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Sub-contracted GPs now have access to the NHS Pension Scheme

Following a period of consultation, the Department of Health has published regulations allowing GP practices to pension earnings from sub-contracted clinical services, where the holder of the main contract is also an NHS employer. This came into effect on 1 April 2016.

Previously, the regulations governing the NHS pension scheme did not allow any payments made through an intermediary or sub-contractor to be pensionable. Whilst this provision was designed to limit the inappropriate extension of liabilities under the scheme, it no longer fits with the various new models of care envisaged by the Five Year Forward View. The increasing number of GP federations being a lead contractor and sub-contracting to their GP Practice members was particularly troublesome. Under the amended regulations, GP practices who hold a GMS, PMS or APMS contract will be able to attain Employing Authority (EA) status and allow their GP members to pension their income earned under that sub-contract, assuming that the holder of the main contract is also an EA.

In order to ensure that only NHS work is pensionable, and that scheme liabilities are adequately controlled, GP federations will be required to use the NHS standard sub-contract, which has been jointly produced by NHS England and the Department of Health.

Alternatives to sub-contracting

GP federations can of course set themselves up to become an EA through the "classic" APMS route i.e. holding an APMS contract and being eligible to enter into a GMS or PMS contract, and therefore providing services directly. Another option would be for the CCG to contract directly with each member surgery, although this is administratively difficult and is inconsistent with the movement towards GPs working at scale and the lead provider model. Sub-contracting is becoming an increasingly more popular method of delivering the new models of care and the consultation document and the proposed regulations recognise this.

Retrospective application

The Department of Health has recognised that, on many occasions, the provision of services under a sub-contract may have commenced before the contract is formally entered into. Therefore, it is proposed that federations applying for Independent Provider (IP) status can identify a retrospective "nominated date" which would be the approval date for IP status in certain circumstances.

In order to be granted retrospective IP status, the GP federation must have paid employer and employee contributions for the relevant period, and must satisfy certain other criteria, including being party to a qualifying contract. In order to be a "party" to a contract, the contract must be signed and dated by all parties, and therefore it is questionable whether, in practice, many providers will be granted retrospective status, given that it is the failure to conclude contractual formalities prior to commencing the services that renders them unable to obtain IP status. In any event this provision will apply only in very specific circumstances and it should not be supposed that retrospective IP status will be possible to attain in respect of existing contracts/services.