NHS England

NHS Standard Contract for 2015/16

Discussion paper for stakeholders response document

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This document is provided for you to use when providing your comments on the NHS Standard Contract for 2015/16 discussion paper for stakeholders. Please expand the response boxes as required.

Please send your comments, by Friday 12 September 2014, to: england.contractsengagement@nhs.net

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Key issues on which we would welcome feedback

Key issue 1 The Contract as a commissioning lever

Question 1 *To what extent should the NHS Standard Contract be used to support longer term strategic changes in local health systems?* *Would you propose any specific changes to the NHS Standard Contract to strengthen the ability of commissioners to use it to support the longer term strategic direction in local health systems?*
An NHS Standard Contract may support commissioners if it is concise, easy to use and relevant. There were some welcome improvements in the 2014 standards, but there are still too many provisions which are of little relevance to NHS community pharmacies entering into contracts to provide low value services; the administrative overhead of the NHS Standard Contract may deter some commissioners and potential providers – therefore its value as a support tool is mainly for the high value services, not local, low cost services. Perhaps there could be a 'NHS Standard Contract Lite' for contracts below a threshold value.

Key issue 2 Changes made to the Contract for 2014/15

Question 2 *How are the changes we made for 2014/15 working in practice?* *Have they delivered benefits?* *Have they caused any problems in practical implementation?*
There were some welcome changes, aimed at reducing the complexity and volume of provisions. However, there is room for further reduction

Key issue 3 Mandated use of the NHS Standard Contract

Question 3 *Are commissioners now routinely using the NHS Standard Contract for all their commissioned healthcare services other than primary care?* *If not, for which services are locally-designed contracts still being used?* *Are there specific problems with the format or content of the Standard Contract which are causing this?*
We know that the use of the NHS Standard Contract is mandatory, and there are benefits in having standard provisions which ensures consistency of approach. But, mandating its use and having some provisions as a one size fits all, means that some commissioners have decided to seek out alternatives (for example where rolling over existing contracts). The contents that cause particular problems are those where there is a requirement to comply with a provision external to the NHS Standard Contract, which presents itself as a simple one line question in the contract, with a cross reference to another site – for example the requirement to comply with the NHS Protect organisational profile provisions. The steps necessary to carry out the profiling are substantial, with the follow up to satisfy NHS Protect following submission also adding to administrative overhead which few will think worthwhile in a low value contract (if our interpretation is correct, a pharmacy chain with many branches each providing low value services, would fall outside the exemption for small providers due tot the aggregation across the business)

Key issue 4 Tailoring the contract for different service types

Question 4 *Are there conditions within the Contract which are inappropriate or redundant for particular service types?* *Where would alternate provisions be appropriate, and where would the omission of particular provisions be appropriate, because they do not add value?*
For services commissioned from NHS community pharmacies, the NHS Protect organisational profiling is a substantial burden although it is recognised that the exemption for small businesses is a welcome step in the right direction. NHS Community pharmacies invest their own resources into their businesses, and the purpose of the NHS Protect activity is to protect the resources of the NHS. We would prefer to see the NHS Protect organisational profile provisions applied only where there will be risks to NHS resources. There are other provisions (e.g. dispute resolution) that are overly detailed for low value services. We accept that some simple contracts and service level agreements formerly agreed between Primary Care Trusts and NHS community pharmacies were inadequate, and we support the principle of an NHS Standard contract to ensure consistency and appropriateness, but this has resulted in a contract that is more appropriate for higher value contracts than the ones usually agreed with NHS community pharmacies.

Key issue 5 NHS England as direct commissioner

Question 5 *Would it be clearer if certain national requirements of NHS England as direct commissioner of services were built into the nationally-mandated text of the NHS Standard Contract (but perhaps to be included or excluded by appropriate selection of option via the eContract system)?*
There are many provisions in the NHS community pharmacy contractual framework, which are replicated (or replicated and expanded) in the NHS Standard Contract. Examples include the clinical governance provisions. If the NHS Contract could be modified to allow a direct read over that compliance with the standard 'terms of service' under the NHS contractual framework is deemed to be sufficient compliance with the NHS Standard Contract, that would be a welcome enhancement.

Key issue 6 **Grant agreements**

Question 6 *Would commissioners welcome publication by NHS England of a model grant agreement template?* *Do you have a form of grant agreement which you have used successfully with voluntary sector providers which you would be happy to share with us?*
We have no comment

Key issue 7 **Contract management (General Condition 9) and financial sanctions**

Question 7 *Do commissioners use the Contract Management provisions in practice?* *Do these work effectively?* *Do the potential financial sanctions in the Contract Management process act as an effective incentive for providers to remedy poor performance?* *Are sanctions pitched at an appropriate level?* *Is there a need for further non-financial levers, aligning commissioner powers under the Contract with action by regulators?*
NHS Community pharmacies are subject to sanctions under their NHS contractual framework and are also subject to regulation by the professional regulator – the General Pharmaceutical Council (GPhC) which has regulatory powers over professionals and premises. It may be appropriate, especially if there is co-commissioning with NHS England, for the sanctions available to NHS England under the pharmacy contractual framework, to be expanded to include co-commissioned services.

