Agency price caps: trusts’ questions answered

Expanded 16 December 2015

A. Implementation of the price caps

1. Why have we introduced price caps?

When Monitor and the NHS Trust Development Authority (TDA) engaged with the sector in August 2015 on our proposed set of rules for agency expenditure, a large number of you told us you wanted levers that would change your continuous and heavy reliance on agency staff. Further, you wanted tools to rebalance the attractiveness of agency working relative to bank working, and to increase the proportion of your own staff working in your organisations. We are implementing price caps to support you to achieve these objectives.

You also signalled that moving as quickly as possible to cap the rates paid for agency workers would help you reduce agency expenditure and you welcomed a consistent approach nationally.

2. Can trusts\(^1\) pay rates lower than the cap?

Yes. The cap is a maximum, not a target. We expect you to negotiate rates below the caps.

If you currently pay agency staff below the capped rates, we expect you to continue to do so.

3. Do the price caps apply to all trusts?

We expect all trusts to comply with the price caps.

You demonstrated strong support for price caps throughout the consultation. It is important that we now all work together to ensure compliance and thus maximise the benefit from the caps. If an individual trust overrides the controls, it will be more difficult for other trusts to comply with the price caps.

\(^1\) ‘Trusts’ refers to all foundation trusts and NHS trusts.
The introduction of the value-for-money risk assessment trigger\(^2\) means that Monitor will explicitly take into accounts trusts’ inefficient or uneconomic spending practices, including any relating to agency spending.

All trusts must report weekly on the number of shifts where they have made payments in excess of the price caps.

Ambulance trusts are initially excluded from the caps. However, this is being reviewed and ambulance trusts are expected to work to the principles of the price caps.

**4. What should trusts do if agencies are unwilling to meet the capped rates/other trusts do not adhere to the price caps?**

We have made it clear to all trusts that you need to take a strong stance with agencies, as well as working across your local health economies to ensure compliance with the price caps.

If an individual trust overrides the **rules**, it will be more difficult for other trusts to comply with the price caps and so every effort must be made to comply with both the price caps and framework rules.

However, where there may be patient safety issues, it is for you to decide whether an override is essential on patient safety grounds.

If you envisage or experience a major performance or service continuity issue, you must raise this with your commissioners and with Monitor/TDA as soon as possible.

**5. What support exists for trusts that repeatedly override for safety reasons?**

We will support you as much as possible in meeting the price controls and other agency rules through sharing best practice, providing an agency diagnostic tool\(^3\) and facilitating peer-to-peer discussions. If you require more support, we will seek to work with you to identify any issues, while gaining assurance that you are doing all you can to apply best practice to the task.

Monitor and TDA staff are happy to discuss the price caps and any local challenges you may be facing. You can speak to your Monitor/TDA regional contact or both NHS trusts and foundation trusts can get in touch through the following email address: agencyrules@monitor.gov.uk


6. Where can trusts find the agency price cap diagnostic tool?

We have created a diagnostic tool ‘How to reduce use of agency staff’ to help NHS providers adopt best practice and reduce over-reliance on agency staff. The tool, which has been developed with pilot sites, will enable a diagnosis of agency issues and the development of an agency action plan to enable improvements to be made quickly.

The tool is available to download as a PDF or in MS Excel format here.

7. What is good practice on adhering to price caps and managing agency spend??

Example of good practice include:

- senior clinical ownership of the use of agency staff in the organisation
- all wards having a list of price caps and all staff knowing the necessary processes if they need to hire an agency worker or override the controls for patient safety reasons
- a manager who requests the agency worker outlining the clinical imperative and impact of not filling the shift to the relevant senior member of staff
- approval for shifts via an executive director responsible for agency expenditure is in line with trust staffing escalation policy and procedure
- renegotiation of all existing rates paid to below the price caps
- working with local trusts to encourage data sharing and regular meetings to ensure compliance across the local health economy
- e-rostering used efficiently to manage rosters and shift patterns that reflect patient need and the demands of the service rather than running with established rota patterns
- multi-professional rostering that acknowledges the value of clinical team work and keeps patients safe
- real-time risk management processes that are constantly reviewed to establish lean and efficient ways of deploying staff
- model areas that do not use agency staff
- expanding the use of bank and flexible substantive positions, eg promoting bank and substantive roles, offering flexible working to substantive and bank staff, initiatives to improve retention and recruitment.
**B. Scope of the price caps**

