

FOCUS ON.....PRIVATE PRACTICE

June 2004

This guidance aims to clarify what GPs can and cannot charge for privately under the new GMS contract. It will give an outline of the new GMS regulations and then deal with a variety of questions and answers reflecting questions GPs have submitted to us.

Regulation 24 of The National Health Service (General Medical Services Contracts) Regulations 2004 states Fees and charges

(2) The contractor shall not, either itself or through any other person, demand or accept from any patient of it's a fee or other remuneration, for its own or another's benefit, for –

(a) the provision of any treatment whether under the contract or otherwise; or

(b) any prescription or repeatable prescription for any drug, medicine or appliance, except in the circumstances set out in Schedule 5.

Schedule 5 is at Appendix 1. It is a slightly extended version of the previous Terms of Service, Paragraph 38. Private practice is still significantly restricted under the new GMS contract. Practices that opt out of the provision of additional, enhanced or out-of-hour services, cannot charge any of their registered patients for supplying a similar service privately. For instance, GPs cannot charge a patient in their practice for seeing them out-of-hours even though the patient may have requested it and may be happy to pay for it. If the patient is a registered patient they cannot be charged.

Questions and Answers:

Can I charge patients for a service not available on the NHS?

There are some services that are not available on the NHS – or only in very limited circumstances, for instance cosmetic procedures, some advanced dermatology procedures, osteopathy. GPs can set up private practices to provide these services although they should not be treating their practices' registered patients. Where GPs wish to start such a private practice, and they are aware that some of their own patients have requested the service, we would advise they write to the Director of Primary Care Services in their PCT to seek agreement to provide the service to any patient as it is not available on the NHS.

Does the change in regulations relating to the sale of goodwill affect a GPs potential to provide non-essential services privately?

The regulations relating to the sale of goodwill refer to restrictions in relation to a medical practice which has a list of registered patients. This relates to all practices providing essential services. We are seeking clarification on the possibility of GPs setting up a completely separate company providing private services to any patient. Until that time we would advise doctors to follow the advice above and not treat any registered patient privately except where indicated.

If I am a locum/freelance GP, without a registered practice list, can I provide private services to patients?

There is a case for saying that freelance/locum GPs are not 'contractors' with a registered list but performers who can work either for a GP practice, OOH service or alternative primary medical services provider. Therefore, they should be able to charge patients privately for any service they chose to provide. However, where a locum is covering for a practice doctor on leave, they are temporarily contracted to care for a registered list and they cannot charge those patients.

Does the 10% limit on private earnings within your practice premises still exist under the new contract?

Yes. If you earn more than 10% private earnings from your practice's premises then your cost or notional rent will be abated accordingly. This is laid down in the National Health Service General Medical Services – Premises Costs (England) Directions 2004 and their equivalent in Scotland, Wales and Northern Ireland.

Can you please clarify the situation with regard to Hepatitis B vaccination– can GPs charge for it?

Immunisation against Infectious Hepatitis (Hepatitis A) is available free of charge on the NHS in connection with travel abroad. However Hepatitis B is not routinely available free of charge and therefore GPs can charge patients for this vaccination when requested in connection with travel abroad.

What about charging for Hepatitis B vaccination for occupational health reasons?

GPs increasingly face patients requesting Hepatitis B for occupational reasons because they are dental nurses or about to enter medical school. GPs cannot, under Schedule 5, charge for Hepatitis B in these circumstances. However, neither does a GP need to provide them under essential or additional services. Such patients can either seek vaccination privately (eg: through a travel clinic) or, as would be most suitable for those about to embark on training/work within the NHS, through an occupational health Hepatitis B Local Enhanced Service where this can be negotiated with the PCT.

Can GPs benefit from the sale of goodwill if they have shares in a company providing OOH or specialist enhanced services?

GPs can benefit from the sale of goodwill if they have shares in a company or co-operative that does not have a registered list. This will be a commercial decision for a GP or practice to make, in the same way as they may choose to have shares in any other category of company.

Are there any advantages to making my practice a limited company?

