

NHS Standard Contract

Guidance on National Variations to existing 2011/12, 2012/13 and 2013/14 form contracts



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First published: February 2014

NHS England INFORMATION READER BOX**Directorate**

Medical	Operations	Patients and Information
Nursing	Policy	Commissioning Development
Finance	Human Resources	

Publications Gateway Reference: 01170

Document Purpose	Resources
Document Name	NHS Standard Contract 2014/15 - Guidance on National Variations to existing 2011/12, 2012/13 and 2013/14 form contracts
Author	NHS England
Publication Date	February 2014
Target Audience	CCG Clinical Leaders, CCG Chief Officers, Care Trust CEs, Foundation Trust CEs , Local Authority CEs, NHS England Regional Directors, Any party to NHS Standard Contract 2014/15 (commissioners and providers)
Additional Circulation List	
Description	This is guidance on the completion of the National Variations to existing contracts and eContracts which extend beyond 31 March 2014 and are on 2011/12, 2012/13 and 2013/14 forms. The Variations reflect changes mandated in national planning guidance, certain recommendations of the Francis Report and other policy developments. Commissioners and providers are required to vary their existing and ongoing contracts.
Cross Reference	NHS Standard Contract 2014/15 (http://www.england.nhs.uk/nhs-standard-contract/)
Superseded Docs (if applicable)	NHS Standard Contract 2013/14 - Guidance on Variations Process (1 July 2013)
Action Required	NA
Timing / Deadlines (if applicable)	Publication February 2014 via NHS England website.
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Document Status

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Executive summary

This document contains guidance on the completion of the National Variations to existing contracts on the 2011/12, 2012/13 and 2013/14 forms to reflect changes mandated in national planning guidance, certain recommendations of the Francis Report and other policy developments

Introduction

This guidance is relevant to any commissioners and providers who are parties to an existing commissioning contract the duration of which extends beyond 31 March 2014.

As in previous years, all commissioners and providers are required to vary their existing and ongoing contracts in order to incorporate policy requirements for the coming commissioning year. For the year 2014/15 these policy requirements include those set out in planning guidance and particular recommendations of the Francis Report.

These variations will be a National Variation as defined in the applicable NHS Standard Contract.

The National Variation must be effected for every commissioning contract the duration of which extends beyond 31 March 2014 by no later than 31 March 2014.

Process

The 2014/15 NHS Standard Contract follows the structure of the 2013/14 NHS Standard Contract and, as last year, is published and available for use in eContract form. Commissioners and providers are strongly encouraged to review the 2014/15 contract and supporting guidance (available via the eContract portal <http://www.econtract.england.nhs.uk>) before taking any further action in response to this guidance.

Commissioners and providers must effect the required National Variation in respect of their contracts in one of three ways.

Option 1: Effect National Variation by updating existing eContract

Where the contract to be varied already exists as an eContract, the procedure for re-stating that contract as a 2014/15 eContract will be broadly the same as they would follow to create, issue and sign a new 2014/15 eContract (on which please refer to <http://www.econtract.england.nhs.uk/>)

Note however that in completing the new eContract:

- at **create New eContract**:
select “**CV14 – National Variation of existing Contract**”
- at **Particulars - Service Commencement**:
Date of Original Contract – enter the date of the original eContract being varied
Contract Term – insert the term of the original eContract
Effective Date – insert the Effective Date of the original eContract
Expiry Date – insert the Expiry Date of the original eContract
Expected Service Commencement Date – insert the Expected Service Commencement Date or Anticipated Service Commencement Date from the original eContract
- otherwise, reflect in the new eContract all locally-agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from the existing PDF contract or newly agreed for the coming year
- **specific step-by-step guidance on the process for carrying over content from the existing PDF contract to the new 2014/15 eContract will be made available separately, via the eContract portal, as soon as possible**
- the eContract will need to be signed by each Commissioner and the Provider in accordance with the guidance available via the eContract portal
- this eContract will be a variation of the existing original eContract, not a new contract
- so, once all signatures have been collected, **enter the date of the ORIGINAL eCONTRACT** on the eContract Home Screen
- the parties to the contract should record the National Variation by completing, **all** signing, and then dating the simple, one page National Variation Agreement available at <http://www.england.nhs.uk/wp-content/uploads/2014/02/sc-var-agr.doc> and by completing details of the National Variation in Schedule 6A (*Recorded Variations*) of the new eContract
- **.Note:** an option to extend the contract should generally **not** be included in the new eContract - see paragraph 17 of the NHS Standard Contract 2014/15 Technical Guidance

