

Increasing Capacity Framework (ICF)

Guidance and FAQs

22 March 2021

NHS England and NHS Improvement



Summary: Increasing Capacity Framework (ICF)



- There have been national arrangements/contracts in place between NHS England (“NHSE”) and Independent Sector (“IS”) hospital providers since March 2020. **The national Q4 contracts with 14 IS providers will expire on 31 March 2021 and will not be extended or renewed.**
- **Most contracts with IS providers which have been suspended since March 2020 will now have expired.** Contracts which have not expired may resume and continue to run until their original expiry date (or a later date, if the contract allows for extension), but those contracts which have expired cannot be revived: new contracts are required.
- It is vital that systems **make arrangements before the end of Q4** to secure services from IS providers to meet local demand for elective care and to address waiting lists and the **Increasing Capacity Framework (“the ICF”) provides a quick and simple way to do so.** There is no need to wait for national 21/22 arrangements to be finalised.
- The **ICF has been set up by NHSE to provide Commissioners and Trusts with a quick and easy route to contract and sub-contract for acute elective services** on standard terms and conditions with IS providers appointed to the ICF.
- The ICF **adheres to procurement law** and has been designed to **reduce the burden of individual end-to-end procurement processes** and negotiations.
- The ICF can be used to place all contracts and sub-contracts for in-scope services, whether or not they are to replicate pre-March 2020 arrangements.
- Established procured AQP arrangements which have not expired may resume. But **if an AQP arrangement has passed its end date, the ICF can be used as the route to re-establish the local Choice offer** for services within scope of the ICF.
- There are **80+ providers** currently signed up to the ICF. Details of the IS providers and the services that they offer can be found in the [ICF Provider Database](#). It is important to **understand what services are being offered** by each ICF provider before developing local indicative activity plans.
- **Additional information and resources** including a ICF Buyer’s Guide are available on the [ICF Portal](#).

Guidance for Purchasers

Increasing Capacity Framework (ICF)

The following guidelines have been designed to **support purchasers to make best use of the ICF and to ensure a smooth transition into April and beyond**. Please note that these guidelines do not prevent systems from entering into more complex contractual arrangements that are compatible with the terms applicable to the ICF.

<p>1</p> <p>Determine what your local system needs</p>	<ul style="list-style-type: none"> • Who are your longest waiters, and what are they waiting for? • Where are the most acute shortages of capacity? • Which, if any, of your contracts and sub-contracts have not expired and can therefore be revived? Do you have a current AQP arrangement which could meet some of your needs – or is it no longer fit for purpose? • Which services could be provided most efficiently in which setting? Should ICF providers focus on P3/P4? • What should Trusts be most focused on? P1/P2? • Where could ICF providers provide a short, medium or long term solution?
<p>2</p> <p>Focus on the ICF providers best able to meet system needs with immediate effect</p>	<ul style="list-style-type: none"> • Review the ICF Provider Database to understand what services are being offered by each ICF provider and from which of their locations before having local discussions and starting to develop local indicative activity plans • Who has capacity, where and for which specialties? • Consider ICF providers who have provided services for NHS patients in your area in the past <u>and</u> those who haven't
<p>3</p> <p>Act and buy collaboratively</p>	<ul style="list-style-type: none"> • Act as a system: engage and make decisions collaboratively • Don't let individual organisations' or clinicians' preferences stand in the way of what is best for patients and your system collectively • Contracts can be placed by any NHS purchaser (NHS Trusts, CCGs or NHSE) so make best use of the collective contracting resource that is available for the system as a whole • Ensure CCGs (and NHSE with CCGs, where appropriate) award NHS Standard Contracts on a collaborative basis • Ensure Trusts award sub-contracts on a collaborative basis (note the new template sub-contract that has been made available for this purpose) • Ensure requirements, specifications, policies etc are consistent system-wide: this improves efficiency and generates certainty

