

January 2007

# Charges to NHS patients

Guidance for GPs



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### Introduction

Private practice is still significantly restricted under the GMS contract. GMS regulation 24, subsection 2, as set out at appendix 1, prevents contractors from charging their patients for most services.

There are however instances, as set out in this guidance, where charges may be made. Schedule 5 of the National Health Service (General Medical Services Contracts) Regulations 2004 lists the strictly limited circumstances in which GPs may charge fees for providing treatment to their NHS patients.<sup>1</sup> These provisions are listed in appendix 2. In addition to the circumstances which apply to all doctors, Schedule 5, regulation 24 sets out that dispensing doctors may charge a fee for the supply of drugs which are either restricted or prohibited from being ordered on an NHS prescription, to NHS patients.

In the current climate, there is an increasing tendency for private companies to provide services to NHS patients and the BMA as a consequence is receiving a growing number of queries in relation to the topic. This guidance seeks to address those and to outline the circumstances when it is allowed for charges to be made to NHS patients.

Further information can be found on the BMA website.

This guidance complements the General Medical Council's (GMC) Good Medical Practice 2006 which outlines that GPs should be open and honest in any financial arrangement with patients. The full text of the relevant section of this guidance can be found at appendix 3.

### **GPs must not charge their patients unless they are certain that the regulations allow for it.**

Practices that opt out of the provision of additional, enhanced or out-of-hours services, may not charge any of their registered patients for supplying a similar service privately. To this end, GPs may not charge a patient in their practice for seeing them out-of-hours even though the patient may have requested it and may be happy to pay for it. If the patient is a registered patient they may not be charged.

GPs contemplating making any charge to their NHS patients must ensure that they comply with the strict requirements of the regulations and that they act in accordance with the ethical duty not to use, or appear to use, their position of trust to influence patients to follow a particular course of action which may offer the doctor some advantage, financial or otherwise.

GPs must bear in mind that their action, in making a charge, could be alleged to involve accepting remuneration for treatment which might be in breach of the regulations, or breach of the ethical duty not to abuse their position of trust. The consequences could be a complaint to the FHSAA, with a possible finding of a breach of the terms of the regulations, possibly a complaint to the GMC's

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#### <sup>1</sup> Impact of competition restrictions

Following discussions with the Office of Fair Trading (OFT) in 2000, within the framework of the law laid down by the Competition Act 1998, the BMA was required to discontinue publishing suggested fees for services which could be provided by any doctor. This included locum fees and medico-legal fees. The result of the OFT ruling was that the Association was only given authority to publish fees on the following basis:

- If the fees were 'agreed' between the BMA and third party organisations for specific items of work;
- If the fees were published by Government organisations (who have exemption from the Competition Act in this area);
- If the fees were provided for services by a patient's own GP or other attending doctor (the Association is permitted to suggest fees in this case).

The most significant impact of the OFT ruling is that the BMA now negotiates and agrees professional fees with approximately fifty organisations each year. Further information on the agreements reached by the BMA can be found on the BMA web site.

professional conduct committee, investigation by the NHS counter fraud service and, ultimately, criminal proceedings.

### **Charging patients for services through private companies**

GMS regulation 24, subsection 2 prevents contractors from charging their patients for most services.

In addition to their normal work, some GPs have shares in private companies providing medical services. In these situations, the question arises as to whether the private company can charge the GPs' NHS patients for private services.

The GPC has obtained legal advice to the effect that the ability of any GP to charge patients through a private company hinges on the nature and definition of the 'contractor'. It is to be noted that the directions refer to the contractor and for the purposes of GMS, a contractor is defined as a person or entity that can hold a GMS contract. Part 2, paragraph 4 of the GMS regulations, defines who can hold a GMS contract and it is clear that the contract can be held either by:

1. A single medical GP
2. 2 or more individuals practising as partnership
3. A company limited by shares.

It therefore follows that paragraph 24 is seeking to prohibit these entities or groups of people and therefore any one or more individuals falling outside of these groups could arguably be entitled to charge a fee or remuneration for the provision of any treatment. Essentially this means that you would have to be or set up a different entity from the one that holds the contract ie if you were single handed it is arguable that you may set up a company or a partnership; or if you were in a partnership, an individual or a company could charge.

In the case of PMS agreements, the PCO normally contracts with individual practitioners, even if they operate as part of a partnership. It is therefore arguable under PMS that the contractor is the individual GP or GPs and therefore under PMS it may be difficult to take advantage of the manner in which paragraph 24 is written.

Under the APMS Directions 2005 section 8, the wording and effect appears to be the same as set out in the GMS regulations.

