Classification: Official

Publication reference: PRN01169

NHS Standard Contract 2024/25

Summary of key changes made in response to consultation feedback

Version 1, February 2024

Prepared by: NHS Standard Contract Team, NHS England
england.contractshelp@nhs.net

Contents

Introduction

Following our consultation which ended on 26 January 2024, NHS England has now published an updated NHS Standard Contract and Contract Technical Guidance for 2024/25.

This document describes the material changes we have made in the final full-length Contract in response to stakeholder feedback received during the consultation process. Changes have been carried over to the shorter-form version of the Contact where relevant.

We have published this updated Contract now, so that commissioners and providers are able to see the proposed Contract text and can start to complete the Schedules locally, so that, wherever possible, contracts can be agreed in advance of services starting to be delivered on 1 April 2024.

The delay to publication of the 2024/25 NHS Planning Guidance means that we are not yet able to confirm national expectations for 2024/25 for some of the national quality standards shown in Annex A of the Service Conditions of the Contract. **We will publish an updated set of 2024/25 Service Conditions alongside the Planning Guidance when it is published.** We do not anticipate making other changes to the Contract documentation at that point.

Overall consultation feedback

We received feedback from 141 organisations or individuals in relation to the specific changes we proposed in the draft 2024/25 Contract. Most responses received were from providers (64%); Integrated Care Boards and Commissioning Support Units accounted for 22%.

Each of the proposed changes had majority support, by a significant margin, amongst the respondents. In most cases, therefore, we have retained in the final Contract the wording proposed in the draft version.

In a small number of areas, consultation feedback has prompted us to make minor changes in the final version of the Contract. In other cases, the feedback indicates that, whilst the specific proposed changes to the Contract are supported, further clarification as to their rationale and intent would be helpful. Our detailed response is set out, issue by issue, below.

(Throughout this document, where we quote a percentage of respondents to our consultation who either supported or opposed a particular proposal, the percentage stated is the proportion excluding any respondents who marked that particular proposal as “not applicable” in their response.)

Changes in response to feedback

Visiting in care homes, hospitals and hospices (Service Condition 17.11)

The 2023/24 Contract (full-length) requires providers to operate a clinically appropriate policy for visits to, and accompaniment of, patients in hospital settings. The provider's local policy must be no more restrictive than the position described in NHS England Covid-era guidance from 2022.

Changes to regulations relating to visiting were published just before Christmas (The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023) and will come into effect on 6 April 2024. The revised regulations apply more broadly than the existing Contract provision – they cover care homes and hospices as well as hospitals, and they also apply to arrangements for enabling care home residents to make social visits outside of the home. CQC has also been consulting on new draft guidance to accompany the revised regulations and will publish final guidance in due course.

In this context, DHSC asked us to update references to visiting in the final Contract. We have therefore amended Service Condition 17.11 in the full-length version of the Contract, so that it applies more broadly (that is, to care homes and hospices as well as hospitals) and requires the provider to operate a policy which complies with the revised regulations and new CQC guidance. As care homes and hospices are often commissioned under the shorter-form version of the Contract, we have included the same requirement in that version, at Service Condition 17.4.

Green NHS and Sustainability (Service Condition 18.2.3)

We proposed to remove a number of provisions from the Contract, either because they are out of date and no longer required or because they can now reasonably be seen as "business as usual" good practice requirements which no longer merit specific mention in the Contract. As part of this approach, we proposed to shorten the detailed provisions in the full-length version of the Contract dealing with Green NHS issues.

Consultation feedback indicated some concern that we had gone too far in limiting, under Service Condition 18.2.3, the obligation on the provider to report on its progress against its local Green Plan. In response, in the final 2024/25 Contract, we have reverted to wording which is closer to the existing 2023/24 requirement.

Patient Safety Specialists (Service Condition 33.9)

The full-length Contract requires the provider to designate one or more Patient Safety Specialists. NHS England recently commissioned an independent evaluation of the implementation of the Patient Safety Specialist role, and this identified some unwarranted variation across providers, meaning that the role of these Specialists was not uniformly effective. We therefore proposed, in the draft

2024/25 Contract, to strengthen the requirement, so that it would require providers to designate Patient Safety Specialists in accordance with NHSE's 2020 Identifying Patient Safety Specialists guidance.

