



NHS Pension Scheme access for GP federations – Q&A

Extract / covering note

As articulated in the NHS Five Year Forward View, the ongoing work to develop new care models of provision is driving innovative ways of delivering care. There is an increasing desire from GPs to work at scale, and this has led to the establishment of a number of federations across the country. This development has led to the identification of specific issues surrounding access to the NHS Pension Scheme, which may have a broad impact across the NHS, and specifically for GPs, seeking access either as individual practices or as new legally registered organisations (e.g. federations).

The Department of Health (DH) and NHS England are working closely alongside the NHS Business Services Authority (NHS BSA) to address these issues as quickly as possible. The attached Q&A sets out some of the broad rules around access to the NHS Pension Scheme for GPs, and outlines some initial steps being taken to remove barriers related to Pensions Scheme access for federations.

Q&A

Q1 – *What options are available to GP federations wishing to offer the NHS Pension Scheme?*

A – There are two distinct options available at present for organisations (such as federations) which wish to become an Employing Authority (EA) to access the NHS Pension Scheme – through the “classic” APMS route, or as an independent provider (IP). The route chosen by a federation will impact on an individual’s status within the Pension Scheme as it determines whether earnings are pensioned through the “practitioner” route or through the “officer” route:

i) Classic APMS route

The “classic” APMS option allows organisations such as federations, who hold an APMS contract, access to the pension scheme as an EA and also allows GP providers “practitioner” status.

To qualify as a “classic” APMS provider, federations need to be constituted so as to be eligible to enter into a GMS or PMS agreement for the provision of primary medical services, and the federation must hold an APMS contract. In practice this means that the ‘owners’ (i.e. shareholders) all have to be eligible to enter into a GMS contract or PMS agreement, however the federation itself does not need to hold any contract other than an APMS contract. Practices are advised to take local advice on ensuring their federation is eligible to access the NHS Pension Scheme as an EA via the “classic” APMS route.

A hybrid NHS Standard / APMS Contract was published by NHS England in March 2015, where commissioners wished to commission both primary and community / secondary services through the same contract. This hybrid contract is starting to be used by federations however it has raised concerns about the way this contract is treated for pensions purposes.

Through work between the DH and NHS England, the status of the hybrid contract for has now been clarified, allowing it to be recognised by the NHS Business Services Authority (NHS BSA) as an APMS Contract as well as a NHS Standard Contract, ensuring earnings from this contract can be pensioned under “practitioner” status. This move is possible because the hybrid contract meets the requirements set out in the APMS Directions, and recognising it formally as an APMS contract therefore removes a barrier for federations wishing to use the “classic” APMS route to access the NHS Pension Scheme. This formal recognition as an APMS contract will be retrospectively applied, so all signed hybrid contracts can be recognised as APMS contracts for pensions purposes.

Please note that whilst this change clarifies the use of the hybrid contract for pensions purposes, it does not remove the requirement that the hybrid contract must only be used where both primary and community / secondary services are being commissioned under the same contract. The hybrid contract should not be used to commission solely primary care services.

ii) Independent Provider route

The IP route is for organisations using NHS contracts that do not *already* qualify to be an existing NHS Pension Scheme EA. For GPs, this would apply where they were employed by a non-NHS contracting organisation, or a GP led organisation such as a federation which was not constituted so as to allow access via the “classic” APMS route. This route has been available since 1 April 2014. Employees of an IP are eligible for membership of the NHS Pension Scheme provided they spend more than 50% of their time [across a pension scheme year – 1st April to 31st March] working on the services provided under the NHS Standard Contract, an APMS contract, a hybrid NHS Standard Contract / APMS contract, or a local authority contract. Employees in providers who choose to access the pension through this route are only eligible for “officer” status, and not for “practitioner” status.

Q2 – *What if a GP (GMS, or PMS) surgery is already an NHS Pension Scheme employing authority (EA) which wins additional work via an NHS Standard Contract?*

A – Since an amendment to the NHS Pension Scheme regulations in April 2014, the surgery’s GPs (practitioners) and employees must pension the income from the NHS Standard Contract in addition to their GMS, PMS or APMS income. There would be no need for such an organisation to apply to become an IP.

Q3 – *Will it become possible to pension income/earnings received via sub-contracting?*

A – At present there are no circumstances where payments through an intermediary or sub-contracting route are currently pensionable. This is a deliberate control designed to limit inappropriate extension of scheme liabilities.

