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Guidance for trusts on agency use during COVID-19: update July 2020

Further to the [previous guidance](#) shared at the end of March, we write to provide an update for all healthcare providers that highlights and summarises key updates. We also wish to outline the support available, so as to ensure all spend remains 'on framework' and aligned with the content of the [letter](#) previously shared by the Minister of State for Care, Helen Whately. We actively encourage you to please consider all options to support your temporary staffing needs, eg internal banks, NHS returners programme, etc.

Measures to support the onboarding of temporary workers: updated temporary worker compliance standards

In addition to any framework-specific and previously circulated guidance, the following compliance standards have been temporarily introduced/amended to support healthcare providers in maintaining the flow of healthcare workers into healthcare providers:

- Suppliers are to use distance learning as an alternative to face-to-face training, where appropriate and applicable. To support with capacity constraints and pending further review, the waiver period for expired training will be extended for a further period of two months. For clarity: the expiry of the waiver period will be **27 August 2020**.
- Pre-employment checks (including interviews, right to work, DBS, professional registration and qualifications, references and employment history) are to be undertaken as laid out in the temporary guidance published on the [NHS Employers website](#). Please note: this is temporary guidance only, and any subsequent changes published on the NHS Employers website will take precedence in all instances.

- Suppliers are to confirm with the temporary worker whether they are willing to work in an environment where they may be exposed to COVID-19. The choice of the temporary worker must then be clearly relayed to the healthcare provider before the booking is confirmed, so that an appropriate and informed decision can be made by the healthcare provider.
- Suppliers must ensure that all employees and registered temporary workers are following the [COVID-19 guidance](#) as published by Public Health England.

Testing arrangements for essential workers

As part of the UK Government commitment to increase COVID-19 testing capacity, it has now been announced that anyone over the age of five with symptoms of COVID-19, or who lives with someone with symptoms of COVID-19, can request a test.

In the case of essential workers (including agency healthcare workers) and those living in the same household as essential workers, tests can be requested via the following link:

<https://www.gov.uk/apply-coronavirus-test-essential-workers>

Health and wellbeing packages

NHS England and NHS Improvement have developed a [health and wellbeing offering](#) that is available to all staff (substantive workers, temporary workers and flexible workers).

Suppliers are requested to ensure this initiative is supported and that this offering is distributed directly to all agency workers as appropriate; contact details for NHS England and NHS Improvement are included within the distributed documentation, should you require further information or support.

Risk assessments for staff

NHS Employers has issued guidance for employers on how to carry out risk assessments, particularly for vulnerable groups, to understand the specific risks staff members face from exposure to COVID-19 and actions which employers can take to keep staff safe. This includes staff returning to work for the NHS, and existing staff who are potentially more at risk due to their race, age, disability or pregnancy. The guidance applies to substantive, bank and agency workers and can be accessed on the [NHS Employers website](#).

The NHS Employers website also has a link to a paper commissioned by the NHS Chief People Officer, which includes a [risk reduction framework](#). This framework is provided to help better inform consideration of the particular risks and concerns of team members and covers three key areas of workplace assessment, workforce assessment and individual assessment.

Suppliers of bank and/or agency staff are required to undertake risk assessments for COVID-19, including vetting bank and/or agency staff registered for any potential risks. Identified risks must be openly shared with trusts where there is an existing booking, or the member of staff wishes to undertake a booking with the trust; a local risk assessment can then be undertaken appropriately. This process will protect individuals and allow trusts to provide the appropriate level of personal protective equipment (PPE) required for a specific site location in accordance with local policy.

It is important to share that bank and/or agency staff may be requested to work in different areas/departments at short notice. The risk assessment should identify specific risks for the trust to manage.

Death in service benefit

On 27 April the Secretary of State announced a new scheme to provide life assurance benefits for eligible NHS or social care staff performing frontline work during the COVID-19 pandemic. In the event of a staff member dying in the course of COVID-19 work, a lump sum payment of £60,000 will be made to their estate, provided they meet the qualifying work-related criteria for the scheme. The life assurance scheme is non-contributory, meaning there is no cost to staff or employers and applies to temporary workers also.

The scheme will be administered by the NHS Business Services Authority (NHS BSA) and further details can be found [on their website](#).

Reporting workers with COVID-19

Suppliers on all NHS England and NHS Improvement approved frameworks are now required to adhere to the following process for reporting a flexible or agency worker who is confirmed as having COVID-19:

- within one working day, alert all trusts/organisations at which the worker has been placed within the last month and
- within one working day, report to the relevant framework operator(s) with a list of all trusts/organisations at which the worker has been placed within the last month.

Guidance on payment of agency workers and NHS interpretation of PPN 02/20, including the updated provisions contained in PPN 04/20

The Cabinet Office and Crown Commercial Service (CCS) issued a procurement policy notice (PPN) on 20 March 2020 (PPN 02/20) regarding payment of 'at risk' suppliers during COVID-19. A linked piece of guidance was published on 27 March 2020 regarding the payment of contingent workers. The below note from DHSC and NHS England and NHS Improvement outlines a suggested interpretation of this guidance for NHS providers.