Option 2: Effect the National Variation by transfer to eContract

The parties to any existing contract which is not yet in eContract form may opt to vary it by converting that contract into an eContract. Using the eContract platform they can:

- create an eContract for the remainder of the term of their existing contract
- reflect in that eContract all locally agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from their existing paper contract (as previously varied) or as newly agreed for the coming year
- by this means adopt not only the new policy changes, but also all other updates and improvements contained in the 2014/15 Standard Contract
- achieve consistency of language, processes and procedures between their existing (varied) contracts and their new contracts – as both will be on the 2014/15 form. This will make management of a portfolio of contracts simpler and more consistent.

If the parties agree to effect the 2014/15 National Variation by transferring to an eContract, the procedure for creating, issuing and signing that eContract will be broadly the same as they would follow to create, issue and sign a new 2014/15 eContract (on which please refer to <http://www.econtract.england.nhs.uk/>).

Note however that in completing the eContract:

- at **create New eContract:**
select “**CV14 – National Variation of existing Contract**”
- at **Particulars - Service Commencement:**
Date of Original Contract – enter the date of the original contract being varied
Contract Term – insert the term of the original contract
Effective Date – insert the Effective Date of the original contract
Expiry Date – insert the Expiry Date of the original contract
Expected Service Commencement Date – insert the Expected Service Commencement Date or Anticipated Service Commencement Date from the original contract
- otherwise, reflect in the eContract all locally-agreed matters (Service Specifications, Indicative Activity Plans etc), whether carried over from the existing paper contract or newly agreed for the coming year
- the eContract will need to be signed by each Commissioner and the Provider in accordance with the guidance available via the eContract portal
- the eContract will be a variation of the existing original contract, not a new contract
- so, once all signatures have been collected, **enter the date of the ORIGINAL PAPER CONTRACT** on the eContract Home Screen

- the parties to the contract should record the National Variation by completing, **all** signing, and then dating the simple, one page National Variation Agreement available at <http://www.england.nhs.uk/wp-content/uploads/2014/02/sc-var-agr.pdf> and by completing details of the National Variation in Schedule 6A (*Recorded Variations*) of the new eContract.
- **Note:** an option to extend the contract should generally **not** be included in the new eContract - see paragraph 17 of the NHS Standard Contract 2014/15 Technical Guidance

Option 3: Effect the National Variation by entering into a detailed National Variation Agreement

The parties to an existing contract may, notwithstanding the benefits of transferring to an eContract, prefer to retain their existing form of contract, and vary it only so far as is necessary to reflect new policy positions.

To cater for this we have prepared template national variation agreements to effect that variation in respect of contracts on the following forms:

2013/14	All Services
2012/13	Acute/Ambulance/Community/Mental Health and Learning Disabilities Services (Multilateral)
2012/13	Acute/Ambulance/Community/Mental Health and Learning Disabilities Services (Bilateral)
2011/12	Acute Services (Multilateral)
2011/12	Community Services (Multilateral)
2011/12	Community Services (Bilateral)
2011/12	Mental Health and Learning Disabilities Services (Multilateral)
2011/12	Mental Health and Learning Disabilities Services (Bilateral)
2011/12	Care Home Services (Multilateral)
2011/12	Care Home Services (Bilateral)
2011/12	Integrated Acute and Community Services (Multilateral)
2011/12	Integrated MHLD and Community Services (Multilateral)

Note that for 2014/15 we have prepared these documents as simple agreements rather than as deeds. This will make things easier for the parties to them as they can simply be signed by an authorised signatory on behalf of each party: there will be no need to execute using a seal or otherwise comply with requirements for execution of deeds.

These template agreements will be available via the the NHS England website <http://www.england.nhs.uk/nhs-standard-contract/>

Each template Variation Agreement is drafted on the basis that the commissioners and providers have signed all previous applicable national deeds of variation issued by the Department of Health and NHS England.

Each template Variation Agreement is drafted so as to effect only the new policy positions required by the NHS England to be incorporated in all NHS contracts. Contracts varied by means of one of the template Variation Agreements will otherwise continue on their existing terms (as may have been varied previously).

