PROVIDER SELECTION REGIME – DRAFT STATUTORY GUIDANCE

EXTRACT – ANNEX C

Annex C: Supplementary information for commissioners and providers of primary care services

Scope of the regime in relation to primary care services

This annex is aimed at relevant authorities arranging primary care services under the PSR and provides additional information about how the PSR is expected to be applied when selecting providers for the delivery of primary care services. It is advised that this annex is read alongside NHS England's dedicated policy and guidance manuals,[1] which support commissioners in the legal, safe, and effective discharge of their primary care responsibilities.

Since 1 July 2022 all integrated care boards (ICBs) have assumed delegated responsibility for the commissioning of primary medical services, and as of 1 April 2023, NHS England delegated commissioning responsibility to all ICBs for all pharmaceutical, primary eye care services (general ophthalmic), and dental services.

Primary care services collectively refer to primary medical care, community pharmacy, primary dental care, and primary eye care services. The procurement of most primary care services is in scope of the PSR.

Primary care services have often been commissioned on the basis of contracts, which do not have a fixed end date, and so run until terminated. These contracts are therefore not routinely rearranged by relevant authorities.

However, there will be situations where relevant authorities must select a new provider for a service; for example, when responding to planned or unplanned contract terminations, when time-limited contracts (such as Alternative Provider Medical Service or Personal Dental Services contracts) expire, or when new services are arranged (such as new GP surgeries within a new estate/development). In these situations, commissioners must follow the appropriate provider selection process.

As a general rule:

- New primary care services that involve a relevant authority selecting a provider, and where the number of providers available to patients is restricted by the

[1] NHS England » Primary care

relevant authority, must be arranged by applying the most suitable provider process or the competitive process.

- New primary care services that do not involve a relevant authority selecting a provider, and where the number of providers available to patients is not restricted by the relevant authority, must be arranged under direct award process B.

- Continuation of existing services where the relevant authority does not select the provider(s), and instead any provider that meets the minimum requirement(s) is offered a contract and is placed on a list of providers for patients to choose from, must be awarded under direct award process B.

- Continuation of existing services where the contract of the current provider is coming to an end, the number of providers available to patients is limited by the relevant authority, the relevant authority wishes to continue with the existing provider and decides that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard (taking into account the key criteria and applying the basic selection criteria), and the proposed contract is not changing considerably, may be awarded under direct award process C.

- Modifications to existing contracts may be made in line with this statutory guidance (see contract modifications).

Primary medical care services

This section provides examples of how the regime may be applied when selecting providers for primary medical care services across five scenarios:

1. Continuation of existing contracts
2. Modification of existing contracts
3. Planned provider exit
4. Unplanned changes to existing contracts
5. New and integrated services

1. Continuation of existing contracts

A GP practice provider has an existing General Medical Services (GMS) contract

This is a nationally negotiated contract, made under section 84(2) of the 2006 Act on the terms set out under the National Health Service (General Medical Services Contracts) Regulations 2015.[2] These contracts are open ended[3] unless terminated by either the relevant authority (the commissioner) or the provider.

The contract has already been awarded and it will continue to run on an ongoing basis and will not come to an end unless terminated. Therefore, no day-to-day 'provider selection' is taking place.

A GP practice provider has an existing Personal Medical Services (PMS) agreement

This agreement is a local agreement between the relevant authority (the commissioner) and named members of a GP practice, made under section 92 of the 2006 Act on the terms set out under the National Health Service (Personal Medical Services Agreements) Regulations 2015.[4] These agreements are almost all open ended unless terminated by either the relevant authority or the provider.[5]

The open-ended agreements have already been awarded and will continue to run on an ongoing basis and will not come to an end unless terminated. Some PMS agreements include a right of return to a GMS contract where the signatory was previously a provider of essential services under a GMS contract. Therefore, no day-to-day 'provider selection' is taking place.

