Locum GPs: Death in service payments
August 2009

This guidance supersedes the BMA's previous interim advice to locum GPs on death benefits during the flu pandemic. For many months the BMA has been working with NHSE officials to ensure that the dependants of locum GPs would be fully protected should the locum GP die while working for the NHS. The English Department of Health has now issued a letter to PCTs setting out how it considers the matter should be dealt with, and this guidance relates to that. It is expected that the three devolved administrations will issue similar letters shortly; details of these will follow.

Death in service benefits: background

On death, the relatives of freelance GP locums are normally entitled to:

- Death gratuity (a lump sum)
- Dependants' benefits.

The exact amount payable will depend on whether the locum GP dies in service, within 12 months of service, or more than 12 months after his/her last period of NHS pensionable service. In general, death in service benefits are financially the most beneficial. Details of the payments available are set out in the BMA membership guidance note, *Death Benefits*, which is available at: www.bma.org.uk/images/deathbenefits05_tcm41-177410.pdf.

Eligibility for death in service payments:
For a GP's dependants to be eligible to receive death in service benefits, the GP must have been **in service** at the time of his/her death. 'In service' is defined as having a contract with the PCO to provide services or having a contract to perform services with an NHS Pension Scheme Employing Authority (PSEA). Therefore, GP providers (GP principals) and salaried GPs employed by an NHS PSEA qualify for death in service benefits regardless of when death occurs. A locum GP who has a contract with an NHS provider (e.g. a GP practice or APMS provider which is an NHS PSEA) and who dies while under contract with that provider will also qualify. However, if a freelance locum GP dies outside a contract for services then their dependants would not be entitled to death in service. For example, a locum GP is contracted to work for practice A from Monday to Wednesday morning and to work for practice B from Thursday to Friday, and that GP dies on Wednesday afternoon. As they were between contracts when they died, then death in service benefits would not be forthcoming. In contrast, if the locum GP had been contracted to work for the same practice (practice A) from Monday to Friday, then death in service benefits would have been payable as the GP would have died 'in service'.

The BMA has tried to persuade government to bring these benefits into line with those payable to other GPs for some time. However, the government has been unwilling to amend the Pensions Regulations to address this.

Department of Health letter: a step in the right direction

Ian Dalton, National Director for NHS Flu Resilience at the Department of Health, wrote on 3 August 2009 to all PCT Chief Executives in England (appended) noting the following:

- During a pandemic it is expected that PCTs will engage the services of peripatetic GP locums on a longer term fee-based continuous contractual basis.

- Where a practice already engages the services of a regular locum, this arrangement can continue.

As a result of this letter GP locums should be aware of the following:

PCOs contracting with peripatetic GP locums
There are two main ways in which a PCO could engage the services of a locum GP:

1. Via a contract of employment in which case the locum GP becomes a salaried GP. The employment contract could be for a fixed-term basis, for example for a specific number of weeks or months. If the locum GP is to be directly employed, then a written contract of employment should be issued, and include details of salary and contracted hours of work. This option has the advantage of providing at least statutory employment protection, including sick leave benefits. As the GP would be employed directly by a PCO, we recommend that the BMA/DH model salaried GP contract should be used. This is available at:

   www.bma.org.uk/employmentandcontracts/employmentcontracts/salaried_gps/SalariedGPcontractPCO0209.jsp

   For detailed guidance on the model salaried GP contract, please see the BMA's *Salaried GPs' Handbook* which is available to BMA members only.

2. Via a contract for services whereby the locum GP continues to work as a locum GP but has a contract to work as directed for a specific amount of time. This is similar to a maternity locum cover arrangement for a GP practice which many GP locums currently enter into. As a result of the contract for services, the locum GP is obliged to work for the contractor for the duration of the contract. We strongly recommend that locum GPs obtain a written locum agreement from the PCO for this work. If you are unsure about the contract being offered, BMA members can seek expert advice from the BMA, ideally prior to commencing work or signing the agreement. For this advice, please email support@bma.org.uk .

