Draft NHS Standard Contract 2021/22: A consultation

Proposed changes to the NHS Standard Contract for 2021/22

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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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1 Introduction

The NHS Standard Contract is published by NHS England for use by NHS commissioners (CCGs and NHS England) to contract for all healthcare services other than primary care services. We are now consulting on changes for 2021/22 to both versions of the Contract – the full-length version, which is used to commission the bulk of such services by value, and the shorter-form version, which can be used in defined circumstances for certain less complex and typically lower cost services. The updated Contracts are available on the NHS Standard Contract 2021/22 webpage.

The continuing move towards NHS system working, and (if enacted) prospective changes to legislation to provide a statutory basis for Integrated Care Systems, are likely to necessitate some fundamental changes to the role and content of the Contract from 2022/23 onwards. In that context and in the light of the continuing impact of Covid-19, we have been considering what changes would be appropriate to the Contract for 2021/22.

We believe that it remains important to keep the Contract up to date, so that it reflects and promotes current national NHS policies and guidance – the Contract is an important means of signalling key priorities to providers of NHS-funded services. At the same time, we are keen to ensure that the national terms of the Contract, and associated guidance, promote wherever possible a collaborative, rather than adversarial or overly transactional, approach. Our proposed changes to the Contract for 2021/22, set out in this document, are made with these aims in mind.

This consultation document describes the main, material changes we are proposing to make to both versions of the Contract. We welcome comments from stakeholders on our proposals, along with any other suggestions for improvement. Comments on the draft Contracts can be made either by using an online feedback form or by email to england.contractsengagement@nhs.net, preferably using our standard template; details are available on the NHS Standard Contract 2021/22 webpage.

The deadline for receipt of responses is Friday 5 February 2021. We will publish the final versions of the generic Contract (both full-length and shorter-form) as soon after that as possible.

(Please note that we have already been consulting separately on changes aimed at streamlining payment arrangements for low-volume flows of activity between CCGs and distant Trusts; that consultation closed on 31 December 2020, and details can be found on the NHS England consultation hub. We will publish our response to that consultation separately in due course.)

2 Period covered by the Contract

The Contract is intended to set national terms and conditions applicable for the 2021/22 financial year. If issues arise in-year which require any amendment to the Contract, NHS England will consult on and publish a National Variation for implementation locally.

3 Proposed changes to the full-length Contract

We describe below the main, material changes we propose to make to the full-length version of the Contract for 2021/22.

3.1 Key changes

Changes to reflect updated national policies

This section sets out proposed changes which are aimed at promoting improvements in how care and treatment are delivered for patients, in line with the latest national policy direction.

Topic	Change	Contract Reference
Interface with primary care	Detailed requirements on secondary care providers relating to their interface with local primary care services have been included in the Contract since 2017. They cover onward referral mechanisms, management of DNAs, discharge summaries and clinic letters, provision of medication, fit notes and dealing with patient queries. Implementation of these requirements remains patchy, resulting in sub-optimal services for patients and wasted resource in practices. We now propose to include a new requirement for each provider to publish (by 30 June 2021 and then annually) a self-assessment of its performance against these requirements and to agree and implement an action plan to address any deficiencies.	Service Condition 3.17
Collaborative work in Integrated Care Systems	The Contract already contains a requirement on commissioners and providers to work together to deliver their local system plan and in support of the NHS's "triple aim" of better health, better care and financial sustainability. We propose to strengthen this by including a specific reference to active participation in, and constructive mutual support and challenge to and from members of, the local Integrated Care System.	Service Condition 4.6
Remote consultations	The use of alternatives (video / telephone) to traditional face-to-face outpatient appointments is now a key tool, in terms of safely and conveniently maximising NHS capacity. We propose to add a requirement for providers to offer patients, wherever clinically appropriate, a choice between a remote consultation and a face-to-face one.	Service Condition 10.5