A GP practice provider has an existing Alternative Provider Medical (APMS) contract

APMS means arrangements made under section 83(2) of the 2006 Act on terms set out under Directions issued from time to time.

This contract is time-limited with the appointed provider and therefore periodically needs to be re-awarded. The following options are available to relevant authorities when awarding a new APMS contract once the existing contract has come to an end:

- If the proposed contract is not changing considerably and the provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, then the relevant authority may award the contract using direct award process C.

[2] The National Health Service (General Medical Services Contracts) Regulations 2015 (legislation.gov.uk)
[3] Except in certain circumstances where a temporary GMS contract may be used (urgent GP contracts).
[4] The National Health Service (Personal Medical Services Agreements) Regulations 2015 (legislation.gov.uk)
[5] In the case of a time-limited PMS agreement, treat this as an APMS agreement, as below.

- If the proposed contract is changing considerably or the relevant authority wants to seek new providers, then the relevant authority may award the contract using the most suitable provider process or the competitive process.

2. Modification of existing contracts

Merger of two of more GP practices leading to changes to existing contracts

Mergers may involve major modifications to contracts. Some may be straightforward (i.e., GMS and GMS contracts merging), while others are likely to be more complex (i.e., GMS, APMS and PMS contracts merging). The relevant authority may need to decide whether to continue with an existing contract or to create a new contract.

Mergers that result in the same services continuing, albeit with different groups or individuals, under one of the previously existing contracts are permitted modifications under the regime. Therefore, there would be no need to undertake a provider selection. Relevant authorities are expected to refer to the contract modifications section for further information about the processes that must be followed.

However, mergers that result in material modifications to the contract, such as a material change to the services, require a new contract to be awarded. The most suitable provider process or the competitive process must be applied because the relevant authority is in effect commissioning a new service.

A sole practitioner or a partnership wishing to replace its contract with a new one, so that it is held by a body corporate

This type of contract modification is a 'permitted modification' under the regime provided the service remains unchanged. Therefore, there is no need to undertake a provider selection. Relevant authorities are expected to refer to the contract modifications section for further information about the processes that must be followed.

Substantial modifications to existing contracts

For example, adding a new branch surgery under a contract or introducing major changes to contract payment mechanisms. This type of contract modification may be permitted under the regime, depending on the size and reason for the modification, and the impact it has on the services delivered. Relevant authorities are expected to refer to the contract modifications section for further information about the processes

that must be followed.

A GP partnership changing members (initiated by the practice)

The contracting parties are changing but this does not result in changes to the services delivered, following the processes set out in the primary care manual[6].

This type of contract modification is a 'permitted modification' under the regime provided the service remains unchanged. Therefore, there is no need to undertake a provider selection. Relevant authorities are expected to refer to the contract modifications section for further information about the processes that must be followed.

A GP partnership changing members or dissolving and the former partners disagree about who should take over the contract to deliver the services

Where a GP partnership has changed membership, refer to the primary care manual[8] concerning the appropriate notices required to effect a contractual change of members holding the contract.

If a partnership has given notice terminating its existing contract there may be disagreement amongst former members of the partnership about who can or should continue to provide the current services under a new contract.

In these circumstances, the relevant authority has a 'selection' decision to make as it needs to decide which of the partners should hold a contract going forward. This must be a new contract award.

The most suitable provider process or the competitive process must be applied.

Substantial modifications to existing APMS contracts

For example, an urgent care centre is changing from walk-in access to referral only access.

This is not a permitted modification under the regime, because the service, and therefore the contract, is changing materially.

Consequently, the relevant authority has a 'selection' decision to take and must apply the most suitable provider process or the competitive process to select the provider(s) for the new service.

[6] NHS England » Primary Medical Care Policy and Guidance Manual (PGM)

3. Planned provider exit

Planned provider exit from a GMS, PMS or APMS contract

In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection takes place, or to choose a new provider.

If a new provider is being chosen, then the most suitable provider process or the competitive process must be applied.

