NHS England

NHS Standard Contract for 2014/15: Discussion paper for stakeholders

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Document Status

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NHS Standard Contract for 2014/15

Discussion paper for stakeholders

Introduction

The NHS Standard Contract is used by commissioners to contract for all clinical services other than primary care. The current Contract, issued in February 2013, has a default duration of only one year, and NHS England will therefore need to issue a revised Contract for use from 2014/15 onwards. NHS England will be updating the NHS Standard Contract for 2014/15 and will be mandating both the use of this updated version for contracts to take effect from 1 April 2014 onwards and the variation of ongoing contracts to incorporate 2014/15 terms with effect from 1 April 2014.

In preparation for this update, we wish to engage with all those with an interest in the NHS Standard Contract – commissioners in CCGs and Area Teams, CSUs, providers from all sectors, provider membership bodies and regulators – to assess how we can develop the Contract for the better.

This paper sets out some key issues on which we would particularly welcome feedback from stakeholders – but we will be glad to receive suggestions for improvement in other areas as well. Please send your comments, by Friday 2 August 2013, to:

England.ContractsEngagement@nhs.net

What we are not covering in this paper

Two other consultations are under way which may affect aspects of the NHS Standard Contract for 2014/15. The questions dealt with in these two consultations are not repeated here.

> NHS England and Monitor have been undertaking a joint consultation regarding the future strategy for payment and pricing for NHS-commissioned services. Please follow the link below for details of the consultation process and how to comment:
>
> http://www.monitor-nhsft.gov.uk/home/news-events-publications/our-publications/browse-category/guidance-health-care-providers-and-co-34

In line with the commitment in the planning guidance for 2013/14, *Planning for Patients*, NHS England has begun a review of incentives, rewards and sanctions within the NHS system and is seeking stakeholders' views on a range of issues relating to this. Details of the engagement process and how to comment are available on the NHS England website.

NHS England has also gathered detailed feedback from users of the electronic contract through a user survey carried out in May and June 2013. The detailed questions covered in the survey are not repeated here, but a high-level question about the future development of the eContract system is included.

Key issues on which we would welcome feedback

Key issue 1 Maintaining the current contract structure

The Contract was significantly restructured both for 2012/13 and 2013/14. Feedback on the current three-part structure has been positive so far, and our intention for 2014/15 is to leave this unchanged, not least so that commissioners and providers can become familiar with it.

Question 1

Do you support our intention to retain the current three-part structure for the Contract for 2014/15?

Key issue 2 Allowing recent changes to bed in

Some sections of the Contract underwent significant changes for 2013/14, and these changes have not yet had time to be tested in practice. This is true in particular for the conditions dealing with contract management processes, including contract management (General Condition 9), dispute resolution (General Condition 14), information requirements (Service Condition 28) and managing activity and referrals (Service Condition 29).

Our initial view is that we should leave this sections broadly unchanged for 2014/15, allowing more time for commissioners and providers to use them in practice and feed back on their effectiveness.

Question 2

Do you support our intention not to make material changes for 2014/15 to the clauses of the Contract dealing with contract management processes?

Key issue 3 Greater flexibility on contract duration

There has been consistent feedback that the single-year duration of the current Contract is an obstacle to effective long-term commissioning focused on sustained improvement in outcomes. In principle, therefore, we are looking to adopt a more flexible approach to contract duration for the 2014/15 Contract.

We envisage that our approach might be along the following lines, but we would welcome feedback on this.

- For contracts which were being let without a competitive procurement process, commissioners would have local autonomy to agree any contract term up to a maximum of two or potentially three years.

- For contracts which were being let following a competitive procurement process (including Any Qualified Provider procurements), commissioners would be able to let contracts with a longer duration than this. We might, however, wish to specify criteria for where a longer duration could appropriately be considered, suggest local processes for assuring decisions on longer contract duration, and/or propose a maximum contract duration which should not be exceeded.

