

## KEY POINT GENERAL COMPARISON: PMS AGREEMENT AND GMS CONTRACT

This document provides a general overview of the similarities and differences that exist between a contractors' obligations and requirements in respect of a select few items depending on whether they hold a GMS Contract or PMS Agreement. The document compares GMS Regulations and the PMS Regulations and the model GMS Contract and PMS Agreement (as defined below). Contractors should be aware that local variations to their specific PMS Agreement may apply which are not covered in this note.

This document is for use as a general guide only and does not represent an authoritative resource on the subject matter. As a consequence the BMA accepts no liability for its use. Anyone looking to rely on this note must take their own independent legal advice to verify its content.

In this document...

- **GMS Contract:** means the NHS England Standard General Medical Services Contract 2015/16  
Available: <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/06/gms-2015-16.pdf>
- **GMS Regulations/ GMS Regs:** means the National Health Services (General Medical Services Contracts) Regulations 2015  
Available: [http://www.legislation.gov.uk/uksi/2015/1862/pdfs/uksi\\_20151862\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1862/pdfs/uksi_20151862_en.pdf)
- **PMS Agreement:** means the NHS England Standard Personal Medical Services Agreement 2015/16  
Available: <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/06/pms2015-16.pdf>
- **PMS Regulations/ PMS Regs:** means the National Health Service (Personal Medical Services Agreements) Regulations 2015  
Available: [http://www.legislation.gov.uk/uksi/2015/1879/pdfs/uksi\\_20151879\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1879/pdfs/uksi_20151879_en.pdf)

Point	Definitions used	GMS	PMS	Core differences
Core services	<p><b>Essential Services:</b> are broken down to cover:-</p> <p>(i) Services required for the management of the contractor's patients who are, or believe themselves to be:-</p> <p>a. Ill with conditions from which recovery is generally expected;</p> <p>b. Terminally ill; or</p> <p>c. Suffering from chronic disease</p>	<p><b>Position under the GMS Contract Regs</b></p> <p>The contractor must provide essential services throughout the core hours.</p> <p><b>Position under the GMS contract</b></p> <p>This bolsters the requirement laid out in the GMS Regs by requiring the contractor to:-</p> <p>➤ Provide essential services;</p>	<p><b>Position under the PMS Regs &amp; PMS Agreement</b></p> <p>Where the PMS Agreement provides for the same the contractor must:</p> <p>➤ provide those essential services (and such others services as the contractor is required to provide to its patients)</p>	None.

