

Revised arrangements for NHS contracting and payment during the COVID-19 pandemic

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Introduction

Following publication of the [letter to NHS bodies from Sir Simon Stevens and Amanda Pritchard on 17 March 2020](#)), we are clarifying below the implications for contracting between commissioners and a) NHS Trusts/NHS foundation trusts and b) other non-NHS providers.

The principles of our approach are to

- provide certainty for all organisations providing NHS-funded services under the NHS Standard Contract that they will continue to be paid for the period April to July 2020; and
- minimise the burden of formal contract documentation and contract management processes, so that staff can focus fully on the COVID-19 response.

Further guidance is likely to be issued over time on specific arrangements to be put in place with providers of particular services. Commissioners and providers should follow the principles of the guidance below but be prepared to react to additional service-specific guidance as and when published.

Contractual arrangements for 2020/21 with NHS trusts/NHS foundation trusts

NHS commissioners and NHS Trusts/NHS Foundation Trusts are not required to sign contracts between them for 2020/21 at this time. The nationally mandated terms of the NHS Standard Contract for 2020/21 will apply for these relationships from 1 April 2020. Commissioners and Trusts must not vary from the national terms.

The national deadline of 27 March 2020 for contract signature, set out in the NHS Operational Planning and Contracting Guidance 2020/21, no longer applies. The subsequent national process for mediation and arbitration for unsigned contracts will no longer apply.

Payment will be made on the block basis described in the Stevens/Pritchard letter for each month from April to July 2020. The specific amounts payable for each commissioner / Trust relationship for which direct payment continues to be required are being notified by NHS England and NHS Improvement via Sharepoint and the provider portal.

Payment in respect of all other CCG/Trust relationships for April to July 2020 will be managed nationally, as set out in the guidance on block payments issued separately.

These block payments are deemed to include CQUIN. The operation of CQUIN (both CCG and specialised) for Trusts will be suspended for the period from April to July 2020; providers need therefore not take action to implement CQUIN requirements, nor carry out CQUIN audits or submit CQUIN performance data. (Commissioners and Trusts should also take a pragmatic approach to agreement of the final payment amounts for the 2019/20 CQUIN scheme, and this should be on the basis of all currently available data. We will not be seeking the submission of 2019/20 quarter 4 data from providers via the national CQUIN data collection.)

Further guidance about payment and contracting beyond 31 July 2020 will be issued in due course.

Where commissioners and trusts have already agreed a new contract and/or financial deal for 2020/21, this should be set aside for the period April-July 2020. Where a commissioner and a trust already have a multi-year contract in place, extending into 2020/21, payment to that trust will nevertheless be made as described above, rather than in accordance with the existing contract.

The following should be noted in relation to contract management arrangements.

- Trusts must comply in a timely, complete and accurate way with mandatory data flows ('sit-rep' reports) in relation to COVID-19. They should also comply with other national reporting requirements (covered by NHS Digital Approved Collections and Information Standards) unless notified otherwise. Further guidance may be produced in the future on which national reporting requirements should be prioritised.
- The provisions of the Contract offer protection for providers from liability for failure to meet their contractual obligations, where they are unable to do so as a result of an event of force majeure and/or their response to an emergency situation. Trusts must do all that they reasonably can to continue to comply with the national service requirements stated in the Contract, but commissioners must recognise that these may not always be achieved in full during the COVID-19 outbreak.
- As set out in the Stevens/Pritchard letter, all contractual sanctions are suspended until further notice; commissioners must now not withhold funding from Trusts in relation to failure to achieve any of the national standards in Schedules 4A and 4B or local standards in Schedule 4C, or under the provisions in GC9 for remedial action plans, or under SC28 for information breaches.

Normal contract management meetings and processes should, in general, be suspended. Commissioners should focus on helping Trusts to prepare for and respond to the emergency and relax local reporting requirements (unless required for business-critical purposes such as drug commercial arrangements) and other local contractual measures which may be burdensome for provider staff, such as activity management, Prior Approval Schemes and audits. Commissioners must also waive the requirements in General Condition 28 of the Contract which require formal notification to be sent in relation to Events of Force Majeure.