4

Make use of Direct Awards

- The ICF allows a contract or sub-contract to be awarded within the first 6 months following a provider's appointment to the ICF without the need for any mini-competition. Note that contracts and sub-contracts awarded on this basis can be for a maximum of 6 months duration (no extensions). This buys valuable time to put longer term arrangements in place via a mini-competition.
- The [ICF Provider Database](#) indicates when each provider was appointed to the ICF. All ICF providers are within the 6 month window until at least 26 May 2021
- Direct awards may also be made after the 6 month window has closed, but subject to certain conditions set out in the [Buyer's Guide](#)
- Direct Awards are a very efficient contracting mechanism so purchasers are encouraged to make full use of this opportunity
- Direct award contracts and/or sub-contracts can be issued to more than one ICF provider for the same service(s), or for any combination of services.
- Contracts/sub-contracts may be awarded to all ICF providers able to satisfy your system's requirements and as may be required to meet local demand for services - please refer to the [Buyer's Guide](#) for the direct award process

5

Use of mini-competitions

- Mini-competitions may be run at any time during the term of the ICF
- Mini-competitions must be run where the circumstances for a direct award do not apply
- Contracts/sub-contracts may be awarded to all ICF providers able to satisfy your system's requirements and as may be required to meet local demand for services - please refer to the [Buyer's Guide](#) for the mini competition process
- Mini-competitions may be as simple as you see fit. For example, in your statement of requirements you can ask ICF providers to provide any of the services covered by the scope the ICF. You need only invite responses from ICF providers who provide these services in your geographic area. A range of possible criteria is set out in the [Buyer's Guide](#) but the requirements/questions that you ask ICF providers to respond to may be as simple as you require including pass/fail questions. ICF providers that meet your requirements and can deliver at the ICF prices and in accordance with your local protocols and policies can then be awarded a zero value NHS Standard Contract.

<p>6</p> <p>Use NHS Standard Contracts and sub-contracts to meet your system needs</p>	<ul style="list-style-type: none"> • A system will need a (preferably multi-CCG) NHS Standard Contract to be in place with a ICF provider to allow for regular flows of direct referrals (whether by eRS or otherwise) to that provider • A system will need one or more sub-contracts (preferably a multi-Trust sub-contract) to be in place with a ICF provider to allow transfer of patient lists from Trusts to that provider • It may be appropriate to put <u>both</u> in place with some ICF providers • See item 13 re 21/22 version of the NHS Standard Contract and template Sub-contract
<p>7</p> <p>Prepare Indicative Activity Plans (IAPs)</p>	<ul style="list-style-type: none"> • Constructive engagement with ICF providers requires systems to have a clear idea of their “ask” • Robust Indicative Activity Plans (IAPs), with whole-system buy-in, should form the basis of that engagement
<p>8</p> <p>Look to transfer patient lists wherever possible</p>	<ul style="list-style-type: none"> • See item 6 re use of sub-contracts to allow transfer of patient lists from Trusts to that provider • Transferring a list of patients requiring the same or similar procedures to a ICF provider allows that provider to operate at peak efficiency, getting the most patients treated in each session • Please note that patient consent is required for transfer
<p>9</p> <p>Ensure NHS Standard Contracts are placed with providers holding eRS backlog lists</p>	<ul style="list-style-type: none"> • Some ICF providers already have NHS patients on their lists, referred via eRS. They need an NHS Standard Contract to be in place with at least one CCG, covering the relevant services and facilities to establish the basis on which they can treat them (whether under that specific contract for that CCG’s patients, or under an implied contract on the same terms for other CCGs’ patients under Choice/NCA rules), and be paid for doing so. • Ensure those contracts specify clearly <u>which services</u> they cover, <u>from which facilities</u> they are to be provided • eRS must be operational in every system

