

Draft NHS Standard Contract 2020/21

Audio presentation 4 of 4

Changes affecting national standards and NHS
“business rules” for 2020/21

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NHS England and NHS Improvement



Welcome

This is the last of four audio presentations which we have prepared to help to explain the changes proposed to the NHS Standard Contract for 2020/21.

This is the agenda we have been working through in the four separate presentations:

Presentation 1	Introduction to the Contract
Presentation 2	Local system collaboration and integration
Presentation 3	New national policy initiatives included in the draft Contract for 2020/21
Presentation 4	Changes affecting national standards and NHS “business rules” for 2020/21

What this presentation covers

In this section, we intend to cover these areas:

- Clinical Review of Standards
- financial sanctions
- patient choice
- counting and coding changes
- National Tariff Payment System
- dispute resolution

Clinical Review of Standards

- The national review of NHS standards for access to key services is still ongoing (see <https://www.england.nhs.uk/publication/clinically-led-review-of-nhs-access-standards/>)
- It covers the standards for urgent and emergency care, mental health, cancer and elective care
- New standards will ultimately replace and/or augment many of those which are included in the current Contract at Schedules 4A and 4B.
- A separate engagement process on the new standards is planned for early 2020.
- The one change made to the draft Contract for 2020/21 is to add in the long-planned cancer 28-day [Faster Diagnosis Standard](#)
- The performance threshold for this is to be set, initially, between 70% and 85% - feedback invited.

Suspension of financial sanctions

The Contract continues to include financial sanctions which apply where providers fail to achieve certain of the national standards set out in Schedules 4A and 4B

BUT most of these sanctions are suspended for those NHS Trusts and NHS Foundation Trusts which agree with NHSE/I a financial improvement trajectory for 2020/21 – where this is the case, the commissioner cannot apply the sanction set out in Schedule 4A / 4B, nor can they withhold funding under GC9.

These arrangements are given effect by wording in SC36.38 and GC9.26 (full-length) and SC36.28 and GC9.9 (shorter-form).

The sanctions which remain active for all providers in 2020/21 are those relating to

- 52-week breaches
- cancelled operations
- mixed sex accommodation breaches
- breaches of the duty of candour

New sanction on timely completion of Care and Treatment Reviews (CTRs)

- CTRs (including CETRs for children) are carried out for people with learning disabilities / autism – before (and periodically during) admission to hospital. The aim is to ensure that any admission to / stay in hospital is appropriate.
- SC6.9 already requires compliance with [CTR Guidance](#), which sets out the timescales within which CTRs must be carried out.
- New SC6.10-12 introduce financial sanctions on the provider where an in-hospital CTR is not completed on time as a result of any act or omission by the provider.
- The new sanctions fall into two categories.
 - Where no CTR has been undertaken prior to admission, one must be completed within 28 days of admission (adult) or 14 days (under 18). Where this is not achieved, the commissioner may withhold and retain the sum of £5,000 plus £300 for each additional day until the CTR is completed.
 - Once a Service User has been admitted, a further CTR must be completed every 12 months (adults in secure settings) / every 6 months (adults in non-secure settings) / every 3 months (under 18). Where this is not achieved, the commissioner may withhold and retain the sum of £300 for each additional day until the CTR is completed.

Other changes affecting sanctions

- Sanctions relating to infection control (MRSA and C difficile cases) have been removed for 2020/21.
- Re-use of the funding which commissioners withhold from providers through sanctions (as well as any unspent CQUIN funding) is now to be considered within the scope of the System Collaboration and Financial Management Agreements required in each system for 2020/21 (see presentation 2).
- This approach replaces the arrangements for oversight of the use of such funding by NHSE/I regional teams (and for a “virtual” 52-week breach sanction on commissioners), which applied in 2019/20

Patient choice of provider

- The 2019/20 Planning Guidance introduced the idea of “choice at 26 weeks”.
- So we have now included a new high-level requirement in SC6 of the draft 2020/21 Contract on commissioners and providers to implement this 26-week choice initiative – with detailed guidance to follow.
- Patients are already legally entitled to move provider if they are told they are likely to wait over 18 weeks.
- Key difference
 - choice at 18 weeks – optional, onus on the patient
 - choice at 26 weeks – something which the commissioner and provider must offer.
- Question – would it make better sense to amalgamate the two, so that choice must be offered at the point the patient actually breaches 18 weeks (or is informed that he/she is likely to)?
- You can feed back on this question through the Contract consultation – but also watch out for what the 2020/21 Planning Guidance will say on this when published.

Counting and coding changes

The 2020/21 Contract continues to feature provisions in SC28 for the notification and time-limited financial neutralisation of “counting and coding changes” – that is, changes in the way in which patient activity is recorded by a provider.

The requirement for financial neutralisation applies whether or not a change is nationally mandated (through new guidance published by NHS Digital) or locally proposed (by the provider or commissioner, in order to secure better compliance with existing NHS Digital guidance).

