



NHS Standard Contract 2017/18 and 2018/19 (Shorter Form)

Consultation on proposed National Variation

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Consultations

Document Name

NHS Standard Contract 2017/18 and 2018/19 (Shorter Form)
Consultation on proposed National Variation

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NHS Standard Contract team

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Target Audience

CCG Clinical Leaders, CCG Accountable Officers, CSU Managing Directors, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, NHS Trust Board Chairs, NHS England Regional Directors, NHS Trust CEs, Commissioners and providers who are party to an NHS Standard Contract

Additional Circulation List**Description**

This document contains proposals for an in-year National Variation to the NHS Standard Contract 2017-19 (Shorter Form). It sets out proposals relating to national policy requirements which have already been announced; and to make a small number of other changes, principally to reference new legislation or guidance.

Cross Reference

NHS Standard Contract 2017-19 <https://www.england.nhs.uk/nhs-standard-contract/17-18/>

Superseded Docs (if applicable)

NA

Action Required

Respond to consultation to england.contractsengagement@nhs.net

Timing / Deadlines (if applicable)**Respond to consultation by 10 November 2017****Contact Details for further information**

NHS Standard Contract team
4E64 Quarry House
Quarry Hill
Leeds
LS2 7UE
england.contractsengagement@nhs.net
<https://www.england.nhs.uk/nhs-standard-contract/>

Document Status

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1 Introduction

This document sets out, for consultation, proposals for an in-year National Variation to the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form).

A separate document, available at <https://www.england.nhs.uk/nhs-standard-contract/17-19-updated/>, sets out proposals for a National Variation to the NHS Standard Contract 2017/18 and 2018/19 (Full Length).

We welcome comments on the proposed National Variations, which should be sent to england.contractsengagement@nhs.net by Friday 10 November 2017.

2 Background

NHS England published an updated NHS Standard Contract (in both full length and shorter-form versions) in November 2016, to come into effect on 1 April 2017.

Alongside national planning guidance and other NHS business rules (National Tariff, CQUIN), the Contract was issued to cover the two-year period from April 2017 to March 2019, thus providing a stable environment for longer-term planning within the NHS.

In this context, NHS England will not undertake a major review of all aspects of the NHS Standard Contract for 2018/19. However when publishing the two-year Contract last November, we did make clear that any significant legislative or policy changes would make it necessary to issue a National Variation to the Contract ahead of 2018/19, which commissioners and providers would then implement locally. With recently announced national policy requirements, a National Variation is now required for the full-length Contract. We are also taking the opportunity to make a very small number of minor changes to update the Contract, to cross-refer to new legislation or guidance, for instance.

Some, but not all, of these national policy requirements and changes need to be reflected in the shorter-form Contract. In determining which new policy requirements should be reflected in both full length and shorter-form Contracts, or only in the former, we have given consideration to (i) the types of services commissioned under each form or contract, (ii) the types of provider organisation which typically hold either form of contract, or may hold contracts in both forms, and (iii) whether, in the case of provisions applicable only to NHS provider organisations which will hold at least one full-length Contract but may also hold shorter-form contracts for specific services, enforcement of those provisions under their full-length contracts only will be sufficient to meet the relevant policy objectives.

Subject to the outcome of this consultation, our intention is to publish, along with the final form of National Variation for both full-length and shorter-form Contracts, an updated version of both forms of the 2017-19 NHS Standard Contract, for use by commissioners when awarding new contracts which are to take effect at any time from 1 January 2018 to 31 March 2019. The NHS Standard Contract [eContract system](#) will also be updated as soon as possible following this publication.

3 Details of specific changes proposed

A draft National Variation is attached at Appendix A. Each of the changes we are proposing is explained below.