In relation to payment for high-cost drugs and devices (HCDD):

- For CCGs, any HCDD payments will be included within the block payments described above.
- For specialised services commissioned by NHS England, HCDD will also be included within the initial block payments. Top up payments for material overperformance will be made as required. Note that this is slightly different to the arrangements set out in the Stevens/Pritchard letter.

NHS England and NHS Improvement will shortly publish the 2020/21 National Tariff Payment System. However, as the block payment arrangements above involve a departure from National Tariff prices and rules, commissioners will need to confirm the payment approach using a simple template document (also published as Appendix 1) and submit via pricing@improvement.nhs.uk.

Welsh commissioners which have material flows of patients to English trusts have agreed in principle to follow the same block payment approach described above. Any activity outside of these arrangements should be paid using the 2020/21 National Tariff prices.

Contractual arrangements for 2020/21 with non-NHS providers operating under the NHS Standard Contract

NOTE: This guidance does not apply to the commissioning of primary care.

Independent sector (IS) acute hospitals

As set out in the Stevens / Pritchard letter, national arrangements have been agreed to buy capacity and support from IS acute hospitals. These arrangements will be in place from 23 March 2020 and will run for at least 14 weeks. Further details, including the list of specific IS providers within scope, will be shared as soon as possible.

For the duration of these national arrangements, payment to the relevant IS providers will be made direct by NHS England and NHS Improvement. Other CCG or NHS England contracts (and sub-contracts from NHS trusts and foundation trusts) with these providers will be set aside for the period covered by the national arrangements. At least one month's notice will be given to terminate the national arrangements and revert to "business as usual".

In respect of IS acute hospitals covered by the national arrangements, the following will apply.

- Where an IS acute hospital provider either a) holds an existing multi-year contract with an NHS commissioner which does not expire at 31 March 2020 or b) has agreed a new 2020/21 contract with its NHS commissioners, then that contract should be suspended for the period for which the national arrangement is in force – and will then be re-activated on its conclusion, on the resumption of "business as usual".
- Where an IS acute hospital provider holds a contract with an NHS commissioner which expires at 31 March 2020 but has not yet agreed a new contract for 2020/21, there is no immediate requirement to put a new contract in place – because the new national arrangements will apply. Once notice has been given to terminate the national arrangements, the commissioners and the provider may, if they choose, enter into a new written contract to cover the remainder of 2020/21. Until and unless they do, however, the default position will be as set out below.
 - The provider will be able to continue to provide elective services – and be paid for providing them – on the same broad basis as under its 2019/20 contract.
 - The nationally-mandated terms of the 2020/21 NHS Standard Contract will apply, and the relevant national prices will be those set out in the 2020/21 National Tariff Payment System.
 - The locally-agreed content of the Particulars of the local 2019/20 contract will continue to apply (such as Service Specifications and Expected Annual Contract Value)
 - The provider will be commissioned to provide the same range of services commissioned under its 2019/20 contract (unless the commissioner has made clear, in writing prior to March 2020, its intention no longer to commission a specific service).

In this way, IS acute hospitals will be able to provide services under the national arrangements for the duration of the COVID-19 emergency, with confidence that they will be able to revert to normal contractual arrangements when “business as usual” resumes.

Other non-NHS providers commissioned under the NHS Standard Contract

Outside acute hospitals, non-NHS providers provide a very wide range of different services. Depending on the specific services they run, providers will be affected by COVID-19 in different ways. Some will have an important, direct role to play in the response; some may be asked to expand, or change the nature of, the services they provide in order to support the response; and, with others, the services they provide may need to scaled back or put on hold.

