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GPC

General Practitioners
Committee

Primary Medical Contracts - Who can hold what?

Guidance for GPs

BMA 

Primary Medical Contracts - Who can hold what?

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Chapter 1: Introduction

This guidance explains the eligibility criteria for holding different types of primary medical services contract and eligibility to be a member of the NHS Pension Scheme. The guidance also sets out the circumstances under which more than one contract may be held. The following should be noted when reading this guidance:

- For all contracts, certain individuals are prohibited from involvement owing to factors such as bankruptcy, criminal convictions or exclusion from the medical register. To simplify this paper, this fact is noted in each section but criteria for exclusion are not listed fully. Interested readers should refer to the relevant regulations to check these criteria
- There is no obligation on any qualifying general medical practitioner to be included in a Performers List unless personally performing primary medical services.

A glossary is available at the end of this document which should be helpful in explaining some of the terms.

Since this is a specialist area, individual professional advice should be sought. BMA members can receive this from the BMA.

Chapter 2: Who can hold GMS contracts?

The regulations dictating who can hold a GMS contract are the most restrictive after those governing PCTMS contracts. GMS contracts are limited to the more traditional types of primary care provider. Contractors can be single-handed GPs, partnerships or certain types of limited companies.

Individuals

Individual medical practitioners must be qualifying general medical practitioners to enter into a GMS contract. Individuals who fall within paragraph 5(2) of the GMS regulations (e.g. because they are subject to a national disqualification, are bankrupt or have been convicted of murder etc) may not hold GMS contracts.

Bodies

GMS contracts may be held by **partnerships** as long as at least one partner (who must not be a limited partner) is a general medical practitioner and any other medical practitioner is a qualifying general medical practitioner or employed by a PCT, a Local Health Board, an NHS Trust, an NHS foundation trust, a Health Board or a Health and Social Services Trust. Other partners could be NHS employees, health care professionals, primary medical services employees etc.

Partnerships in Scotland are separate legal entities unlike England, therefore in Scotland the GMS contract can be held by the partnership as a separate legal entity. In order to qualify for a GMS contract it is a condition that neither an individual in the partnership nor the partnership must fall within paragraph 5(2) (e.g. be subject to a national disqualification, bankrupt or convicted of murder etc).

GMS contracts may be held by **a company limited by shares** as long as at least one share in the company is legally and beneficially owned by a qualifying general medical practitioner and any other share or shares in the company that are legally and beneficially owned by a medical practitioner are owned by a qualifying general medical practitioner or by a medical practitioner who is employed by a PCT, a Local Health Board, an NHS Trust, an NHS foundation trust, a Health Board or a Health and Social Services Trust. It is also a condition that the company, any person legally and beneficially owning a share in the company and any director or secretary of the company must not fall within paragraph 2 of the regulations (e.g. be subject to a national disqualification, bankrupt or convicted of murder etc). It must be remembered that legally a person includes an entity with a separate legal identity such as a body corporate. Any company limited by shares must have appropriate clauses in its memorandum and Articles of Association which ensure that shares are not acquired by disqualified individuals, and which has arrangements for the surrender of shares held by an individual who becomes unqualified; without these restrictions the company may be able to hold a contract, but would lose it on such a transfer or incident.

Other types of body may not hold GMS contracts.

Summary – who can and who can not hold GMS contracts

All categories are subject to conditions detailed above

<ul style="list-style-type: none">√ Individual general medical practitioners√ Medical partnerships√ Companies limited by shares with at least one general medical practitioner shareholder where other shareholders qualify under S8r of the NHS Act (v.s.)	<ul style="list-style-type: none">✗ Individuals who are not general medical practitioners✗ Limited liability partnerships✗ Companies limited by guarantee✗ Publicly owned companies✗ Industrial and provident societies, friendly societies, voluntary organisations
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Chapter 3: Who can hold (S)PMS/S17C contracts?

There is no difference between contractual arrangements for PMS (i.e. including essential services) and SPMS (i.e. excluding essential services).

Individuals

The PMS agreement regulations (2004) state that PMS agreements may be made with medical practitioners only if they:

- (a) are a qualifying general medical practitioner or
- (b) are employed by a PCT, a Local Health Board, an NHS Trust, an NHS foundation trust, a Health Board or a Health and Social Services Trust.

PMS agreements can also be made with an individual falling within the following categories [28D(1)(b) to (d) of the National Health Service Act 1977, inserted by section 21 of the NHS (Primary Care) Act 1997]:

- an individual who is providing personal medical or dental services in accordance with section 28C (PMS) arrangements or section 17C (Scottish equivalent) arrangements
- an NHS employee
providing that individual does not fall within paragraph 5(3) of the PMS agreement regulations (e.g. because they are subject to a national disqualification, is bankrupt or have been convicted of murder etc).