- **Learning From Deaths.** The Care Quality Commission's recent review into Southern Health NHS Foundation Trust, *Learning, candour and accountability*, emphasised the importance of providers putting in place robust arrangements to identify, report, review, investigate and learn from deaths of patients under their care. The proposed National Variation reflects this as a new contractual requirement for all providers at Service Condition 3.4, with NHS Trusts and Foundation Trusts specifically obliged to comply with the detailed guidance which the National Quality Board has subsequently published (National Guidance on Learning from Deaths, available at <https://www.england.nhs.uk/publication/national-guidance-on-learning-from-deaths/>).
- **Urgent access to mental health care.** The recent Child X case has demonstrated the need for NHS commissioners and providers to ensure that there are proper arrangements for children and young people, in particular, to access mental health services on an urgent basis, rather than being held in inappropriate settings such as police cells. The draft National Variation therefore amends Service Condition 15 to refer specifically to the evidence-based treatment pathways for urgent and emergency mental health care, developed by NHS England, NICE and the National Collaborating Centre for Mental Health and to be published shortly at <https://www.england.nhs.uk/mental-health/adults/crisis-and-acute-care/>.
- **Never Events.** NHS Improvement has recently consulted on changes to the Never Events regime and has now published its intended next steps (see <https://improvement.nhs.uk/resources/never-events-policy-and-framework-review-2016/>). It will amend its guidance later this year so that commissioners may no longer apply financial sanctions to providers where Never Events occur. To reflect this intended change, the draft National Variation proposes deletion of the provision within the Contract relating to sanctions for Never Events at Service Condition 36.28.
- **Financial reconciliation.** We have become aware of an inaccurate cross-reference relating to the financial reconciliation process set out in Service Condition 36 of the current Contract, and the draft National Variation proposes a change to Service Condition 36.34.1.2 to correct this.
- **Nationally Contracted Products Programme.** NHS Improvement and NHS Supply Chain are working with Trusts to implement the Nationally Contracted Products Programme – a procurement approach aimed at harnessing the purchasing power of NHS organisations to deliver savings for the NHS as a whole. The Programme is an important element of the NHS 10 Point Efficiency Plan set out in *Next Steps on the NHS Five Year Forward View*, and we have therefore included, within the proposed National Variation, a new high-level contractual requirement (at Service Condition 36.39) on NHS

provider organisations to co-operate with NHS Improvement and NHS Supply Chain in ensuring full implementation of the Programme.

- **Freedom to Speak up Guardians.** The National Guardian's Office has asked us to update the wording at General Condition 5.7 of the Contract, which relates to the appointment and role of Freedom to Speak Up Guardians. The National Variation therefore includes proposed revised wording to reference the current guidance published by the National Guardian's Office.
- **Data Security Standards.** The Government has now published its response (*Your Data: Better Security, Better Choice, Better Care*) to the 10 data security standards recommended by the National Data Guardian, confirming its approval of the standards. The draft National Variation contains updated wording (General Condition 21.4 and definitions) to reflect this.
- **Electronic Invoicing.** The Contract contains requirements at Service Condition 36.38 around electronic invoicing. There is a specific reference to e-Invoicing Guidance which is now out of date, and the draft National Variation includes a revised definition with the correct reference.
- **Overseas visitor charging.** New regulations have been approved and new guidance has been published relating to the charging of overseas visitors using NHS services. Minor changes are necessary to update the relevant references within the definitions in the Contract, and the draft National Variation therefore includes these.

4 Applicability and implementation of the National Variation

Subject to the outcome of this consultation, our intention is that a final version of the National Variation (shorter-form) will be published during November, with the expectation that commissioners will then implement the National Variation in their local contracts by 1 January 2018. We will also publish [on our website](#) an updated version of the full 2017-19 shorter-form Contract, for use in any situations where commissioners are letting new contracts with providers. The NHS Standard Contract [eContract system](#) will also be updated as soon as possible following this publication.

5 Consultation responses

We welcome comments on this proposed in-year National Variation to the NHS Standard Contract 2017/18 and 2018/19 (Shorter Form). Comments on the proposals should be sent to england.contractsengagement@nhs.net by Friday 10 November 2017.