The Contract provisions in this area have not been changed for 2020/21. They are explained in detail in section 44 of our [Contract Technical Guidance](#).

Commissioners and providers should be aware of two areas in which counting and coding changes are being or may be nationally mandated for 2020/21.

- The first is the move to OPCS4.9 (see https://hscic.kahootz.com/connect.ti/t_c_home/view?objectId=14270896#14270896).
- The second relates to the recording of Same Day Emergency Care (SDEC) and, if approved, will be set out in the *NHS Operational Planning and Contracting Guidance 2020/21*.

National Tariff Payment System

NHSE/I have been consulting separately on changes to the National Tariff Payment System for 2020/21. The proposals involve new arrangements for blended payment for outpatient care and maternity services, complementing those already introduced for emergency care in 2019/20.

Assuming the proposed arrangements are confirmed following consultation, the contractual means of giving effect to them will be as follows:

- The Emergency Care Blended Payment are already established under SC36.21, with a specific Schedule (3D) used for the agreed local arrangements. We continue to provide a detailed template for this Schedule, and model completed examples are set out in Appendix 8 of our Contract Technical Guidance.
- The new blended payment arrangements for outpatient care will be mandatory, and so we have included a new provision at SC36.22 to give them effect. There is more local flexibility in respect of what is included in each local agreement, however, so we have not provided a template. Rather, the agreed arrangements should be described locally in Schedule 3A (Local Prices).
- For maternity services, systems will be able to choose between retaining the current pathway tariff approach and moving to the blended payment model. The agreed approach should be set out locally in Schedule 3A (Local Prices).

Dispute resolution procedures

NHSE/I will shortly publish joint guidance on contract dispute resolution for 2020/21.

- One procedure will deal with the resolution of disputes relating to the agreement of new contracts for 2020/21 between commissioners and NHS providers (ultimately resolved through arbitration through an Independent Arbitration Panel convened by NHSE/I).
- A second procedure will deal with the resolution of any disputes regarding the terms of any local variation to non-expiring contracts which are intended to take effect for 2020/21 (resolved through the GC14 process, ultimately through expert determination by an independent expert).

These documents will be published as part of the NHS Operational Planning and Contracting Guidance for 2020/21 and will be consistent with the processes which have operated in recent years.

Dispute resolution – Contract changes

Consistent with these procedures, we are proposing two changes to the Contract wording on dispute resolution (GC14) for 2020/21

These are that:

- mediation will be arranged jointly by NHSE/I for disputes involving NHS Foundation Trusts (as well as for NHS Trusts, as currently); and
- Expert Determination for disputes involving NHS Trusts and NHS Foundation Trusts will be undertaken by an Expert allocated by NHSE/I, rather than via CEDR or any other body.

This means that the Nominated Mediation Body (on page 11 of the Particulars) now only needs to be completed where the provider is not an NHS Trust or an NHS Foundation Trust.

Help and support

Website:

<https://www.england.nhs.uk/nhs-standard-contract/20-21/>

This hosts the full-length and shorter-form Contracts, the Contract Technical Guidance and other publications including

- model Collaborative Commissioning Agreement
- model sub-contracts and guidance

Model grant agreement and guidance <https://www.england.nhs.uk/nhs-standard-contract/grant-agreement/>

Email helpdesks for queries:

- on the NHS Standard Contract via nhscb.contractshelp@nhs.net
- on CQUIN via e.cquin@nhs.net
- on Who Pays? via england.responsiblecommissioner@nhs.net
- on the eContract system england.econtract@nhs.net
- on the National Tariff Payment System nhsi.pricing@nhs.net

Contract Technical Guidance

Our [Contract Technical Guidance](#) contains detailed advice on use and interpretation of the NHS Standard Contract and, more broadly, on many aspects of commissioning and contracting within the NHS, including

Contract duration and extension	Managing provider performance and quality of care
Varying contracts	Managing activity and referrals
Financial sanctions	Information requirements and counting and coding changes
Sub-contracting	Managing payment
Managing disputes	Contract termination and exit arrangements

Please do use the Technical Guidance as a reference point.

Feeding back

The Contract consultation closes on Friday 31 January 2020.

You are welcome to feedback your views on the changes we are proposing to the Contract for 2020/21. You can do this in two ways:

- by using the online survey available at <https://www.engage.england.nhs.uk/consultation/proposed-changes-nhs-standard-contract/>
- by email to england.contractsengagement@nhs.net, using the template response document available at <https://www.england.nhs.uk/publication/draft-nhs-standard-contract-2020-21-a-consultation-stakeholder-response-document/>

We will publish the final version of the Contract as soon as possible after we have reviewed the consultation responses.

Conclusion

Thanks for listening.

Remember, there are three other separate presentations which you can access on the NHSE/I YouTube channel:

Presentation 1	Introduction to the Contract
Presentation 2	Local system collaboration and integration
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