

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

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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.

Section 178: Abolition of pilot schemes

410. *Section 178* repeals the power in Part 1 of the National Health Service (Primary Care) Act 1997 concerning pilot schemes for the provision of personal medical and personal dental services in England and Wales.
411. PMS and PDS will however continue under the arrangements (frequently referred to as PMS and PDS permanence) set out in sections 28C, 28D, 28E and 28EE of the NHS Act 1977 (which are amended by *section 177*).

Section 179: Persons performing primary medical and dental services

412. *Section 179(1)* inserts new *section 28X* in the 1977 Act to allow regulations to provide that healthcare professionals (including medical and dental practitioners) may not perform primary or medical or dental services unless they are on an appropriate PCT/LHB list.
413. In relation to medical practitioners, for example, the new single medical list will replace the medical list (section 29A of the 1977 Act), the medical supplementary list (section 43D of the 1977 Act) and services lists in PMS (sections 8ZA of the Primary Care Act and 28DA of the 1977 Act). Under the new arrangements a medical practitioner performing primary medical services need only be included in one appropriate PCT list – normally that of the PCT with whom he holds a contract.
414. In relation to dental practitioners, the new single dental list will replace the dental list (section 36 of the 1977 Act), supplementary list (section 43D of the 1977 Act) and

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services lists in PDS (sections 8ZA of the Primary Care Act, and 28DA of the 1977 Act). Under the new arrangements a dentist who is performing primary dental services need only be on one PCT list – normally that of the PCT with whom he holds a contract.

415. *Section 28X(4)* provides for the regulations to make provision about eligibility for inclusion in a list, grounds for refusal for inclusion in a list and the procedure to be followed. It allows provision to be made corresponding to sections 49F to 49N of the 1977 Act, thereby providing for suspension and removal from the PCT/LHB's list and appeals to the Family Health Service Appeals Authority. Further, *section 28X(4)(e)* allows for the regulations to make provision about requirements that a person who is included in a list must comply with if their name is to remain in the list. *Section 28X(4)(g)* allows for regulations to make provision about the circumstances in which a person included in a list may not withdraw from it. *Section 28X(7)* makes clear that information about applications, refusals, suspensions or removals may be shared with the NHS authorities which need the information.
416. *Section 49M(7)* of the 1977 Act enables regulations to be made about payments to practitioners who have been removed from lists by primary care organisations, whose appeals to the appeals body (the Family Health Services Appeals Authority) have been unsuccessful, but have been successful on further appeal to the Courts. *Section 179(2)* provides that the regulations may also include provision for the amount of any payment or the method of calculating the amount to be determined by the Secretary of State or someone appointed by the Secretary of State.

Section 180: Assistance and support

417. *Section 180* inserts a new *section 28Y* in the 1977 Act. This new section gives PCTs and LHBs a power to assist and support providers and prospective providers of primary dental services and primary medical services who do so through GDS, PDS, GMS or PMS arrangements. Support and assistance includes financial support.
418. For dentistry, this will enable PCTs or LHBs, for example, to increase primary dental services capacity by giving financial assistance to establish or extend dental practice premises. In respect of medical services, the PCT/LHB might employ a practice manager who would then work, for example, for two small practices who might not otherwise be able to avail themselves of such services. Equally the PCT/LHB might employ a general practitioner to support a practice temporarily to avoid the practice opting out of certain service provision. A PCT/LHB will be able to charge for the support given.