APPENDIX A - DRAFT NATIONAL VARIATION AGREEMENT

Contract/Variation Reference: [Include local reference number here]

Proposed by: Co-ordinating Commissioner on behalf of NHS England

Date of Variation Agreement: [Include date here]

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

1. In consideration of their respective obligations under the Contract (as varied by this Variation Agreement) the Parties have agreed the Variation summarised below.

Learning From Deaths

With effect from 1 January 2018, Service Condition 3 is varied to include the additional provision below:

3.4	The Provider must:	All
	3.4.1 implement policies and procedures for reviewing deaths of Service Users whilst under the Provider's care and for engaging with bereaved families and Carers; and	
	3.4.2 where it is an NHS Trust or an NHS Foundation Trust, comply with National Guidance on Learning from Deaths where applicable.	

and the definitions in the General Conditions are varied to include the following additional definition:

National Guidance on Learning from Deaths guidance published by the National Quality Board to help standardise and improve the way acute, mental health and community NHS Trusts and Foundation Trusts identify, report, review, investigate and learn from deaths, and engage with bereaved families and carers, available at <https://www.england.nhs.uk/publication/national-guidance-on-learning-from-deaths/>

Places of Safety

With effect from 1 January 2018, Service Condition 15 is deleted and replaced by the following:

	SC15 Urgent access to mental health care	
15.1	The Parties must have regard to the Mental Health Crisis Care Concordat and must reach agreement on the identification of, and standards for operation of, Places of Safety in accordance with the Law, the 1983 Act Code, the Royal College of Psychiatrists Standards and the Urgent and Emergency Mental Health Care Pathways.	MH

and the definitions in the General Conditions are varied to include the following additional definition:

Urgent and Emergency Mental Health Care Pathways the evidence-based treatment pathways for urgent and emergency mental health care, developed by NHS England, NICE and the National Collaborating Centre for Mental Health and published at <https://www.england.nhs.uk/mental-health/adults/crisis-and-acute-care/>

Never Events

With effect from 1 January 2018, the heading 'Never Events' and Service Condition 36.28 is deleted and is replaced with 'Intentionally omitted'.

Financial reconciliation

With effect from 1 January 2018, Service Condition 36.34.1.2 is deleted and replaced by the following:

36.34.1.2	within 5 Operational Days of the receipt by that Party of an invoice in accordance with SC36.26,	All
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Nationally Contracted Products Programme

With effect from 1 January 2018, Service Condition 36 is varied to include the additional provision below:

Nationally Contracted Products Programme

36.39	Where it is an NHS Trust or an NHS Foundation Trust, the Provider must use all reasonable endeavours to co-operate with NHS Improvement and NHS Supply Chain to implement in full the requirements of the Nationally Contracted Products Programme.	All
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and the definitions in the General Conditions are varied to include the following additional definitions:

Nationally Contracted Products Programme the procurement programme operated by NHS Improvement and NHS Supply Chain which aims to consolidate purchasing power in order to purchase products on a better-value basis for NHS Trusts and Foundation Trusts, as described at <https://improvement.nhs.uk/resources/core-set-nhs-products-be-used-all-nhs-providers/>

NHS Supply Chain the organisation run by DHL Supply Chain on behalf of the NHS Business Services Authority, providing a dedicated supply chain to the NHS in England

Freedom to Speak Up Guardians

With effect from 1 January 2018, General Condition 5.7 is deleted and replaced by the following:

