Focus on…….
the nature of the contract and partnerships

This guidance note has been produced by the General Practitioners Committee to help explain the issues relating to the nature of the new GMS contract to GPs and Local Medical Committees, and is one of a series of guidance notes on the new contract. The guidance will be updated as progress is made throughout the implementation discussions and negotiations. We would advise all GPs to read the contract document and supporting documentation, available on the BMA website at www.bma.org.uk. The GPC has produced a list of frequently asked questions and answers which can also be found at the website address.

Nature of the contract

Now The current GMS "contract" takes the form of statutory arrangements entered into between individual GPs and Primary Care Organisations.

New Practices, not individual GPs, will enter into contracts with their local PCO. This is a change to the legal basis of the contract.

How This change requires statutory changes, through legislation.

When This will come into effect in April 2004.

Why The change to practice-based arrangements will allow allocation of the global sum to the practice and will give practices the flexibility to configure their services to best meet the needs of their patients. So, for example, if a partner retires, it will be for the practice to decide how best to deal with this – for example through straight replacement or employing a practice nurse. Practices will no longer be required to seek the PCOs permission when advertising for or appointing GPs.

Contract documentation

The contract documentation, published and sent to all GPs in February, April and May 2003, clearly sets out the national terms of the contract which have been negotiated with the NHS Confederation and agreed with the Governments of the four countries.

The contract documentation also sets out certain national terms which will have to be incorporated in certain local contracts, for example those for Directed Enhanced Services.

The agreements set out in the contract documentation will be adhered to during the implementation of the contract.

Contract between practices and the PCO

Individual practice contracts between each practice and their PCO are distinct from the contract documentation, published in February, April and May, and will set out what services are to be provided, the level of quality, the support arrangements to be provided (information technology and human resources, for example) and the financial resources. There will be discussion and agreement between the PCO and the practice about the precise detail of the contract e.g. whether the practice is willing to provide out-of-hours or enhanced services.

So, the contract will be between the practice and the PCO and it will include:

- national terms applicable to all practices (the 'practice contract')
- what services are provided by the particular practice i.e.
  - essential
  - additional if not opted out
  - out-of-hours if not opted out
  - enhanced, if opted in
- the level of quality of essential and additional services that the practice 'aspires' to
- support arrangements e.g. IM&T, premises
- total financial resources e.g. global sum (including MPIG if necessary) + quality + enhanced services + premises + IM&T + dispensing.

The practice contract will allow for local variation but only for the provision of local enhanced services.

The practice contract will not be published until later this year. It needs the primary legislation to be enacted first, before April 2004, when the practice contracts will come into effect.

Providers

A new GMS practice will be the GMS 'provider'.

The 'provider' can be made up of one of more individuals including practice managers, nurses, allied health professionals, and/or pharmacists, but must always include at least one general medical practitioner with a JCPTGP certificate (or who is 'suitably experienced' within the meaning of section 31 of the National Health Service Act 1977).

Partnerships

There must always be a GP in the constitution of the partnership if the practice is to be a GMS provider (above).

Under the new arrangements, practices will be allowed to include in their partnership:

- practice managers
- nurses
- allied health professionals
- pharmacists.

Partnership agreements

Although it is desirable that every practice should have an effective partnership agreement, the absence of an agreement cannot prevent a PCO awarding a practice a contract. In the absence of an agreement the provisions of the Partnership Act 1890 will apply.

Partnerships with an agreement may not need to draw up completely new agreements, but it is very likely that they will need to amend their existing agreements.

We will be producing model partnership guidance. This will be done following primary legislation.

Other providers

PCOs will be able to provide services in the new world. The intention is that this will help practices to opt out of services – particularly out of hours – and will help with patient assignments where practices have indicated that they cannot take on more patients.

PCO provision of services will require primary legislation.

PCOs will also be able to commission services from other providers.

Performer lists

The current medical lists and supplementary lists, and the services list for PMS providers – which are about suitability to practise – will be merged into a single primary care performers list.

This is subject to new legislation.

Vacancies and practice splits

The contract will be a 'rolling' contract. This means that, except in limited cases to be defined in regulations, partners can retire/leave and new partners can join while the obligations on the PCO and on the practice under the contract remain the same.

This avoids the need for substantial variation of the contract, and maintains flexibility for practices. This means that the practice can decide to replace a GP with e.g. a nurse practitioner, or by increasing the hours of a nurse and employing another healthcare professional.

The global sum will not change if there is a change in the make-up of the practice staff, but would change if e.g. the practice opted out of an additional service.

A more substantial split?

If there is a more substantial partnership split, where practitioners wished to divide into e.g. two groups, the contract would come to an end.

The two groups would need to enter into new contracts with the PCO.

It is anticipated that most practice splits will have been notified to the PCO well in advance so that the PCO can set up new contracts with the new practices.

Where the split occurs without notice, it is expected that the PCO will set up temporary contract arrangements with each of the new practices, and that after a period new contracts will normally be granted to each of the practices.

Guidance will be issued on how this process will be managed. The process will involve consultation with the LMC or its equivalent.

A word about health service bodies

A practice will be able to decide whether to become a Health Service Body. This means that the GMS contract would be an NHS contract (or in Northern Ireland, a Health and Social Services contract). One of the main issues here is that if a practice opts to become a health service body, making the contract an NHS contract, contract disputes will be resolved formally in accordance with Dispute Resolution Regulations.

It is anticipated that most practices will opt to become an NHS body so that they can take advantage of these Regulations. For those practices that do not opt to become an NHS body, it is likely that a more informal dispute resolution procedure will be applied, as in the case of PMS.

Dispute resolution and appeals

Procedures will be put in place to deal with disputes and disagreements between the PCO and providers.

There are two main procedures:

- **Dispute resolution**:
  - for dealing with disputes that arise **within the contract** e.g. about whether a particular provision has been performed properly, or about a financial dispute under the contract
  - available where there is an NHS contract

- **Appeals:**
  - For dealing with disputes that arise **outside the contract.** These would apply in very limited circumstances e.g. where there is a dispute about whether an individual GP could have access to the primary care performers list.

Local resolution of disputes

In both dispute resolution and appeals, there will be procedures to resolve disputes locally in the first instance, including a conciliation meeting between the PCO and the provider.

LMCs are able to be involved in this process at the request of either party.

A local conciliation meeting will not be mandatory but we would encourage its use, as it is quicker and cheaper.

Enquiries

If you have any enquiries on this guidance please email nbreeze@bma.org.uk

QUESTIONS

Q As the contract is practice-based, who signs the contract?
A All the partners of the practice, at least one of whom must be a GP.

Q What happens to the Terms of Service?
A They are scrapped, though sections of them such as the 'black list' of drugs that cannot be prescribed will be carried over to the new contract. The Terms of Service will be replaced by contractual agreements.

Q. Can nurses and other registered health care professionals become partners?
A. Yes, subject to the agreement of all existing partners and so long as one member of the partnership is a GP.