

Focus on.....Standard and Default Contracts

This guidance note has been produced by the General Practitioners Committee (GPC) to explain to GPs and Local Medical Committees the arrangements for entering into default contracts, and sets out the reasons why practices should avoid entering into default contracts.

This guidance applies to practices in all four UK countries, and is one of a series of guidance notes on the new contract available on the BMA website at www.bma.org.uk/gpcontract.

The standard GMS contract

The standard GMS contract has been drafted by Counsel, and Departmental and GPC lawyers have double-checked that it accords with the new GMS contract regulations which faithfully reflect the new contract as agreed between the Department of Health, NHS Confederation and the GPC.

Contract terms:

- Most of the terms of the standard GMS contract are mandatory and therefore cannot be amended. Practices and PCOs should not attempt to negotiate on these.
- Other agreed terms, whilst not mandatory, have been subject to agreement between the negotiating parties nationally and should not therefore need amending in any way at local level.
- There are only a small number of terms which will be particular to each practice and which will need to be tailored to reflect the agreement between the practice and the PCO. The main areas relate to:
 - what additional services the practice will be opting out of, if any
 - what enhanced services the practice will be providing
 - what level of quality the practice will be aspiring to
 - whether or not the practice will be opting out of out-of-hours services.

The explanatory note to PCOs issued with the draft standard contract indicates those parts of the contract which may need some adaptation for each practice. This is available at the Department of Health website at:
www.dh.gov.uk/assetRoot/04/06/86/62/04068662.pdf

The mandatory and agreed terms are not listed separately in any document. However, these are all terms set out in the standard contract except those that are indicated as requiring individual adaptation in the explanatory note.

Practices and PCOs should use the standard contract when agreeing contracts.

Timetable

By the end of the first week in March, PCTs in England should have reached provisional agreements on the standard GMS contract with practices, and should have sent versions of the standard contract to every GMS practice, tailored to reflect the provisional agreements reached.

The timetable for agreeing contracts differs slightly in each of the four countries, with the Scotland, Wales and Northern Ireland timetables slightly behind that of England. For further information please read, *Focus on...how to access information* at the BMA website

All contracts should be signed by 31 March at the very latest.

Duration of the standard contract

Regulation 14 of the contract regulations deals with the duration of the contract, and is reflected at clause 15 of the standard contract. The footnote to clause 15 makes it clear that the PCO must include wording that "the contract shall subsist until it is terminated in accordance with the terms of this Contract or the general law".

There should, therefore, be no end date inserted into clause 15 of the standard GMS contract. The only exception to this is where a temporary contract is entered into in certain limited circumstances.

Default contract

The current GMS arrangements end on 31 March 2004, and the new arrangements come into effect on 1 April 2004. If new GMS contracts are not signed by 31 March 2004, services cannot be provided to patients, and payments cannot be made to practices.

As a safeguard to ensure that practices maintain their rights to payment and that services continue to be available to patients in the unlikely event of the standard GMS contract not being signed, provisions for 'default contracts' have been put in place.

The General Medical Services Transitional and Consequential Provisions Order 2004 makes provision for default contracts. This can be found at:
www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts/fs/en

The default contract will allow practices to continue to be paid, but the provisions of the default contract are far more restrictive than the standard GMS contract. Practices will be excluded from a range of entitlements available in the standard contract, including the right to:

- opt out of additional services that the practice is already providing
- provide any enhanced services as part of the Default Contract
- quality aspiration and preparation payments
- opt out of responsibility for out-of-hours services
- change their practice area

Default contracts should only be used as a very last resort and it is not anticipated that they should be used at all.

Duration of default contracts

All default contracts will normally end on 30 September 2004.

Default contracts will continue beyond 30 September 2004 only if a default contract has been entered into, and either:

- formal dispute resolution procedures under the contract regulations have been instigated before 30 September and remain unresolved
- the practitioner was suspended from the Medical Register
- the practitioner was subject to the Regulation 25 procedure under the present GMS Regulations (sick doctor provisions), or
- the practice was on “relevant service” i.e. on full time armed forces service.

Why sign a standard contract?

If there are outstanding issues on any contract term, e.g. final agreement over the price of a local enhanced service, indicative budgets or the opting out of additional services, the GPC’s lawyer strongly advises that practices should sign the standard contract “subject to dispute”, highlighting the areas of disagreement, to ensure that the contract is in place by 1 April 2004.

The standard contract route is by far the better option because:

- the provisions of the default contract are far more restrictive than the standard GMS contract, as explained above
- if the practice signs a default contract rather than signing a standard contract “subject to dispute”, there is a considerable danger that the default contract will come to an end, after its permitted term of six months, and the right to a GMS contract will be lost. This disastrous situation can only be avoided if contractors on a default contract formally initiate dispute resolution proceedings whilst the default contract is running and before 30 September 2004, or one of the other circumstances arise, as set out above. Only then can the default contract continue until the dispute(s) have been resolved
- there are only a very few exceptional circumstances in which a PCO can refuse a practice’s request to sign a standard contract even if it is “subject to dispute”
- signing the Standard GMS Contract does not restrict or remove the contractor’s right to pursue formal dispute resolution procedures should the dispute remain outstanding on 1 April 2004. Even if a practice disputes a clause within the contract, if it signs the contract it remains perfectly possible for it to continue to dispute the non-agreed provisions whilst, in the meantime, maintaining its other entitlements in full.