

To:

All Directors of Commissioning of Primary Care Trusts in England
All Directors of Commissioning of Strategic Health Authorities in England

CC:

Chief Executives of Primary Care Trusts in England
Chief Executives of Strategic Health Authorities in England
NHS Confederation

Gateway Reference: 17584

Clinical Negligence Scheme for Trusts (CNST) cover for independent sector providers in 2012-13 - update

Dear Colleague

We refer to the Standard Acute Contracts entered into with Independent Sector (IS) Providers in (or after) July 2011 following the 'Any Qualified Provider' accreditation process undertaken by PCTs following the expiry of the ECN/FCN programme.

As you are aware, the Department of Health is currently reviewing CNST arrangements and the rules for membership of that scheme being undertaken but presently membership of CNST is not available to IS Providers. An interim arrangement was put into place in 2011 through a PCT Indemnity Agreement that was signed in conjunction with each Standard Acute Contract and provided CNST cover to all NHS patients treated under that contract.

The expiry of some contracts with the independent sector at the end of March would mean that the interim indemnity for 2011 no longer applied. Moreover, as we have not yet reached agreement on a revised form of indemnity for 2012 to cover acute services, the Department needs to extend the temporary measures put in place to enable continuity of services whereby NHS patients can continue to be referred into and treated by the IS, with CNST cover remaining in place.

With immediate effect, all Standard Acute Contracts in place with IS Providers with an expiry date of 31 March 2012 must be extended and the revised Expiry Date (as set out in Section 3 of the 2011/12 Standard Acute Contract) will be **30 June 2012**. This will mean that the CNST Agreement covering that Standard Acute Contract will also remain in effect until 30 June 2012. Given that the total extension would be for a period of 3 months PCTs should achieve this through using a deed of variation to ensure that IS providers are on the terms of the 2012-13 contract. Two deeds of variation are attached for this purpose. The deed attached at Annex A for existing Standard Acute Contracts, which were extended to 30 April 2012 by the deed circulated in March and the deed attached at Annex B for existing Standard Acute Contracts that were extended to 30 April 2012 by exchange of letters. The appropriate deed once signed will extend the existing Standard Acute Contract to 30 June 2012 and in the case of the deed set out in Annex B will incorporate the 2012/13 Operating Framework requirements which would not yet have been incorporated into the Standard Acute Contract.

PCTs should confirm this extension with your relevant IS Providers by letter no later than **30 April 2012** and should also work with your IS Providers to agree the appropriate Deed of Variation as soon as possible thereafter.

In any event, once the new CNST arrangements are finalised, PCTs and IS Providers will be able to work under the terms of the 2012/13 National Standard Contracts that you are currently negotiating (or may already have agreed) and may elect to either retrospectively make the new contract to be effective from 1 April 2012 or agree that the new contract will take effect on 30 June 2012 (with certain terms of the new contracts, such as CQUIN, being amended so that it operates for the services provided and goals achieved from 1 April 2012).

Nothing in these arrangements affects the ability of IS Providers to continue to treat patients or accept valid referrals under the current Standard Acute Contract and so there will be no disruption of services to patients as a result of this variation to the contracts.

For clarity, for all other Standard Acute Contracts which PCTs have in place with an IS Provider with an original Expiry Date (as set out in Section 3 of the 2011/12 Standard Acute Contract) later than 31 March 2012, those contracts and the associated CNST Indemnity Agreements will continue unaffected and PCTs should continue to work with these IS Providers to agree the National Variation Deed for 2012-13 for Acute contracts.

Independent sector providers who did not have a contract in 2011-12 but with whom PCTs wish to contract in 2012-13 will need to either put in place their own indemnity arrangements or wait to sign the revised CNST Agreement for 2012-13. It is not appropriate to apply the CNST Agreement for 2011-12 to the 2012-13 National Standard Contract.

Further guidance will be issued with the revised 2012/13 interim indemnity.



Bob Ricketts CBE
Director of Provider Policy

Enc.

Annex A - Deed of variation (where deed of variation issued in March used to extend term)

Annex B - Deed of variation (where exchange of letters used to extend term)