Tackling health inequalities	In accordance with Implementing phase 3 of the NHS response to the COVID-19 pandemic, we propose to amend the Contract to require each provider to identify a board-level executive responsible for overseeing the Provider's actions to address and reduce health inequalities. We also propose to add a new Schedule to the Particulars, in which the parties can set out actions they will each or jointly take to address inequalities in access to, experience of, or outcomes from, care and treatment.	Service Conditions 13.9-10 and Schedule 2N
Green NHS	We intend to continue to strengthen the requirements in the Contract on green issues, in line with commitments set out in Delivering a 'Net Zero' National Health Service. Proposed changes include • identifying a board-level officer accountable for actions to deliver on 'Net Zero' commitments; • ensuring all electricity purchased is from certified renewable sources; and • stronger targets focused on the reduction of harmful greenhouse gases and air pollution.	Service Condition 18
Infection Control and Prevention	We propose to • add a specific requirement that all providers must designate an infection control and prevention lead at Board (or equivalent) level; and • update the Contract wording so that each provider is required to put in place an "infection prevention programme" (rather than the previous outdated "HCAI reduction plan").	Service Condition 21.1
Evidence-Based Interventions	NHSE published national guidance on evidence-based interventions in 2018, covering 17 specific interventions, and the Contract already requires compliance with this. Following consultation, national guidance on a second set of 31 additional interventions has now been endorsed by NHSE/I and published on the Academy of Medical Royal Colleges website. We propose to adapt the Contract wording and definitions to include appropriate reference to this second set of guidance.	Service Condition 29.28-31 and Definitions
Safeguarding	We propose to broaden the existing requirement in relation to supporting implementation of the Child Protection Information Sharing Project, with this in future applying to all providers (including specifically outpatient and mental health services), rather than just to urgent and emergency acute services as previously.	Service Condition 32.8
Freedom To Speak Up	After discussions with the National Guardian's Office, we propose to strengthen the Contract wording on "freedom to speak up" in two ways, by requiring each provider • to inform the National Guardian's Office of the identity of its nominated Freedom To Speak Up Guardian(s); and • to co-operate with the National Guardian's Office in any case reviews which the latter may undertake and take appropriate action in response to any recommendations arising. ***	General Condition 5.9

Changes to support Primary Care Networks

This section sets out proposed changes in how the Contract requires providers of community-based physical and mental health services to support Primary Care Networks (PCNs). These are being given effect through coordinated changes to the NHS Standard Contract and under the five-year framework for GP contract reform.

Two new service models are being introduced under which community services providers will work closely with PCNs.

- The first is the **Enhanced Health in Care Homes** model, which is already reflected in the Contract in Service Condition 4.10 and Schedule 2Ai. Contract requirements in this area came into effect gradually during 2020/21 – so we now propose to update Schedule 2Ai to remove references to actions which were to have taken place in 2020/21 and to make clear that these are now ongoing requirements for 2021/22.

- The second is the new national service model for **Anticipatory Care**, which is being introduced for 2021/22. We therefore propose to include detailed requirements for relevant providers of community physical and mental health services to work with PCNs to implement the Anticipatory Care model. These are included at Service Condition 4.9 and Schedule 2Aii.

Final arrangements in these two areas will be confirmed in the light of:

- feedback to this consultation; and

- the conclusion of negotiations between NHS England and the GPC England in relation to the 2021/22 GMS Contract, through which the precise requirements on PCNs will be finalised.

New requirements are also being considered for 2021/22 to increase the number of **registered mental health practitioners**, employed by major local providers of community mental health services but embedded for practical purposes in PCN teams. These proposals are at an earlier stage and are still under negotiation at national level between NHS England and GPC England. At this stage, therefore, we have included only outline requirements (at Service Condition 4.11 and Schedule 2Aiii) to apply to the relevant secondary care providers. Depending on the outcome of the GMS Contract negotiations, we will share further details and drafting as soon as possible, so that CCGs and affected providers have the opportunity to review and comment.

Clearly, it is essential that providers of community and mental health services are appropriately funded by commissioners to carry out the requirements set out in Schedules 2Ai and 2Aii (and, if confirmed, 2Aiii). This should be addressed through local discussions to agree 2021/22 local prices and contract values.

The Contract provisions in respect of Enhanced Health in Care Homes and Anticipatory Care are included in the shorter-form Contract, but those relating to

mental health practitioners would not be, as they would apply only to the main local provider of mental health services.

Changes relating to people issues

This section sets out proposed changes in provisions of the Contract relating to staff working in the NHS.

