

2019/20 Pensions Annual Allowance Charge Compensation Scheme **Accounting Treatment in Primary Care**

Dental

Guidance Note on section 112 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 with respect to the tax year 2019/20 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 Dental practice, the Scheme Payment will, from an accounting perspective, be made by the Dental practice.
3. NHS England has statutory powers to provide financial assistance to Dental practices under section 112 of the NHS Act 2006. NHS England will rely on section 112 to route the Scheme Payment through the Dental practice.
4. NHS England has produced a standardised section 112 agreement to record these arrangements.
5. This guidance note sets out how to prepare the standard section 112 agreement for signature and provides an overview of the key terms of the section 112 agreement.

Guidance on completing the section 112 Agreement

6. The standardised nature of the section 112 agreement, and the fact that the amount of any payment is calculated in accordance with the Scheme, means relatively little input is required to prepare the section 112 for signature.
7. The legal entity that will enter into the section 112 agreement as the Dental practice is known as the "Grant Recipient" in the section 112 agreement. The

persons or bodies entering into the section 112 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 Dental practice	Contractor arrangement	What to add as the Grant Recipient on the front cover, page 3 and the signature page
GDS	Individual	The name of the individual
GDS	Partnership	The names of all partners in the partnership
GDS	Dental corporation	As a dental corporation is a body corporate, the name of the body corporate as it appears on the relevant register. The registered address and number should also be included on page 3.
GDS	Limited liability partnership	The name of the LLP as it appears on Companies House. The registered address and registered number should also be included on page 3. The LLP may authorise an individual partner to sign on behalf of the LLP.
PDS	Individual	The name of the individual
PDS	Partnership	The names of all partners who are contractor parties under the PMS Agreement
PDS	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.
PDS	Dental corporation	As a dental corporation is a body corporate, the name of the body corporate as it appears on the

Type of arrangement held by the Dental practice	Contractor arrangement	What to add as the Grant Recipient on the front cover, page 3 and the signature page
		relevant register. The registered address and number should also be included on page 3.
PDS	Limited liability partnership	The name of the LLP as it appears on Companies House. The registered address and registered number should also be included on page 3. The LLP may authorise an individual partner to sign on behalf of the LLP.
PDS	NHS Trust or NHS Foundation Trust	The full name of the NHS Trust or NHS Foundation Trust. The formal address should also be included on page 3.
PDS Plus	As for PDS above	As for PDS above

Key terms of the section 112 Agreement

Duration

9. The section 112 agreement becomes effective 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 112 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 The parties have certain rights to terminate the section 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 112 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

11. The section 112 agreement may be in place for many years. There may be changes to both parties during this time.
12. 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.
13. section 112 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 112 agreement are not transferred to another organisation.
14. Over time, the Dental practice may want to change the identity of the persons that constitute the Grant Recipient under the section 112 agreement as a result of changes to those who hold the Dental contract. There may be changes in the identity of the partners of the Dental practice, incorporation of the Dental contract or transfer or novation of the Dental contract to other persons or organisations. It is important to note that, whereas a GDS contract is deemed to be held with the practice partnership as it is constituted from time to time, where the Dental practice wants to make a change to the persons listed on the section 112 agreement, a novation will always be required. There is no automatic change to the parties as with certain scenarios under a GDS contract.
15. The section 112 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 112 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 112 agreement is first entered into.
18. The amount of a Grant Payment will equal the amount of the Scheme Payment provided that the costs do not include the cost of a National Insurance charge that may be payable as a result of the Dental 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 112 agreement acknowledges that while the Dental 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 Dental practice, provide the relevant amount to NHSBSA and will, again on behalf of the Dental practice, arrange for NHSBSA to make the payment to the Scheme Beneficiary. This ensures that no additional transactional costs are incurred in the payment being received by the Grant Beneficiary.
20. The section 112 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 112 agreement which is attached as Annex A.

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