### **Premises considerations for GPs providing services through private companies**

Where practice premises are used for the provision of medical services to private patients or under arrangements with any person who is not a public authority, the payment of rent abatement by the PCT must be adjusted.<sup>2</sup> Practices are permitted to receive up to 10% of their income privately without the rent abatement being affected. Any private income, including income in kind, that is higher than this percentage will result in the abatement being reduced as set out in the table below:

<b>Appropriate Abatement Percentage</b>	<b>Private Income Percentage</b>
0%	Up to 10%
10%	Between 10 and 20%
20%	Between 20 and 30%
30%	Between 30 and 40%
40%	Between 40 and 50%
50%	Between 50 and 60%
60%	Between 60 and 70%
70%	Between 70 and 80%
80%	Between 80 and 90%
90%	Above 90%

For clarity, practice premises are associated with the provision of medical services if there is any connection or association between the provision of medical services and the practice premises (for

<sup>2</sup> Paragraph 49, GMS Premises Cost Directions 2004

example, contact and billing arrangements), even if the medical services are provided elsewhere. The PCT should take reasonable steps to ensure that agreement with the contractor is sought as to what are appropriate average amounts and the PCT should justify the averages that it determines.

## Frequently asked questions

### **What is treatment?**

Treatment is not defined in the regulations, but our legal advice considers it to have a wide definition. Any contact with a patient which has a therapeutic or preventative element should be considered as treatment even if the primary reason for the contact is different

### **May GPs charge for Hepatitis B vaccinations in connection with travel?**

Immunisation against infectious Hepatitis (Hepatitis A) is available free of charge on the NHS in connection with travel abroad. However Hepatitis B is not routinely available free of charge and therefore GPs may charge patients for this vaccination when requested in connection with travel abroad.

### **May GPs charge for Hepatitis B vaccinations on the grounds of occupational health reasons?**

GPs increasingly face patients requesting Hepatitis B for occupational reasons because they are dental nurses or about to enter medical school. In order to determine the need for, and advise patients about the risk, some knowledge of occupational health is required. GPs may not, under Schedule 5, charge a patient for Hepatitis B in these circumstances, but a fee may be chargeable to a third party. However, neither does a GP need to provide Hepatitis B immunisation under essential or additional services. Such patients may either seek vaccination privately (eg through a travel clinic) or, as would be most suitable for those about to embark on training/work within the NHS through an occupational health Hepatitis B Local Enhanced Service where this can be negotiated with the PCT.

### **May GPs charge for issuing a private prescription?**

No. GPs may write private prescriptions for patients which they may wish to do particularly in relation to drugs not available through the Drug Tariff. However GPs may not charge for providing such a prescription, but a dispensing doctor may charge for dispensing the prescription. The only occasion when a doctor may charge for a private prescription is in relation to travel overseas.

### **May GPs charge for providing acupuncture or similar alternative therapies?**

No, acupuncture, or similar alternative therapies, provided to registered patients constitutes a form of treatment and therefore must be provided without charge.

### **May GPs charge for conducting pregnancy tests in the surgery?**

No. A pregnancy test constitutes treatment for which GPs may not charge. If a patient requires a pregnancy test, this should be arranged through a referral or testing in the surgery.

### **May GPs sell pregnancy testing kits?**

No. GPs can purchase kits for their own use in the surgery but may not charge patients. The cost of these may be counted as a practice expense and will therefore be indirectly reimbursed as part of the annual GP pay award.

### **May GPs sell travel kits?**

As set out in Schedule 5, regulation 24 (h), GPs are eligible to charge for providing travel kits to their patients.

### **May GPs charge for dispensing a private prescription for 'black/grey listed' drugs?**

Prescribing doctors may not charge. Dispensing doctors can supply 'black/grey' listed drugs and make a charge for the supply of the drug as set out in schedule 5, section 24.

### **May GPs rent equipment to patients?**

No. This would constitute a charge for a form of treatment even though the patient may be gaining access to equipment which would otherwise be unavailable to them.

### **May GPs use their access to wholesalers of medical equipment to buy equipment and sell it to patients on a non-profit basis?**

This could be interpreted as charging for treatment. A complaint from a patient would be unlikely if this were the only route to obtain the equipment (ie if it were unavailable on the NHS) although the GP's actions could be open to misinterpretation by a third party.

**May GPs sell items such as baby milk and health foods?**

No, as this would be construed as charging patients for treatment. An exception to this is where such items are supplied on behalf of another agency eg NHS trust or health authority.

**May GPs sell OTC drugs such as aspirin?**

No. GPs are under obligation to provide NHS patients any drugs or appliances needed for their treatment without charge.

**May GPs charge a partner's patients?**

No, unless the partner could have charged the patient for the same service or supply.