In any event, we envisage that

- both commissioner and provider would continue to be able to give 12 months' notice to terminate the contract (with the contract continuing to allow for locally-agreed financial exit arrangements to be agreed where appropriate to apply in this eventuality);

- NHS England would continue to be able to mandate National Variations, which commissioners and providers would be required to implement (for example, to give effect to annual planning guidance);

- both commissioner and provider would continue to be able to propose other variations (for example to effect annual reviews of local prices and local quality requirements), with the ability to terminate services with notice as currently where a service variation was not agreed.

Question 3

Do you support our intention to provide a Contract with greater flexibility in terms of duration, as outlined above, and do you have any comments on the specific details of the approach?

Key issue 4 Innovative approaches to contracting

NHS England is keen to promote innovative, more effective approaches to commissioning and contracting, especially in relation to service integration. We therefore want to ensure that the format of the Contract does not act as a barrier to such approaches. Different variants of the 'prime contractor' model appear to be one of the key new approaches which local commissioners are wishing to explore.

Our initial review of a range of innovative models being used and considered by commissioners and providers suggests that major change to the current Contract should not be needed and that these approaches can in fact already be accommodated within the scope of the Contract. We want to understand, though, whether commissioners have experienced, or perceive, specific difficulties in using the current Contract to support these more innovative forms of commissioning.

Question 4

Do you agree that the current Contract can support innovative commissioning models such as the 'prime contractor' approach? If not, what changes do you think are needed?

Key issue 5 Balance between acute and other services

We recognise that the Contract currently contains many more standards and quality requirements relating to acute hospital services than to community, mental health or other services. To a degree, of course, this reflects the availability of monitoring data on a consistent national basis. Nonetheless, to the extent that we can, we are keen to ensure a more even balance in the Contract across acute and other services, with more detailed requirements specified for community, mental health and other services.

Question 5

Can you suggest additional quality or service standards for community, mental health and other non-acute services which could be reflected in, and possibly incentivised through, the Contract in 2014/15?

Key issue 6 Guidance on collaborative contracting

We are keen to understand whether the guidance published for 2013/14 on collaborative contracting offers sufficiently clear parameters for commissioners to work within, in terms of collaborative contracting arrangements between CCGs, between CCGs and local authorities, and between CCGs and NHS England – or whether the guidance would benefit from clarification and/or expansion.

Question 6

Is the current guidance on collaborative contracting sufficiently comprehensive, detailed and clear? If not, which specific areas and issues require further clarification?

Key issue 7 Electronic Contract

The electronic Contract system was introduced in February 2013, with one of the initial benefits being the ability to tailor the NHS Standard Contract based on the type of services being commissioned, removing those elements that were not relevant. There was also an intention that the eContract could, over time, save staff time in the preparation of contract documentation and support the move towards a paperless NHS.

Actual use in practice of the eContract system has been quite low so far. The system had to be developed rapidly, and the platform on which it runs has caused problems with performance and responsiveness. So, although some commissioners have been able to complete many of their contracts using the eContract system, others have been deterred from using it.

It was always clear that further work would be needed to make the eContract the system of choice for commissioners. A User Group has been established to drive improvements; migration to a faster platform will be completed by autumn 2013, and other enhancements are being planned to give better functionality.

Of course, developing and maintaining the eContract system for 2014/15 onwards will commit resources within NHS England on a continuing basis. For us to make this continuing investment, we need to gauge the extent to which the eContract system is something which commissioners want to have and which they will expect to use for the majority of their contracts. We would welcome specific feedback on this issue to inform our future direction of travel.

Question 7

If an improved, more reliable and responsive eContract system is made available for 2014/15, will your organisation plan to make use of it for the majority of its contracts?

Key issue 8 A contract for all shapes and sizes of provider?

The NHS Standard Contract is mandated by NHS England for use by commissioners for all clinical services other than those covered by GMS/PMS contracts for primary medical care and equivalent contracts for primary dental, pharmaceutical and ophthalmic services.

