

GATEWAY REFERENCE NUMBER 04424

CCG Accountable Officers
NHS England Regional Directors
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19/01/16

Re: Levying of Financial Sanctions

You will be aware that the overall health system is facing significant financial challenge this year. It is essential that the Department of Health Group – comprising providers, commissioners, ALBs and the Department itself – lives within the resources allocated by parliament. Where the achievement of this objective is at risk, all organisations within the health system need to take robust mitigating action. A number of such initiatives have therefore been launched across providers, notably in the form of controls on agency expenditure, and by NHS England, including restrictions on central programme expenditure.

In this context, as part of supporting the overall financial position of the health sector, NHS Improvement and NHS England have agreed to adopt a variant to the current framework regarding sanctions. The variant is designed to bring maximum transparency to the related financial flows, and to reduce whole-system expenditure.

Scope

The variant described in this letter covers the quality standards set out in the Particulars of the National Standard Contract, specifically those set out in Schedules 4A, 4B, 4C, 4D and 4G. The variant also applies to the sanction applicable to emergency readmissions within 30 days as set out in paragraph 36.22 of the Service Conditions.

Deductions may also be made to contract payments for other reasons, such as the marginal rate emergency threshold, underperformance on CQUIN schemes, and monies withheld in relation to the production of remedial action plans. For the avoidance of doubt, these areas are outside of the scope of the variation set out in this letter.

Current Framework

Under the current rules and guidance regarding the levying of financial sanctions, they should be applied for breaches of the national quality standards.

Commissioners then determine the use of monies levied, within the ambit of the purposes for which the overall financial allocation is applied. The current guidance recommends that commissioners consider whether it is possible to invest the monies in a way which will help rectify the performance problem that gave rise to the sanction.

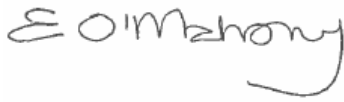
Revised Framework

Under the revised framework, commissioners (CCGs and NHS England direct commissioning teams) should continue to levy financial sanctions in line with the national standard contract as for the first three quarters of the year; the obligation to publish the amount and application of contractual sanctions will also continue, as will monitoring by NHS England. Commissioners will also retain the flexibility to pay sanctions monies to providers.

However, with effect retrospective to 1st January and for the remainder of the financial year:

- a) where the commissioner chooses to return the fines monies to its providers, any such monies should be retained by the provider to support improvements in the provider's financial position, and so should not result in additional expenditure; or
- b) where the commissioner retains the fines income, the monies must flow directly to the commissioner's bottom line resulting in an equivalent underspend against plan, so as to benefit the overall NHS aggregate financial position.

The impact on financial positions should appear in commissioner and provider reporting from month 10 onwards. Providers and commissioners will be required to submit a joint monthly return showing the level of sanctions levied, and how the sanctions have been applied. Further guidance setting out the administrative and monitoring arrangements is attached.



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Director of Finance

NHS Trust Development
Authority



Jason Dorsett
Finance, Reporting and
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Monitor

Paul Baumann
Chief Financial Officer

NHS England

ANNEX

CHANGES TO FINANCIAL SANCTIONS

DETAILED GUIDANCE FOR COMMISSIONERS

Current rules

The current rules on financial sanctions are as follows:

- 1) Sanctions must be applied for breaches of the quality standards in Schedule 4.
- 2) Commissioners are required to publish on their websites details of the sanctions applied to each of their major providers, and to account for how that resource is applied. Reports must indicate how the commissioner has spent, or intends to spend, the funding withheld from providers through the application of sanctions on a quarterly basis.
- 3) Commissioners are not strictly limited as to how they apply resources obtained from sanctions. It is for each commissioner to determine the use of funding retained – within the ambit of the purposes for which it uses its overall financial allocation – but there is currently a steer towards applying the resource in a way which will help to resolve or mitigate the underlying performance problem resulting in the penalty.
- 4) Commissioners also have the option to use the provisions set out in the general conditions section of the national contract in relation to remedial action plans. Any amounts withheld under these provisions are not expected to be withheld permanently, however, so any such amounts are outside of the scope of this letter. Commissioners are also reminded that the remedial action plan provisions should be applied reasonably and proportionately.

Revised arrangements

Commissioners, including NHS England, will continue to levy financial sanctions in line with the access and other standards set for the NHS by Government and reflected in the national contract. However, with effect from 1st January the levying of financial sanctions should not result in any additional net expenditure, and therefore the financial benefit of contract sanctions will either flow directly through to the bottom line of commissioners, or be applied to support the financial position of providers, resulting in a reduction in their net expenditure and an expected improvement in the financial position. This means that commissioners will not be able to rely on income from sanctions to mitigate other financial pressures. This applies to sanctions levied on performance breaches that occur on or after 1st January 2016.

To ensure that we have a transparent and consistent view of sanctions levied, and in addition to the non-ISFE reporting requirement for commissioners, a monthly return will be required to ensure the provider and commissioner views on sanctions levied are consistent. The return will show the sanctions that have been levied in the reporting period, and also whether they have been retained by the commissioner or returned to the provider. The return will be completed for each provider covering all commissioners with which the provider transacts. It will be the responsibility of the lead commissioner and the provider to ensure that the return is completed and submitted on time. A template for this reporting requirement accompanied by specific guidance will be issued shortly.

The level of financial sanctions levied will continue to be monitored through the year and will be compared against the performance information for each commissioner/provider. Where the actual value of sanctions levied differs materially to that indicated by the performance data, commissioners will be required to account for the difference.

Commissioners are also reminded of the ongoing obligation to publish information on financial sanctions on their websites.

Where commissioners have levied sanctions during the first nine months of the year but not yet reinvested them in full, commissioners are asked to reflect the retained amount as an improvement in their financial position.

Reaching final agreement with providers on the level of sanctions due for the final part of the year will typically fall after the year-end financial processes have been completed. Separate guidance will follow on how to treat this issue in the year end processes.

Finally, commissioners should note that:

- The assessment of eligibility for quality premium payments will be by reference to the plan agreed at the conclusion of the 2015/16 planning process, and not the revised outturn after adjustment for any retained income from financial sanctions.
- The additional surplus resulting from the retention of fine receipts will be available for carry forward into 2016/17 and subject to the same rules for eligibility and prioritisation of drawdown as other brought forward surpluses.