Topic	Change	Contract Reference
Black, Asian and minority ethnic representation	In accordance with Implementing phase 3 of the NHS response to the COVID-19 pandemic, we propose to amend the Contract to require each provider to publish a five-year action plan setting out how it will ensure that, over that period, that the level of black, Asian and minority ethnic representation in its board and senior workforce will reflect that in its overall workforce, or in its local community, whichever is higher.	Service Condition 13.7
NHS People Plan	We included a reference to the NHS People Plan in the 2020/21 Contract, but in practice, because of the pandemic, publication of the Plan was delayed until July 2020. We now propose to amend the Contract wording for 2021/22 to refer to the Plan as published, making clear that providers must implement the actions expected of employers as set out in the Plan.	General Condition 5.1
Core Skills Training Framework	The Core Skills Training Framework specifies the statutory / mandatory training which staff working in the provision of NHS-funded services must regularly undergo. The Framework covers areas such as fire safety, safeguarding and information governance and data security. We propose to add a requirement to the Contract that a provider must provide its staff with training in accordance with the requirements of the Framework. ***	General Condition 5.5
Hosting of doctors in training	Health Education England has published new guidance setting out the role of non-NHS providers to work with Trusts in hosting doctors in training. We propose to include a requirement for providers to have regard to this guidance.	General Condition 5.7
Violence prevention and reduction standard	As set out in the NHS People Plan, a new NHS Violence Prevention and Reduction Standard has now been launched, creating a framework which supports NHS staff to work in a safe and secure environment, safeguarded against abuse, aggression and violence. We propose to add a requirement on providers to have regard to the new standard. ***	General Condition 5.9

Workforce sharing	Sharing staff on a flexible basis between providers has been a key requirement under the Covid-19 pandemic, but it is important that arrangements to do so are robust and well-documented. In time, digital staff passports will be an important enabler here, but – for now – NHSE/I have published an Enabling Staff Movement Toolkit, which provides suitable documentation to support seamless and efficient workforce sharing between organisations. We propose to add a requirement that, where providers intend to agree workforce-sharing arrangements, they should do using the Toolkit documentation.	General Condition 5.12

3.2 Changes to simplify financial aspects of NHS contracting

This section sets out changes aimed at simplifying the way in which the financial side of the Contract operates, so that commissioners and providers have to spend less time on complex and time-consuming transactional processes. They build on the separate consultation we have been undertaking on changes to streamline payment arrangements for low-volume flows of activity between CCGs and distant Trusts.

Removal of financial sanctions for failure to achieve national standards

For access and waiting times standards and for a number of other national standards on mixed sex accommodation, ambulance handover delays, cancelled operations and the duty of candour, the Contract has for many years set out financial sanctions which the commissioner is to apply to the provider for any breach. In practice, as part of efforts to return the NHS provider sector to financial balance, most of these sanctions have been suspended for most providers, on a rolling annual basis since 2016.

Our intention for 2021/22 is now to remove these sanctions from the Contract for all providers. This will be more consistent with today's emphasis on collaborative working at Integrated Care System level. Where CCGs and Trusts are jointly accountable for delivery of system financial balance, it makes little sense to encourage a focus on transactional sanctions which one applies to the other – this simply creates a bureaucratic burden and does nothing to identify the causes of poor performance, addressing which will, in any case, often require collaborative system-level action.

Accordingly, we have proposed changes to the Contract text as follows:

- removing the sanctions themselves (which are shown in the "consequence of breach" columns in Schedules 4A and 4B); and

- removing the wording under which the sanctions are triggered and applied (Service Condition 36.37) and under which application is in some situations suspended (Service Condition 36.38 and General Condition 9.26).

The Contract includes a separate Schedule in which local-agreed quality standards can be set out; we propose to make a similar change to this Schedule, so that financial sanctions can no longer be included.

It is important to be clear what these changes mean for elective care. We are proposing to remove the specific sanctions on providers for 52-week breaches and for failing to meet the 92% standard for incomplete 18-week pathways. Given the impact of Covid-19, however, it will be important during 2021/22 that volumes of elective activity are maximised – and the Contract will still be able to give effect, through the activity and pricing schedules, to any nationally-set approach for 2021/22 to incentivising volumes of elective activity.

National Tariff Payment System and CQUIN

NHS England and NHS Improvement will be consulting separately on changes to the National Tariff Payment System for 2021/22. It is likely that the 2021/22 arrangements will propose a greater reliance on fixed payments, especially where larger contract values are involved. This will help to reduce the complexity of financial negotiations and monitoring. A revised approach of this kind will necessitate some minor changes to the Contract wording. At this stage, we have provisionally proposed removing the separate provisions from Service Condition 36 dealing with the current "blended payment" approach for emergency care and outpatient services. We will confirm the final position when we publish the final Contract, after the outcome of the Tariff consultation is known.

