

NHS Standard Contracts 2017/18 – 2018/19

Video presentation for commissioners and providers (available on the [NHS England YouTube channel](#))

Presentation 3 of 3 Contract management

Agenda

1	<p>Presentation 1 - Overview of the NHS Standard Contract</p> <ul style="list-style-type: none">• Use of the Contract, including full-length and shorter-form versions• Grant agreements, sub-contracts and non-contract activity• E-Contract system• Supporting publications• Advice and support• Dispute resolution
2	<p>Presentation 2 - New policy requirements</p> <ul style="list-style-type: none">• Primary care / secondary care interface• Other new policy requirements• Service Development and Improvement Plans
3	<p>Presentation 3 - Contract management</p> <ul style="list-style-type: none">• Implications of the two-year contract approach• Prior Approval Schemes• Managing counting and coding changes• Contract sanctions and the Sustainability and Transformation Fund

What a two-year Contract means at national level

As the NHS Operational Planning and Contracting Guidance makes clear, all the key NHS business rules (Contract, National Tariff, CQUIN) have been set out for the two-year period from April 2017 to March 2019. The underlying intention is to give the NHS longer-term stability and clarity – with less need for organisations to adapt to new rules from one year to the next and more scope to focus on service and financial performance and outcomes.

So in producing the NHS Standard Contract to cover this two-year period, we have had to anticipate further ahead in terms of national policy requirements. The result is that this Contract

- places slightly more reliance than previously on policy requirements or guidance which are still to be published (for example, on conflicts of interest, data security standards and e-referral)
- introduces some new requirements on a staged basis over the two-year period, rather than everything being a ‘must do’ from 1 April 2017 (clinic letters, for instance).

We have done our best to future-proof the Contract for the two-year period – but it is possible that we may need to issue a National Variation at some point, to accommodate significant new legislation or policy developments.

Contract duration at local level

For some years, the duration of contracts offered has been at the commissioner's discretion – the NHS Standard Contract does not set a default contract term or mandatory upper limit.

- Multi-year contracts can have advantages – they offer greater stability, and many contractual processes work more effectively within the context of a multi-year agreement.
- Equally, there are other situations where a shorter-duration is appropriate – where a new service is being piloted, say, or to cover the period until a new service has been procured.

The expectation in the Planning Guidance is that commissioners will offer two-year contracts for 2017-19. The national process for managing the contracting round will focus, through Contract Tracker submissions, on larger-value contracts (>£5m), but there is no reason why the multi-year contract approach should not also be applied to lower-value contracts.

This does not amount to an absolute requirement for every contract to be for a two-year period. Some commissioners will already have existing multi-year contracts in place which they wish to leave to run their course. Others may be planning to procure new models of care (MCP or PACS) to commence in 2018/19, so would only wish to put a single-year contract in place for 2017/18 with current providers. Both approaches are fine.

What can be agreed for the whole two-year period

- When agreeing a two-year (or longer) contract, commissioners and providers will need to balance
- achieving maximum clarity at the outset on the terms which will apply for the full contract period; and
 - recognising that year-to-year contract variation is likely to be needed in some areas.

- So we would anticipate that, for acute contracts operating on an activity x price basis, for instance,
- it should be possible to agree definitively, at the point of contract signature, the local prices and CQUIN indicators which would apply for the full two-year period
 - it should be possible to agree the Indicative Activity Plan (IAP) and Expected Annual Contract Value (EACV) for each of the two years
 - but it would be likely that the IAP and EACV for the second year would need to be updated, before 31 March 2018, by agreement of a Variation.

So remember that a multi-year contract is not static – there is likely to be a need for some process of ongoing variation, updating key schedules as necessary from year to year.

Prior Approval Schemes

What are Prior Approval Schemes?

Prior Approval Schemes are a means through which commissioners can give contractual effect to commissioning policies which set out the circumstances under which patients should be able to access specific services or treatments.

- At the simplest level, they operate as a framework within which the provider must work – so a Prior Approval Scheme for treatment X sets out the access criteria, and the provider is able to offer treatment X to any patient who meets the criteria.
- In other situations (typically for access to high-cost, unusual treatments), the provider may need to submit specific information about a patient to the commissioner, to gain individual prior approval in advance of starting any treatment.

The arrangements for Prior Approval Schemes are set out in Service Condition 29.21-27 of the Contract.

Prior Approval Schemes are to be notified by commissioner to the provider in advance of the start of the Contract Year, with any new Schemes or amendments to existing Schemes introduced in-year on one month's notice.