This PPN is underwritten by the principles that:

- public sector supply chains should be protected where we assume they will be needed in the future
- the public sector should continue to pay contracts where it represents long term value for money (ie it avoids the need for a lengthy re-procurement process in the longer term).

Bank workers

Bank workers should receive full pay for self-isolating, sickness, or closure of workplace due to COVID-19 for all pre-booked bank shifts that they would have worked had they not self-isolated. This may include known bank workers with consistent working patterns. This applies to staff who have a substantive contract with their employer, and to 'bank only' staff. Bank workers should be given priority for shifts where substantive vacancies are available.

A bank worker should not be furloughed. Where work cannot be found for a bank worker in their normal role, every effort should be made to redeploy them, either elsewhere in the trust, or at a neighbouring trust.

Agency workers

Under certain circumstances, agency workers on live assignments with an NHS provider will be eligible for payment according to PPN 02/20.

PPN 02/20 is clear that payments should not be made to suppliers where there is no contractual volume commitment to supply. The supporting guidance on contingent workers stipulates that only workers on **live assignments** qualify for payment under PPN 02/20. As such, an agency worker who is unable to work due to COVID-19 for sickness, self-isolation or temporary closure of their workplace, will only qualify for payment under this guidance where they are undertaking a live, ongoing assignment, with evidence of a booking reference number. This will generally not apply if a worker is booked on an ad-hoc or shift by shift basis.

For those working on an ad hoc basis, a live assignment would normally equate to a single shift booked in advance with a booking reference number. In this event, the trust should pay 80% of the value for only the first shift to be worked if the worker is sick or self-isolating. After this shift, the employing agency is responsible for paying the worker under statutory sick pay guidelines (SSP).

As outlined in PPN 02/20, workers who were on a live assignment who are sick or self isolating due to Covid-19 should be paid as per PPN 02/20 at a rate of 80% up to a ceiling of £2,500 per month.

In addition, payments should not exceed 80% of NHS England and NHS Improvement price caps as set out in the agency rules.

We recommend that workers seeking more consistent contractual arrangements with NHS providers should be offered shifts via a local or collaborative bank. Providers must be aware of any contract requirements through the approved frameworks to provide notice to the supplier in the event of a temp to bank or temp to perm transfer being agreed.

This guidance is a recommendation only that relates to Covid19.

Cancelled assignments

Eligibility for payment to contingent workers impacted by COVID-19 will be dependent on them being in a current live assignment. That is: they must have started working on the assignment. Therefore, a contingent worker who has not yet started their assignment will not be entitled to pay within the scope of PPN 02/20.

Where an assignment ends during a worker's sickness or self-isolation, they are only entitled to this benefit up to the point at which the assignment is due to expire. There is no obligation to extend them if the intention was that their assignment would naturally end.

Direct engagement

Where an agency worker is engaged via a direct engagement model, their entitlement to sick pay and benefits will depend on their specific employment/engagement contract. Trusts with workers hired in this way should contact their direct engagement provider for specific guidance. Should you need to escalate please contact your framework operator. The framework operator will not be able to provide tax, HR or employment advice.

Longer term contracts

Where a trust has an ongoing contractual arrangement with a supplier of contracted services, with a commitment to supply, NHS providers should pay this supplier in line with PPN 02/20, where the supplier is considered to be 'at risk'.

In exceptional circumstances, where a worker is not employed on a long term contract but has, in effect, been working in the same role for a long period of time, a trust may wish to pay them during sickness or self-isolation, in order to ensure continuity of service in the long

term. However, this will need to be recorded and reported to NHS England and NHS Improvement.

You will need to provide the name of the agency, hours worked and full shift details, including the end of the assignment. Please submit to nhsi.agencyrules@nhs.net.

Where you identify workers who may fall into this category, efforts should be made in the first instance to employ them via a bank contract.

Supplier profiteering

Further to the benefits previously outlined in ensuring that all spend remains on-framework, we can confirm that all NHS England and NHS Improvement approved frameworks are working in conjunction with the Department of Health and Social Care and NHS England and NHS Improvement to ensure appropriate contractual remedy is applied, where profiteering has been identified.

To support us in this please do report any profiteering behaviour by the supply chain to the relevant framework contact detailed below.

Framework providers: contact details

Framework providers are available to support with any questions or issues around your temporary staffing supply. Key contacts for each organisation are as below:

- NHS North of England Commercial Procurement Collaborative (NOE CPC): enquiries@noecpc.nhs.uk
- NHS Commercial Solutions (NHS CS): NHSCS.agency@nhs.net
- NHS London Procurement Partnership (LPP): workforcesupport@lpp.nhs.uk
- East of England NHS Collaborative Procurement Hub (EoE CPH): workforce@eoecph.nhs.uk
- Crown Commercial Service: info@crowncommercial.gov.uk
- HealthTrust Europe, Total Workforce Solutions: agency@htepg.com