The proposed change to the Contract wording was strongly supported in consultation feedback (95% in favour). However, NHS England has now published an updated document, setting out requirements for the Patient Safety Specialist role, and we have amended the Contract definition of Patient Safety Specialist so that it now refers only to that newly published document.

Procurement frameworks for products and services (Service Condition 39.2)

We included new provisions in Service Condition 39 relating to the use by NHS Trusts and NHS Foundation Trusts of frameworks accredited by NHS England when purchasing products and services. Our proposed changes in this area were supported by 91% of respondents.

NHSE has now published detailed guidance about the national process for accrediting organisations which host frameworks (framework host accreditation) and for accrediting specific frameworks for particular goods and services (framework category accreditation). The guidance includes an initial list of organisations accredited as framework hosts. Detailed FAQs have also been made available on Future NHS at https://future.nhs.uk/CCF_Hub/groupHome. Queries about the new arrangements can be sent to england.ceopframeworks@nhs.net.

We have retained the new provisions in the final Contract with three amendments.

- We have included a reference to the guidance above in the Contract definition of an Accredited Framework.

- We have made clear (as a new Service Condition 39.2.3) that, where a Trust has already, before 1 April 2024, commenced an internally approved process to purchase something via a framework, then – even if it has not yet awarded a contract under that process – the requirement to purchase via an accredited framework does not apply.

- Because the list of accredited framework hosts has been published, we have been able to simplify the wording in Service Conditions 39.2.1 and 39.2.2.

Publication of the guidance and FAQs described above will address many of the anxieties expressed by stakeholders responding to our consultation on this issue. But consultation feedback indicated some common misunderstandings of the new Contract provisions, and the clarifications below should be helpful.

- Frameworks as referred to in the Contract include dynamic purchasing systems.

- The obligation to purchase via an accredited framework applies only if the provider wants to use a framework to make its purchase; the option to purchase via other procurement procedures remains available.

- If an accredited framework can't supply the product or service for when it's needed, the obligation to use an accredited framework doesn't apply: note the "for timely supply" wording at Service Condition 39.2.

- Some Trusts suggested that they should still be entitled to seek their own better deals, individually. The purpose of accredited frameworks is to leverage NHS purchasing power on a national scale, resulting in better value for the NHS and taxpayers overall.

NHS Trusts and NHS Foundation Trusts are encouraged to make full use of the NHS Spend Comparison Service; this offers a free-to-use online tool for NHS procurement teams to compare price and spend data, helping to identify potential savings, leverage the market and collaborate to purchase goods and services. The Service relies on up-to-date data – and all NHS Trusts and NHS Foundation Trusts should note that they are required, under Service Condition 28 and Schedule 6A of the Contract, to submit accounts payable and purchase order data to the Service.

Agency rules (Service Condition 39.8)

We included a new requirement in the draft Contract (full-length) relating to NHS England's rules on agency expenditure. Reflecting the wording of the rules at the time, the proposed Contract requirement was for all NHS Trusts, and any NHS Foundation Trusts receiving interim support from DHSC and any in breach of their licence for financial reasons, to comply with the rules. Other NHS Foundation Trusts were only required to have regard to the rules.

The proposed new Contract requirement was strongly supported in consultation feedback (92% in favour). The agency rules have now been republished in updated form, making clear that the annual limits set by NHS England on agency expenditure at system level are joint objectives for ICBs and partner Trusts under section 223L of the National Health Service Act 2006. Every NHS Trust and NHS Foundation Trust must use all reasonable endeavours to achieve such objectives, and we have amended the wording in the final Contract accordingly to make this explicit.

Venous thromboembolism (VTE) risk assessment (Service Conditions, Annex A)

The Contract includes a longstanding requirement for acute providers to ensure that 95% of inpatients undergo risk assessment for VTE. The national data collection on VTE risk assessment was suspended during the pandemic and the Contract wording changed, with a requirement that providers undertake sample-based auditing of compliance locally each quarter.