	<p>(ii) Appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs (this includes providing primary medical services require din core hours for the immediately necessary treatment of persons to whom the contractor has been required to provide treatment owing to an accident or emergency at any place in its practice area)</p> <p>(iii) Services required in core hours for the immediately necessary treatment of any of the following persons who request such treatment:-</p> <p>a. for a period of either</p> <ul style="list-style-type: none"> <li>i. 14 days following the relevant persons application was refused; or</li> <li>ii. The date upon which the person has been registered elsewhere for the provision of essential services</li> </ul> <p>Persons whose application to be included on the contractors list are refused</p> <p>b. for a period of either</p> <ul style="list-style-type: none"> <li>i. 14 days following the relevant persons application as temporary resident was refused; or</li> </ul>	<ul style="list-style-type: none"> <li>o at such times within core hours</li> <li>o As are appropriate to meet the reasonable needs of its patients;</li> </ul> <p>➤ To have in place arrangements for the contractor’s patients to access such services throughout the core hours in case if emergency.</p>	<ul style="list-style-type: none"> <li>o at such times,</li> <li>o within core hours</li> <li>o as are appropriate to meet the reasonable needs of patients</li> </ul> <p>➤ have in place arrangements for the contractor’s patients to access such services throughout the core hours in case if emergency.</p>	
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	<p>ii. The date upon which the person has been registered as a temporary resident elsewhere for the provision of essential services.</p> <p>Persons whose application to be included on the contractors list as a temporary resident are refused.</p> <p>c. For a period of 24 hours or such shorter period as the person is present in the contractor's area, any person who is in the contractor's practice area for less than 24 hours.</p> <p><i>Reg 17 GMS Regs</i> <i>Cl 8.1 GMS Contract</i> <i>Sch 2 Pt 1 1 PMS Regs &amp; Cl 7.2 PMS Agreement</i> <i>(which refers back to the definition of Essential Services)</i></p> <p><b>Core Hours:</b> means the period beginning at 8 00am and ending at 6 30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays</p> <p><b>Patients:</b> defined under the PMS &amp; GMS Regs as-</p> <ul style="list-style-type: none"><li>(i) a registered patient;</li><li>(ii) a temporary resident;</li><li>(iii) persons to whom the contractor is required to provide immediately necessary treatment as part of its obligation to provide essential services; and</li></ul>			
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	<p>(iv) any other person to whom the contractor has agreed to provide services under the agreement; and</p> <p>(v) any person in respect of whom the contractor is responsible for the provision of out of hours services.</p> <p><b>Temporary residents:</b> generally covers any person who arrives in a place and intends to stay there for more than 24 hours but less than 3 months.</p>			
<b>Attendance outside the practice premises</b>	<p><b>Practice area:</b> there are two definitions applying.</p> <p><u>Under the GMS Contract/ Regs</u> it is defined as the area in respect of which persons resident in it will, subject to any other terms of the relevant core contract relating to patient registration, be entitled to register with the contractor, or seek acceptance by the contractor as a temporary resident.</p> <p><u>Under the PMS Regs</u> it is defined as the area specified in the PMS Agreement as the area in which essential services are to be provided;</p> <p><u>Under the PMS Agreement</u> it is defined as the geographical area from time to time in respect of the population of which the commissioner is legally responsible for the provision of or payment for healthcare services.</p>	<p><b>Position under the PMS &amp; GMS Contract/ Regs</b></p> <p>Where, in the reasonable opinion of the contractor, the medical condition of a patient is such that i) attendance on the patient is required, and ii) it would be inappropriate for the patient to attend the contractor's premises then the contractor must provide services to the relevant patient at, what the contractor believes, is the most appropriate of the following:-</p> <ul style="list-style-type: none"> <li>➤ the patient's last home address;</li> <li>➤ such place that the contractors has notified the patient and commissioner as the place where they have agreed to visit and treat the patient;</li> <li>➤ another place in the contractor's practice area.</li> </ul> <p><i>[GMS Regs Sch 2 Reg 5 replicated in clause 7.6.1 of the GMS Contract]</i>  <i>[PMS Regs Sch 2 Reg 6 replicated in clause 7.10 of the PMS Agreement]</i></p>		None.
<b>Out of Hours Services</b>	Meaning of definitions used in this section (which replicate those contained in both the GMS and PMS Regulations).	<b>Position under the GMS Contract/ Regs</b>	<b>Position under the PMS Agreement/ Regs</b>	The core differences are:-

	<p><b>OOH Services:</b> being those essential services that a contractor provides its registered patients during core hours.</p> <p><b>OOH Period:</b> means:</p> <ul style="list-style-type: none"> <li>- 6pm to 8am Monday to Thursday; and</li> <li>- 6pm on a Friday to 8 am the following Monday; and</li> <li>- Good Friday, Christmas Day and bank holidays</li> </ul>	<p>Any GMS contract must provide for the provision of OOH services during the OOH Period.</p> <p>A contractor is only required to provide these services if, in their reasonable opinion having regard to the patient’s medical condition, it would not be reasonable in all the circumstances for the patient to wait to obtain such services during core hours.</p> <p><b>Opt out of OOH Services under the GMS Contract/ Regs</b></p> <p>The contractor can opt out of providing OOH Services. To do so the contractor must serve written notice specifying the date (which must be either three or six months after the notice is given) upon which the provision of OOH Services are to cease. The commissioner must approve the notice as soon as is reasonably practicable and in any event within 28 days of receiving notice from the contractor.</p> <p><i>NOTE – there is an issue with the way in which the Regs are drafted in the sense that there is a clear conflict as to whether NHSE has discretion in accepting a contractor’s opt out notice.</i></p> <p><i>The Regs are poorly drafted. Part 6 Reg 38 (3) states that the “Board must</i></p>	<p>Any agreement under which “essential services” are to be provided must provide for the provision of out of hours services throughout the out of hours period unless</p> <ul style="list-style-type: none"> <li>➤ Prior to signing the agreement the commissioner has accepted in writing a written request from the contractor that the agreement should not require the contractor to make such provision;</li> <li>➤ The contractor has opted out (in accordance with Pt 6)</li> <li>➤ The agreement has been varied to exclude a requirement to make such a provision. [Reg 22 (1)]</li> </ul> <p>Except where the agreement provides otherwise, even where a contractor is required to provide OOH he is only required to do so if, in their reasonable opinion having regard to the patient’s medical condition, it would not be reasonable in all the circumstances for the patient to wait to obtain such services.</p> <p><b>Opt out of OOH Services under the PMS Agreement/ Regs</b></p> <p>As is the case under the GMS Regs the contractor can opt out of providing OOH Services and the process of notification is the same. As such any contractor wanting to opt out of</p>	<ul style="list-style-type: none"> <li>➤ A GMS contract automatically includes the need to provide OOH services whereas a PMS Agreement can, where agreed prior to it being signed, exclude the provision of OOH services.</li> <li>➤ A PMS Agreement can, with the agreement of the commissioner, be varied to exclude the requirement to provide the OOH services.</li> </ul>
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<p><b>Additional services</b></p>	<p><b>Additional services:</b> this is defined as one or more of the following:</p> <ul style="list-style-type: none"> <li>(i) cervical screening services;</li> <li>(ii) contraceptive services;</li> <li>(iii) childhood vaccines and immunisations;</li> <li>(iv) vaccines and immunisations;</li> <li>(v) child health surveillance services;</li> <li>(vi) maternity medical services; and</li> <li>(vii) minor surgery;</li> </ul>	<p><b>Position under the GMS Regs</b></p> <p>A contract <u>may</u> provide for the provision by the contractor of additional services.</p> <p>Where the contractor is under contract to provide additional services:</p>	<p><b>Position under the PMS Regs</b></p> <p>Additional services are not covered under the PMS Regs.</p> <p><b>Position under the PMS Agreement</b></p> <p>The PMS Agreement provides for the possibility of additional services being supplied by the GP practice. In doing so it mirrors the requirements that are</p>	<p>In relation to the overarching obligation sin respect of the provision of additional service, none.</p>