There is already national guidance covering how out-of-hospital services will need to respond to the COVID-19 pandemic – on services supporting discharge from hospital, for instance, and on community services more generally (for both, see <https://www.england.nhs.uk/coronavirus/>). Commissioners should have regard to this and further guidance which may be published relating to other sectors.

In this context – with providers which are not NHS bodies and services which are, in general, not covered by national prices – it is important from a governance perspective that written contracts for 2020/21 are agreed as soon as possible. Commissioners will need to exercise local discretion in terms of precise contractual arrangements, depending on the role an individual provider is likely to play in the COVID-19 response. General guidance is set out below.

- Contracts must be in the form of the NHS Standard Contract 2020/21, but they need not be complex; the shorter-form version of the Contract will often be appropriate.
- Commissioners are not mandated to take a block payment approach for the period of April to July 2020, fixing payment at historic 2019/20 levels – but such an approach will be appropriate in some circumstances.
- Where a provider provides services that will be essential to the local COVID-19 response (including but not limited to services designated as Commissioner Requested Services), and/or where a provider’s staff may readily be redeployed into other COVID-19 related activities, a block payment approach protecting the provider’s historic level of income should be adopted. This may include community nursing and therapy services, intermediate care, end of life care, mental health inpatient services and community teams, and patient transport services, for instance.

- In other instances – where providers provide elective services on an Any Qualified Provider basis (for example, some diagnostic and treatment services), where levels of activity are likely to reduce significantly during the pandemic, and where there is little scope for the provider’s staff to be redeployed – it will be more appropriate to retain an “activity x price” basis for payment. In such instances, where the provider’s income from NHS commissioners falls, it will have access to the wider financial protections offered by the government for businesses and employers (see <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-COVID-19/COVID-19-support-for-businesses>).
- CCGs, with local authority partners, will need to consider carefully making appropriate contractual arrangements with care homes. A mixed economy approach may be appropriate – continuing to pay for existing NHS Continuing Healthcare cases on the basis of a weekly rate, whilst also purchasing additional bed capacity to support hospital discharge on a block or similar basis.
- Contracts should cover core funding for the services commissioned; there will be separate arrangements for providers to claim exceptional additional costs reasonably incurred as a direct result of COVID-19 and the response to it. Details will be published in due course; to access such funding and avoid any unintended double-payment, providers will be required to adopt an open-book accounting approach.
- Although contracts should be put in place in this way, it is essential that contracting processes do not delay or impede the necessary response to COVID-19 from being put in place.

Of the arrangements described above for contracts with Trusts, the following also apply to non-NHS providers other than acute hospitals.

- CQUIN is also suspended for April to July 2020; commissioners should make CQUIN payments at the full applicable rate during this period.
- The Stevens / Pritchard letter made clear that the block payments made to Trusts for April to July 2020 would include the national uplift for inflation and CNST, but not the 1.1% increased efficiency requirement. This also applies for non-NHS providers for April to July 2020, except for those providers operating under national prices under the 2020/21 National Tariff on an “activity x price” basis; the national prices have both inflation and efficiency built in.

- The arrangements above for the suspension of contractual sanctions also apply for the period April to July 2020, as does the light-touch approach to contract management.

These arrangements will be reviewed before the end of July and will be extended as necessary; further guidance relating to the period beyond 31 July 2020 will be issued in due course.

Where monthly payments are being made in advance to non-NHS providers, based on an Expected Annual Contract Value, commissioners should consider whether they can bring forward payment timescales to align with the revised earlier timescales for Trusts set out in separate guidance.

Where block payment is not agreed, commissioners and providers must be prepared to show flexibility in relation to the strict application of the normal monthly timescales in the contract for invoice validation and payment. And it is essential that commissioners prioritise making agreed payments promptly to non-NHS providers, to protect their cashflow.

Normal arrangements for invoicing and payment will continue to apply to any non-contract activity carried out by non-NHS providers, but – given that most of this relates to routine elective activity – levels during the period April to July 2020 are expected to be minimal.