We are also considering changes for 2021/22 to CQUIN, the national scheme to incentivise improvements in quality of care. Here too, we are keen to simplify the financial arrangements, whilst not losing our focus on taking forward key clinical initiatives. At this stage, we have not proposed changes to the Contract text relating to CQUIN (Service Condition 38 and Schedule 4D). Revised arrangements will be published in the New Year, and we will then make any necessary amendments when we publish the final version of the Contract.

Reduced frequency of financial reconciliation

NHS payment rules under the National Tariff Payment System now place greater emphasis on fixed payments for many providers/services, with much less variation in relation to actual levels of activity in-year. As a result, we believe that we can now reduce the frequency of financial reconciliation required under the Contract from monthly to quarterly. (Financial reconciliation is the process which commissioner and provider go through to adjust payments made on account to reflect subsequent actual volumes of activity.)

Making this change will significantly reduce the administrative burden on contracting and finance staff in providers, CCGs and CSUs. However, it is important to avoid unintended consequences.

- The change will apply only to those contracts where an Expected Annual Contract Value has been agreed and is being paid up front in monthly instalments. Contracts where there is no agreed Expected Annual Contract

Value – and where the provider simply invoices on a retrospective basis for services actually delivered – will remain on a monthly invoicing arrangement. This is important to protect cashflow for those providers.

- It is essential that the timeliness and quality of providers' data submissions to SUS are not affected. SUS data will continue to be "frozen" by NHS Digital, for payment purposes, on the current monthly timetable. It is only the contractual process – submission by the provider of a reconciliation account, validation of this by the commissioner and subsequent processing of financial adjustments as required – which will move to a quarterly basis.

The proposed changes are given effect principally by amendments to Service Condition 36.28-35, with some further minor changes in consequence to Service Condition 28.18-23 and General Condition 9.12-25.

3.3 Technical improvements and other smaller changes

We propose to make the following technical improvements.

Topic	Detailed change	Contract Reference
Counter-fraud arrangements	The NHS Counter-Fraud Authority (NHSCFA) will be publishing, early in the New Year, revised counter-fraud requirements for CCGs and providers of NHS-funded services, updated in line with the new Government Functional Counter-Fraud Standard. After discussion with NHSCFA, we propose to amend the Contract provisions on counter-fraud in Service Condition 24 accordingly. *** (Note that we also propose to remove the references to "security management" from Service Condition 24, instead adding a provision to General Condition 5 in relation to the new NHS Violence Prevention and Reduction Standard, as described above.)	Service Condition 24
Contract monitoring reports	Information Standards covering contract monitoring reports were first published by NHS Digital in 2019. The Standards cover aggregate contract monitoring, patient level activity and separately charged drugs and devices. The Standards have operated on a non-mandatory basis to date, but NHS Digital is now consulting on updated versions which, if approved, will become mandatory, from April 2021, for all providers of acute and mental health services operating under the full-length Contract. To reflect the changed status of the standards, we have proposed appropriate amendments to Schedule 6A; this is of course subject to the outcome of NHS Digital's consultation.	Particulars Schedule 6A

We propose to make a number of other smaller changes.

Topic	Detailed change	Contract Reference
EU Exit	We propose to remove the specific requirement for providers to comply with "EU Exit Guidance", since it related specifically to the process of Britain leaving the EU on 31 January 2020. All commissioners and providers will, of course, continue to be under a duty to follow any national guidance on managing the impact of the end of the EU transition period at 31 December 2020. ***	Service Condition 2.2
Seven-day services	We propose to update the reference to the provision of seven-day acute hospital services, so that this now requires completion by NHS Trusts and NHS Foundation Trusts of the Board Assurance Framework for Seven Day Hospital Services.	Service Condition 3.11
Maternity services	The Contract includes a standard for the proportion of women who experience continuity of carer during their maternity care. The performance threshold which providers must achieve, by March 2022, will remain at 51% – but we propose to add a specific requirement that the proportion of black and Asian women and those from deprived communities on continuity of carer pathways must at least match the proportion among the general population. We propose to do this through a change to the definition of the Continuity of Carer Standard, bringing it into line with the revised Framework shortly to be published by the Royal College of Midwives.	Service Condition 3.13 and Definitions
Patient choice of provider	We propose to remove the new requirement included in the 2020/21 Contract to comply with NHS Managed Choice Guidance. This envisaged a system under which, between 18 and 26 weeks on the RTT pathway, all patients would be offered a further choice of provider. This is now no longer being pursued for 2021/22 as a mandatory national approach.	Service Condition 6.1
Care Programme Approach	With the publication of the Community Mental Health Framework, the Care Programme Approach has now been superseded. For 2021/22, we therefore propose to remove the specific reference to it from the Contract.	Service Condition 10.5
Activity Planning Assumptions (APAs)	We have become aware of a potential inconsistency in the wording relating to APAs. The requirement in SC29.7 for a provider to "comply with" APAs is not in line with SC29.4.1, which requires that the provider must "use all reasonable endeavours to manage Activity … in accordance with any APAs". The latter is more appropriate language, and we therefore propose to remove the "comply with" wording.	Service Condition 29.7
Prior Approval Schemes	New or revised Prior Approval Schemes can be introduced on one month's notice, but there has been some confusion about how quickly a new Scheme comes into operation. We propose to revise the Contract wording to make clear that new or revised Schemes will apply to decisions to offer treatment made after the one-month notice period has elapsed – rather than simply to new referrals made after this point. This will ensure consistency of access to services.	Service Condition 29.24