4. Sudden and/or unplanned changes to existing contracts

Sudden closure of existing GMS, PMS, or APMS contract holder

For example, due to the death of a GP who is the sole contract holder or loss of Care Quality Commission (CQC) registration.

In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection takes place, or to choose a new provider – this may either be as a temporary contract or a longer-term solution.

If a new provider is being chosen, then the urgent provisions within the regime may be used to secure immediate needs, e.g., to establish caretaker arrangements. However, as this will be a temporary arrangement it must be reconsidered after a set period (the urgent circumstances section provides further information about proper application). To note, a temporary contract under the GMS regulations could only be put in place for a maximum of one year[7].

Importantly, the most suitable provider process or the competitive process must be applied to establish a new permanent arrangement.

Urgent provision is needed to cover a service because a provider has opted out of providing it

Examples include:

- a provider leaves the market unexpectedly
- a directed enhanced service needs rearranging rapidly due to a provider

[7] The National Health Service (General Medical Services Contracts) Regulations 2015 (legislation.gov.uk)

unexpectedly declining to participate.

In these situations, the decision is either to disperse the patient list to the surrounding practices, in which case no provider selection takes place, or to choose a new provider – this may either be as a temporary cover or a permanent long-term solution.

If a new provider is being chosen, then the urgent provisions within the regime may be used to secure immediate needs, e.g., to establish caretaker arrangements. However, as this will be a temporary arrangement it must be reconsidered after a set period (the urgent circumstances section provides further information about proper application). To note, a temporary contract under the GMS regulations could only be put in place for a maximum of one year[8].Importantly, the most suitable provider process or the competitive process must be applied to establish a new permanent arrangement.

5. New and integrated services

Establishment of a new GP service (using GMS, PMS or APMS contracts)

In these circumstances, a new provider is being selected for a new contract, and so relevant authorities must apply the most suitable provider process or the competitive process.

Arranging a new service under an APMS contract

For example, arranging a new walk-in GP service within a hospital. This may be a freestanding APMS contract located within the hospital, or an NHS trust may contract for the business and either directly employ GPs or subcontract to GPs.

As a provider is being selected for a new service, relevant authorities must apply the most suitable provider process or the competitive process.

Mixed primary medical care and non-primary care services

For example, integrated NHS 111 services, which are usually set up under the NHS Standard Contract (with APMS 'bolt-on' schedule) and comprise primary medical care and urgent care services.

As a provider is being selected for a new service, relevant authorities must apply the most suitable provider process or the competitive process.

[8] The National Health Service (General Medical Services Contracts) Regulations 2015 (legislation.gov.uk)

Commissioning local enhanced services and/or local incentive schemes

For example, GPs with specialist expertise (i.e. in dermatology or vasectomies) carrying out 'traditional' secondary care health care services in primary care settings. These services may be carried out under a subcontract with an NHS trust or foundation trust or may be directly commissioned from the GPs. Because a provider is being selected for a new service, the relevant authority must apply the most suitable provider process or the competitive process.

Where the relevant authority is inviting all GP practices to provide a wider range of services in general practice or to provide their core general practice services to a higher standard, then these services may be carried out under a contract modification.

If the members of a primary care network (PCN) are commissioned to deliver the services, then the relevant authority 'commissions' the PCN, but it is for the PCN (through its collaboration/network agreement structures) to determine how the practices within the PCN operate to deliver the services. PCNs are not legal entities and therefore a PCN itself cannot hold a contract. This means that either a lead practice will hold all the contracts for the PCN, or the relevant authority will hold a contract with each individual practice in the PCN, which then come together through a collaboration agreement. Some PCNs have established a company (or other corporate entity) to carry out services or other functions on its behalf. That company is a separate legal entity to the PCN. Such a company may be treated as any other potential provider when considering awarding a contract and selecting the appropriate contract award process.