Bodies

A qualifying body may only enter a PMS agreement if the qualifying body, any person legally and beneficially owning a share in the qualifying body and any director or secretary of the qualifying body does not fall within paragraph 5(3) (e.g. because they are subject to a national disqualification, is bankrupt or have been convicted of murder etc). Any company limited by shares must have appropriate clauses in its memorandum and Articles of Association which ensure that shares are not acquired by disqualified individuals, and which has arrangements for the surrender of shares held by an individual who becomes unqualified; without these restrictions the company may be able to hold a contract, but would lose it on such a transfer or incident.

The National Health Service (Primary Care) Act 1997 defines a qualifying body as:

- a company which is **limited by shares** all of which are legally and beneficially owned by persons falling within paragraphs 28D (1)(a) to (d) of the same Act

Partnerships and other types of body

Partnerships cannot hold PMS agreements. PMS agreements can however be made with individuals who operate as part of a partnership. Similarly, although the regulations do not cater specifically for limited liability partnerships (LLPs) or other types of entity, a group of GPs who individually or collectively hold PMS contracts could form themselves into these types of entity to provide services under their own commercial arrangements. Although services may be provided under these types of commercial arrangements, the actual contracts will not be held by the entities and any obligations will continue to be held by the individual.

Summary – who can and who can not hold (S)PMS contracts

All categories are subject to conditions detailed above

- √ Individual medical practitioners
- √ NHS employees
- √ Companies limited by shares owned by medical practitioners, NHS trusts, individuals providing personal medical services or NHS employees

- ✗ Individuals who are not medical practitioners or NHS employees
- ✗ Medical partnerships*
- ✗ Limited liability partnerships (LLPs)*
- ✗ Companies limited by guarantee*
- ✗ Publicly owned companies
- ✗ Industrial and provident societies, friendly societies, voluntary organisations etc*

* Individuals holding PMS contracts could form themselves into and operate under partnerships, LLPs, companies limited by guarantee etc but these bodies cannot hold PMS contracts

Chapter 4: Who can hold APMS/HBPMS contracts?

The APMS and Health Board PMS (HBPMS) Directions are the most liberal of the arrangements for primary medical services contracts and make APMS/HBPMS contracts open to a wide range of bodies and individuals. The less restrictive arrangements mean that where companies are concerned, shares may be available publicly and need not be limited to known individuals.

A PCO may enter into an APMS/HBPMS contract with any individual, company, partnership, industrial and provident society, friendly society, voluntary organisation or any other body as long as the individual contract holder, the body or the director(s)/secretary of the company or officer(s)/trustee(s) or other person concerned with the governance of the society, organisation or body does not fall within paragraph 3(5) [4(2) in Scotland] (e.g. is subject to a national disqualification, is bankrupt or has been convicted of murder etc).

Summary – who can hold APMS contracts	
All categories are subject to conditions detailed above	
<ul style="list-style-type: none"> √ Individual medical practitioners and NHS employees √ Individuals who are not medical practitioners or NHS employees √ Limited liability companies (including publicly owned companies) √ Medical partnerships √ Limited liability partnerships √ Companies limited by guarantee √ Industrial and provident societies, friendly societies, voluntary organisations etc 	<ul style="list-style-type: none"> ✗ Companies where there are disqualified directors

Chapter 5: What types of employer are eligible to participate in the NHS Pension Scheme?

To be eligible to participate in the NHS Pension Scheme contractors must have NHS Pension Scheme Employing Authority status as defined by the NHS Pension Scheme Regulations. Provided they meet the criteria set out above, all bodies holding GMS, PMS and PCTMS are, by definition of the NHS Pensions Regulations, entitled to participate in the NHS Pension Scheme.

APMS contractors that offer NHS primary medical services and that would be eligible to enter into a general medical services (GMS) contract or personal medical services (PMS) agreement with a primary care organisation (PCO) can apply to the NHS Pensions Agency for NHS Pension Scheme Employing Authority status. Where granted, its staff (including GPs) will be able to participate in the NHS Pension Scheme. Staff working for these APMS providers will therefore be able to continue to contribute to, or to join, the NHS pension scheme. Further information is available in the APMS guidance:

www.bma.org.uk/ap.nsf/Content/apms0406~keyconsids#APMSandpensions

Employing Authorities as defined by the NHS Pension Scheme Regulations

The current definition of an Employing Authority as detailed in the NHS Pension Scheme Regulations is as follows:

- (i) A Strategic Health Authority established under section 8 of the National Health Service Act 1977
- (ii) A Health Authority established under section 8 of the National Health Service Act 1977
- (iii) A Special Health Authority established under section 11 of that Act
- (iv) A Primary Care Trust established under section 16A of that Act
- (v) A Local Health Board established under section 16BA of that Act
- (vi) A National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990
- (vii) Any other body that is constituted under an Act relating to health services and which the Secretary of State agrees to treat as an employing authority for the purposes of the scheme
- (viii) A person who is providing Personal Dental services
- (ix) An OOH provider
- (x) APMS contractor with whom a Primary Care Trust or Local Health Board has made arrangements under section 16CC(2)(b) of the 1977 Act, but only if that person is also a person who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;
- (xi) A GMS practice – (The meaning of which is confirmed in the NHS Pension Scheme Amendment Regulations 2005 – Statutory Instrument No. 661)
 - (a) a registered medical practitioner,
 - (b) two or more individuals practising in partnership, or
 - (c) a company limited by shares,with whom a Primary Care Trust or Local Health Board has entered into a GMS contract.

- (xii) A PMS practice - (The meaning of which is confirmed in the NHS Pension Scheme Amendment Regulations 2005 – Statutory Instrument No. 661)
- (a) an individual,
 - (b) two or more individuals practising in partnership, or
 - (c) a company limited by shares,
- with whom or with whose members a Primary Care Trust or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the Primary Care Trust or Local Health Board).

Chapter 6: Implications of and arrangements for holding multiple contracts

Partnerships can hold more than one type of contract but they should be aware of liability issues; in a partnership they will be jointly liable for all the contracts they hold. It should also be noted that, as detailed above, only certain bodies can hold contracts. For example only those bodies legally able to hold GMS and PMS contracts can hold those contracts. Companies should remember to register with companies house under the Companies Act 1985 s.1(2)b.

Partnerships are business arrangements and practices will have individual business reasons for wishing to hold multiple contracts. These reasons may be financial or operational, for example to retain PMS growth money, to allow a practice to contract with more than one PCT, or to allow for a separate entity to deliver non-essential services so the practice may benefit from sale of goodwill in the future. Practices should discuss any changes to contracts held with all partners and seek specialist business advice as appropriate. There may be issues about the same partnership holding separate contracts with the same other body, particularly given the add-on nature of essential services. Therefore it may be better, if not necessary, for the contracts to be held by different types of organisation.

Chapter 7:

At a glance: Who can and who can not hold primary medical services contracts?

All categories are subject to conditions detailed above

	PCTMS	GMS	(S)PMS	APMS
PCTs	√	X	√	√
General medical practitioners	X	√	√	√
Medical practitioners	X	X	√	√
NHS employees	X	X	√	√
People who are not medical practitioners/NHS employees	X	X	X	√
Medical partnerships*	X	√	X	√
Companies limited by shares with at least one general medical practitioner shareholder	X	√ (restrictions on other shareholders)	√ (restrictions on other shareholders)	√
Companies limited by shares owned by medical practitioners, NHS trusts, individuals providing personal medical services or NHS employees	X	√	√	√
Limited liability companies inc. publicly owned companies	X	X	X	√
Limited liability partnerships*	X	X	X	√
Companies limited by guarantee*	X	X	X	√
Industrial & provident societies*	X	X	X	√
Voluntary organisations*	X	X	X	√
Friendly societies*	X	X	X	√

* These bodies cannot hold PMS contracts however individuals holding PMS contracts could form themselves into and operate under these arrangements. See Chapter 3 for further details.

Chapter 8: Glossary

General medical practitioner	A medical practitioner whose name is included in the General Practitioner Register
Qualifying general medical practitioner	A medical practitioner whose name is included in the General Practitioner Register, but excluding those unable to be included on Medical Lists under the previous arrangements (e.g. those covered by 'grandfather' arrangements by virtue of locum appointments) and those disqualified on efficiency or suitability grounds
GMS	General medical services provided under S28Q of the NHS Act 1977; S 17J of the NHS (Scotland) Act 1978
NHS employee	An individual who, in connection with the provision of services in the health service in England and Wales or Scotland, is employed by- (a) an NHS trust; (b) in the case of an agreement under which personal medical services are provided- (i) a medical practitioner whose name is included in a medical list kept under this Act or in a corresponding list kept under the section 28X of the 1978 Act; or (ii) a medical practitioner who is providing personal medical services in accordance with section 28C arrangements or section 17C arrangements;
PMS/S17C	Personal Medical Services provided under S28C of the NHS Act 1977; S 17C of the NHS (Scotland) Act 1978
APMS	Alternative Provider Medical Services provided under S16CC(2)(b) of the NHS Act 1977; S 2C(2) of the NHS (Scotland) Act 1978
PCTMS	Primary Care Trust Medical Services provided under sections 17 and 18(3) of the NHS Act 1977
HB Medical Services	Primary Medical Services provided under S 2C of the NHS (Scotland) Act 1978