



Test your knowledge

February 2024

Questions and answers from our primary care helpdesk.

Dentistry

Pensions

An individual contract holder wants to take partial retirement, they are in the 1995 scheme. Do they need to retire from their contract?

Answer

NHS Dentists are members of the NHS Pension Schemes. Changes to the NHS Pension Scheme for 1995 members announced in 2023, means that they are now able to take partial retirement. If they take partial retirement, it has removed the requirement for them to resign off of all NHS Contracts, including as contract holders. Prior to this change many individual contract holders wanted to take their pension but retain their NHS contract, to be able to do this they use to make arrangements to go into partnership before reverting back to an individual contract holder (a process known as 24-hour retirement). The change to the rules means that if they are taking partial, not full retirement then this is no longer a requirement, nor do they have to reduce their first month's commitment to 16 hours a week, all they must do is reduce their NHS commitment by 10% going forward. Commissioners should not offer pensions advice and the contractor should seek their own advice.

Medical

Parental leave

Maternity reimbursement payments where a practice GP is on parental leave. We have been working on the basis that all maternity claims are only payable up to 26 weeks. Policy and Guidance Manual (PGM) page 410 and a discretionary payment is applicable if the practice meets certain criteria- PGM page 413.

However the "up to 26 weeks" is not in the statement of financial entitlements (SFE).

Can you please confirm if maternity payments in regards to locum reimbursement can go beyond 26 weeks and is non-discretionary?

Answer

The GMS SFE Directions 2023, Part 4, Direction 9 applies to your query if a GMS Contract or other contract type if the SFE is deemed to apply. Direction 9(5) provides for amounts payable (a) in respect of the first two weeks and (b) in respect of any week thereafter - you are correct in that (b) does not limit that period to 26 weeks however it is NHS England policy that there a 26 week maximum as contained in the locum protocol in the NHS England PGM, Part D, chapter 2 that you have found, which I advise is the maximum permitted without any exercise of discretion subject to the conditions of the SFE being met.

The PGM does provide policy guidance on the exercise of discretion however such is deemed to be in exceptional circumstances - section 2.6 is a list of matters in the locum protocol and section 2.7 describes the exercise of discretion by the commissioner referenced as being in exceptional circumstances.

Unless the ICB consider the matter to within those exceptional listed, albeit not an exhaustive list, it is unlikely to permit discretion exercised in favour of a contractor claim beyond the 26-week marker.

Sickness payments

A GP at a practice has taken sick leave four times in the past year so far, each time for a two-week period. Because of the two-week period, the practice has not claimed for locum cover – as reimbursement starts after two weeks.

Could this sickness be treated as one long sickness period, it relates to the same condition?

Answer

We presume you are seeking advice on application of the GMS SFE 2023 and Direction 10.

Subject to the required entitlements and conditions being satisfied, Direction 10 provides for 'Ceilings on the amounts payable' in paragraphs 5 to 9 and where paragraph 7 includes 'No reimbursement under this Section will be paid in respect of the first two weeks period of each period of leave of absence.' In essence, you are correct that in your scenario the GP contractor will not be able to claim for the initial and subsequent two-week periods where the performer has returned to work, whether the same condition or not.

The GMS SFE provides for a locum protocol, which can be found in the NHS England Policy and Guidance Manual (PGM), Part D, chapter 2 and 2.4 deals with sickness and 2.4.1 reflects the SFE on this point saying:

In respect of sickness leave, for each period of sickness leave, there is a qualifying period of two weeks during which time no payments are made.

However, as this does not appear to be a phased return to work scenario referenced in the PGM, the integrated care board (ICB) may wish to consider the exercise of discretion permitted within the locum protocol at 2.6 and the discretionary powers in 2.7 having regard to the examples given. Note: these are deemed to be exercised in exceptional circumstances and your scenario is not envisaged in the PGM but not an exhaustive list. I will leave to you whether the ICB wishes to consider exercising such 'exceptional circumstances' discretion.

Pharmaceutical services

Superintendent pharmacist

Is there a limit as to how many companies a pharmacist can be the superintendent of?

Answer

In short, no, there isn't.

The [Medicines Act 1968](#) sets out who can carry on a retail pharmacy business, namely:

- A sole trader who is a registered pharmacist,
- A partnership where each partner is a registered pharmacist, or
- A body corporate that has a superintendent who is a registered pharmacist.

Until 1 December 2022, the superintendent could only act as such for one body corporate that carries on a retail pharmacy business. However, [section 71 of the Medicines Act 1968](#) was changed with effect from that date and a superintendent can now act as such for more than one body corporate and there is no limit within the Medicines Act on the number of bodies corporate. The General Pharmaceutical Council maintains a [register](#) of these superintendents and regularly updates it.