Where the PCN is to be commissioned, the relevant authority must apply the most suitable provider process or the competitive process to decide which PCN the service should be delivered by, but the regime is not applied when the PCN decides which practice should hold the contract or deliver the service.

Commissioning a directed enhanced service that can only be provided by a single provider to meet the needs of the wider population (Special Allocation Scheme)

Such services are usually secured via APMS contracts, and in these circumstances a new provider is selected for a new contract. Therefore, the relevant authority must apply the most suitable provider process or the competitive process.

Establishment of a new integrated urgent care service (including out-of-hours service)

New contracts are largely set out under the NHS Standard Contract and comprise some primary medical care and some urgent care, all routed through NHS 111. In these circumstances, a provider is selected for a new service, and so the relevant authority must apply the most suitable provider process or the competitive process.

A PCN takes on a new responsibility to provide secure (subcontract) enhanced access to GP services

Some PCNs may choose to subcontract enhanced access services, and they may continue to use the same providers.

The relevant authority must apply the most suitable provider process or the competitive process to decide which PCN the services should be delivered by.

PCNs are not legal entities and therefore a PCN itself cannot hold a contract. This means that either a lead practice will hold all the contracts for the PCN, or the relevant authority will hold a contract with each individual practice in the PCN, which then come together through a collaboration agreement. Some PCNs have established a company (or other corporate entity) to carry out services or other functions on its behalf. That company is a separate legal entity to the PCN. Such a company may be treated as any other potential provider when considering awarding a contract and selecting the appropriate contract award process.

The regime does not apply to the PCN deciding which practice should hold the contract or deliver the service. However, the PCN's lead provider, if that is the agreed model, may subcontract further (e.g., to a GP federation outside the PCN). In these situations, the PCN must apply controls on subcontracting from the original commissioning contract it received.

Primary dental care services

This section provides examples of how the regime may be applied to primary dental care service contracts across two scenarios:

1. Continuation of existing contracts
2. Sudden and/or unplanned changes to existing contracts

To note, community dental services are not classified as part of primary dental services under the 2006 Act. While primary dental services are commissioned under section 99 of the 2006 Act, community dental services are commissioned under section 3B(1)(a) of the 2006 Act and are 'dental services of a prescribed description'.

However, community dental services are in scope of the regime, because the regime applies to ‘all forms of health care provided for individuals’.

1. Continuation of existing contracts

A dental practice has an existing GDS contract with a provider

This is a permanent nationally negotiated contract, made under section 28K of the National Health Service Act 1977 or section 100 of the 2006 Act on the terms set out under the National Health Service (General Dental Services Contracts) Regulations 2005,[9] unless terminated by either the relevant authority or the provider. The contract may be renegotiated or updated from time to time, but the service does not significantly change.

The contract has already been awarded and it will continue to run on an ongoing basis until terminated. Therefore, no day-to-day ‘provider selection’ is taking place.

A dental practice has an existing PDS agreement with a provider

This is a contract that is negotiated made under section 28C of the National Health Service Act 1977 or section 107 of the 2006 Act on the terms set out under the National Health Service (Personal Dental Services Agreements) Regulations 2005[10].

PDS agreements can be used to arrange mandatory services and/or specialist services such as sedation, or domiciliary services, and generally have a time limit applied to them – normally reviewed around every five years. PDS agreements are negotiated with qualifying individuals and can come to an end (and thus need to be renewed) if these individuals leave or change, or if the contract allows individuals a right to return to a GDS contract, or following termination.

If a PDS agreement comes to an end and needs to be renewed and the relevant authority restricts the providers available to patients, then if the proposed contract is:

- not changing considerably and the relevant authority is satisfied that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, it may award the contract using direct award process C.
- changing considerably or the relevant authority wants to seek new

[9] The National Health Service (General Dental Services Contracts) Regulations 2005 (legislation.gov.uk)
[10] The National Health Service (Personal Dental Services Agreements) Regulations 2005 (legislation.gov.uk)

providers, then it may award the contract using the most suitable provider process or the competitive process.