## Appendix 1

### Fees and charges – Part 5, Regulation 24

24. - (1) The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor shall not, either itself or through any other person, demand or accept from any patient of its a fee or other remuneration, for its own or another's benefit, for -

- (a) the provision of any treatment whether under the contract or otherwise; or
- (b) any prescription or repeatable prescription for any drug, medicine or appliance, except in the circumstances set out in Schedule 5.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor's list of patients, but fails to produce his medical card on request and the contractor has reasonable doubts about that person's claim, the contractor shall give any necessary treatment and shall be entitled to demand and accept a reasonable fee in accordance with paragraph 1(e) of Schedule 5,[d] subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under paragraph 1(e) of Schedule 5[d] applies to the Primary Care Trust for a refund within 14 days of payment of the fee (or such longer period not exceeding a month as the Primary Care Trust may allow if it is satisfied that the failure to apply within 14 days was reasonable) and the Primary Care Trust is satisfied that the person was on the contractor's list of patients when the treatment was given, the Primary Care Trust may recover the amount of the fee from the contractor, by deduction from its remuneration or otherwise, and shall pay that amount to the person who paid the fee.

## Appendix 2

### Schedule 5, Regulation 24

1. The contractor may demand or accept a fee or other remuneration -
  - (a) from any statutory body for services rendered for the purposes of that body's statutory functions;
  - (b) from any body, employer or school for a routine medical examination of persons for whose welfare the body, employer or school is responsible, or an examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;
  - (c) for treatment which is not primary medical services or otherwise required to be provided under the contract and which is given -
    - (i) pursuant to the provisions of section 65 of the Act (accommodation and services for private patients), or
    - (ii) in a registered nursing home which is not providing services under that Act,

if, in either case, the person administering the treatment is serving on the staff of a hospital providing services under the Act as a specialist providing treatment of the kind the patient requires and if, within 7 days of giving the treatment, the contractor or the person providing the treatment supplies the Primary Care Trust, on a form provided by it for the purpose, with such information about the treatment as it may require;

- (d) under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);
- (e) when it treats a patient under regulation 24(3), in which case it shall be entitled to demand and accept a reasonable fee (recoverable in certain circumstances under regulation 24(4)) for any treatment given, if it gives the patient a receipt;
- (f) for attending and examining (but not otherwise treating) a patient -
  - (i) at his request at a police station in connection with possible criminal proceedings against him,
  - (ii) at the request of a commercial, educational or not-for-profit organisation for the purpose of creating a medical report or certificate,
  - (iii) for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the patient;
- (g) for treatment consisting of an immunisation for which no remuneration is payable by the Primary Care Trust and which is requested in connection with travel abroad;
- (h) for prescribing or providing drugs, medicines or appliances (including a collection of such drugs, medicines or appliances in the form of a travel kit) which a patient requires to have in his possession solely in anticipation of the onset of an ailment or occurrence of an injury while he is outside the United Kingdom but for which he is not requiring treatment when the medicine is prescribed;
- (i) for a medical examination -
  - (i) to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or
  - (ii) for the purpose of creating a report -
    - (aa) relating to a road traffic accident or criminal assault, or
    - (bb) that offers an opinion as to whether a patient is fit to travel;

- (j) for testing the sight of a person to whom none of paragraphs (a), (b) or (c) of section 38(1) of the Act (arrangements for general ophthalmic services) applies (including by reason of regulations under section 38(6) of that Act);
- (k) where it is a contractor which is authorised or required by a Primary Care Trust under regulation 20 of the Pharmaceutical Regulations or paragraphs 47 or 49 of Schedule 6 to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than by way of pharmaceutical services or dispensing services, any Scheduled drug;
- (l) for prescribing or providing drugs or medicines for malaria chemoprophylaxis.

## Appendix 3

### GMC Guidance – Good Medical Practice 2006

#### Probity

##### Financial and commercial dealings – paragraphs 72-73

- 72.** You must be honest and open in any financial arrangements with patients. In particular:
- (a) you must inform patients about your fees and charges, wherever possible before asking for their consent to treatment
  - (b) you must not exploit patients' vulnerability or lack of medical knowledge when making charges for treatment or services
  - (c) you must not encourage patients to give, lend or bequeath money or gifts that will directly or indirectly benefit you
  - (d) you must not put pressure on patients or their families to make donations to other people or organisations
  - (e) you must not put pressure on patients to accept private treatment
  - (f) if you charge fees, you must tell patients if any part of the fee goes to another healthcare professional.
- 73.** You must be honest in financial and commercial dealings with employers, insurers and other organisations or individuals. In particular:
- (a) before taking part in discussions about buying or selling goods or services, you must declare any relevant financial or commercial interest that you or your family might have in the transaction
  - (b) if you manage finances, you must make sure the funds are used for the purpose for which they were intended and are kept in a separate account from your personal finances.
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