		<ul style="list-style-type: none"> <li>➤ the contractor must make such facilities and equipment as are necessary available to enable them to be properly performed.</li> </ul> <p><b>Position under the GMS Contract</b></p> <p>The GMS Contract extends these obligations by stipulating that the additional services</p> <ul style="list-style-type: none"> <li>➤ must be supplied to their registered patients and persons accepted as temporary residents</li> <li>➤ where they are funded by the global sum, must: <ul style="list-style-type: none"> <li>○ Provide the additional services at such times within core hours as are appropriate to meet the reasonable needs of its patients;</li> <li>○ Have in place arrangements for its patients to access such services throughout the core hours in the case of emergency.</li> </ul> </li> </ul>	<p>placed on their GMS colleagues in the sense that:-</p> <ul style="list-style-type: none"> <li>➤ the contractor must make such facilities and equipment as are necessary available to enable the additional services to be properly performed.</li> <li>➤ they must be supplied to their registered patients and persons accepted as temporary residents</li> <li>➤ where they are funded by the global sum, they must be provided at such times within core hours as is appropriate to meet the reasonable needs of the contractors' patients.</li> <li>➤ the contractor must have in place arrangements for its patients to access such services throughout the core hours in the case of emergency.</li> </ul>	
<p><b>Sub contracting of work</b></p>		<p><b>Position under the GMS Contract/ Regs</b></p> <p><i>Sub contracting services other than OOH Services</i></p>	<p><b>Position under the PMS Agreement/ Regs</b></p> <p>Sub contracting the provision of services is permitted where the</p>	<p>Whereas a PMS practice has the ability to sub contract without the approval of the commissioner where it is</p>