The sub-contracting question could begin to affect a significant number of organisations as the new care model vanguards move towards developing an accountable lead provider organisation. Given the likelihood of organisations, including possibly GP federations, becoming sub-contractors, the DH and NHS England have been working to find a solution to this problem.

A first step is that the DH has agreed to consider a change to the NHS Pension Scheme regulations in April 2016 which will allow income from a sub-contract with another Pension Scheme EA to be treated as pensionable earnings for practitioners. This will form part of a forthcoming public consultation planned by the DH in late 2015. Assuming this amendment to the regulations is made GPs who begin to do sub-contracted work will be able to claim the new income under their current terms, assuming the practice concurrently holds a GMS, PMS or APMS contracts. This proposed amendment is expected to be effective from 1 April 2016.

Q4 – *Are there any alternatives to sub-contracting which practices could explore in the meantime?*

A – In the first instance, federations should consider whether it is appropriate or possible to set themselves up constitutionally to become an EA through the “classic” APMS route, holding a hybrid or APMS contract, and therefore provide services directly. Separately, a federation which has accessed EA status through the Independent Provider route could employ GPs, which would allow income from the federation to be pensioned as an “officer”. Where a federation employee is also in pensionable employment elsewhere, that individual could have two concurrent pensionable posts (subject to not exceeding an aggregate of whole time). The 50% rule for IPs means that the GP must spend 50% of their time in their IP role on activities relating to the qualifying NHS contract.

Another potential option is for the clinical commissioning group (CCG) to consider contracting directly with each of the federation’s member surgeries, though this creates additional complications for the administration of these contracts, so federations may choose not to use this route given the other solutions in development and the broader aim of creating federations which provide services across a larger population. The CCG would then pay the practices directly for the delivery of the services. The CCG could also enter into a separate NHS standard contract with the federation who would manage and govern the delivery of the services on behalf of the CCG but would not be the route for any of the payments.

Q5 – *What is the 75% pensionable pay threshold for IPs, and why is it not applicable to other EAs in the Scheme?*

A – The 75% pensionable pay threshold was introduced to ensure that when services transfer from a “traditional” NHS provider to an IP the pensionable pay, attracting a 14.3%

employer contribution, remains broadly the same. This figure was chosen because, in the average NHS Trust setting, around 66% of total NHS funding remains available to spend as net pensionable pay for staff once the organisation's expenses for premises, medical materials, national insurance and employer contributions to the NHS Pension Scheme are deducted. The 75% pay threshold should be relatively generous, given, in particular, that not all of an IP's staff may be engaged in the delivery of NHS clinical services for more than 50% of their time. Both DH and NHS England will however continue to review this situation as further organisations become Employing Authorities under the IP route as the new care model vanguard sites develop.

Q6 – Why can't IP status be granted retrospectively and what options are available where there is a "gap" in pensionable service as a result?

A – This was another control mechanism agreed during the policy development and regulatory refinement. DH is considering whether it remains a necessary and appropriate control given the developing nature of service provision and an amendment to the regulations may be proposed in the forthcoming public consultation in late 2015.

Where a federation is granted IP status, but there is a gap in their employees' membership of the NHS Pension Scheme, an option could be for the federation to use employee and/or employer contributions (or monies that would have been treated as contributions) during the gap to buy an amount of 'additional pension' for affected individuals once admitted to the scheme. This would be credited to individuals as an extra amount of pension and serves the purpose of restoring 'lost' pension.

Q7 – Why is Practitioner status not afforded under the IP route?

A – Practitioner status operates solely in relation to primary care. It is available only to GPs and dentists who are delivering primary care services under a GMS, PMS or APMS contract (or dental equivalents). It follows that salaried GPs, or GP providers, employed by an IP pension income from that employment as officers rather than practitioners.

More generally, the introduction of the new NHS Pension Scheme in 2015 saw the removal of the distinction between officer and practitioner membership. The old scheme used the terms to differentiate between the two methods upon which benefits are built up by members; final salary for officers, career average earnings for practitioners. In the new scheme all members accrue benefits on a career average earnings basis. So for salaried GPs, or GP providers, who are members of the new NHS Pension Scheme 2015 there is no practitioner status to maintain.

Q8 – Where can I find out more?

A – The NHS Pension Scheme administrator – the NHS Business Services Authority – has a section of its website dedicated to IPs which can be accessed via this link <http://www.nhsbsa.nhs.uk/4328.aspx>

Q9 – Who should I contact if I have further questions?

A – You can email NHS BSA nhsbsa.directions@nhs.net, the Department of Health policy team on nhs_pp&e_services@dh.gsi.gov.uk