

Gateway ref 02298

Model Variation Agreement for RTT backlog clearance activity

Guidance

Further to the letter issued on 24 September, which sets out arrangements for securing the additional RTT activity needed between now and 30 November 2014, attached is a model Variation Agreement which lead commissioners can use as required, complete with appropriate local detail which can be incorporated into relevant contracts with acute providers. This contract variation is specifically to target waiting list backlogs in order to achieve all speciality RTT compliance by 1 December 2014 and maintain this compliance for the remainder of the financial year. Each Trust must put in place sufficient capacity in-house or outsourced to achieve the required activity. The contract variation sets out the tariff rate being applied to activity above baseline for its duration to incentivise backlog clearance. Attention is drawn to clause 6.4 in this regard.

Because CCGs and NHS England normally hold separate contracts with providers, two Variation Agreements may need to be agreed per provider (i) one for the contract which deals with NHS England commissioned services, (ii) the other for the contract dealing with CCG commissioned services. However, this will not always be the case, and local health economies should adapt the approach to reflect local circumstances.

The Variation Agreement is provided as a template for local use, rather than as a mandatory form which must be used in every case. Local health economies may adapt the detail of the Variation Agreement to ensure that it is workable for local circumstances, but in doing so must ensure the key principles are covered which set out the circumstances under which an increased price will be paid, and under which commissioners will not apply the financial consequences set out in the contract for failure to achieve RTT Operational Standards.

The Variation Agreement is based on the premise that the contract in place at local level is the NHS Standard Contract for 2014/15. Where, for any reason, other forms of contract are in place, commissioners will need to adapt the Variation Agreement to reflect the requirements of the actual local contract itself. You will see in clause 5.3 that commissioners should submit a template to Monitor setting out the Local Variation to National Prices. NHS England is discussing this requirement with Monitor and will agree a handling approach nationally. Commissioners are asked to take no action to meet the terms of clause 5.3 at this stage.

Where the Contract provides for this, and where all Commissioners have agreed, via their Collaborative Commissioning Agreement or otherwise, the Co-ordinating Commissioner may sign a Variation Agreement on their behalf. Where this is not the case, the Variation Agreement will need to be signed by all of the Commissioners who are party to the contract, as well as by the Provider.

VARIATION AGREEMENT

Contract/Variation Reference:

Proposed by: Co-ordinating Commissioner on behalf of NHS England/Co-ordinating Commissioner on behalf of the Commissioners/Provider (*delete as applicable*)

Date of Proposal:

Date of Variation Agreement:

Capitalised words and phrases in this Variation Agreement have the meanings given to them in the Contract referred to above, or, where appropriate, in this Variation Agreement.

1 The Parties have agreed the Variation summarised below:

Detail of the agreed Variation

1 Introduction

1.1 This Variation has been agreed in order that the Provider shall undertake additional Activity, at higher prices than those set out in the Contract and with protection against the financial consequences which the Commissioners could impose in relation to its achievement of the 18 Weeks Referral-to-Treatment Standards. The Provider agrees that the intention of the Variation is that, by undertaking the additional Activity, it will reduce waiting list backlogs so that it will be in a position to achieve the 18 Weeks Referral-to-Treatment Standards in full from 1 December 2014 onwards.

2 Variation Period

2.1 This Variation applies only to Services provided and Activity undertaken during the period from 1 October 2014 to 30 November 2014 inclusive (the Variation Period). It applies only to Services covered by the 18 Weeks Referral-to-Treatment Standard; that is, elective outpatient, diagnostic and elective inpatient / day case activity (referred to in this Variation Agreement as Elective Services).

3 Indicative Activity Plan

3.1 A revised Indicative Activity Plan for Elective Services has been agreed and is included as Schedule A to this Variation Agreement.

3.2 This revised Indicative Activity Plan sets out, at Commissioner and specialty level, specific revised expectations for Elective Services Activity to be carried out during October and November 2014. It sets out, separately for each of these two months:

3.2.1 The Baseline Activity Level – Here meaning the level of costed activity projected in the original Indicative Activity Plan for the Contract for the months of October and November 2014.

3.2.2 The Required Activity Level – Here meaning the revised total level of costed Activity which the Provider has now committed to deliver.

3.2.3 The Activity Increase – Here meaning the additional costed Activity the Provider has committed to deliver. Further details on the approach to pricing are set out in 6-12 below.

3.3 The Provider agrees to use all reasonable endeavours to deliver this Activity Increase.

4 Expected Annual Contract Value

4.1 A revised Expected Annual Contract Value has been agreed, consistent with this revised Indicative Activity Plan. This is included as Schedule B to this Variation Agreement.

