



Public health services for 0-5 year-olds

**Transfer of commissioning responsibilities
to local authorities**

**Initial contracting guidance for NHS
commissioners**

Public health services for 0-5 year-olds

Transfer of commissioning responsibilities to local authorities

Initial contracting guidance for NHS commissioners

Version number: 1

First published: November 2014

Updated: NA

Prepared by: NHS Standard Contract Team

Document classification: Official

NHS England INFORMATION READER BOX**Directorate**

Medical	Operations	Patients and Information
Nursing	Policy	Commissioning Development
Finance	Human Resources	

Publications Gateway Reference: 02448

Document Purpose	Resources
Document Name	Public health services for 0-5 year-olds - Transfer of commissioning responsibilities to local authorities - Initial contracting guidance for NHS commissioners
Author	NHS England
Publication Date	November 2014
Target Audience	Directors of PH, Local Authority CEs, NHS England Regional Directors, NHS England Area Directors, Directors of Children's Services, All commissioners of public health services for 0-5 year olds
Additional Circulation List	
Description	Responsibility for 0-5 years healthcare services transitions from NHS England to local authorities on 1 October 2015. Clear and robust contractual arrangements must be in place between commissioners and service providers through transition, and this publication sets out initial guidance for NHS England area teams on the approach they should take locally. Further guidance will be issued later in the autumn.
Cross Reference	NA
Superseded Docs (if applicable)	NA
Action Required	Write to providers of public health services for 0-5 year-olds
Timing / Deadlines (if applicable)	Action required no later than 30 November 2014
Contact Details for further information	NHS Standard Contract Team 4E44 Quarry House Quarry Hill Leeds LS2 7UB nhscb.contractshelp@nhs.net http://www.england.nhs.uk/nhs-standard-contract/

Document Status

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of this document are not controlled. As a controlled document, this document should not be saved onto local or network drives but should always be accessed from the intranet

Contents

- 1 Introduction..... 5
- 2 Overall approach..... 5
- 3 Option 1 – agreement of one single contract for 2015/16 for mid-year novation..... 6
- 4 Option 2 – agreement of two separate six month contracts..... 7
- 5 Communicating with providers..... 8
- 6 Sharing contract documentation..... 8
- 7 Complex scenarios..... 9
- 8 CQUIN..... 10
- 9 Advice and support..... 11
- Appendix A..... 12

1 Introduction

- 1.1** The key consideration for national stakeholders in the transfer of commissioning responsibilities for 0-5 year-old Healthy Child Programme is to ensure a stable transition process which will maintain service continuity and support the continued development of the service, offering best outcomes to patients and their families.
- 1.2** As part of this transition, it will be important that clear and robust contractual arrangements are in place between commissioners and service providers through transition. This document sets out initial instructions and advice for NHS England area teams on the approach they should take locally to help secure this.
- 1.3** This document provides an overview of the contracting options available to NHS commissioners through transition and encourages local discussion on the most appropriate approach to suit local need. Continuity of service and service transformation is key to the safe transfer of commissioning responsibilities. This guidance is not aimed directly at local authorities, recognising that this is not the role of NHS England, however this document has been produced with input from, and has the support of, the Department of Health, Public Health England and the Local Government Association. We hope that it will be of interest and use to local authorities.

2 Overall approach

- 2.1** NHS England's current contracts with service providers of 0-5 services can be split into two broad groups:
 - contracts that expire at 31 March 2015 (these are the majority);
 - contracts that expire after 30 September 2015, the date at which commissioning responsibility transfers (these are a substantial minority).
- 2.2** This initial guidance sets out the proposed approach for the first group of contracts, those expiring at 31 March 2015. Further information will be issued later in the autumn relating to the second group of contracts, ie those running beyond 30 September 2015. In the interim, NHS England national support centre team is working directly with those area teams who hold such contracts to agree a contract by contract approach. Area teams should not give notice to terminate these contracts at this time.
- 2.3** For contracts with service providers which expire on 31 March 2015, the overall approach which NHS England Area Teams should follow is summarised below.

