



## Accountable care contracting and NHS Pensions

Accountable Care Organisation (ACO) Contract package  
- supporting document

**Our values:**  
clinical engagement, patient involvement,  
local ownership, national support

August 2017

## Accountable care contracting and NHS Pensions

This document has been developed in partnership with the Department of Health.

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### Equality and health inequalities statement

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.

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## Introduction

The move to Accountable Care Organisations (ACOs), including both MCP and PACS models will affect provider delivery models in different ways, with primary care providers potentially working in a wider range of more integrated public or independent sector organisations, and with some providers moving from directly holding contracts with commissioners to holding sub-contractor relationships with lead providers.

Work with Vanguards has identified NHS Pension Scheme access as a potential limiting factor. Consequently, the Department of Health (DH) and NHS England are working closely alongside the NHS Business Services Authority (NHS BSA), as the administrator of the NHS Pension Scheme, to address these issues as quickly as possible, based on the general principle that where existing pensionable activity is being delivered by the same teams, but potentially through different organisational or contractual forms, access to the NHS Pension Scheme should be maintained. The below information sets out some of the rules for NHS Pension Scheme access; addresses the implications for access which arise from ACO (inc MCP and PACS) model development, and outlines the steps that have been taken or are in progress to remove the identified barriers.

This document is a successor to a Q&A released in November 2015 which focused on the pensions status of GPs working at scale in new models of provision and is intended to incorporate the content of that Q&A to be read as standalone information.

## 1. Overview of NHS Pension Scheme access requirements

Organisations which wish to access the NHS Pension Scheme for their staff require Employing Authority (EA) status. EA status is currently secured through three different routes:

### **i As an NHS body or GP practice**

Where an organisation, such as a CCG, an NHS Trust or NHS Foundation Trust is an NHS Body (as set out in legislation), they have automatic EA status, ensuring that employee income is pensionable. Self-employed GPs utilise NHS England as their employing authority so they also have access assuming they have an eligible contract or other eligible earnings. For all practices, as with other non-NHS bodies, pensionable income is dictated by the contract held, and historically the eligible contracts have been the NHS Standard Contract, an APMS contract, a hybrid NHS Standard / APMS Contract (where both primary and community / secondary care are being delivered), GMS / PMS contracts (GPs only) or a local authority public health contract.

### **ii Classic APMS route**

The "classic" APMS option allows organisations such as GP federations, who hold an APMS contract, access to the pension scheme as an EA and also allows GP providers "practitioner" status (see section 2. below).

To qualify as a "classic" APMS provider, federations need to be constituted so as to be eligible to enter into a GMS or PMS agreement for the provision of primary medical services, and the federation must hold an APMS contract. In practice this means that the 'owners' (i.e. shareholders) all have to be eligible to enter into a GMS contract or

PMS agreement (e.g. as GPs), however the organisation itself does not need to hold any contract other than an APMS contract. Practices are advised to take local advice on ensuring their federation is eligible to access the NHS Pension Scheme as an EA via the “classic” APMS route.

### iii Independent provider (IP) route

The IP route is for organisations that do not already qualify to be an existing NHS Pension Scheme EA, but hold eligible contracts. This would apply for example to a non-NHS organisation (for example an independent sector organisation holding a NHS Standard Contract), or a GP-led organisation such as a federation which was not constituted so as to allow access via the “classic” APMS route. This route has been available since 1 April 2014. Employees of an IP are eligible for membership of the NHS Pension Scheme provided they spend more than 50% of their time working on the services provided under the NHS Standard Contract, an APMS Contract, a hybrid NHS Standard Contract / APMS Contract, or a local authority public health contract (the IP is required to monitor this 50% requirement on behalf of the NHS Pension Scheme).

## Changes being made to accommodate new care models:

Access rules are being amended (although this has not yet occurred) to recognise an ACO Contract as an eligible contract, and therefore add it to the list of contracts cited above. This will allow eligible income derived from an ACO Contract to be pensionable for the staff of any EA, and ensure that any current EA which moves to hold only an ACO Contract will retain EA status, alongside those organisations accessing for the first time through the routes outlined in section 1 above.

