

## Focus on.... Sale of goodwill

June 2004 (updated October 2013)

This guidance is to help GPs and local medical committees (LMCs) with decisions relating to trading in goodwill and to better understand the sale of goodwill regulations that came into force in April 2004.

### Definition of goodwill

Goodwill in relation to earnings from the provision of essential and additional services, enhanced services and out-of-hours (OOH) services may be considered as the value of the super profits that the practice can earn where the fees from such work substantially exceed the cost of the provision.

For example, if a GP practice were making £90,000 profit per partner from this work and the practice were offered for sale, the purchaser(s) may aim to employ salaried doctors and would deduct from the level of profit per partner the market value of the cost of the salaried GPs who would have to do the work. Because the total cost of employing a salaried GP is around about £90,000, there would be very little return on the investment and very little value in the goodwill. Super profits would however arise if the profits per partner had been £130,000 per annum, but their work could be replaced at the cost of £90,000 per salaried GP. There would be super profits of £40,000 and a related value for the goodwill.

**Note:** Accountants have different methodologies for making the calculation. Professional accountancy advice must be sought for any individual set of circumstances.

### Background

On 1<sup>st</sup> April 2004, *The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004* [SI.2004/906]<sup>1</sup> came into force. This resulted in:

- (a) a relaxation of the current ban in relation to enhanced and out-of-hours services, but not in relation to essential and additional services; and
- (b) a relaxation that applies to all providers, including GMS and PMS practices, while retaining the ban in relation to the provision of essential and additional services by GMS contractors or, in the case of PMS, where the provider has a registered patient list or such a list is being held on its behalf.

Equivalent policies to these in England were implemented in Wales and Scotland. The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting)(Wales)<sup>2</sup> Regulations SI. 2004/1017 in Wales and The Primary Medical Service (Sale of Goodwill and Restrictions on Sub-contracting)(Scotland)<sup>3</sup> SI. 2004/162 in Scotland.

### **The Regulations – *The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004* [SI. 2004/906]**

<sup>1</sup> [www.opsi.gov.uk/si/si2004/20040906.htm](http://www.opsi.gov.uk/si/si2004/20040906.htm)

<sup>2</sup> [www.opsi.gov.uk/legislation/wales/wsi2004/20041017e.htm](http://www.opsi.gov.uk/legislation/wales/wsi2004/20041017e.htm)

<sup>3</sup> [www.opsi.gov.uk/legislation/scotland/ssi2004/20040162.htm](http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040162.htm)

“The following performers or providers of primary medical services –

- (a) a GMS contractor;
- (b) a PMS contractor that has a registered patient list;
- (c) an APMS contractor that has a registered patient list; and
- (d) a medical practitioner who is a performer, with a registered list, of essential services during core hours, other than –
  - (i) solely under arrangements to provide enhanced services
  - (ii) solely as a locum, or
  - (iii) only under arrangements to provide enhanced services and as a locum,

may not sell the goodwill of their medical practices in any circumstances (and no other person may sell that goodwill in their stead).”

As a GMS contractor has to provide essential and additional services to a registered patient list there is no reference to having a registered patient list in 3(1)(a). A PMS contractor does not have to have a registered patient list but if s/he does this will relate to the provision of essential and additional services; hence the structure of 3(1)(b).

The effect of the regulations is that for providers to trade in goodwill in relation to enhanced and out-of-hours services, they will need to set up a separate entity, distinct from the provider that contracts with the primary care organisation (PCO) to provide essential and additional services to a registered patient list.

Once established, the separate entity may bid in open competition to provide enhanced or out-of-hours services. However, practices will need to have opted out of providing those services as part of their original contract with the PCO under which they provide essential and additional services to a registered list if they wish to bid to provide these services under a new provider entity.