NHS England is consulting on plans to re-establish the comprehensive national data collection, so we have made amendments to the wording of Annex A of the

Service Conditions and the definition in our Contract Technical Guidance to future-proof the requirements. The revised wording makes clear that the existing requirement for monitoring via sample-based audit will continue until such time as the comprehensive national data collection becomes mandatory again.

Oliver MacGowan Mandatory Training Package (General Condition 5.5)

The Health and Care Act 2022 makes provision for mandatory training on learning disability and autism for all staff. The Department of Health and Social Care has recently completed a consultation on a draft code of practice to govern the provision of such training and is expected to publish the final version shortly. We therefore proposed to add a requirement to the Contract for providers to ensure that all staff receive training on learning disability and autism appropriate to their role, in accordance with the code of practice when published in final form and having regard to DHSC's, CQC's and NHS England's recommendation of the Oliver McGowan Mandatory Training on Learning Disability and Autism as the "preferred and recommended" training package.

The proposed new provision in the draft Contract received overwhelming support (98% in favour). There is one area in which we have made a change in the final Contract. The Oliver McGowan Mandatory Training on Learning Disability and Autism remains the "preferred and recommended" training package for DHSC and NHSE. However, as CQC's published guidance on training staff to support autistic people and people with a learning disability does not endorse specific training packages, we have amended the Contract wording to remove the specific reference to CQC.

Contract management (General Condition 9.1)

We proposed to remove the separate arrangements for "Information Breaches" from Service Condition 28, with the intention that breaches of information and reporting requirements would in future be handled under the overall "contract management" process at General Condition 9.

This proposal was strongly supported in consultation feedback (93% in favour). Some respondents correctly pointed out that General Condition 9.1 continued to suggest that automatic financial sanctions could be applied for breaches of national and local quality standards, despite the provisions allowing for such sanctions having been absent from the Contract since 2021/22. We have therefore deleted General Condition 9.1.

Audit (General Condition 15)

We proposed simplifications to the provisions in the full-length version of the Contract for independent audit, bringing them into line with the briefer and less transactional arrangements in the shorter-form version.

Our proposed changes received strong support in the consultation feedback (94% in favour). A number of respondents asked that we re-instate the requirement for

the auditor's draft report to be shared with the provider, to allow discussion of the findings and the correction of any inaccuracies or misinterpretations before a final report is issued. We agree that this specific step in the process is helpful, and we have therefore included it in the final Contract for both the full-length and shorter-form versions.

We have also added some further detail on independent audits to our final Contract Technical Guidance (see paragraphs 43.17-20).

Clarifications in response to feedback

The section below deals with areas in which we have retained, in the final Contract, changes which we originally proposed in the draft version – but where we think it is helpful for us to offer some clarification.

NHS Provider Selection Regime

We proposed a number of changes to the Contract to reflect the new NHS Provider Selection Regime (PSR). These dealt with permitted variations, termination and extension of contract term, as well as providing space within the Particulars for recording the route through which the individual contract was awarded – whether under the new PSR or the preceding regime. These changes attracted strong support in consultation feedback (95%-97% in favour).

Comments which we received as part of consultation feedback indicated that commissioners and providers are still getting to grips with the detail of how PSR will work. Extensive support is available on PSR and we recommend that all those affected should read and consider the PSR statutory guidance and FAQs. Detailed questions on PSR can be directed to psr.development@nhs.net.

We also received questions about the way in which we expect commissioners to document, in the Particulars, the route through which they have awarded an individual contract. We recommend reading paragraph 15 of our Contract Technical Guidance. The key points are:

- Implementation of PSR should not mean that different services always need to be dealt with in separate contracts – nor should it discourage or prevent collaborative commissioning (whereby multiple commissioners award a single joint contract to a provider).

- Commissioners should continue to make local decisions about which services they think it makes sense to bundle together into a single contract, and about whether and when they wish to commission services jointly with others.

- There can only be one process for the award of a single contract, so the chosen process for award must be the same for all commissioners which are party to the contract in question and for all the services in scope of the contract.

Prior Approval Schemes

We proposed small adjustments to the wording of Service Condition 29 on Prior Approval Schemes (PASs), through which commissioners can set criteria to determine which patients are eligible to access particular services or treatments. The changes we proposed received strong support in the consultation feedback (93% in favour), and we have retained them in the final Contract.

