

2025/26 NHS Payment Scheme – a consultation notice

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



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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 2025/26 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
2. Responses to the consultation must be submitted via the [online survey](#). The statutory consultation period of 28 days ends at midnight at the end of 28 February 2025. 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 2025/26 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 2023/25 NHS Payment Scheme (amended) would 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 ICB
 - 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. Section 114C(2) of the 2012 Act specifies that it is only objections to the proposals from ICBs and “relevant providers” that count for the purposes of the statutory objection process. 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. As defined by s114C(8) of the 2012 Act, there are two categories of relevant provider:
 - 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 2022](#). 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.

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 in each case are currently 66%. This was set out in [The National Health Service \(NHS Payment Scheme – Consultation\) \(No. 2\) Regulations 2023](#).

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 without amendment 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 2025/26 NHSPS.
 - 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.
 - 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 2025/26 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 2025/26 NHSPS.
15. If NHS England issues a revised consultation notice, this re-consultation will be subject to the same process – that is, a 28-day consultation during which NHS England will consult each ICB, relevant provider and other persons NHS England considers appropriate, who will all be able to submit their further views on the proposals. The

objections process described above will also apply to this consultation. 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 the objections process, either with amendments which do not require re-consultation 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 2025/26 NHSPS, the organisation's objection can be registered in an [online survey](#).
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.
20. If you have any questions, please contact england.pricingenquiries@nhs.net.