

Gloucestershire Local Medical Committee
GOODWILL GUIDANCE

Introduction

In 2004, when the new GMS contract was introduced, regulations¹ were made permitting, in limited circumstances, the sale of goodwill of medical practices, which had been totally banned since the formation of the NHS in 1948. This guidance note was written in 2004, and appears to be still extant.

Goodwill Regulations

The Primary Medical Services (Sale of Goodwill and Restrictions on Subcontracting) Regulations 2004 ensure that, irrespective of the contracting route chosen by the contractor and the PCT, **the sale of goodwill in a medical practice which has a list of registered patients will not be permitted in any circumstances.** However, the sale of goodwill will be permitted by contractors which do not have a list of registered patients. A contractor will have a registered list of patients if it is providing essential services (or their equivalent) during core hours. Some performers of primary medical services may also have a list of registered patients.

Additionally, a sub-contractor of primary medical services will continue to be able to sell goodwill, provided that it does not subsequently enter into a contract with a PCT for the provision of primary medical services in respect of which it will hold a list of registered patients.

Consequences

The following providers will be outside of the scope of the ban, and therefore able to sell goodwill provided that they do not subsequently enter into a contract for the provision of primary medical services in respect of which they will hold a list of registered patients:

- **Existing providers** of out of hours, additional and enhanced services who do not hold a list of registered patients.
- **Existing GP co-operatives** providing out of hours, additional and enhanced services, who do not hold a list of registered patients.
- **New providers** entering into the field who do not hold registered lists. This may include companies or other distinct legal entities which are established by existing medical practitioners (GMS and PMS), and other PMS providers to provide only out of hours, additional or enhanced services either as direct providers with PCTs or as subcontractors.

Any part of a practice in relation to which the contractor wishes to sell goodwill (i.e. provision of out of hours, additional or enhanced services, or non-medical business interests) has to be provided by entities that are legally distinct from the practice providing essential services (where there is a list of registered patients).

Contractors are advised to take legal advice when entering into essential services contracts to ensure that their business does not inadvertently become subject to the ban on the sale of goodwill.

¹ The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 [SI.2004/906], which came into force on 1 April 2004

Sub-contracting rules

Sub-contractors were not covered by the ban on the sale of goodwill as it applied before the coming into force of the new Regulations. It remains the case that sub-contractors are not caught by the ban provided that they do not subsequently enter into a contract in respect of which they will hold a list of registered patients. However, the National Health Service (General Medical Services) Regulations 2004 and the National Health Service (Personal Medical Services) Regulations 2004 have been amended in order to prevent a contractor setting up sub-contracting arrangements designed to thwart the legislative ban on the sale of goodwill in medical practices that hold contracts for essential services (or their equivalent).

Consequently, it will be a breach of any primary medical services contract (that includes essential services, or their equivalent and where there is a registered list of patients) to sub-contract those essential services to a company or firm owned or formed wholly or partly by the contractor itself, or any current or former employee, partner or shareholder thereof, *for the purposes of avoiding the ban on sale of goodwill.*

These restrictions on sub-contracting (and the consequences of having done so) apply even if the GMS and PMS contract has yet to be varied to take these provisions into account.

In the case of a breach, the PCT has discretion to either terminate the entire contract, or serve notice on the provider to terminate the subcontracting agreement.

Apparently, similar rules were to have been made to apply to APMS contracts. We have not found out whether this ever happened.

Review

It was intended in 2004 that these arrangements would be reviewed in 2006. We have no record that this was ever done. It is probably a dead letter until current circumstances change.