GMS vs. PMS

GMS Contracts

Subject to good behaviour, a GMS contract is, in effect, a lifelong contract and a GMS partnership is entitled as a matter of right to take on new partners subject to giving the requisite notice. A different notice is required to advise NHSE of a partner who retires. A special type of notice is required where one partner retires from a two partner practice as it is necessary to nominate the continuing partner as the successor to the contract. Essentially however a GMS contract can be “rolled” on and on and this provides considerable security for the partners. It has been suggested in some cases where a partnership “takes over” a small GMS practice, by bringing new partners in and then retiring the original partner, that objection can be taken on the grounds of suitability. I have never however seen this succeed as an argument and it is a very difficult one for NHSE to run as if there is a question of unsuitability they should have dealt with it long before notice to change the constitution of the partnership was given. In small practices, there might also be a question of capacity but again I have never seen this run successfully by NHSE.

PMS Agreements

A PMS agreement is not made with the partners from time to time (as is the case with GMS) but with a person or persons and thus any change in the constitution of the partnership brings about a change in the identity of the persons involved with the agreement, a change which in legal terms is described as a novation. The problem here is that every novation in a contract requires the consent of both parties to the contract and the addition of a new partner in a PMS practice requires NHSE consent. Where you join a seventh partner to an existing 6 partner practice consent is almost automatically given but if you try and join a 2nd partner to a sole practitioner PMS practice NHSE may well either refuse consent or only give consent subject to lots of conditions and for example the imposition of KPI's.

Another problem with PMS is that because every change is a novation, the old contract comes to an end and technically each new contract should be put out for procurement in accordance with the European Regulations. Again I accept that there are a number of PMS novations that are not made subject to this but Area Teams are becoming increasingly sensitive about their obligations in this regard and if they come across a practice which would appear to be attractive to other providers there may very well be a procurement exercise. As you will immediately see this situation can be contrasted with the GMS situation where you can bring partners in and out as a matter of right.

The other particular point which is of great concern is that a PMS agreement can be terminated by NHSE on 6 months’ notice without even having to give a reason. This is the mechanism that NHSE have used when they have wanted to change PMS agreements. They threaten to give notice unless the contractors agree, for example, to a reduction in the pound per patient payment or the imposition of KPI’s and/or both.
Again this is contrasted with GMS where a six-month notice cannot be given and the only termination arrangements follow an unresolved remedial notice or a breach notice. One final problem with PMS, although it is not a problem that the banks have taken on board yet, is that because there is only technically 6 months of security borrowing against the contract and its attendant rent reimbursement is far less secure than in the case of GMS.

Clearly if the PMS pounds per patient is very much higher than GMS there are reasons to continue with PMS but certainly my present view is that if there is very little in it financially, practices should revert to GMS and use the far more stable platform that is available. If you want to merge two GMS practices it is relatively straightforward because you can bring partners in and out. A merger of PMS practices is very difficult indeed because of the novation problems.

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