		<p>The sub contracting of services is permitted where:</p> <ul style="list-style-type: none"> <li>➤ The contractor has taken reasonable steps to satisfy itself that <ul style="list-style-type: none"> <li>○ The sub contracting is reasonable in the circumstances;</li> <li>○ The person to whom the services are sub contracted is/ are qualified and competent to provide the services</li> </ul> </li> <li>➤ Except i) in the case of OOH Services (discussed below) or ii) where the sub contract is with a health care professional, the contractor has served notice of the proposed sub contract and the sub contractor on the commissioner. <p style="text-align: center;"><i>[Upon receipt of such notice the commissioner has 28 days to raise an objection to the proposal.]</i></p> </li> <li>➤ The sub contract does not relate to the provision of essential services to a company or firm that is <ul style="list-style-type: none"> <li>○ wholly or partly owned by the</li> </ul> </li> </ul>	<p>contractor has taken reasonable steps to satisfy itself that</p> <ul style="list-style-type: none"> <li>➤ The sub contracting is reasonable in the circumstances;</li> <li>➤ The person to whom the services are sub contracted is/ are qualified and competent to provide the services</li> <li>➤ The person to whom the services are sub contracted holds adequate insurance</li> </ul> <p>Aside from this, the contractor must also:-</p> <ul style="list-style-type: none"> <li>- Ensure that it notifies the commissioner as soon as reasonably practicable of the sub-contract;</li> <li>- Ensure that the sub-contractor has no ability to further sub contract the relevant services;</li> <li>- Ensure that the sub contractor is not a company or firm that is <ul style="list-style-type: none"> <li>○ wholly or partly owned by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor;</li> <li>○ formed by or on behalf of the</li> </ul> </li> </ul>	<p>comfortable with the person who is or will be providing the services, the position with a GMS contractor is slightly more complex.</p> <p>A GMS contractor must have the prior approval of the commissioner unless the sub contract is with i) a healthcare professional or ii) (in the case of OOH Services) is with one of four specified people (including another GMS contractor who is contracted to provide OHH Services themselves). (See Paragraph 15.10.2 of the <a href="#">GMS Contract 2015-16</a>)</p>
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		<p>contractor, or by any former or current employee of, or partner or shareholder in, the contractor;</p> <ul style="list-style-type: none"> <li>o formed by or on behalf of the contractor, or from which the contractor derives a pecuniary benefit or</li> <li>o formed by or on behalf of any former or current employee of, or partner or shareholder in, the contractor, or from which such person derives a pecuniary benefit</li> </ul> <p>and which is or was formed wholly or partly for the purpose of avoiding restrictions of the sale of goodwill.</p> <p><b><i>Sub contracting OOH Services</i></b></p> <p>The sub contracting of OOH Services is permitted:-</p> <ul style="list-style-type: none"> <li>i) with the prior written approval of the commissioner; or</li> <li>ii) where the sub contract is to provide OOH</li> </ul>	<p>contractor, or from which the contractor derives a pecuniary benefit or</p> <ul style="list-style-type: none"> <li>o formed by or on behalf of any former or current employee of, or partner or shareholder in, the contractor, or from which such person derives a pecuniary benefit</li> </ul> <p>and which is or was formed wholly or partly for the purpose of avoiding restrictions of the sale of goodwill.</p> <p><i>NOTE the PMS Agreement does have square bracketed provisions which extend beyond the Regs. These prohibit sub contracting unless otherwise agreed in writing by the commissioner.</i></p>	
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		<p>iii) Services on a short term or occasional basis; or where the proposed sub contractor is a person holding a GMS contract which includes OOH Services, a PMS Agreement which includes a requirement to provide essential services during all or part of the OOH Period, healthcare professionals who provide OOH Services personally under a contract for service or a group of medical practitioners who provide OOH Services for each other under informal rota agreements.</p>		
<b>Duration of the Agreement</b>		<p><b>Position under the GMS Contract/ Regs</b></p> <p>Unless a temporary contract of not more than 12 months, the contract runs unless and until terminated in accordance with its terms.</p>	<p><b>Position under the PMS Agreement/ Regs</b></p> <p>Similarly the contract runs unless and until terminated in accordance with its terms.</p>	<p>None but it is worth highlighting the difference in the circumstances upon which the commissioner can terminate the agreement under the GMS and PMS Regs. See below.</p>
<b>Grounds for termination</b>		<p><b>Position under the GMS Contract/ Regs</b></p> <p>Termination can occur:</p> <ul style="list-style-type: none"> <li>➤ Where both parties agree.</li> </ul>	<p><b>Position under the PMS Agreement/ Regs</b></p> <p>Termination can occur:</p> <ul style="list-style-type: none"> <li>➤ Where both parties agree.</li> </ul>	<p>The most fundamental difference is that, unlike the PMS Regs/ contract, the GMS Regs/ contract do not allow the commissioner to voluntarily serve notice</p>