For both types of contract, the GP need not be engaged to work for the PCO for a full week. Indeed, either contract could be framed so that the GP is required to work for the PCO for only a session per week or even a session per fortnight, for example. However, what is important in order to be eligible for the death in service payments is for the contract to be continuous. We therefore recommend that the contract is for a fixed amount of time and for this contract period to be sufficiently lengthy (e.g. for three months) so that it is clear that the contract is ongoing should the GP die during the contract time.

Please note that an honorary contract will not entitle a GP to death in service benefits. GPs should therefore ensure that they are offered a full contract.

Practices contracting with GP locums

Many practices engage locums for a fixed amount of time to cover maternity or sickness leave of a practice GP. This arrangement can continue. Provided that the practice engaging the locum is an NHS Pension Scheme Employing Authority, then the locum GP will be covered for death in service payments. We advise locum GPs to check with their contractor that they have the NHS PSEA status. Ideally, locum GPs should also ensure that they receive a written contract for services (which is not an employment contract). This is helpful to both parties as it avoids ambiguity since it should set out the amount of work that the locum will provide as well as the

length of the contract and the rate of remuneration. As noted above, BMA members can seek expert advice from the BMA (email support@bma.org.uk) on the agreement being offered.

Additional advice to locum GPs

Locum GPs should ensure that they have sickness insurance protection – this applies not only when working within a pandemic phase, but is prudent normal working practice. Please seek advice on this from an independent financial advisor.

BMA members who have specific questions on any of this should contact support@bma.org.uk.

Appendix

To: Primary Care Trust Chief Executives	Richmond House 79 Whitehall London SW1A 2NS 020 7210 4850 ian.dalton@dh.gsi.gov.uk

3 August 2009

Gateway reference: 12352

To PCT CEOs,

Swine flu and death in service payments to locum GPs

You may be aware of concerns being expressed by the BMA over the position of locum GPs, engaged by GP practices (including GMS, PMS and APMS contractors), out-of-hours providers or PCTs during a pandemic, should they die in between contracted periods.

Previous guidance to PCTs has made clear that during a pandemic, it is expected that peripatetic locum GPs will be directly employed in their area, so as to make most effective use of these resources in directing them to support organisations most under pressure dealing with the demand and effects of a pandemic. Where a practice already engages the services of a regular locum to cover maternity leave absence for example, we would normally expect this arrangement to continue unchanged. We will be producing the *Pandemic Flu – Supporting PCTs: Planning and Responding to Primary Care Capacity Challenges* guidance this week.

The BMA are concerned that where locums are employed under 'call-off ' contract arrangements, a locum could easily be caught between contracts of employment and that, in the event of an illness resulting in their death, the locum's dependents would not be able to access NHS Pension Scheme death in service benefits. Those concerns may reduce the willingness of locum GPs in your area to become part of the PCT's planned response to tackling the effects of a pandemic.

We believe a solution is for PCTs to engage the services of GP locums on a longer term fee based continuous contractual basis. This would afford these types of GPs type 2 (Assistant) Practitioner status under the NHS Pension Scheme Regulations

rather than Locum Practitioner status. Type 2 Practitioners are afforded continuous (i.e. 24/7) death in service cover under the NHS Pension Scheme whereas death benefits awarded in respect of Locum Practitioners differ depending on the time of death. It would also be possible for GMS, PMS and APMS contractors to employ locums on this basis.

Also type 2 (Assistant) Practitioners are covered under the NHS Injury Benefits Scheme; GP Locums are not.

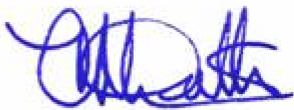
This does not mean that the GP needs to be contracted to work every day. The contract could be just for one day per week to maintain continuous NHS Pension Scheme type 2 Practitioner status.

Where a GMS/PMS/APMS contractor (that is an NHS Pension Scheme Employing Authority) engages the services of a fee based GP on a long term basis they must inform the relevant PCT so that the correct level of NHS Pension Scheme employee and employer contributions can be deducted.

Please ensure this is now set in motion, so that contracts may be quickly issued to locum GPs in your areas should it become necessary if the pandemic escalates. PCTs are reminded to ensure that when the emergency is over that these contracts are cancelled.

If more information is required in respect of NHS Pensions, death cover etc please contact practitioners@nhspa.gov.uk

Yours Sincerely,



Ian Dalton
National Director of NHS flu resilience