2.4 Area teams, as the outgoing commissioners, should work with local authorities, as the incoming commissioners, to put in place new contracts with existing providers which ensure services are available to patients throughout the transition year. Service continuity and stability are a key principle of safe transfer.

2.5 In order to ensure this, area teams should, working with local authorities, put in place contracts with existing providers to commence on 1 April 2015. Two alternative approaches can be taken to this, depending on local circumstances.

- **Option 1.** The area team can put in place a single contract for the full-year of 2015/16, with a deed of novation being approved by the relevant local authority at the same time as the contract is signed, confirming that the contract will transfer to the local authority on 1 October 2015.
- **Option 2.** The area team can put in place a six-month NHS England contract with the provider for the period from April to September 2015 and can help the local authority put in place a similar, but separate, contract with the provider for the period from October 2015 to March 2016. It would be very desirable for both contracts to be signed before the start of the 2015/16 financial year.

There may be some cases where NHS England and the relevant local authority work with one or more CCGs to put in place a joint contract with the provider. These are discussed in section 7 below.

2.6 Area teams should discuss and agree the most appropriate approach with local authority colleagues. Further detail on each approach is set out in sections 3 and 4 below, including the situations in which each might be appropriate.

3 Option 1 – agreement of one single contract for 2015/16 for mid-year novation

3.1 With this option, the NHS England area team should work closely with the relevant local authority, negotiating jointly with the provider, to put in place one single contract with the provider for the period from 1 April 2015 to 31 March 2016. This contract will initially be held by NHS England, but will novate to the local authority on 1 October 2015.

3.2 The contract must be in the form of the 2015/16 NHS Standard Contract and must be separate from other contracts which NHS England may hold with the same provider, for instance for specialised services. This is essential so that the contract can novate as a separate entity.

3.3 The contract must secure the objectives to be set out in NHS England's public health commissioning intentions, which will be published later in the autumn. In particular, it must secure full delivery on an ongoing basis of the

planned 2014/15 expansion of health visitor staff numbers. At the same time, the contract must fully reflect local authority commissioning requirements.

- 3.4** At the same time as agreeing and signing the contract with the provider, the area team must ensure that an appropriate deed of novation is formally approved by all the relevant parties. Area teams must not sign contracts with providers in advance of approval of the deed of novation by the provider and the relevant local authority, as this would result in an ultra vires act on the part of the area team. A template deed of novation will be provided by early January.
- 3.5** The area team should make every possible effort to ensure that the contract is signed, and the deed of novation approved, by the end of February 2015.
- 3.6** We envisage that Option 1 will be appropriate where there has already been discussion between the area team and the local authority about an intention to novate the contract, where the local authority is comfortable to use the NHS Standard Contract form, and where the local authority intends, in the short term at least, to commission the same range of 0-5 services from the same provider as NHS England.
- 3.7** If considering pursuing this option, therefore, area teams should seek early written assurance from the local authority on the issues in 3.6 above, before proceeding with negotiations to agree a full-year contract with the provider. We recommend that this is done by no later than 22 January 2015. Where a local authority is not able to provide this commitment, the area team will need to revert to Option 2.

4 Option 2 – agreement of two separate six-month contracts

- 4.1** Under this option, the NHS England area teams and the relevant local authority would work closely together, negotiating jointly with the provider, to put in place
 - an NHS England contract with the provider for the period from 1 April to 30 September 2015; and
 - a local authority contract with the provider for the period from 1 October 2015 until 31 March 2016.
- 4.2** The NHS England contract must be in the form of the 2015/16 NHS Standard Contract and must be separate from other contracts which NHS England may hold with the same provider, for instance for specialised services.
- 4.3** The NHS England contract must secure the objectives to be set out in our public health commissioning intentions, which will be published later in the

autumn. In particular, our contracts must secure full delivery on an ongoing basis of the planned 2014/15 expansion of health visitor staff numbers.