2. Sudden and/or unplanned changes to existing contracts

Sudden closure of an existing GDS or PDS contract holder, e.g., due to the retirement or death of a dentist who is the sole contract holder

In these situations, the decision is either to disperse activity to the surrounding dental practices, in which case no provider selection takes place, or to choose a new provider – this may either be as temporary cover or a permanent long-term solution.

If a new provider must be appointed immediately, then the urgent provisions within the regime may be used to secure immediate needs, e.g., to establish caretaker arrangements. However, as this may be time limited, provider selection must take place.

- To establish a new permanent arrangement, the relevant authority may use the most suitable provider process or the competitive process, if the number of providers available to patients is restricted by the relevant authority.

Pharmaceutical services

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013[11] set out the contracting arrangements specific to community pharmaceutical services and as such these do not come under the regime.

However, other health services provided by pharmacies are in scope, including:

- services commissioned directly from pharmacies under the NHS Standard Contract, such as an anticoagulant service
- local enhanced services, such as emergency vaccination programmes
- local pharmaceutical services where pharmaceutical services are commissioned outside the scope of the Community Pharmacy Contractual Framework.

[11] The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (legislation.gov.uk)

When the commissioning of new services falls within the scope of the regime (such as the examples above), and the number of providers is restricted by the relevant authority, then the most suitable provider process or the competitive process may be used to establish these.

To continue with existing arrangements (i.e., to award a new contract to the existing provider where the current contract is coming to an end), direct award process C may be an option, provided that the services are not changing considerably and the relevant authority is satisfied that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard.

Primary eye care services

The type and provision of primary eye care services is set out in the General Ophthalmic Services Contracts Regulations 2008.[12] The procurement of primary eye care services is in scope of the regime. Three types of primary eye care services may be commissioned:

- mandatory services
- additional services
- enhanced services.

Mandatory services

Mandatory services, which include NHS sight testing and the provision of NHS optical vouchers, must be commissioned by the NHS in all areas of England, under the National General Ophthalmic Mandatory Services Contract. Any provider that meets the required criteria may provide these services, meaning that the relevant authority does not limit the providers available to patients.

Therefore, contracts must be awarded under direct award process B, on condition that patients have a choice of providers and the number of providers from which patients have a choice is not limited by the relevant authority.

Additional services

Additional services (mobile NHS sight testing) must be commissioned in all areas of England, under the National General Ophthalmic Additional Services Contract. Any

[12] The General Ophthalmic Services Contracts Regulations 2008 (legislation.gov.uk)

provider that applies and meets the required criteria may provide these services, meaning that the relevant authority does not limit the providers available to patients.

Therefore, contracts must be awarded under direct award process B, on condition that patients have a choice of providers and the number of providers from which patients have a choice is not restricted by the relevant authority.

Enhanced services

Enhanced services are extended ophthalmic services, including (but not limited to):

- minor eye conditions services
- urgent eye care services
- referral refinement
- stable glaucoma monitoring
- post cataract care.

Relevant authorities may choose to commission these services, under the NHS Standard Contract, to meet local needs, fit with local eye care development plans and reduce pressure on secondary care ophthalmology services. Contracts for enhanced ophthalmic services are generally awarded to selected providers as required to meet system requirements, rather than to all potential providers. Therefore, contracts cannot be awarded under direct award process B.

Therefore, if the relevant authority is choosing a particular provider or a group of providers only, then a provider selection must take place.

If a contract for enhanced services needs to be awarded and the relevant authority limits the providers available to patients, then they may:

- award the contract to an existing provider using direct award process C, provided the existing contract is coming to an end, the proposed contract is not changing considerably from the existing contract, the relevant authority is satisfied that the provider is satisfying the contract and will likely satisfy the proposed contract to a sufficient standard.

If the proposed contract is changing considerably from the existing contract or the relevant authority wants to seek new providers, then they may apply the most suitable provider process or the competitive process.