



NHS England and NHS Improvement
Skipton House
80 London Road
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31 January 2022

Dame Meg Hillier MP
Chair of the Public Accounts Committee
House of Commons
London

Dear Dame Meg

MINISTERIAL DIRECTION REGARDING CONTRACTS WITH INDEPENDENT SECTOR PROVIDERS

Thank you for your letter dated 18 January 2022 regarding the measures that have been developed and put in place to respond to the uncertain situation faced by the NHS due to the Omicron surge. Working with the Department of Health and Social Care, we sought to follow the correct process as I place the upmost importance on transparency and timely communication on such matters but I apologise that we did not meet your expectations. My officials have discussed with the Treasury Officer of Accounts to ensure we understand the full detail of requirements and I will continue to make every effort to ensure the correct processes are followed in any similar situations in the future.

Contracts with the independent sector

In December we were asked by the Rt Hon Secretary of State for Health to explore on what terms the NHS could takeover use of acute inpatient independent sector provider capacity. This was in the context of:

- a very rapidly growing Covid infection rate from the Omicron variant;
- and, the uncertainty on admissions to hospital, staff absence and therefore the potential demand and pressures on general and acute bed capacity in the NHS;
- other steps being taken simultaneously to create contingency surge capacity within the core NHS estate;
- and, the acceleration of the vaccine booster campaign.

In the run-up to Christmas, we discussed on what terms independent sector providers would be willing to make available all of most of their capacity and to effectively suspend their private business. The request envisaged the potential for far higher levels of emergency demand, risks to staffing and therefore pressure on the NHS and the ability to maintain effective levels of care.

Outline agreement was reached just before Christmas on the terms and conditions under which the key Independent Sector Providers would make their facilities entirely available to the NHS. In the stage before triggering surge conditions this involved agreeing a minimum income guarantee from the NHS for the final quarter of the year.

To protect value for money:

- the minimum income guarantee was agreed at a level where the NHS could have reasonable confidence that sufficient work would be put through the ISPs to justify the expense, taking account of the same period in the previous year and activity through the autumn. National prices were also agreed to enable the ISPs to do cancer and other more complex cases which they would not normally necessarily do;
- national governance arrangements were agreed to manage the process of escalation and de-escalation from surge conditions to ensure effective use of private sector capacity;
- if surge plans were implemented in any system then ISPs will be reimbursed for costs only.

I reviewed and assessed the proposed arrangements and the steps taken to protect value for money in the face of the various risks and uncertainties. We were also already taking other comprehensive steps, as in previous Covid waves, to put in place alternative options for additional surge capacity.

Over Christmas and the New Year, the arrangements were discussed with HM Treasury, and agreement was reached at the end of the first week of January and was signed off by the Chief Secretary to the Treasury. At that point a formal direction was sought from the Secretary of State as to whether the Government wished to put these arrangements in place taking account of the uncertainty on the future path of Covid and its impact on the NHS and the other steps taken to create surge capacity within the NHS. The Secretary of State's letter of 8 January gave that direction.

It was only after receiving that direction that the NHS sought and entered into a formal commitment with the ISPs, effective from Monday 10 January.

Total cost of the arrangements

You have also asked me to notify you in writing if we activate the surge arrangements within the contract, which I am of course happy to do. To this date no surge arrangements have been triggered. In the face of Covid and other pressures, the NHS continues to work with ISPs to provide as much elective work as possible across the country.

I will write to you following the end of the financial year with our best assessment of the cost of these contracts – this is likely to be around mid-April. Final figures may take a couple of additional months to confirm due to the time it will take to collate detailed activity data that is the basis for final payment.

I copy this letter to the Chair of the Health and Social Care Committee, the Comptroller and Auditor General, the Treasury Officer of Accounts and the Secretary of State for Health and Social Care.

Yours sincerely



Amanda Pritchard
NHS Chief Executive