1. **Which staff groups are in scope of the price caps?**

The price caps apply to all staff groups covered by national pay scales:

- medical staff (including dental staff where applicable)
- nursing and midwifery staff
- all other clinical staff
- all other non-clinical staff.

The table below defines the nursing and care staff under the ceiling and framework rules launched on 2 September 2015.

<table>
<thead>
<tr>
<th>Definition in NHS Occupation Code Manual (OCM)²</th>
<th>Codes in NHS OCM</th>
<th>Covered by ceiling under agency rules</th>
<th>Covered by mandatory frameworks under agency rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered nurses, midwives and health visiting staff</td>
<td>NA, NC, NE, N0, N1, N2, N3, N4, N5, NB, N6, N7</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Registered nursing learners</td>
<td>P2, P3</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Support to nursing staff, excluding healthcare assistants</td>
<td>NF, N8, N9</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Unregistered nursing learners</td>
<td>P1</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Healthcare assistants who work in nursing</td>
<td>H1A to H1N, plus H1S; H2A to H2N, plus H2S</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Other healthcare assistants and other support staff who do not work in nursing</td>
<td>H1P, H1R H2P, H2R</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

2. **Are GPs subject to the price caps?**

GPs are not covered by these price caps, except where they are employed by a trust. Where this is the case, the appropriate equivalent medical price caps should apply.

3. **Do the price caps include agency staff employed by clinical commissioning groups?**

We have worked with the other national bodies in developing the rules. NHS England is currently reviewing the price caps in the trust sector before deciding whether to implement similar price caps for agency staff employed by clinical commissioning groups (CCGs) and NHS England.
C. Design of the price caps

1. What makes up the 55% uplift?

The uplift was calculated to approximate to the employment on-costs (including, where applied, employer pension contribution, National Insurance, holiday pay, travel, etc) as well as a modest administration fee/agency charge.

2. How do the price caps fit with trusts’ Agency Worker Regulations responsibilities?

The price caps apply regardless of the length of time an agency worker has spent on an assignment. You will need to be aware of your responsibilities under the Agency Worker Regulations (AWR) and consider whether long-term reliance on agency staff is appropriate and sustainable within the price caps.

3. Do price caps apply to staff paid through their own limited companies/personal service companies and not procured via an agency?

Temporary workers delivering services on a day-rate basis (operating as a sole trader or limited company) are included in the scope of the rules.

Where trusts outsource services (eg through block contract to deliver services via contract/service-level agreement), none of the external contractor's staff are subject to the price caps. The rules have been updated to reflect this clarification.

4. How do the price caps affect NHS-commissioned contracts in the independent/third sector?

We would expect that when trusts compete for external NHS contracts (eg NHS prison services), any agency procurement will adhere to the price caps. Any contracting for services would need to take into consideration capacity to override for patient safety reasons. Similarly, for managing existing contracts, price caps can only be overridden to protect patient safety.
D. Frameworks

1. How important is getting on framework now that the price caps exist?

It is very important to get on framework. Procurement via approved frameworks will ensure:

- greater transparency on agency spend
- greater assurance on quality of agency supply
- control of the cost of agency spend.

Trusts are required to procure nursing and care agency staff via framework agreements that have been approved by Monitor and TDA. The rate paid via these approved frameworks also has to comply with the price caps.

Monitor/TDA will explore options to expand this rule to all staff groups.

For these rules to be effective, all trusts must keep to them. Monitor and TDA will take appropriate and proportionate action in cases of non-compliance.