		<ul style="list-style-type: none"> <li>➤ Where the contractor serves not less than 6 months written notice to terminate.</li> <li>➤ Where, in the case of a contract with an individual medical practitioner, that practitioner dies.</li> <li>➤ Where a medical practitioner dies and the conditions concerning who can hold a GMS contract pursuant to Reg 5 are no longer satisfied.</li> <li>➤ By the commissioner:- <ul style="list-style-type: none"> <li>○ Where information given to them before the contract was entered into was found to be inaccurate or untrue in a material respect.</li> <li>○ Where there has been unlawful sub contracting of the contractors work.</li> <li>○ Where the contractor has breached the contract and patient safety is at serious risk</li> <li>○ Where the commissioner considers that the contractor's financial status is such that the commissioner</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Where either party serves not less than 6 months written notice to terminate.</li> <li>➤ Where, in the case of a contract with an individual medical practitioner, that practitioner dies.</li> <li>➤ By the commissioner:- <ul style="list-style-type: none"> <li>○ Where information given to them before the contract was entered into was found to be inaccurate or untrue in a material respect.</li> <li>○ Where there has been unlawful sub contracting of the contractors work.</li> <li>○ Where the contractor has breached the contract and patient safety is at serious risk</li> <li>○ Where the commissioner considers that the contractor's financial status is such that the commissioner would be at risk of material financial loss.</li> <li>○ Where one of the various "fault" of "fitness" grounds</li> </ul> </li> </ul>	<p>to end their core contract. This right is bestowed solely on the contractor.</p>
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		<p>would be at risk of material financial loss.</p> <ul style="list-style-type: none"> <li>o Where one of the various “fault” of “fitness” grounds contained in Schedule 2 Part 8 Reg 58 (4) apply to the contractor (including national disqualification).</li> </ul>	<p>contained in Schedule 2 Part 8 Reg 58 (4) apply to the contractor (including national disqualification).</p>	
<b>Provision of information</b>		<p><b>Position under both the GMS &amp; PMS Agreement/ Regs</b></p> <p>No later than 28 days after the same has been requested by the commissioner, the contractor must provide the commissioner (or such person authorised in writing by the commissioner) or allow them access</p> <ul style="list-style-type: none"> <li>i) Any information which is reasonably required by the commissioner for the purpose of or in connection with the OMS contract; and</li> <li>ii) Any other information which is reasonably required in connection with their functions.</li> </ul> <p>The contractors is required to either provide the commissioner (or someone authorised in writing by the commissioner)</p> <p><i>Reg 74 of the GMS Regs/ Clause 16.8 of the GMS contract</i>  <i>Reg 67 of the PMS Regs/ Clause 38 of the PMS Agreement</i></p>		<p>None. The provisions replicate one another.</p>
<b>Personal Data</b>		<p>Under the GMS Regs the contractor must nominate a person with the responsibility for practices and procedures relating to the confidentiality of personal data they hold.</p>	<p>Under the PMS Regs the contractor must nominate a person with the responsibility for practices and procedures relating to the confidentiality of personal data they hold.</p>	<p>The PMS Agreement introduces far broader obligations and requirements than are contained in the GMS Regs and/or GMS Contract. Many are,</p>

		<p>The GMS contract provides no additional express requirements beyond this.</p>	<p>Other than this the PMS Agreement introduces additional contractual requirements, namely:-</p> <ul style="list-style-type: none"> <li>i) The requirement that they comply fully and in all respects with the provisions of the Data Protection Act 1998;</li> <li>ii) The requirement to have regard to the provisions of the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Provider Medical Services Code of Practice (as amended from time to time);</li> <li>iii) Comply with the Confidentiality Code of Practice for NHS Staff;</li> <li>iv) Comply with Protecting and Using Patient Information (a manual for Caldicott Guardians);</li> <li>v) Appoint a senior clinician to perform the role of Caldicott Guardian and make available on request the name and contact details of the Caldicott Guardian to the Board;</li> <li>vi) Comply with the NHS information Governance Toolkit (to the extent</li> </ul>	<p>however, a moot point. For instance a requirement to comply with the Data Protection Act 1998, as provided for in the PMS Agreement, is a requirement that would apply to all contractors irrespective of whether they are under a requirement under their core contract or NHS Regulations to comply with it.</p>
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			<p>vii) that it applies to the contractor); Comply with the security management standard BS 7799-2</p>	
<b>Representatives</b>		<p><b>Position under both the GMS Contract/ Regs</b></p> <p>There are no provisions relating to the appointment of a representative to act as focal point from whom and to whom communications are to be made.</p>	<p><b>Position under both the PMS Agreement/ Regs</b></p> <p>Although the PMS Regs do not contain any provisions relating to representatives the model PMS Agreement does. In doing so it identifies:-</p> <ul style="list-style-type: none"> <li>➤ That the contractor will appoint a representative (and notify the commissioner promptly of any change) who shall be the key point of contact that the commissioner may refer all queries and day to day communications regarding the operation of the PMS Agreement that is in place;</li> <li>➤ That the commissioner will appoint a representative (and notify the contractor promptly of any change) who shall be the key point of contact that the contractor may refer all queries and day to day communications regarding the operation of the PMS Agreement that is in place.</li> </ul>	<p>Other than the need to provide a “representative” which is a requirement under the model PMS Agreement, none.</p>

