



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

[^{F1}CHAPTER 4

THE NHS PAYMENT SCHEME

Textual Amendments

- F1** Pt. 3 Ch. 4 substituted (1.7.2022 but only for the insertion of ss. 114C, 114D for specified purposes, 1.4.2023 in so far as not already in force) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 10 para. 3](#); S.I. 2022/734, reg. 2(b) (with regs. 13, 29, 30); S.I. 2023/371, reg. 2(d)

114A The NHS payment scheme

- (1) NHS England must publish a document, to be known as “the NHS payment scheme”, containing rules for determining the price that is to be payable by a commissioner—
 - (a) for the provision of health care services for the purposes of the NHS;
 - (b) for the provision of services in pursuance of arrangements made by NHS England or an integrated care board in the exercise of any public health functions of the Secretary of State, within the meaning of the National Health Service Act 2006, by virtue of any provision of that Act.
- (2) The commissioner and the provider of services mentioned in subsection (1) must comply with rules under that subsection.
- (3) Rules under subsection (1) may, in particular—
 - (a) specify prices;
 - (b) specify amounts, formulae or other matters on the basis of which prices are to be determined;

Changes to legislation: *Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (c) provide for prices to be determined for, or by reference to, components of services or groups of services;
 - (d) make different provision for different services or provision for some services but not others;
 - (e) make different provision for the same service by reference to different circumstances or areas, different descriptions of provider, or other factors relevant to the provision of the service or the arrangements for its provision;
 - (f) confer a discretion on the commissioner of a service or on NHS England.
- (4) Rules under subsection (1) may allow or require a price to be agreed between the commissioner and the provider of a service.
- (5) Rules made by virtue of subsection (4) may—
- (a) make provision about how the price is to be agreed;
 - (b) allow the agreement to make any provision that could be made by rules by virtue of subsection (3);
 - (c) provide for the publication by the commissioner, the provider or NHS England of information relevant to the agreement.
- (6) For the purpose of securing that the prices payable for the provision of services mentioned in subsection (1)(a) or (b) result in a fair level of pay for providers of those services, NHS England must, in exercising functions under subsection (1), have regard to—
- (a) differences in the costs incurred in providing those services to persons of different descriptions, and
 - (b) differences between providers with respect to the range of those services that they provide.
- (7) The NHS payment scheme may contain rules relating to the making of payments to the provider of a service for the provision of that service.
- (8) The NHS payment scheme may contain guidance as to the application of rules under subsection (1).
- (9) A commissioner of a service mentioned in subsection (1) must have regard to any such guidance.
- (10) The NHS payment scheme has effect for the period specified in the NHS payment scheme or, where a new edition of the NHS payment scheme takes effect before the end of that period, until that new edition takes effect.

114B The NHS payment scheme: enforcement

Where the commissioner of a service fails to comply with rules contained in the NHS payment scheme, NHS England may direct the commissioner to take steps specified in the direction, within a period specified in the direction—

- (a) to secure that the failure does not continue or recur, or
- (b) to secure that the position is (so far as practicable) restored to what it would have been if the failure was not occurring or had not occurred.

114C The NHS payment scheme: impact assessment and consultation

- (1) Before publishing the NHS payment scheme, NHS England must—

Changes to legislation: Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) carry out an assessment of the likely impact of the proposed scheme, or
 - (b) publish a statement setting out its reasons for concluding that such assessment is not needed.
- (2) Before publishing the NHS payment scheme, NHS England must consult the following—
- (a) each integrated care board;
 - (b) each relevant provider;
 - (c) such other persons as NHS England considers appropriate.
- (3) NHS England must give those persons a notice—
- (a) describing the proposed NHS payment scheme,
 - (b) setting out any impact assessment carried out under subsection (1)(a), and
 - (c) specifying when the period within which representations may be made about the proposed NHS payment scheme (“the consultation period”) will come to an end.
- (4) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (5) NHS England must publish the notice given under subsection (2).
- (6) If, having consulted under this section—
- (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,
- NHS England must consult again under this section.
- (7) Subsection (6) does not apply where section 114D applies.
- (8) In this section “relevant provider” means—
- (a) a licence holder, or
 - (b) another person, of a prescribed description, that provides—
 - (i) health care services for the purposes of the NHS, or
 - (ii) services in pursuance of arrangements made by NHS England or an integrated care board by virtue of section 7A or 7B of the National Health Service Act 2006 (Secretary of State’s public health functions).