2. A trust is using an approved framework but the published rates exceed the price caps. What should the trust do?

Both the framework rules and the price cap rule should be adhered to. You are therefore expected to pursue all on-framework options and ensure rates paid for agency workers comply with the price caps.
E. Monitoring and overriding the rules

1. What does Monitor/TDA expect to be in place to effectively manage demand for agency staff?

Trust boards must ensure they are following robust and effective governance processes, and any overrides are for patient safety reasons only and could not have been avoided through flexible workforce planning optimal deployment of available staff.

In establishing a robust governance process, Monitor/TDA will be looking to ensure trusts have done all they can to proactively manage the situation. This may include:

- the trust demonstrating robust and accurate information collection, underpinned by a thorough assessment of clinical areas to account for patient acuity, workload and the availability of staff
- consistent principles applied to decision-making overseen by an executive lead
- clear processes for booking agency shifts, along with escalation, audit and control arrangements
- clear policies and procedures (and demonstrated compliance) that, for example, do not allow for the use of agency staff to fill annual leave or other requirements that should be managed as part of a planned approach to the management of the workforce
- clearly co-ordinated management action to influence roster planning and also retrospectively review agency use to improve the future allocation of staff
- with regard to long-term vacancies filled by agency staff, the trust demonstrating how they have reviewed the need for the ongoing use of temporary staff. This might include consideration of skill and grade mix changes, new roles or other creative solutions to deliver the service(s) differently.

2. What action will Monitor/TDA take if trusts override the caps?

Monitor and TDA will scrutinise any payments in excess of the price caps. Inappropriate use and failure to make rapid improvements to workforce management may lead to regulatory action as appropriate. This would include trusts boards being required to develop a clear workforce strategy on how the overrides will be avoided in the future (see Section 9 Enforcement in the rules).

3. When can trusts exercise the ‘break glass’ clause? eg waiting list initiatives

Where there may be a patient safety issue, it is for you to decide whether an override is essential on patient safety grounds. You should only use overrides after you have
explored all alternative strategies. Overrides should be used within a robust escalation process sanctioned by your trust board.

If you envisage or experience a major performance or service continuity issue, you must raise this with your commissioners and with Monitor/TDA as soon as possible.

4. What data must trusts report on a weekly basis?

All trusts are required on a weekly basis to complete a short qualitative survey and to report the number of shifts where they have:

- made payments in excess of the price caps
- procured agency nursing staff through a non-approved framework or agency.

You must make every effort to report instances where you have exceeded the price caps within the reporting period. Any shifts that come to your attention after you have submitted the weekly collection template to Monitor/TDA should be included in the historic tab in the weekly template.

5. Who needs to sign off the weekly returns?

The weekly monitoring return template must be signed off by a relevant executive board member, eg director of finance, medical director, director of nursing, director of human resources.

The deadline for submission is 12 pm on Wednesdays.

6. Are trusts expected to create their own local password? What is the relevance of the password?

Yes. You are expected to create your own local password. Once created, it should be used for all subsequent submissions.

The password provides an extra layer of security.

7. Do the price caps apply to existing bookings/contracts that were in place before the introduction of the price caps?

If you have existing bookings for agency staff, made before 23 November 2015 and at rates above the price caps, where possible you should renegotiate these rates. If this is not possible, you should report these as overrides in your weekly return and include an explanation of how you plan to modify these arrangements so that you adhere to the caps in future.
8. If there are NHS strikes, can trusts pay above the price caps to cover staff shortages?

No. The rules would still apply and you would need to report any overrides in your weekly returns.

F. Trust feedback

1. How can trusts provide feedback to Monitor/TDA on the agency price caps process and the weekly data collection?

We welcome your feedback. Please email agencyrules@monitor.gov.uk.

2. How can trusts share best practice and other useful materials?

We encourage trusts to work together and with Monitor/TDA to share best practice and useful materials. If you would like to do this, please email agencyrules@monitor.gov.uk.