<p><b>Compliance with quality standards</b></p>	<p><b>Good Practice:</b> defined within the PMS Agreement as using standards, practices, methods and procedures conforming to the law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services contractor providing clinical services and/or engaged in operations similar to the services [being provided under the core contract] under the same or similar to the obligations of the relevant party under this agreement whilst at the same time complying with any specific standards set out in this agreement or notified to the contractor by the [commissioner] from time to time;</p> <p><b>Serious Incident Reporting:</b> defined in the PMS Agreement as the reporting process as set out in the Board's incident reporting policy.</p>	<p><b>Position under both the GMS &amp; PMS Agreement/ Regs</b></p> <p>Both the GMS and PMS Regs provide limited provisions specifically relating compliance with quality standards. These provisions relate to OOH Services and state:-</p> <ul style="list-style-type: none"> <li>➤ Where the contractor does not provide OOH services, <ul style="list-style-type: none"> <li>○ they must monitor the quality of the OOH Services which are offered or provided to its registered patients having regard to the “National Quality Requirements in the Delivery of Out of Hours Services” and record, and act appropriately in relation to, any concerns arising.</li> <li>○ They must forward on any concerns over the quality of the OOH services being provided to the commissioner</li> </ul> </li> <li>➤ Where the contractor does provide OOH services they must meet the quality requirements in the “National Quality Requirements in the Delivery of Out of Hours Services”</li> </ul>		<p>As is clear from the further provisions provided under the PMS Regs/ Contract, the PMS Agreement introduces far broader obligations and requirements than are contained in the GMS Regs and/or GMS Contract.</p> <p>It is worth pointing out that irrespective of the differences, both GMS and PMS practices will be equally subject to the requirements of CQC.</p>
	<p><b>Further provisions unique to the GMS Regs/ Contract</b></p> <p>Aside from the above there are no further specific provisions contained in the GMS Regs or GMS Contract which specifically deal with compliance with quality standards</p>	<p><b>Further provisions unique to the PMS Regs/ Contract</b></p> <p>The PMS Agreement places practices under significantly more express requirements in connection with quality standards. These are contained in clause 9 of the model PMS Agreement and require the contractor to:-</p> <ul style="list-style-type: none"> <li>➤ Cooperate with patient satisfaction surveys that may be carried out by the Department of Health, the commissioner or any other appropriate NHS body;</li> </ul>		

			<ul style="list-style-type: none"><li>➤ meet all performance requirements under the PMS Agreement;</li><li>➤ comply with all NHS requirements notified to them by the commissioner including the core quality standards contained within Standards for <a href="#">Better Health</a>;</li><li>➤ carry out the services in accordance with Good Practice;</li><li>➤ comply with the standards and recommendations in the <a href="#">Fundamental Standards</a>, those issued by the National Institute for Health an Care Excellence, issued by any relevant professional body and agreed between the parties, and from any audit and serious untoward incident and Serious Incident Reporting.</li></ul> <p>In addition to the above, the PMS Agreement places contractors under an express obligation to:-</p> <ul style="list-style-type: none"><li>➤ ensure all staff are informed and are aware of the standard of performance they are required to provide;</li><li>➤ monitor the compliance with such standards and taken action to remedy any faults;</li><li>➤ provide evidence to the commissioner, on request,</li></ul>	
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			that they have complied with the above provisions.	
<b>Clinical governance</b>	<p><b>Controlled drugs:</b> means any drug listed in Part I, II or III of Schedule 2 of the Misuse of Drugs Act 1971 (as amended) :</p> <p><a href="http://www.legislation.gov.uk/ukpga/1971/38">http://www.legislation.gov.uk/ukpga/1971/38</a></p> <p><b>System of clinical governance:</b> defined as being a framework through which the contractor endeavours continuously to improve the quality of its services and to safeguard high standards of care by creating an environment in which clinical excellence can flourish.</p>	<p>Under both the GMS and PMS Regs the contractor must:-</p> <ol style="list-style-type: none"> <li>1. Have in place an effective system of clinical governance which includes appropriate standard operating procedures in relation to the management and use of controlled drugs. [GMS Regs - Part 14 Reg 87 / PMS Regs – Part 14 Reg 79]</li> <li>2. Nominate a person (who must be a person who performs or manages the performance of services under relevant core contract) who is responsible for ensuring the operation of the system of clinical governance. [GMS Regs - Part 14 Reg 87 / PMS Regs – Part 14 Reg 79]</li> <li>3. Cooperate with the commissioner in the discharge of any obligations of the commissioner or its accountable officers under s17 (accountable officers and their responsibilities as to controlled drugs) and 18 (co-operation between health bodies and other organisations) of the Health Act 2006 [GMS Contract cl 20.1.2 / PMS Agreement cl 11.3 ]</li> </ol>		<p>Although there is significant cross over between the GMS and PMS Regs the PMS Agreement introduces a wide obligation to comply with additional requirements concerning clinical governance which the commissioner may (from time to time) advise.</p>
		<p>Save for the above there are no further provisions concerning clinical governance in the GMS Regs or GMS Contract.</p>	<p>The PMS Agreement identifies that the need for the contractor to comply with the above obligations is without prejudice to their obligations to</p> <ul style="list-style-type: none"> <li>➤ meet all performance requirements under the PMS Agreement including the obligation to comply with Standards for Better Health; and</li> <li>➤ comply with the commissioner’s reasonable instructions from time to time (including compliance with their clinical governance</li> </ul>	