Key issue 8 Never Events

Question 8 *Would you support changing the focus of Never Event sanctions for 2015/16, to focus on dis-incentivising failure by providers to report Never Events?*
We have no comment

Key issue 9 Sub-contracting (General Condition 12)

Question 9 *What would constitute a proportionate approach to commissioners having oversight of provider sub-contracting arrangements?* *Are the expectations in the current Contract on sub-contracting unreasonable or unrealistic – and, if so, why?* *Should we review and clarify our definitions and guidance on sub-contracting?* *We have received requests to publish a non-mandatory template for sub-contracts – would this be helpful?*
Because of the complexity and depth of the NHS Standard Contract many NHS community pharmacies may prefer to be sub-contracted by a lead provider. It is important that the commissioner has confidence in the services provided – whether directly or through sub-contracting, but it should not be necessary for the commissioner to have oversight of the sub-contracted providers since this reassurance will come from the lead provider's own sub-contracting framework. A sub-contractor could face double the amount of administrative burden if it was to have to respond for example to two organisations wishing to carry out monitoring exercises. We suggest that oversight of sub-contractors should be left to the lead provider who is accountable to the commissioner for the services provided, whether directly or through sub-contracts.

Key issue 10 **Dispute resolution (General Condition 14)**

Question 10 *How frequently do commissioners and providers follow the formal dispute resolution process – or are they usually able to resolve in-year differences informally?* *Is the process of Expert Determination set out in the Contract workable in practice?* *Is there sufficient clarity about the basis on which disputes relating to the agreement of a new contract should be handled?* *Would further national guidance in this area be helpful?*
We mentioned above that this is unnecessarily complex for many of the services commissioned through NHS community pharmacies. Many disputes can be dealt with informally and this should be built into the NHS Standard Contract. If national guidance is being considered, this is indicative that users of the NHS Standard Contract are finding the interpretation difficult – and it may be helpful to refresh and simplify GC14 as well as providing guidance.

Key issue 11 **Managing activity and referrals (Service Condition 29)**

Question 11 *Do commissioners use the activity management provisions in SC29 in practice?* *Are there some service types for which the provisions are simply not relevant at all?* *Do the provisions strike the right balance between commissioner and provider responsibilities and create strong enough incentives for each?*
Managing and monitoring activity is an important process, but we believe that for lower value contracts, the detailed arrangements for meetings, etc. may be considered overkill.

Key issue 12 Information flows, payment and financial reconciliation

Question 12 *Are any specific aspects of information, payment and reconciliation processes set out in the contract unclear?* *Is the overall reporting burden appropriate?* *Do the nationally-mandated Reporting Requirements in Schedule 6B cover all of the core information which commissioners require for any contract?* *Is there a case for including a specific requirement in the Contract so that any claim for a provider for payment must be backed by datasets at individual patient level?*
We have no comment

Key issue 13 The electronic contract system

Question 13 *What would encourage you to make greater use of the eContract system?* *Is the key requirement to have a basic system which works reliably from the start of the contracting round?*
The electronic system is a helpful development. Providing an 'eContract Lite' may be a further step worth taking.

Key issue 14 Staff engagement and equality

Question 14 *Would you support the additions and amendments to the NHS Standard Contract for 2015/16 (as detailed in s3.14 of the NHS Standard Contract for 2015/16 Discussion paper for stakeholders)?*
Great care must be taken to ensure that additional work on ensuring equality does not interfere with the delivery of services. Proposals such as extending the NHS Staff Survey from NHS Trusts to all providers of NHS funded care would not be appropriate for many NHS community pharmacies which are small businesses. The administration involved in managing and monitoring equality and diversity places undesirable additional demands on an already over-stretched sector.

Key issue 15 Minimising redundancy costs when senior NHS staff are subsequently re-employed

Question 15 *How could the NHS Standard Contract be used to create appropriate incentives for providers and commissioners, in terms of the re-hiring of senior NHS staff in receipt of redundancy pay from their previous NHS employer?*
We have no comment

Key issue 16 Contract support from NHS England

Question 16 *How can the NHS Standard Contract team better support commissioners and providers using the Contract at local level?* *In particular, how useful is our Contract Technical Guidance, and do you have suggestions for additional topics which need to be covered in it?*
The Guidance produced by NHS England is essential. It would be better to reduce the size and complexity of the NHS Standard Contract, but even if reduced to the minimum, there would still be a place for good guidance, as many who enter into these contracts are healthcare providers rather than trained in contract law.

Other issues

Question 17 *We are happy to receive suggestions for improvement to any other aspects of the NHS Standard Contract. Please feel free to cover further topics here.*
We have no further comments

How to respond

Please send the completed response document, by Friday 12 September 2014, to: england.contractsengagement@nhs.net