- 4.4** The area team should make every possible effort to ensure that its own contract is signed by the end of February 2015 and should offer every support to assist the local authority and the provider to sign their separate contract to the same timescale.
- 4.5** Where the local authority agrees, this contract can also be in the form of the NHS Standard Contract and can be based on exactly the same service specification, price and CQUIN requirements as the NHS England contract. This will assist considerably in assuring a stable transition period, as well as reducing the time spent on contract negotiation and drafting. Where this approach is agreed, the area team should be prepared to assist by producing the necessary contract documentation on behalf of the local authority, if the latter so wishes.
- 4.6** We anticipate that Option 2 will be more appropriate where, for instance, the local authority is uncertain about use of the NHS Standard Contract or wishes to change (within the limitations of the final mandate) the range of services commissioned.
- 4.7** Ultimately, of course, local authorities will make their own decisions about procurement and contracting. In the event that a local authority is not in a position to work with the area team and the provider towards Option 1 or 2, the area team must still ensure that it puts in place a stand-alone NHS England contract with the existing provider for the period from 1 April to 30 September 2015.

5 Communicating with providers

- 5.1** It is important that commissioners communicate clearly with all providers, in order to give confidence about the way in which the transition will be managed. We therefore recommend that area teams should write to each provider with a contract expiring on 31 March 2015, setting out the overall approach we intend to be taken locally to agreement of contracts for 2015/16. The letter should be sent by no later than 30 November 2014 – and should preferably be a joint letter with the relevant local authority.
- 5.2** Example letters for different scenarios are set out in Appendix A. These will need adaptation by area teams to reflect local circumstances.

6 Sharing contract documentation

- 6.1** Where area teams have not already done so, they should share existing contract documentation and in-year reporting information with local authority colleagues, allowing them to familiarise themselves with aspects of the existing

contract such as service specifications, quality and reporting requirements and financial monitoring arrangements.

7 Complex scenarios

7.1 The description of Options 1 and 2 generally reflect the simplest of scenarios,

- where the area team contracts with a single provider; and
- where commissioning responsibility will transfer to a single local authority.

7.2 There are many different scenarios which may emerge at local level. Though this guidance cannot cater for them all, it is worth exploring three specific situations which may arise.

Where, currently, a single NHS England contract exists, but multiple local authorities will commission the service separately in future,

7.3 This scenario is slightly more straightforward under Option 2, where NHS England is putting in place a six-month contract from April to September 2015. In this situation, area teams and local authorities could choose to put in place:

- multiple NHS England contracts (ie one per local authority) from April to September 2015, mirrored by multiple local authority contracts from October to March; or
- a single NHS England contract from April to September 2015, followed by multiple local authority contracts from October to March (but with the NHS England contract setting out service, financial and reporting requirements at local authority level).

Conceivably, if the local authorities agreed that they wished to contract collaboratively for 0-5 services, there could be a single NHS England contract from April to September 2015, followed by one joint multi-party local authority contract from October 2015 onwards (rather than multiple separate ones).

7.4 Under Option 1, this scenario is more complex. Agreeing arrangements to novate a single NHS England contract to multiple local authorities would be possible, but complicated and time-consuming. It will therefore be more realistic to put in place multiple NHS England contracts (ie one per local authority) from April to September 2015, mirrored by multiple local authority contracts from October to March.

Where both NHS England and the relevant local authority are currently party to an existing CCG-led contract with the provider, which includes 0-5 and other services

7.5 Where the local authority wishes the above arrangement to continue during 2015/16, then it should be possible to reflect this in one single contract which

all of the parties sign at the start of the year – with the financial schedules reflecting that responsibility for commissioning and funding 0-5 services transfers from 1 October 2015 from NHS England to the local authority.

Where the local authority is currently party to a CCG-led contract with the 0-5 provider (perhaps for other public health services)

- 7.6** In this instance, subject to the agreement of all parties, it would again be possible for the three different commissioners – CCG, local authority and NHS England – to sign the same contract with the provider for the full year of 2015/16. Again, the financial schedules could reflect the shift of commissioning responsibility for 0-5 services from 1 October 2015. Assuming that the only services being commissioned by NHS England were 0-5 services, NHS England's active input into the contract would cease from 1 October 2015.
- 7.7** In the two examples at 7.5 and 7.6, the form of contract to be used would be the NHS Standard Contract.