Topic	Detailed change	Contract Reference
Charging of overseas visitors	The Contract contains provisions relating to the charging of overseas visitors provided with NHS treatment. In light of the end of the EU Exit transition period, we now propose to amend these slightly, to ensure that the language remains appropriate; further changes may be required if regulations and DHSC guidance are updated in due course. ***	Service Condition 36.41
Personalised care	We propose to update the text describing potential local inclusions in Schedule 2M (the Development Plan for Personalised Care). We also propose to update the definition used for a Personalised Care and Support Plan.	Schedule 2M and Definitions
Discharge guidance	We propose to update the definition of Transfer and Discharge Guidance and Standards to include reference to Hospital discharge service: policy and operating model, published by DHSC in August 2020. ***	Definitions
Procurement of emergency ambulance vehicles	The Contract already includes, at Service Condition 39.4, a requirement for ambulance Trusts to source new double-crewed base vehicles and conversions in accordance with a national specification (the National Ambulance Vehicle Specification) and through a national supply agreement (the National Ambulance Vehicle Supply Agreement). The supply agreement has been delayed but is now being put in place; we have updated the definition to refer to the most up-to-date information.	Definitions

We have made other minor changes to rationalise and improve the Contract where we have considered it appropriate to do so.

4 The shorter-form Contract

A small number of the changes described in section 3 above are also appropriate to include within the shorter-form version of the Contract. These changes are identified with asterisks (*******) in the tables above and relate to:

- Enhanced Health in Care Homes
- Anticipatory Care
- counter-fraud arrangements
- Core Skills Training Framework
- financial sanctions
- financial reconciliation
- EU Exit
- health records transfer
- charging of overseas visitors
- definition for discharge guidance

The shorter-form Contract remains significantly ‘lighter-touch’ than the full-length version. Our Contract Technical Guidance continues to describe the situations where

use of the shorter-form Contract is encouraged – as well as those for which it is not designed.

5 System Collaboration and Financial Management Agreement

The Contract continues to require, at Service Condition 4.9, that CCGs and NHS Trusts / Foundation Trusts will sign, and act in accordance with, an overarching System Collaboration and Financial Management Agreement (SCFMA), setting out how they will work together to deliver system financial balance.

This requirement was introduced for 2020/21 but – given the approach to contracting under the pandemic – will not have had a significant impact. We continue to believe, however, that a system-level agreement of this kind has a key role to play. A slightly updated model SCFMA, for local adaptation, is published on the NHS Standard Contract 2021/22 webpage, and further detail on its purpose and use is set out within our Contract Technical Guidance. Our approach is intended to set a minimum requirement, not to prevent partners within an ICS/STP from adopting (or retaining) a more ambitious collaboration or alliance agreement. We welcome feedback on the model SCFMA.

6 Consultation responses

We invite you to review this consultation document and the two draft Contracts (available on the NHS Standard Contract 2021/22 webpage) and provide us with feedback on any of our proposals.

Comments on the draft Contracts can be made either by using an online feedback form or by email to england.contractsengagement@nhs.net, preferably using our standard template; details are available shortly on the NHS Standard Contract 2021/22 webpage.

The deadline for receipt of responses is Friday 5 February 2021. We will publish the final versions of the generic Contract (both full-length and shorter-form) as soon after that as possible.