114D Objections to proposed NHS payment scheme

- (1) This section applies where—
- (a) within the consultation period under section 114C, NHS England receives objections to the proposed NHS payment scheme from one or more integrated care boards or relevant providers, and
 - (b) either or both of the following apply—
 - (i) the objection percentage for integrated care boards exceeds the prescribed percentage;
 - (ii) the objection percentage for relevant providers exceeds the prescribed percentage.

Changes to legislation: *Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) In subsection (1)(b) the “objection percentage” is the proportion (expressed as a percentage) of integrated care boards or (as the case may be) relevant providers that objected.
- (3) NHS England must consult such persons as appear to NHS England to be representative of the integrated care boards or relevant providers from whom objections were received.
- (4) If, having complied with subsection (3)—
 - (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,
 NHS England must consult again under section 114C.
- (5) If, having complied with subsection (3), NHS England decides not to amend the proposed NHS payment scheme, it may publish the scheme but, before doing so, must—
 - (a) publish a notice stating that decision and setting out the reasons for it, and
 - (b) send a copy of the notice to—
 - (i) the persons consulted under subsection (3), and
 - (ii) the integrated care boards or relevant providers from whom objections were received.

114E Amendments of the NHS payment scheme

- (1) NHS England may amend the NHS payment scheme during the period for which it has effect, provided that, in the opinion of NHS England, the amendments are not so significant as to require publication of a new edition of the NHS payment scheme.
- (2) In deciding whether the amendments are so significant as to require the publication of a new edition of the NHS payment scheme, NHS England must have regard to—
 - (a) the proportion of integrated care boards that would be affected by the proposed amendments;
 - (b) the proportion of relevant providers that would be affected by the proposed amendments;
 - (c) the impact that the proposed amendments would have on integrated care boards and relevant providers that would be affected by them;
 - (d) whether any integrated care boards or relevant providers would be disproportionately affected by the proposed amendments;
 - (e) the amount of any increase or decrease in prices that would result from the proposed amendments.
- (3) If NHS England amends the NHS payment scheme, it must publish the NHS payment scheme as amended.
- (4) Before amending the NHS payment scheme, NHS England must, in accordance with subsections (5) to (7), consult the following about the proposed amendments—
 - (a) any integrated care boards that would be affected by the proposed amendments;
 - (b) any relevant providers that would be affected by the proposed amendments;

Changes to legislation: *Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (c) such other persons as NHS England considers appropriate.
- (5) NHS England must publish a notice specifying—
 - (a) the proposed amendments, and
 - (b) when the period within which representations may be made about the proposed amendments (“the consultation period”) will come to an end.
- (6) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (7) NHS England must send a copy of the notice to each of the persons to be consulted under subsection (4).

114F Interpretation

In this Chapter—

“commissioner”, in relation to a service, means the person who arranges for the provision of the service;

“the NHS payment scheme” means the document published under section 114A(1);

“relevant provider” has the meaning given by section 114C(8).]

^{F1}115 Price payable by commissioners for NHS services

.....

^{F1}116 The national tariff

.....

^{F1}117 The national tariff: further provision

.....

^{F1}118 Consultation on proposals for the national tariff

.....

^{F1}119 Consultation: further provision

.....

^{F1}120 Responses to consultation

.....

^{F1}121 Determination on reference under section 120

.....

Changes to legislation: Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

^{F1}122 Changes following determination on reference under section 120

.....

^{F1}123 Power to veto changes proposed under section 122

.....

^{F1}124 Local modifications of prices: agreements

.....

^{F1}125 Local modifications of prices: applications

.....

^{F1}126 Applications under section 125: notification of commissioners

.....

^{F1}127 Correction of mistakes

.....

Changes to legislation:

Health and Social Care Act 2012, CHAPTER 4 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)