8 CQUIN

- 8.1** CQUIN (Commissioning for Quality and Innovation) schemes offer providers operating under the NHS Standard Contract a financial incentive of up to 2.5% of actual contract value for achieving specified quality improvements.
- 8.2** Any new contracts entered into by NHS England for 0-5 services from 1 April 2015 onwards (whether this is under Option 1 or Option 2) should therefore include a CQUIN scheme, in accordance with the national CQUIN guidance to be published by NHS England later in the year – unless, in exceptional circumstances, agreed otherwise with the provider and stated in the contract.
- 8.3** Under Option 1, where contracts novated to local authorities include CQUIN schemes, local authorities will be bound by the terms of these schemes.
- 8.4** Under Option 2, where area teams are assisting local authorities in the development of new contract documentation with the provider for the second half of 2015/16, they should note that
- if the local authority chooses to operate under the NHS Standard Contract, it should offer the provider a CQUIN scheme;
 - if using a different contract form, the local authority can still choose to offer the provider a CQUIN scheme – and retaining the NHS England CQUIN scheme may be advantageous in this situation;
 - if a different contract form is used, there is no requirement on the local authority to offer CQUIN (although the financial impact of this for 0-5

services would no doubt be something which the provider would wish to discuss with the local authority).

- 8.5** Clearly, under both Option 1 and 2, it will be important for area teams to ensure that they discuss CQUIN for 2015/16 in detail with local authority colleagues, as local authority support for planned CQUIN schemes will make a stable transition of contractual arrangements more likely.

9 Advice and support

- 9.1** There are certain to be additional issues which emerge and further complexities which need to be addressed. Where these cannot be resolved locally, area teams are welcome to raise these with the NHS Standard Contract team via nhscontractshelp@nhs.net. Updated guidance or FAQs will be issued as necessary.

Appendix A

Draft letters for area teams to send to providers (joint with local authorities wherever possible), giving details of future contracting intentions

The example letters below are drafted for the most straightforward situation, where there is a simple 1-1 relationship between NHS England as the current commissioner and one local authority as future commissioner.

Local circumstances will vary widely, of course, and the letters below will need to be adapted by area teams, sometimes in discussion with local authorities, to suit the particular circumstances of each contract.

1. Example joint letter where Option 1 is proposed

Joint NHS England / local authority letter to be sent where

- the existing contract expires on 31 March 2015
- the area team and local authority intend that the area team should put in place a new contract for the full year of 2015/16, which will novate mid-year to the local authority
- the local authority is therefore comfortable to state a broad intention, at this stage, to commission the service from the same provider, to use the NHS Standard Contract and to commission the same services at the same price as NHS England

Dear [name]

Transfer of commissioning responsibilities for 0-5 children's public health services

As you know, responsibility for commissioning of 0-5 children's public health services will transfer from NHS England to local authorities on 1 October 2015. As the present and future commissioners, we are writing to update you on how we intend to manage the transition locally. Our underlying aim is to secure a smooth transition with continuity of service provision and clear, well-understood contractual arrangements.

Draft financial allocations for 0-5 services for each local authority will shortly be [have now been] published by DH, and the national mandate for 0-5 services to be commissioned by local authorities will also be available in final form. Taken together, these will give a good basis on which contracts for 2015/16 can be agreed early in 2015.

As you will be aware, NHS England's contract with you expires on 31 March 2015. Our joint intention is that, in the period from December 2014 to February 2015, contracting teams from NHS England and the Council will negotiate one single separate contract with you for 0-5 services covering the whole of 2015/16. The contract will be held initially by NHS England, but will then transfer by novation to the Council with effect from 1 October 2015.

Our intention is that this contract will be signed, and the deed of novation approved, by the end of February 2015, thus giving you full clarity before the start of the year about funding and expected service levels for the full year. The contract will be in the form of the 2015/16 NHS Standard Contract.

We hope that this letter is helpful in setting out our broad intentions at this stage and gives you, and your staff, confidence that the transition of commissioning responsibilities will be managed in a way which ensures continuity of service provision. However, before making firm decisions on these issues, the Council will wish to review the final version of the NHS Standard Contract for 2015/16 (which will be published by NHS England in December) and to review both the final mandate for 0-5 services to be commissioned and the final financial allocation it receives from the Department of Health. We will therefore write to you again in January with a further update.