Where a body corporate appoints a new superintendent, it is required by [paragraph 32\(4\). Schedule 4](#) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 to notify each integrated care board (ICB) in whose area it has premises and provide the required fitness information on the new superintendent within 30 days of their appointment. In reality these notifications are made to [Primary Care Support England](#) (PCSE) either using PCSE Online or completing the 'paper' form. A failure to notify the ICB and provide the required fitness information would be a breach of the body corporate's terms of service which could result in the ICB issuing a breach notice. It could also lead to the ICB using its fitness powers in relation to the body corporate if it cannot be assured that the body corporate remains a fit and proper person to be included in the relevant pharmaceutical list or lists.

Application to change directors and superintendent

Can our pharmaceutical services regulations committee (PSRC) refuse an application to change the directors and superintendent of a body corporate?

Answer

No, it can't. It is not for the PSRC to decide if a pharmacist can be a superintendent or whether someone can be a director of a body corporate.

Where a body corporate notifies the integrated care board (ICB) that it has changed its directors and superintendent and provides the required fitness information on those individuals, Primary Care Support England will undertake the required checks and seek references on those who are pharmacists. A committee report is then prepared and sent to the PSRC for a decision.

The PSRC needs to consider whether or not the body corporate remains a fit and proper person to be included in the relevant pharmaceutical list or lists (if it has premises in more than one health and wellbeing board's area); where no issues or concerns are identified as a result of the checks and references, the PSRC can be assured that it is.

Where issues or concerns are identified the PSRC will need to decide whether it has sufficient grounds to either:

- remove the body corporate from the relevant pharmaceutical list or lists on fitness grounds, or
- contingently remove the body corporate from the relevant pharmaceutical list or lists ie place conditions on the continued inclusion of the body corporate.

If the PSRC decides to remove or contingently remove the body corporate it must follow the process set out in [regulation 82](#) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. It will also need to consider whether the body corporate should be suspended whilst the process is completed, particularly if the decision is to remove the body corporate as this can take several months to complete especially if there is an appeal to the First-tier Tribunal against the decision to remove.

The PSRC needs to bear in mind that if it decides to remove a body corporate on fitness grounds then this includes the removal of all the pharmacies that it operates which are included in a pharmaceutical list, no matter where they are located in England. The decision will not, however, affect any pharmacies that the body corporate may operate that are not included in a pharmaceutical list ie wholly private pharmacies. Removal would take effect the day after the process is complete so there could be pharmacies closing with little or no notice – for example if the body corporate unsuccessfully appealed the decision to remove it to the First-tier Tribunal the pharmacies would close the day after the appeal decision is issued.

The PSRC will therefore need to check the [consolidated pharmaceutical list](#) that NHS England publishes on the NHS Business Services Authority website to see if the body corporate has pharmacies elsewhere in England. Where it does, the PSRC will need to first liaise with those other ICBs' PSRCs.

Eyecare

Dispensing only optometry services

How do we contract with an NHS dispensing only optometry service?

Answer

With dispensing only services there is no formal contractual arrangements between the commissioner and the dispenser, funding is received following submission of GOS3 or GOS4 forms. Each form is a stand-alone contractual form that enables payment to be made to the dispenser. Primary Care Support England (PCSE) will need to know who they are so they can be set up on the PCSE system.

Premises

Rent review appeal

A contractor initially accepted their notional rent offer but 12 weeks later have submitted an appeal. Are they within their rights to submit an appeal even after accepting the rent offer?

Answer

The CMR6 template letter notes that contractors must notify the commissioner of a dispute within 56 days. However, under the GMS regulations, contractors are given up to three years to raise a dispute:

GMS Contracts Regulation 83(4) states:

“Where a party wants to refer a dispute, it must send a request under paragraph (3) (written request for dispute resolution) to the Secretary of State before the end of the period of three years beginning with the date on which the matter giving rise to the dispute occurred or should reasonably have come to the attention of that party.”

As we are well within this period, the contractor still has the right to do this. The commissioner will have the original written confirmation as part of the evidence should the case end up with NHS Resolution. However, before this stage, the local dispute resolution (LDR) process needs to be fully exhausted. Referring the dispute to NHS Resolution should

be the last resort. Further guidance on the LDR can be found in NHS England's [policy guidance manual](#) (PGM), see part C, chapter 4.

PCC's contracting helpdesk is open to commissioners who are annual contract holders with helpdesk included in their contract. For details on annual contracts visit <https://www.pcc-cic.org.uk/annual-contracts/> or contact enquiries@pcc-cic.org.uk.

PCC does not provide legal advice and you should seek a legal opinion where appropriate.