5 Payment Terms

Prices

5.1 The Activity Increase has been costed using increased prices which are subject to agreement of Local Variations to National Prices for any Elective Services that are subject to National Prices and the increased prices for any Elective Services that are subject to local pricing. The increased prices are

5.1.1 National Prices as set out in the 2014/15 National Tariff Payment System (subject to any Local Variation that has already been agreed or any Local Modification that has been approved or granted by Monitor), increased by 15%

5.1.2 Local Prices, as set out in Schedule 3A of the Contract, increased by 15%.

5.2 For Activity delivered by the Provider during the Variation Period, the Commissioners will pay

5.2.1 at the normal Prices (i.e. those provided for in the Contract) for Activity up to the Baseline Activity Level

5.2.2 at the Increased Prices for Activity above the Baseline Activity Level up to and including the Required Activity Level

5.2.3 at the normal Prices (i.e. those provided for in the Contract) for Activity above the Required Activity Level.

Local Variation

5.3 In accordance with section 7 the *2014/15 National Tariff Payment System* the Commissioner must agree Local Variations to the National Prices for any Elective Services that are subject to National Prices and submit the relevant template to Monitor.

Payment on account and reconciliation

5.4 The payments on account to be made by Commissioners to the Provider under Service Condition 36.33 to 36.36 will not be amended to reflect the revised Estimated Annual Contract Value. Rather, Commissioners will continue to make payments on account based on the original Estimated Annual Contract Value set out in Schedule 3F of the Contract.

5.5 The process for financial reconciliation set out in Service Conditions 36.37 to 36.46 of the Contract will operate on a different basis for Elective Services during the Variation Period.

5.5.1 The two months of October and November 2014 will be treated as one single reconciliation period.

5.5.2 Reconciliation will be carried out by comparing the actual value of Activity for Elective Services carried out during the Variation Period against the estimated value for the same period derived from the original Estimated Annual Contract Value in Schedule 3F.

5.5.3 Actual Activity will be priced using the pricing approach set out in 4.1 to 4.2 above; this will be applied based on Activity levels for the Contract as a whole, rather than individually for each Commissioner.

5.6 The Commissioners will thus make a reconciliation payment to the Provider after the Final Reconciliation Date for November 2014, which reimburses the Provider at the prices referred to in 4.1 to 4.2 above for all relevant Activity carried out during the Variation Period.

6 Operational Standards and Contract Management

6.1 The Operational Standards set out in Schedule 4A of the Contract will continue to apply during the Variation Period.

6.2 However, in relation to any breach of any of the three Operational Standards which deal with the 18 Weeks Referral-to-Treatment Standard (CB_B1, CB_B2 and CB_B3),

6.2.1 for the duration of the Variation Period only, and

6.2.2 where the Provider has delivered at least 80% of the Activity Increase over the Variation Period as a whole,

6.3 The Commissioners will not apply the financial consequences set out in Schedule 4A (*Operational Standards*) or apply the provisions of General Condition 9 (*Contract Management*).

6.4 The Provider must ensure that the Activity Increase is targeted at Service Users who have waited over 16 weeks.

7 CQUIN

7.1 In line with CQUIN Guidance, CQUIN will continue to be payable on the value of Elective Services delivered. The level of actual payment will depend on the Provider's performance against the agreed CQUIN scheme. However, the maximum value of CQUIN for Elective Services during the Variation Period will be calculated on the basis of the Prices set out or referred to in the original Contract, not the Increased Prices set out in this Variation Agreement.

8 Reporting Requirements

8.1 The Provider must, by 3 October 2014, using the templates provided on Unify:

8.1.1 upload weekly admitted and non-admitted Activity profiles for Elective Services to Unify for the period from 1 October to 30 November 2014; and

8.1.2 upload monthly admitted and non-admitted Activity profiles for Elective Services to Unify for the period from 1 December 2014 to 31 March 2015.

8.2 The Provider must upload weekly PTL data to Unify each week.

2 The Variation takes effect on [1 October 2014].

3 [The Co-ordinating Commissioner is authorised by all Commissioners to sign this Agreement on their behalf.]*

IN WITNESS OF WHICH the Parties named below have signed this Variation Agreement on the date(s) shown below

Signed by	[INSERT CO-ORDINATING COMMISSIONER'S AUTHORISED SIGNATORY'S NAME]
for and on behalf of THE CO-ORDINATING COMMISSIONER*	
Signature	
Title	
Date	

[INSERT AS ABOVE FOR EACH COMMISSIONER]*

*If the Contract being varied is in the form of the NHS Standard Contract 2014/15 (and all Commissioners have agreed, via their Collaborative Commissioning Agreement or otherwise, that the Co-ordinating Commissioner may sign the Variation Agreement on their behalf), only the Co-ordinating Commissioner need sign. In all other circumstances, all Commissioners must sign the Variation Agreement. Delete/complete as appropriate.

Signed by	[INSERT AUTHORISED SIGNATORY'S NAME]
for and on behalf of	[INSERT PROVIDER'S NAME]
Signature	
Title	
Date	