Yours sincerely

[Name]

[Job title]

NHS England Area Team / XXX Council

2. Example joint letter where Option 2 is proposed

Joint NHS England / local authority letter to be sent where

- the existing contract expires on 31 March 2015
- the area team and local authority have agreed to put in place two separate contracts, an NHS England contract for April to September 2015, and a local authority contract for October 2015 to March 2016.

Dear [name]

Transfer of commissioning responsibilities for 0-5 children's public health services

As you know, responsibility for commissioning of 0-5 children's public health services will transfer from NHS England to local authorities on 1 October 2015. As the present

and future commissioners, we are writing to update you on how we intend to manage the transition locally. Our underlying aim is to secure a smooth transition with continuity of service provision and clear, well-understood contractual arrangements.

Draft financial allocations for 0-5 services for each local authority will shortly be [have now been] published by DH, and the national mandate for 0-5 services to be commissioned by local authorities will also be available in final form. Taken together, these will give a good basis on which contracts for 2015/16 can be agreed early in 2015.

As you will be aware, NHS England's contract with you expires on 31 March 2015. Our joint intention is that, in the period from December 2014 to February 2015, contracting teams from NHS England and the Council will negotiate two separate contracts with you for 0-5 services

- an NHS England contract for the period from 1 April 2015 to 30 September 2015*
- a local authority contract for the period from 1 October 2015 to 31 March 2016.*

[Add more detail about the form of contract to be used, if agreed.]

Our intention is that these two contracts will both be signed by the end of February 2015, thus giving you full clarity before the start of the year about funding and expected service levels for the full year.

We hope that this letter is helpful in setting out our broad intentions at this stage and gives you, and your staff, confidence that the transition of commissioning responsibilities will be managed in a way which ensures continuity of service provision. However, before making firm decisions on these issues, the Council will wish to review both the final mandate for 0-5 services to be commissioned and the final financial allocation it receives from the Department of Health. We will therefore write to you again in January with a further update.

Yours sincerely

[Name]

[Job title]

NHS England Area Team / XXX Council

3. Example NHS England letter where discussions with local authorities are not well advanced

Letter to be sent by the area team alone, where the existing contract expires on 31 March 2015, but where the local authority does not feel able to make any written commitment on its contracting intentions at this stage

Dear [name]

Transfer of commissioning responsibilities for 0-5 children's public health services

As you know, responsibility for commissioning of 0-5 children's public health services will transfer from NHS England to local authorities on 1 October 2015. I am writing to update you on how we intend to manage the transition locally. Our underlying aim is to secure a smooth transition with continuity of service provision and clear, well-understood contractual arrangements.

Draft financial allocations for 0-5 services for each local authority will shortly be [have now been] published by DH, and the national mandate for 0-5 services to be commissioned by local authorities will also be available in final form. Taken together, these will give a good basis on which contracts for 2015/16 can be agreed early in 2015.

As you will be aware, NHS England's current contract with you expires on 31 March 2015. Our statutory responsibility for commissioning 0-5 services will cease after 30 September 2015, and our intention is to place a new contract with you, separately for 0-5 services, covering at least the period from 1 April to 30 September 2015. We will aim to agree this contract with you by the end of February 2015; the contract will be in the form of the NHS standard Contract for 2015/16.

We are in discussion with XXX Council about its commissioning intentions. The Council is not yet in a position to make a firm statement about its plans, pending confirmation of the mandate and its financial allocation. One option we will discuss with the Council is whether we can agree one single contract with you for the full year of 2015/16, with this being held initially by NHS England and then transferring to the Council mid-year by novation.

We hope that this letter is helpful in setting out NHS England's intentions at this stage, and we will continue to work with XXX Council to ensure that there is a clear process to manage the transfer of commissioning responsibilities. We will write to you again in due course with a further update.

Yours sincerely

[Name]

[Job title]

NHS England Area Team (copy to XXX Council)