

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Dental and Medical Services

Primary dental and medical services: supplementary

Section 177: Arrangements under section 28C of the NHS Act 1977

400. *Section 177* amends the existing provisions in section 28D of the 1977 Act which set out who can enter into primary medical services or primary dental services arrangements. *Section 177(2)* substitutes section 28D(1)(b) and (c) with new *section 28D(1) (b) to (bc)*. These paragraphs include a number of changes to the categories of persons who may enter into PMS or PDS arrangements. For example, a dentist will be able to enter into a PMS contract and a medical practitioner will be able to enter into a PDS contract. In such cases, the services under these contracts will have to be performed by appropriately qualified individuals.
401. New regulation making powers set out in *section 28D(1)* provide that the Secretary of State or the Assembly may set conditions that prospective providers of PMS or PDS must meet before they can enter into PMS or PDS arrangements. They are intended to ensure that the conditions that are to be prescribed in respect of GMS contractors under *section 28S* and GDS contractors under *section 28M* may be applied, where appropriate, to providers of PMS and PDS under section 28C arrangements.
402. *Subsection (5)* provides a new definition of NHS employee, that will apply equally to PMS and PDS, to replace that in section 28D(2) of the 1977 Act.
403. *Subsection (7)* inserts new *subsection (3)(ca)* into section 28E of the 1977 Act. This provides that the Secretary of State or the Assembly may set out conditions that apply to persons performing primary dental or primary medical services under section 28C of the 1977 Act. For example, conditions may set out the qualifications and experience required of healthcare professionals performing PMS or PDS.
404. *Subsection (8)* inserts new *subsections (3A) and (3B)* into section 28E of the 1977 Act which allows for regulations under section 28E(1) to require payments under PMS or PDS arrangements to be made in accordance with any directions given by the Secretary of State or the Assembly. The amendment allows the Secretary of State or the Assembly to require certain payments to be provided for within the contractual terms, for example to ensure that maternity payments made to dentists under a PDS agreement are the same as those under a GDS contract or that seniority payments are made to PMS general practitioners in the same way as to a GMS practitioner.
405. *Subsection (9)* introduces new *section 28E(3C)* which allows the Secretary of State or the Assembly to make regulations as to the circumstances under which a PCT or LHB must enter into a GMS or GDS contract with an existing provider of PMS or PDS when

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

asked to do so. This replaces the regulation making powers in section 28E (3)(g) and (7) of the 1977 Act that permit a PMS medical practitioner to have a preferential right of return to the PCT or LHB medical list. The preferential right of return provides an assurance to a GMS GP who moves to become a PMS medical practitioner that should they, in the future, wish to revert to providing services under GMS they will, in most cases, be able to do so as of right.

406. *Subsection (10)* 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 PMS contract or PDS contract may be entered into.
407. *Subsection (11)* inserts into section 28E new *subsections (3E)* and *(3F)*. *Subsection (3E)* requires for regulations to make provisions that set out the circumstances under which a person providing PMS may or must accept a person as a patient for whom services are to be provided under a PMS arrangement, the circumstances in which he can decline to accept such a person and how he can terminate his responsibility for a patient.
408. *Newsection 28E (3F)* requires for regulations to provide for the right of a patient of a PMS or PDS provider to exercise choice as to the person from whom they will receive services.
409. *Subsection (12)* - repeals sections 28F and 28G of the 1977 Act. These sections relate to the choice of medical practitioner and choice of dental practitioner; matters now covered in the new GMS/GDS contracts and PMS/PDS arrangements. Section 28H is also repealed. Section 28H requires the Secretary of State to ensure that every person providing or performing PMS has the opportunity to participate in arrangements for vaccinations and immunisations. In future, PMS arrangements might not be for the full range of primary medical services, for example a PCT might choose to enter into a PMS contract where an existing GMS practice has decided not to deliver certain services, such as vaccinations and immunisations or contraceptive services, as being the most appropriate way of ensuring that patients still have access to those services. Consequent to the repeal of section 28H, immunisation services will be a matter for both GMS contracts and PMS arrangements.