It may be possible to save tax if you set up your practice as a limited company as companies are taxed differently from those who are self-employed. However specialist accountancy advice would need to be sought before any decision was made. The GPC will provide more guidance on limited-company status in the future.

Will I still be entitled to my NHS pension if I become a limited company?

The NHS Pensions Agency confirmed with the BMA Pensions Department that a limited company is able to contract to a PCT for the provision of GMS services/PMS services. Doctors in such a practice will need to write to the NHSPA (or SPPA) to obtain employer status. Assuming they obtain employer status the salary that the doctors draw from the company is able to be pensioned in the NHS pension scheme and this will be on a practitioner basis. Any such doctors will need to consider how much they pay themselves as salary because any dividends taken from the company would not be pensionable. The NHSPA suggests that prior to establishing the company, the doctors write to the agency to ensure that their status is acceptable. This will partly depend on the aims of the organisation as it must be on the 'not for profit' basis similar to out-of-ours providers.

Can I charge for issuing a private prescription?

No. GPs can write private prescriptions for patients which they may wish to do particularly in relation to drugs not available through the Drug Tariff. However GPs cannot charge for providing such a prescription.

Is it possible to sell my patients blood pressure machines as a number of them have asked about this?

Unfortunately, except for the provisions in Schedule 5 relating to travel medicine, it is not possible to sell your patients appliances.

Can the BMA provide a list of prescribed fees for travel vaccines?

The BMA does not provide a list of prescribed fees for travel vaccines as this would be a breach of the Competition Act.

APPENDIX 1

SCHEDULE 5 Regulation 24

FEES AND CHARGES

1. The contractor may demand or accept a fee or other remuneration -

- (a) from any statutory body for services rendered for the purposes of that body's statutory functions;
- (b) from any body, employer or school for a routine medical examination of persons for whose welfare the body, employer or school is responsible, or an examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;
- (c) for treatment which is not primary medical services or otherwise required to be provided under the contract and which is given -
 - (i) pursuant to the provisions of section 65 of the Act (accommodation and services for private patients), or
 - (ii) in a registered nursing home which is not providing services under that Act,if, in either case, the person administering the treatment is serving on the staff of a hospital providing services under the Act as a specialist providing treatment of the kind the patient requires and if, within 7 days of giving the treatment, the contractor or the person providing the treatment supplies the Primary Care Trust, on a form provided by it for the purpose, with such information about the treatment as it may require;
- (d) under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties)[\[76\]](#);
- (e) when it treats a patient under regulation 24(3), in which case it shall be entitled to demand and accept a reasonable fee (recoverable in certain circumstances under regulation 24(4)) for any treatment given, if it gives the patient a receipt;
- (f) for attending and examining (but not otherwise treating) a patient -
 - (i) at his request at a police station in connection with possible criminal proceedings against him,
 - (ii) at the request of a commercial, educational or not-for-profit organisation for the purpose of creating a medical report or certificate,
 - (iii) for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the patient;
- (g) for treatment consisting of an immunisation for which no remuneration is payable by the Primary Care Trust and which is requested in connection with travel abroad;
- (h) for prescribing or providing drugs, medicines or appliances (including a collection of such drugs, medicines or appliances in the form of a travel kit) which a patient requires to have in

his possession solely in anticipation of the onset of an ailment or occurrence of an injury while he is outside the United Kingdom but for which he is not requiring treatment when the medicine is prescribed;

(i) for a medical examination -

(i) to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or

(ii) for the purpose of creating a report -

(aa) relating to a road traffic accident or criminal assault, or

(bb) that offers an opinion as to whether a patient is fit to travel;

(j) for testing the sight of a person to whom none of paragraphs (a), (b) or (c) of section 38(1) of the Act (arrangements for general ophthalmic services) applies (including by reason of regulations under section 38(6) of that Act);

(k) where it is a contractor which is authorised or required by a Primary Care Trust under regulation 20 of the Pharmaceutical Regulations or paragraphs 47 or 49 of Schedule 6 to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than by way of pharmaceutical services or dispensing services, any Scheduled drug;

(l) for prescribing or providing drugs or medicines for malaria chemoprophylaxis.