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2019/20 Pensions Annual Allowance Charge Compensation Scheme **General practice**

Guidance Note on section 96 Agreement relating to the
2019/20 Pensions Annual Allowance Charge
Compensation Scheme (2019/20 PAACCS)

22 July 2022

Introduction

1. On instructions from the Secretary of State, NHS England has put in place a scheme to ensure that clinicians who faced annual allowance tax charges in relation to their pension accrual under the 1995/2008 and 2015 sections of the NHS Pension Scheme are compensated when they retire for any reduction in benefits from annual allowance charges (the "Scheme").
2. Where a person entitled to compensation under the Scheme (a "Scheme Payment") was a person who, at the relevant time, was providing primary medical services at a GP practice, the Scheme Payment will, from an accounting perspective, be made by the GP practice.
3. NHS England has statutory powers to provide financial assistance to GP practices under section 96 of the NHS Act 2006. NHS England will rely on section 96 to route the Scheme Payment through the GP practice.
4. NHS England has produced a standardised section 96 agreement to record these arrangements.
5. This guidance note sets out how to prepare the standard section 96 agreement for signature and provides an overview of the key terms of the section 96 agreement.

Guidance on completing the section 96 Agreement

6. The standardised nature of the section 96 agreement, and the fact that the amount of any payment is calculated in accordance with the Scheme, means that relatively little input is required to prepare the section 96 for signature.
7. The legal entity that will enter into the section 96 agreement as the GP practice is known as the "Grant Recipient" in the section 96 agreement. The persons or bodies entering into the section 96 agreement need to be clearly set out. Appropriate names need to be added to:

- i the front cover;
- ii the parties section on page 3; and
- iii the signature page.

8. The table below indicates what is to be added depending on the type of GP contract and the arrangement of the contractor.

Type of arrangement held by the GP practice	Contractor arrangement	What to add as the Grant Recipient on the front cover, page 3 and the signature page
GMS	Individual	The name of the individual
GMS	Partnership	The names of all partners in the partnership
GMS	Limited Company	The name of the company as it appears on Companies House. The registered address and company number should also be included on page 3.
PMS	Individual	The name of the individual.
PMS	Partnership	The names of all partners who are contractor partners under the PMS agreement.
PMS	Limited Company	The name of the company as it appears on Companies House. The registered address and company number should also be included on page 3.
APMS	Individual	The name of the individual.
APMS	Partnership	The names of all partners in the partnership.
APMS	Limited Company or any other types of organisation that is a separate legal entity	The name of the organisation as it appears on the appropriate register, e.g. for companies this will be Companies House. The registered address and registered number should be included on page 3.

Key terms of the section 96 Agreement

Duration

9. The section 96 agreement comes into effect once signed by the parties and will remain in force but be effectively dormant until a Scheme Payment is to be made.
10. The section 96 agreement is worded to automatically expire the day after the last Scheme Payment is made, if it is not terminated earlier. It will automatically terminate if NHS England loses the power to make a payment pursuant to section 96 of the NHS Act (which is the statutory power that NHS England is relying on to enter into this arrangement) and the obligations of NHS England under the section 96 agreement are not transferred to another organisation.
11. The parties have certain rights to terminate the section 96 agreement earlier. These rights include where:
 - i a party takes steps that indicate the party is close to, or is about to, undergo bankruptcy or administration or a similar event;
 - ii the Scheme is withdrawn or no longer has effect; and
 - iii a party has committed a breach of the section 96 agreement that can't be remedied or is remediable but the party has not remedied the breach after being required to do so.

Changes to the parties

12. The section 96 agreement may be in place for many years. There may be changes to both parties during this time.
13. Over time, responsibilities of NHS England may transfer to another organisation, whether existing or new. This most commonly occurs via a statutory transfer scheme or order which effectively makes it a statutory requirement that for those contracts/agreements that transfer, the reference to NHS England in the contract/agreement is to be read as a reference to the body to which it transferred. No signed novation agreement is necessary.

14. Over time, the GP practice may want to change the identity of the persons that constitute the Grant Recipient under the section 96 agreement because of changes to those who hold the GP contract. There may be changes, for example, in the identity of the partners of the GP practice, incorporation of the GP contract or transfer or novation of the GP contract to other persons or organisations. It is important to note that, whereas a GMS contract is deemed to be held with the practice partnership as it is constituted from time to time, where the GP practice wants to make a change to the persons listed on the section 96 agreement, a novation will always be required. There is no automatic change to the parties as with certain scenarios under a GMS contract.
15. The section 96 agreement indicates that NHS England's consent is required for a novation and that NHS England is required to act reasonably.

Payment

16. The reimbursement is referred to as the "Grant Funding" in the section 96 agreement. Any individual payment of the Grant Funding is referred to as a Grant Payment.
17. It is acknowledged that the exact amount of any Grant Payment cannot be known until the Scheme Payment to which it relates is calculated in accordance with the Scheme. This may not occur until the relevant person who is eligible to receive the payment (the "Scheme Beneficiary") retires which may be many years after the section 96 agreement is first entered into.
18. The amount of a Grant Payment will equal the amount of the Scheme Payment on the provision that it will not include the cost of a National Insurance charge that may be payable as a result of the GP practice voluntarily choosing to account for the Grant Payment or the Scheme Payment in such a way that leads to a National Insurance charge being incurred.
19. The section 96 agreement acknowledges that while the GP practice is eligible to receive the Grant Funding, it won't actually receive the money into its bank account. Instead, NHS England will, acting on behalf of the GP practice, provide the relevant amount to the NHS BSA and will, again on behalf of the GP practice, arrange for NHS BSA to make the payment to the Scheme Beneficiary. This

ensures that no additional transactional costs are incurred in the payment being received by the Scheme Beneficiary.

20. The section 96 agreement provides the ability for NHS England to withhold, suspend or require repayment of the Grant Funding in certain expressly stated circumstances including where a National Insurance Charge has been incurred that results in an additional liability to NHS England. Other circumstances include where an error has been made in the amount to be paid or the Grant Recipient has acted dishonestly or negligently in respect of the Grant Funding. The full list of circumstances are set out in the section 96 agreement which is attached as Annex A.

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