Some providers made comments about the administrative burden which can be involved in PASs and proposed that a provider should only have to work to a single set of criteria for a particular service, which would apply across all its commissioners. We strike a careful balance in the Contract and in our Contract Technical Guidance (paragraphs 42.8-13) about the use of PASs:

- It is for individual commissioners, not providers, to make local decisions on what services to commission for their populations and what access criteria to apply. Our engagement over summer 2023 confirmed that many commissioners regard PASs as an important commissioning tool, enabling them to ensure that activity which providers undertake is clinically appropriate and in accordance with local commissioning policies and criteria.

- It is important that an ICB can ensure that the same criteria apply to all its patients, whichever of its commissioned providers they attend for treatment. So there will be some instances where an individual provider does need to apply different criteria for patients from different ICBs.

- The Contract also contains safeguards for providers. It requires commissioners to have regard to the administrative and financial burden which PASs may involve for providers, and it requires ICBs operating under a single contract with a provider to seek to minimise the number of different PASs they operate in relation to any particular service. In practice, therefore, ICBs must seek to collaborate locally to adopt consistent clinical thresholds and administrative processes in their PASs as far as possible, thus lessening the number and variability of different PASs which any individual provider must deal with.

Emergency Preparedness and Response (EPRR)

We proposed to update the EPRR provisions in the full-length version of the Contract, so that all providers were specifically required to have in place an Exercising Plan and a Commander Training Plan – in addition to existing requirements for an Incident Response Plan and a Business Continuity Plan. The proposed changes to the Contract wording were strongly supported in consultation feedback (96% in favour). A small number of independent sector providers felt that

the additional requirements for them to have an Exercising Plan and a Commander Training Plan were inappropriate.

We recognise that the role likely to be played by an independent sector provider in any local incident will vary, depending on the type and scale of NHS services offered by the provider. This should be considered by the commissioner in ensuring that its scrutiny of an independent sector provider's emergency preparedness is proportionate; and the EPRR provisions in the shorter-form version of the Contract offer a lighter-touch approach where appropriate.

However, exercising incident response and ensuring appropriate training for response commanders are important elements of the NHS core standards for emergency preparedness, resilience and response. Compliance with these core standards is already a requirement under Service Condition 30.1, and we have therefore retained the new wording, as proposed, in the final full-length Contract.

Armed Forces Covenant

The full-length version of the Contract (Service Condition 1.5) includes a requirement for commissioners and relevant providers to have due regard to the Armed Forces Covenant and the Armed Forces Covenant Duty Statutory Guidance. In their response to the consultation, DHSC asked whether it would be appropriate to include the same requirement in the shorter-form Contract.

The Duty only applies formally to a limited list of bodies specified in the Guidance. In relation to providers of NHS-funded services under the NHS Standard Contract, it applies to NHS Trusts and NHS Foundation Trusts, but not to non-NHS providers. Trusts are rarely commissioned under the shorter-form Contract, and so we do not believe that adding the formal requirement to have due regard to the Duty to that version would be of significant value.

Nonetheless, NHS England would certainly encourage all non-NHS providers, operating under either version of the Contract, to take account of the principles of the Covenant in the way in which they provide services to members of the armed forces community.

Agreement of realistic activity plans and contract values

In response to consultation feedback from independent sector providers, we have included a reminder in our Contract Technical Guidance that, for contracts where payment depends on activity volumes, opening activity plans and estimated annual contract values should be set at realistic levels. This is important for providers, because it means that the monthly cashflow they receive ('on-account payments') will be broadly in line with the expected profile of costs they will face.

How requirements under the Contract are expressed

Some respondents commented on our use in the Contract of terms such as "have regard to"; their view was that these terms might be viewed as weak or imprecise.

We believe that these terms are appropriate in the contexts in which we use them. We provide clear definitions in paragraph 5 of our Contract Technical Guidance of the different ways in which the Contract describes obligations on either commissioner or provider and what each expression means.

NHS England
Wellington House
133-155 Waterloo Road
London
SE1 8UG

Contact: england.contractshelp@nhs.net

This publication can be made available in a number of alternative formats on request