be appropriate where it has not been possible to enter into a GMS contract before the coming into force of *section 175* to ensure continuity of service. An Order may prescribe the circumstances in which a PCT or LHB must enter into a contract, the terms of the contract, remuneration and the resolution of any disputes.