Prior Approval Schemes – what’s changed? (1)

These are the first two (of four) changes to the Contract requirements for 2017/19:

Contract change	Rationale
<p>In considering whether to introduce or amend a Prior Approval Scheme, the commissioner must have regard to the burden which the Scheme may place on the provider.</p>	<p>Schemes which require individual approval can create a significant administrative burden – commissioners need to make sure that schemes are only introduced where there is expected to be a genuine benefit (in terms of more appropriate access to services) and are designed (and reviewed) to keep burden to a minimum.</p>
<p>Commissioners operating under a single contract with a provider must use reasonable endeavours to minimise the number of separate Commissioner-specific schemes in relation to any individual condition or treatment.</p>	<p>Operating multiple different Schemes for all of the different CCGs who are party to a contract can create a major burden for providers. There is no requirement for all commissioners to adopt the same single contract-wide Scheme – but they must collaborate with the aim of limiting the number of different Schemes that apply.</p>

For more detail, see Contract Technical Guidance section 42.9-42.14 and Who Pays? guidance paragraphs 38-46

Prior Approval – what’s changed? (2)

These are the remaining changes to the Contract requirements for 2017/19:

Contract change	Rationale
<p>The parties must use all reasonable endeavours to ensure that the design and operation of Prior Approval Schemes does not cause undue delay in patients accessing clinically appropriate treatment and does not place at risk achievement by the provider of any Quality Requirement.</p>	<p>Prior Approval arrangements are inevitably going to involve some delay – but this must not be excessive and mustn’t lead to problems in delivery of waiting times standards.</p>
<p>The local contract must set out a Prior Approval Scheme Response Time Standard, and the commissioner must respond to requests for individual approval within this timescale (so long as the provider has supplied all the required information).</p>	<p>The previous requirement was for a response time to be specified within each individual Scheme – a single approach across the whole contract is more straightforward.</p>

For more detail, see Contract Technical Guidance section 42.9-42.14 and Who Pays? guidance paragraphs 38-46

Managing counting and coding changes

Counting and coding changes

The arrangements for managing counting and coding changes (that is, changes in how activity is recorded) are set out in Service Condition 28. They are primarily relevant where services are funded on an 'activity x price' basis at National Prices.

The Contract provisions, in simplified summary, continue to require that

- potential changes are notified six months in advance (ie by 30 September)
- changes are discussed between the parties in context of national recording rules
- where agreed, changes are implemented from the following 1 April
- the financial impact of agreed changes is made neutral for the first full contract year

We are aware that interpretation of the Contract provisions on counting and coding changes can cause disagreement at local level. We have significantly expanded the section of our Contract Technical Guidance which deals with this (section 44) – please read this carefully, and the illustrative case studies in Appendix 6.

We are happy to try to help with understanding the provisions – email us at nhscontractshelp@nhs.net

Contract sanctions and the Sustainability and Transformation Fund

Overall approach in 2017/19

As in 2016/17, where trusts accept the offer of STF funding – and the associated conditions – the application of certain financial sanctions under the Contract will be suspended.

But the process this year is much more advanced. NHSI has already published indicative guidance and has made offers to all trusts of amounts of STF funding and associated control totals. Trusts have until 24 November to respond.

For Contract sanctions to be suspended, the provider must (in respect of 2017/18, 2018/19 or both)

- have accepted the offer of funding from the general element of the STF
- have accepted a financial control total
- have agreed
 - performance trajectories (these will only be required in respect of RTT 18-weeks, 4-hour A&E and 62-day cancer waits and only where the provider is not able to meet the national standard from April 2017); and/or
 - assurance statements (these will be a commitment to meet the national standard; they will be required for RTT 18-weeks, 4-hour A&E and 62-day cancer waits where the provider expects to meet the national standard from April 2017 – and for all the other standards listed on the next slide)

What sanctions are affected?

The sanctions which are covered by the suspension arrangements are in relation to these standards (set out in Schedules 4A and 4B of the Contract):

- A&E waits (four-hour wait and twelve-hour trolley waits)
- RTT waits (18-week incomplete pathway, 52-week waits and six-week diagnostic waits)
- Cancer 62-day waits
- Ambulance response times (Red1, Red 2, other Category A)
- Ambulance handover to A&E and “crew clear” standards

Note that financial withholding under GC9 in relation to performance against these standards (including potential consequences arising from failure to agree or implement a Remedial Action Plan) is also covered by the suspension.

The suspension is given contractual effect through additional wording in SC36.37A and GC9.26.

The net effect is that any individual provider which fails to deliver the required performance on these national standards will face either withdrawal of STF funding (by NHS Improvement) or application of sanctions under the Contract (by the local commissioner) – but not both.

Implications for contract management

STF performance trajectories and assurance statements (expected to be confirmed and published by NHSI by March 2017) should then be recorded in local contracts as Service Development and Improvement Plans (SDIPs). We've published a specific template for this at <https://www.england.nhs.uk/nhs-standard-contract/17-18/>

This means that

- the performance trajectories and assurance statements do become contractual obligations on the provider
- commissioners can't apply any financial sanctions in relation to these obligations
- but they can hold providers to account for (and try to provide assistance with) delivery.

Joint discussion will be helpful between commissioners, providers and local teams of NHSI / NHSE to avoid contradictory or duplicatory processes for monitoring performance and agreeing any necessary remedial action.

Feedback

- Please give us feedback on this video presentation by emailing ContractsEngagement:

england.contractsengagement@nhs.net