			requirements as are notified to the contractor from time to time).	
<b>Staff &amp; conditions for employment/engagement</b>	<p>Exempt medical practitioner</p> <p>Medical performers list</p> <p>Medical register</p>	<p>Under both the GMS and PMS Regs there are various requirements concerning the staff used in providing services under the relevant contract. These cover:-</p> <ol style="list-style-type: none"> <li>1. <b><u>Qualifications of medical practitioners:</u></b> the general overarching position (albeit there are some exclusions) is that any medical practitioner providing services must:- <ol style="list-style-type: none"> <li>a. Be included in the medical performers list;</li> <li>b. Not suspended from the performers list or from the medical register;</li> <li>c. Not subject to interim suspension.</li> <li>d. Is a requirement that no health care professional may perform services under the relevant contract unless that person has such clinical experience and training as is necessary to enable the person to properly perform the services.</li> </ol> </li> <li>2. <b><u>Qualifications of health care professionals:</u></b> the general overarching position (albeit there are again some exclusions) is that any health care professional providing services must:- <ol style="list-style-type: none"> <li>a. Be registered with the professional body relevant to that health care professional's profession; and</li> <li>b. That registration must not be subject to a suspension.</li> </ol> </li> <li>3. <b><u>Experience of health care professionals:</u></b> they must have such clinical experience as is necessary to enable the person to properly perform such services.</li> <li>4. <b><u>Pre employment checks:</u></b> these are broken down into three, namely:</li> </ol>	<p>Although there is significant cross over between the GMS and PMS Regs the PMS Agreement clearly introduces a variety of express and quite prescriptive additional requirements on contractors when it comes to the handling of their staff.</p>	

		<p><b>Conditions for employment or engagement.</b> other than an exempt medical practitioner, the contractor must, before employing or engaging either a medical practitioner or health care professional:-</p> <ul style="list-style-type: none"><li>a. Obtain documentary evidence that i) in the case of a practitioner, they are entered in the medical performers list and ii) in the case of a health care professional, they are registered with their relevant professional body and not subject to any form of suspension; and</li><li>b. Check that they have the clinical experience necessary to enable the person to properly perform services under the relevant core contract</li></ul> <p><i>Where the employment or engagement of a medical practitioner and/or a health care professional is urgently needed and it is not possible to check these matters then the relevant medical practitioner / healthcare professional can be employed or engaged for a period not exceeding seven days whilst the checks are carried out.</i></p> <p><b>Clinical references.</b> Other than a GP Registrar, the contractor may not employ or engage a healthcare professional to perform service under their contract unless:</p> <ul style="list-style-type: none"><li>a. They have two clinical references relating to two recent posts which lasted more than three months without break or (where this is not possible) a full explanation of why this is the case and details of alternative referees; and</li><li>b. Have checked the references.</li></ul> <p><i>Where the employment or engagement of a health care professional is urgently needed and it is not possible to obtain these references then the relevant health care professional can be employed or engaged for a period not exceeding fourteen days (extended by another seven if there is reason to believe the referee is ill on holiday or temporarily unavailable for some other reason) whilst the checks are carried out.</i></p>	
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		<p><i>Where a contractor employs or engages the same person on more than one occasion within a three month period they can rely on their former references provided these references are not more than 12 months old.</i></p> <p><b>Verifications of qualifications.</b> In relation to the employment or engagement of any person to assist in the provision of services (so it would apply to all staff) then the contractor must take reasonable steps to satisfy itself that the person in question is suitably qualified and competent to discharge the duties for which they are engaged. Particular regard to their academic and vocational qualifications, education and training and previous employment or work experience should be taken.</p> <p>5. <b>Arrangements for GP Registrars.</b> When employing Registrars the contractors must be aware that:-</p> <ol style="list-style-type: none"> <li>a. by reason of having employed a Registrar the total number of hours for which other medical practitioners perform primary medical services (or indeed for which other staff who assist those practitioners in the provision of these services) is not reduced.</li> <li>b. the terms of employment they offer (including rates of pay) must be those approved by the Secretary of State.</li> <li>c. take account of the guidance entitled "A reference Guide for Postgraduate Speciality Training in the UK".</li> </ol>	
		<p>Aside from the above provisions (which similarly apply to GMS contracts and PMS Agreements), GMS contractors are also subject to the following additional obligations which are enshrined in the GMS Regs themselves:-</p> <ul style="list-style-type: none"> <li>➤ As is widely known, the GMS Regs places the contractor under an obligation to</li> </ul>	<p>Aside from the above provisions (which similarly apply to GMS contracts and PMS Agreements), PMS practices are also subject to the following additional express obligations which although are not contained in the PMS Regs are contained within the model PMS Agreement:-</p>