## 2. Pensioning income as a practitioner or officer

In the NHS Pension Scheme there are two broad categories of pension scheme status, to reflect self-employed members such as GPs (‘practitioners’) and employed members (‘officers’).

GP principals under GMS and PMS practice-based arrangements have historically been entitled to practitioner status within the NHS Pension Scheme (which affects the method of contribution and calculation of benefits). Practitioner and officer pensions are now calculated in the same way in the 2015 NHS Pension Scheme, but self-employed practitioners are still a distinct category of member. GPs and their practice staff’s access to the NHS Pension Scheme is underpinned by the GMS/PMS contract being a qualifying contract for pension purposes, allowing the practice to become an EA for access purposes.

Where an individual has worked in both self-employed practitioner and employed officer roles in the old NHS Pension Scheme (namely the 1995 and 2008 sections) this will be taken into account at retirement, where the calculation is made based on all the different roles that individual has worked in throughout his/her pensionable service. The intention of the rules of the NHS Pension Scheme is to deliver parity whether a member is an officer, a practitioner, or a mixture of the two. Most practitioners do have some officer NHS Pension Scheme membership.

A key difference between the two statuses is that there are more 'pension flexibilities' afforded to practitioners. An officer's pensionable salary is restricted to the income associated with a whole-time equivalent position. GPs registered as practitioners have more flexibility to pension additional income streams should they arise. For further information on the specific NHS Pension Scheme rules, or for information on the impact of changes of employment status on a pension under the NHS Pension Scheme, individuals should seek expert advice.

Practitioner status was developed for GPs working in practice, and is available under the partnership's EA status granted by NHS England. It is designed to be used within a practice setting and therefore is not compatible with the broader NHS Pension Scheme rules about shareholders or owners of larger independent sector providers being able to access the NHS Pension Scheme.

### **Changes being made to accommodate new care models:**

There is no intention to change any of the current rules around practitioner / officer status in the NHS Pension Scheme.

An application of the current rules means that GPs moving to become employed in an ACO will have access to the NHS Pension Scheme, assuming the organisation has obtained EA status through one of the current available routes, on the same terms as all other employees (i.e. as "officers"). This will be the case no matter whether the organisation is a public or independent sector entity. In the event that a GP decides to also take an ownership position within an independent sector ACO, e.g. a limited company or partnership, they should ensure they have an employment position in that organisation to continue to access the NHS Pension Scheme, and therefore will no longer be practitioners.

## **3. Pensioning income as a sub-contractor**

Historically there have been no circumstances where payments through an intermediary or sub-contracting route are pensionable in the NHS Pension Scheme. This was a deliberate control designed to limit inappropriate extension of the NHS Pension Scheme liabilities.

An initial alteration to the NHS Pension Scheme was made effective from 1 April 2016 which applied only to GPs and practice staff, and resulted from separate conversations relating to the proliferation of GP federations. This change allowed income from an approved sub-contract with another EA to be treated as pensionable earnings for practitioners (and by extension employees within a GP practice). This amendment allowed GPs who begin to do sub-contracted work the ability to pension the new income under their current terms, assuming the practice concurrently holds a GMS, PMS or APMS contract.

### **Changes being made to accommodate new care models:**

Since the above 1 April 2016 amendments, further work has established that the move away from traditional contracting routes due to the development of population based models could cause more organisations to move from direct contracts with commissioners, to sole sub-contracting relationships. On the principle of not removing access to the NHS



Pension Scheme from existing Scheme members undertaking pensionable work, further work has led to an agreement in principle that the current IP access rules (see section 1.(iii)) can be extended to include income derived from recognised sub-contracts.

Following agreement with HMT, DH formally consulted on these proposals in late 2016, specifically to allow clinical sub-contractors to organisations holding an ACO Contract to pension this sub-contracting income in line with the current Independent Provider regulations. Following this consultation, DH is aiming to make this change and also include all ACO models on the same basis. This will follow further consultation later in the year, to be delivered in line with the earliest point at which an ACO Contract is likely to go live.

For GP practices, these changes would mean that those who move to become sole sub-contractors to an ACO (for example), are therefore able to access the NHS Pension Scheme for their income as before. Any earnings from an agreed model sub-contract would be eligible to be pensioned where the lead contractor holds an ACO Contract. Practice staff would also retain access to the NHS Pension Scheme where the practice is granted IP status through the relevant regulations. In the meantime, from April 2017 scheme rules will allow IPs to pension income from a recognised NHS Standard sub-contract, even where they do not hold other NHS contracts.