We obviously need to ensure that the Contract is fit for this purpose and that commissioners are finding in practice that they can indeed use it for all of their relevant contracting needs – whether this means high-value contracts with Foundation Trusts or small-scale contracts with GP practices, voluntary bodies or AQP providers. We would welcome feedback on whether and how the Contract needs to evolve to allow it to work equally well for providers of different types and contracts of different values.

Question 8

Are there types of contract or provider for which use of the NHS Standard Contract is proving particularly problematic? How can these problems best be overcome?

Key issue 9 Payment reconciliation processes

The Contract sets out a process for financial reconciliation between commissioners and the provider in clause 36 of the Service Conditions (Payment Terms). This process places the onus on the Co-ordinating Commissioner to provide a separate reconciliation account for itself and each commissioner for each month, based on information provided by the provider. The provider then either accepts or contests the reconciliation account in respect of each commissioner

Our understanding is that the approach set out in the Contract is often not what is implemented locally across the NHS. Rather, we believe that current practice is typically for the provider to issue the reconciliation account, split by commissioner, with each commissioner then accepting or contesting its element. We accept that this is probably a more logical approach, and we are therefore minded to amend the Contract to reflect this for 2014/15.

Question 9

Do you agree that it would be appropriate to amend the Payment Terms clause, so that providers issue monthly reconciliation accounts, which each commissioner can then accept or contest?

Key issue 10 Reporting requirements

Patients First and Foremost, The Initial Government Response to the Report of The Mid Staffordshire NHS Foundation Trust Public Inquiry sets out a clear commitment to reducing duplicatory information burdens across the NHS system, and we will need to ensure that the NHS Standard Contract supports this where possible. At the same time, implementation of the recommendations of the Francis report, and the drive for better outcome measures, are likely to have implications for information reporting requirements in the Contract.

Working jointly with the Health and Social Care Information Centre, we will be reviewing the Reporting Requirements schedule in the Contract (Schedule 6C) for 2014/15. We would welcome ideas for ways in which current reporting requirements can sensibly be made less onerous, without diluting in a material way the requirement for appropriate assurance of service outcomes, safety, quality and performance to be made available.

Question 10

Do you have suggestions for specific changes to the Reporting Requirements schedule of the Contract, with a view to safely reducing the information collection burden?

Key issue 11 Making the Contract simple to complete and use

We are keen to ensure that the Contract is designed in a way which allows efficient completion of necessary detail at local level, rather than creating extra work for commissioners and providers through requirements which are burdensome or duplicatory. We would welcome views on whether there are any detailed requirements, in terms of practical completion of the Contract documentation, which cause significant work for contracting staff without adding obvious value – and which we should consider removing.

We would also welcome feedback on how we can help commissioners and providers to understand and use the Contract in practice and whether the traditional support package – of guidance, workshops, webinars and helpdesk – remains fit for purpose.

Question 11

In terms of practical completion of the Contract documentation, can you suggest ways in which this could be streamlined, eliminating any current requirements which are not seen as adding value locally? And do you have suggestions for the type of support you would like in understanding and using the Contract?

Key issue 12 Compliance with the law and specific policy guidance

The Contract places an overall requirement on providers to provide services in accordance with the law, with applicable guidance to which they have a duty to have regard, and with recognised good practice. Clearly, the Contract cannot and should not attempt to list or restate all of the applicable law and guidance, but it does currently reference a range of specific requirements which are covered by separate guidance. This is typically the case where

- either there are specific contractual processes or requirements, related to the policy issue in question, which have to be followed (for instance, financial consequences for failure to achieve agreed standards)

- or the issue is viewed nationally as being of particularly high priority and thus worthy of specific inclusion.

Question 12

Do you think that the Contract gets the balance right, in terms of the extent to which existing guidance on specific policy areas is re-stated within it? Should specific content be removed, or additional areas added?

Other issues

We are happy to receive suggestions for improvement to any other aspects of the NHS Standard Contract. Please feel free to cover further topics in your response.

How to respond

Please send your comments, by Friday 2 August 2013, to:

England.ContractsEngagement@nhs.net