		<p>ensure that any general medical practitioner is offered terms no less favourable than those agreed within the model contract agreed between the BMA and the NHS. [Reg 49]</p> <ul style="list-style-type: none"> <li>➤ Where either <ul style="list-style-type: none"> <li>○ the registration of a health care professional or</li> <li>○ in the case of a medical practitioner, the inclusion of that practitioner's name in a primary care list</li> </ul> </li> </ul> <p>is subject to conditions, the contractor must ensure compliance with those conditions in so far as they are relevant to the contract. [Reg 42]</p>	<ul style="list-style-type: none"> <li>➤ The contractor is under an obligation to ensure that any general medical practitioner is offered terms no less favourable than those agreed within the model contract agreed between the BMA and the NHS. [CI 20.17]</li> <li>➤ If either <ul style="list-style-type: none"> <li>○ the registration of a health care professional or</li> <li>○ in the case of a medical practitioner, the inclusion of that practitioner's name in a primary care list</li> </ul> </li> </ul> <p>is subject to conditions, the contractor must ensure compliance with those conditions in so far as they are relevant to the contract. [CI 20.4]</p> <ul style="list-style-type: none"> <li>➤ The contractor must employ or engage a sufficient number of clinical and non clinical staff to realise their obligations to provide services under their PMS Agreement. [CI 19.1]</li> <li>➤ The contractor must ensure that they have a sufficient reserve of trained and competent staff to provide</li> </ul>	
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			<p>services during holidays or absence and during actual or anticipated peaks in demand for the service. [CI 19.1]</p> <ul style="list-style-type: none"><li>➤ The contractor must provide a sufficient number of staff at a supervisory and management level (with sufficient skills and training) to ensure that all staff are adequately supervised and managed properly. [CI 19.2]</li><li>➤ The contractor (at their sole cost) must ensure that all staff undergo reasonable medical screening, examinations or tests if requested by the commissioner. [CI 19.3]</li><li>➤ The contractor will maintain detailed records of their staff (including name and place of duty, starting and finishing times, disciplinary action, information to confirm compliance with the pre employment checks and verifications required etc.). These records are to be made available to the commissioner on reasonable request. [CI 19.4]</li><li>➤ The contractor shall comply with the NHS Employment Check Standards and such</li></ul>	
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			<p>other checks as required by the Disclosure Barring Service or such other checks required by national guidelines and policies. [Cl 19.5]</p> <ul style="list-style-type: none"><li>➤ The contractor shall employ or engage such persons in providing services under their PMS Agreement who:<ul style="list-style-type: none"><li>○ Are registered with the appropriate professional body (if relevant)</li><li>○ Possess the appropriate qualifications, experience and skill to perform the duties required of them (where this is not the case they must be supervised)</li><li>○ Are careful, skilled and competent in practicing their duties. [Cl 19.6]</li></ul></li><li>➤ The contractor shall ensure that every member of staff:-<ul style="list-style-type: none"><li>○ Receives proper and sufficient training and instruction in accordance with Good Practice and in accordance with the standards required</li></ul></li></ul>	
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			<ul style="list-style-type: none"> <li>o by their relevant professional body;</li> <li>o Has reasonable opportunity to undertake the appropriate training;</li> <li>o Are provided with all necessary and appropriate support to facilitate them in developing career progression pathways. [Cl 19.7]</li> </ul>	
<b>NHS Branding</b>		<p>There are no specific provisions on NHS Branding in the GMS Regs and/or GMS Contract</p>	<p>Albeit not a requirement identified in the PMS Regs, the PMS Agreement (at clause 88.1) provides that a PMS practice:-</p> <ul style="list-style-type: none"> <li>➤ Must designate and brand their premises as facilities from which NHS services are to be provided;</li> <li>➤ May use their own branding on their premises and in communication where such branding is approved by the Department of Health.</li> </ul>	<p>That the PMS Agreement introduces a requirement to identify that their premises are facilities from which NHS services are provided. Any other branding used on premises needs the prior approval of the Department of Health.</p>