Where commissioners and providers wish to agree further variations to their contract (for example, to update Service Specifications), they must follow the variation procedure set out in their contract and enter into a separate Variation Agreement to effect those further changes.

As in previous years, we are publishing template variation documents in respect of the forms of contract published for the last three years. Where contracts based on standard forms for earlier than 2011/12 are to continue beyond 31 March 2014, commissioners and providers should either:

- (a) pursue Option 2 outlined above, or
- (b) take their own legal advice in order to produce a Variation Agreement based on the templates we have provided but adapted to suit the contract being varied.

The table below summarises the actions necessary to complete a Variation Agreement.

Clause	Guidance
Cover Page	Insert the full names of all Commissioners who are parties to the original, the full name of the Provider, and the date of the original contract. Delete the square brackets.
First page	After “THIS NATIONAL VARIATION AGREEMENT is dated” insert the date on which the Variation Agreement is completed – ie when it has been signed by all the parties. Note that if the parties sign on different dates, the date to be inserted here is a date on or after that on which the last party signs. This is the date on which the Variation Agreement becomes legally binding. Delete the square brackets.
First page	At “(1)” at the top of the first page insert the names and addresses of

	all Commissioners. Delete the brackets.
First page	At “(2)” insert the name of the Provider and the address of its principal/registered office. Delete the brackets.
First page	After “WHEREAS”, in paragraph A insert the date of the original contract.
Appendix 2 Appendix 3 Appendix 4 Appendix 5 Appendix 6 Appendix 8 Appendix 9	Please refer to the 2014/15 NHS Standard Contract and associated Technical Guidance for instructions on how to complete the open fields in these Appendices.
Execution page	<p>Signatures</p> <p>The authorised signatory of the Provider and each Commissioner must execute the Variation Agreement where indicated. Insert additional signature blocks as required.</p> <p>The Variation Agreement may be signed in counterpart (by each party signing separate but identical copies), or alternatively all parties can execute the same copy of the Variation Agreement.</p>

Order of Events

Whichever of the options outlined above is taken, the order of events in respect of each contract must be as follows:

Period to 31 March 2014	<p>(a) commissioner(s) and provider to consider 2014/15 NHS Standard Contract/eContract and associated guidance alongside this guidance and relevant template Variation Agreement;</p> <p>(b) commissioner(s) and provider to agree which of Option 1, Option 2 or Option 3 it is appropriate to pursue in relation to that contract;</p> <p>(c) commissioner(s) and provider to agree the form of eContract or Variation Agreement accordingly;</p> <p>(d) commissioner(s) and provider to enter into new eContract or Variation Agreement to effect variation of contract on or before 31 March 2014.</p>
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Varying a contract: legal considerations

In order to vary an existing Contract, the parties to that contract must follow the variation procedure set out in that contract. The variation procedure appears at General Condition 13 in the 2013/14 NHS Standard Contract. In the case of contracts on the 2012/13 NHS Standard Contract form those provisions are set out in clause 52 in Section E. In 2011/12 contracts they appear at clause 38.

The parties should seek their own procurement advice before deciding whether to pursue Option 1, Option 2 or Option 3 and in considering any further variations.

The parties may wish to meet to discuss the National Variation required by NHS England and whether they are to be effected via Option 1, Option 2 or Option 3. The parties should try to reach agreement. If agreement on the National Variation cannot be reached, the parties may refer the issue to the Dispute Resolution Procedure in accordance with their contract. If agreement still cannot be reached, either the Co-ordinating Commissioner or the Provider may terminate the contract.

If agreed, the National Variation becomes legally binding on the date on which the new eContract is signed by all parties and dated, or the Variation Agreement is signed by all parties and dated, as appropriate. However, whichever option is pursued to effect the variations, they will not take effect until 1 April 2014. So the rights, obligations and liabilities of the parties to the contract up to and including 31 March 2014 will be as set out in that contract before it was varied for 2014/15. For example if a breach of the 18 Weeks Referral to Treatment Standard occurs in March 2014, the consequence of that breach will be as set out in the original contract and/or 2013/14 National Deeds of Variation, and not the consequence set out in the 2014/15 NHS Standard Contract and the 2014/15 Variation Agreement.

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First published February 2014
Published in electronic format only.