## 4. NHS Pension Scheme access in situations where there is a compulsory transfer

Where the organisational responsibility for providing a function/activity changes (e.g. through the retendering of a contract) the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) rules are likely to apply. CCGs / providers are advised to make separate legal investigations to understand how TUPE may apply in local circumstances. TUPE does not apply to occupational pensions (with the exception of some early retirement pension rights e.g. enhanced pensions payable in the event the individual is made redundant), however separate guidance has been set out to protect NHS Pension Scheme (and other public sector pension scheme) access in these situations (see below).

### i) **Compulsory transfers between government departments or public sector organisations**

Where staff transfer compulsorily between government departments their pensions are protected by the "Staff Transfers in the public sector" Cabinet Office Statement of Practice guidance (COSOP). COSOP sets out a framework to be followed by public sector organisations to implement the Government's policy on the treatment of staff transfers where the public sector is the employer. It applies directly to central government departments and agencies and to the NHS. It does not apply to Local Authorities who are obliged instead to comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 in relation to future service pension provision (although extending HM Treasury's "Fair Deal" policy (Fair Deal for staff pensions: staff transfer from central government 2013) to transfers involving Local Authority staff is being considered).

COSOP requires transferring individuals to either remain in the public sector pension scheme they were in, or be enrolled in a "broadly comparable" pension scheme if the public sector body cannot access the same public sector pension scheme. The

Government Actuaries Department (GAD) must be involved in certifying whether or not another public sector pension scheme is broadly comparable to the employee's previous public sector pension scheme.

In the new care models' environment, COSOP is most likely to apply to staff previously employed by a Local Authority (provided the staff had originally transferred under TUPE from an applicable public sector body). It protects the public sector pension scheme access and ensures that employees will not lose out from the transfer.

**ii) Compulsory transfers from a government department or public sector organisation to the independent sector**

HM Treasury's "Fair Deal" policy applies to compulsory transfers out of the public sector, whilst the Best Value Authorities Staff Transfers (Pensions) Direction 2007 currently applies to transfers out of Local Government (see possible extension of Fair Deal in (i) above). The Fair Deal policy means that staff who are compulsorily transferred from the public sector will be offered continued access to the same public service pension scheme they had been a member of rather than being offered a broadly comparable private pension scheme. Under the Best Value Direction, staff who are compulsorily transferred from a local authority, will be offered access to a broadly comparable private pension scheme or may be offered continued access to the Local Government Pension Scheme. In broad terms, all public sector staff (other than perhaps, Local Authority employees who may be offered a broadly comparable private pension scheme) whose employment is compulsorily transferred from the public sector under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain access to their current employer's public sector pension arrangements. This will apply additionally to any subsequent transfers.

**iii) Compulsory transfers between independent sector organisations**

Where employees are being compulsorily transferred between non-NHS providers, protection under the "Fair Deal" policy may apply, where the staff were previously compulsorily transferred out of the public sector. Where this wasn't the case, the employing organisation will only be able to access the NHS Pension Scheme, like other independent sector providers, through the IP rules, as outlined under section 1. Together this means continued access to the NHS Pension Scheme will be available for eligible employees.

## 5. Further information

With any further questions the NHS Business Services Authority (NHS BSA) can be contacted at [nhsbsa.directions@nhs.net](mailto:nhsbsa.directions@nhs.net), and the Department of Health policy team are available on [nhs\\_pp&e\\_services@dh.gsi.gov.uk](mailto:nhs_pp&e_services@dh.gsi.gov.uk).

The NHS Pension Scheme administrator – the NHS BSA – has a section on its website dedicated to IPs which can be accessed via this link <http://www.nhsbsa.nhs.uk/4328.aspx>.



The NHS Five Year Forward View sets out a vision for the future of the NHS. It was developed by the partner organisations that deliver and oversee health and care services including:

- NHS England
- Care Quality Commission
- Health Education England
- The National Institute for Health and Care Excellence
- NHS Improvement
- Public Health England

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