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2023/25 NHS Payment Scheme – a
consultation notice

Annex CnA: Responding to this consultation, and the statutory objection process

23 December 2022

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1. Introduction

1. The purpose of this annex is to provide guidance on the process by which Integrated Care Boards (ICBs), ‘relevant providers’ and other persons NHS England considers appropriate can object to proposals for the 2023/25 NHS Payment Scheme (NHSPS). In this annex, we:
 - explain which ICBs, providers and other persons can object to the proposals
 - detail how objections can be submitted
 - explain the process that applies where objections exceed the prescribed percentages
 - set out the proposed timetable for publication of the 2023/25 NHSPS.
2. The statutory consultation period of 28 days ends on 21 January 2023. However, given the launch of the consultation in December, and the bank holidays for Christmas and New Year, we will continue to consider objections and feedback submitted until midnight at the end of **27 January 2023**. After this, NHS England will calculate the objection percentages. If none of the objection thresholds are reached, and subject to consideration of consultation responses, NHS England would then publish the 2023/25 NHSPS in due course. See Section 4 of this Annex for more details of the objection process.
3. The rules, prices and methods in the 2022/23 National Tariff Payment System will continue in force until the new NHSPS comes into effect.

2. Scope of the consultation

4. Section 114C of the Health and Social Care Act 2012 (the 2012 Act) provides that, before publishing the NHSPS, NHS England must consult with:
 - each Integrated Care Board
 - each relevant provider
 - such other persons as NHS England considers appropriate.
5. Previously, for the National Tariff, although we were required to consult on the entire set of proposals for the tariff, the objection process applied only to the proposed method for setting national prices. The amended 2012 Act provides that both the consultation and the objection process covers all the proposals for the NHSPS.
6. Section 114C of the 2012 Act also provides that NHS England must carry out an assessment of the likely impact of the proposed scheme. This impact assessment is published in Part C of the consultation notice.

3. Who can object to the proposals?

7. The 2012 Act specifies that it is only objections to the proposals from ICBs, “relevant providers” and “such other persons that NHS England considers appropriate” that count for the purposes of the statutory objection process.¹ This means only these objections can determine whether NHS England can proceed to publish without further consultation, or would need to take further steps as set out in section 4 below.
8. There are two categories of relevant provider²:
 - Those who hold an NHS Provider Licence. This includes all NHS trusts and NHS foundation trusts and many independent sector providers of NHS services.
 - Other relevant providers as specified in the National Health Service (NHS Payment Scheme – Consultation) Regulations 2022³ The effect of those regulations is that a person is a relevant provider if they provide an NHS service which would be covered by the payment arrangements proposed in this consultation notice. This refers to current providers of the service. The definition of relevant provider includes all NHS trusts currently providing services that would be subject to the proposed NHSPS.
9. Other commissioners, providers and other organisations and individuals can respond to the consultation and voice their objections to the proposals. However, those objections will not be included in the statutory objection process. This includes objections from prospective providers who intend to provide a service, but who do not currently provide that service.

¹ Section 114C(2) 2012 Act.

² as defined by s114C(8) 2012 Act.

³ SI 2022/1189 available at: [The National Health Service \(NHS Payment Scheme – Consultation\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2022/1189)

4. The objection process

10. The 2012 Act provides that NHS England must discuss objections with representatives of organisations who have objected to the proposals, if:
 - the proportion of ICBs objecting to the proposed NHSPS is greater than the prescribed percentage; and/or
 - the proportion of relevant providers objecting to the proposed NHSPS is greater than the prescribed percentage.
11. The percentages will be prescribed in regulations, which we expect to come into force before the end of the consultation period. The relevant prescribed percentage in each case is currently expected to be 66%. This is based on draft regulations but could change as the draft is subject to approval by Parliament.⁴
12. Following this discussion with representatives of objecting organisations, NHS England will decide whether to amend the proposed NHSPS. If NHS England makes significant amendments and it would be unfair to make them without further consultation, a re-consultation under section 114C would be required.
13. If NHS England decides not to make any amendments to the proposed NHSPS, it may publish the scheme but must first publish a notice stating the decision to publish and the reasons why. It must then send this notice to the representatives of objecting organisations and all ICBs and relevant providers from whom objections were received.
14. As such, there are the following possible outcomes after statutory consultation:
 - If neither objection threshold has been reached and NHS England decides, after considering stakeholder feedback, that it is not necessary to make any significant changes to the proposed NHSPS which require further consultation, NHS England will publish the 2023/25 NHSPS.

⁴ [The National Health Service \(NHS Payment Scheme – Consultation\) \(No. 2\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- If neither objection threshold has been reached, and NHS England decides, after considering stakeholder feedback, that it is necessary to make significant changes to the proposals which require further consultation, NHS England will issue a revised consultation notice and re-consult for 28 days.
 - If one or both of the objection thresholds has been reached, NHS England will arrange a discussion with representatives from the organisations objecting to the proposals. Following these discussions, NHS England will either:
 - decide to amend the proposed NHSPS and:
 - if those amendments are significant and NHS England considers it would be unfair to make the amendments without further consultation, re-consult on the updated proposals; or
 - if the amendments are not significant or if they are and NHS England considers it would not be unfair to proceed without further consultation, proceed to publish the final NHSPS as revised.
 - decide not make any amendments to the proposed NHSPS and publish a notice setting out the reasons why NHS England has decided to proceed with the proposed NHSPS.
15. If NHS England issues a revised consultation notice, this re-consultation will be subject to the same process – that is, ICBs, relevant providers and other persons NHS England considers appropriate could object to the proposed NHSPS, and all stakeholders can submit their views on the proposals. This process would continue until:
- neither objection threshold is met and NHS England decides to publish the proposals without further consultation; or
 - NHS England decides to publish the NHSPS following objections, either with amendments or publishing a notice explaining the reasons for proceeding without amendments.
16. Objections to the proposals should be made by the ICB or relevant provider, not by individual teams or departments of those bodies. An objection should be an objection agreed by the respondent, rather than the view of an individual or team within it. It is the responsibility of individual ICBs and relevant providers to ensure proper internal processes for deciding to make an

objection (for example, a process of obtaining agreement of members, governing bodies or the board).

17. ICBs and relevant providers should provide reasons for their objection to the proposals. A failure to do so does not invalidate the objection, but if the reasons are not raised at this stage, it may impact our assessment of the objection.
18. Should an ICB or relevant provider decide to object to the proposed 2023/25 NHSPS, the organisation's objection can be registered in an [online survey](#).⁵
19. Irrespective of the number of separate objections from an ICB or relevant provider, for the purposes of calculating the objection percentages (as set out above), each respondent will be counted only once.

⁵ www.engage.england.nhs.uk/pricing-and-costing/2023-25-nhsps-consultation

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