- 5.7 The Provider must
 - 5.7.1 appoint one or more Freedom To Speak Up Guardians to fulfil the role set out in and otherwise comply with the requirements of National Guardian's Office Guidance;
 - 5.7.2 ensure that the Co-ordinating Commissioner is kept informed at all times of the person or persons holding this position;
 - 5.7.3 have in place, promote and operate (and must ensure that all Sub-Contractors have in place, promote and operate) a policy and effective procedures, in accordance with Raising Concerns Policy for the NHS, to ensure that Staff have appropriate means through which they may raise any concerns they may have in relation to the Services; and
 - 5.7.4 ensure that nothing in any contract of employment or contract for services or any other agreement entered into by it or any Sub-Contractor with any member of Staff will prevent or inhibit, or purport to prevent or inhibit, the making of any protected disclosure (as defined in section 43A of the Employment Rights Act 1996) by that member of Staff nor affect the rights of that member of Staff under that Act in relation to protected disclosures.

and the definitions in the General Conditions are varied to include the following additional definitions:

National Guardian's Office the office of the National Guardian, which provides advice on the freedom to speak up guardian role and supports the freedom to speak up guardian network: <http://www.cqc.org.uk/national-guardians-office/content/national-guardians-office>

National Guardian's Office Guidance the example job description for a freedom to speak up guardian and other guidance published by the National Guardian's Office, available at <http://www.cqc.org.uk/national-guardians-office/content/publications>

Raising Concerns Policy for the NHS the model whistleblowing policy for NHS organisations, published by NHS Improvement and NHS England, available at <https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>

and the Governance and Regulatory section on page 9 of the Particulars is amended to read:

Provider's Freedom To Speak Up Guardian(s)

Data Security Standards

With effect from 1 January 2018, General Condition 21.4 is deleted and replaced by the following:

- 21.4 The Provider must adopt and implement the National Data Guardian's Data Security Standards and must comply with further Guidance issued by the Department of Health, NHS England and/or NHS Digital pursuant to or in

connection with Standards. The Provider must be able to demonstrate its compliance with those Standards in accordance with the requirements and timescales set out in such Guidance, including requirements for enabling patient choice.

and the definitions in the General Conditions are varied to include the following additional definition:

National Data Guardian's Data Security Standards the standards recommended by the National Data Guardian and approved by the Department of Health, as set out in Annex D of *Your Data: Better Security, Better Choice, Better Care*, available at <https://www.gov.uk/government/consultations/new-data-security-standards-for-health-and-social-care>

Electronic Invoicing

With effect from 1 January 2018, the definition in the General Conditions of e-Invoicing Guidance is deleted and replaced by the following:

e-Invoicing Guidance guidance relating to the application and use of the NHS Shared Business Services e-Invoicing Platform, available at: https://www.sbs.nhs.uk/media/6204/Tradeshift-Supplier-Training-Guide/pdf/New_Supplier_Training_Guide1.pdf

Overseas visitor charging

With effect from 1 January 2018, the definitions in the General Conditions of Overseas Visitor Charging Guidance and Overseas Visitor Charging Regulations are deleted and replaced by the following:

Overseas Visitor Charging Guidance any guidance issued from time to time by the Secretary of State or by NHS England on the making and recovery of charges under the Overseas Visitor Charging Regulations, including that available via: www.gov.uk/government/publications/guidance-on-overseas-visitors-hospital-charging-regulations
and
<https://www.england.nhs.uk/wp-content/uploads/2015/05/guidance-chargeable-overseas-visitor.pdf>

Overseas Visitor Charging Regulations the regulations made by the Secretary of State under section 175 of the National Health Service Act 2006, available via: <http://www.legislation.gov.uk/uksi/2015/238/contents/made> and
<http://www.legislation.gov.uk/uksi/2017/756/contents/made>

2. The Parties agree that the Contract is varied accordingly.

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

SIGNED by

.....
Signature

**[INSERT AUTHORISED
SIGNATORY'S NAME]
for and on behalf of
the Co-ordinating Commissioner**

.....
Title

.....
Date

SIGNED by

.....
Signature

**[INSERT AUTHORISED
SIGNATORY'S NAME]
for and on behalf of
[INSERT PROVIDER NAME]**

.....
Title

.....
Date