<p>10</p> <p>Use established arrangements wherever suitable</p>	<ul style="list-style-type: none"> • Make use of established arrangements with IS providers that have worked well in the past, such as service specifications, established policies etc • 19/20 outturn activity may be an appropriate benchmark for capability and capacity and therefore IAPs/EACVs
<p>11</p> <p>Focus on services with national prices</p>	<ul style="list-style-type: none"> • Where the National Tariff sets a national price or a non-mandatory price for a service, that is the maximum price a ICF provider must charge, under either a contract or a sub-contract (subject to addition of the local market forces factor (MFF) and the application of any percentage discount to the price indicated in the ICF Provider Database for that ICF provider, where appropriate). Mini competitions on price below the national price or a non mandatory price are permitted. • There are no exceptions, uplifts or negotiations to increase these prices. • ICF providers may have additionally offered volume discounts which are included in the ICF Provider Database • The National Tariff sets national prices for most electives (these are to be renamed “unit prices” for 21/22, and will remain mandatory for services purchased via the ICF)
<p>12</p> <p>Save more complex payment arrangements for later, if necessary</p>	<ul style="list-style-type: none"> • More complex payment arrangements may take time. There is no need to let these discussions prevent you from issuing contracts and sub-contracts for services which have a set price (see item 11) • Where the National Tariff does not set a price, a price will need to be agreed with a ICF provider in accordance with the National Tariff local pricing rules • Where the National Tariff does set a price, but you want to agree an unbundled price (for example, because a Trust is offering to provide one or more clinicians to help deliver the service), you will need to agree the unbundled price with the ICF provider

13

There is no need to wait for national 21/22 arrangements to be finalised

- The 21/22 versions of the NHS Standard Contract and template Sub-contracts were published on 22 March 2021 and should be used for all contracting arrangements for 1 April 2021 onwards. [The 21/22 versions are published on the NHS England website](#). If a contract has already been signed using the 20/21 version of the NHS Standard Contract, it should be updated to incorporate 21/22 NHS Standard Contract terms in accordance with the published national variations guidance.
- The 21/22 National Tariff will not be published until after the start of Q1 (following consultation). Prices set by the 20/21 National Tariff continue to apply until the 21/22 National Tariff is published. New prices will be automatically applied in relation to services delivered after the date of publication of the 21/22 National Tariff.
- Allocations for 21/22 will include funding for independent sector provision for purchase of services through the ICF.

14

It is also important to understand what the ICF doesn't cover

- The ICF is for the purchase of elective services to be delivered by ICF providers at their own sites and locations
- The ICF does not cover:
 - purchase of in-sourced services
 - staff supply
 - equipment leasing
 - premises leasing
 - emergency acute activity
 - maternity services
 - mental health services
 - community work services
 - surge capacity provision
- If the ICF is used to buy services outside the scope of the ICF, or on terms which are not provided for under the ICF, you will be risking a formal procurement challenge

Frequently Asked Questions

Increasing Capacity Framework (ICF)

Question	Answer
<p>What is the scope of the ICF?</p>	<ul style="list-style-type: none"> The ICF will enable NHS Trusts and Foundation Trusts, CCGs and NHSE, as a commissioner of specialised services, to purchase elective acute services from a range of service providers at prices equivalent to or lower than those ordinarily paid to NHS Trusts and Foundation Trusts Detailed information about the scope of the ICF is available on the ICF Portal
<p>Is the ICF mandatory?</p>	<ul style="list-style-type: none"> Use of the ICF is not mandatory but provides a quick and simple way to access IS capacity that adheres to procurement law and ensures consistency of terms and conditions
<p>Who was eligible to apply to the ICF?</p>	<ul style="list-style-type: none"> Any providers offering services that are covered within the scope of the ICF were eligible to apply
<p>Eligibility, scope and duration</p> <p>How do providers sign up to the ICF?</p>	<ul style="list-style-type: none"> The deadline for providers to apply to be on the ICF has now passed and NHSE is currently unable to re-open it NHSE is intending to refresh the ICF on a 9-12 month cycle - this will be published in the public sector tender portal Contracts Finder
<p>Which providers are on the ICF?</p>	<ul style="list-style-type: none"> There are 80+ providers signed up to the ICF Details of the ICF providers and the services that they offer can be found in the ICF Provider Database
<p>What is the duration of a ICF Agreement?</p>	<ul style="list-style-type: none"> The Term of each ICF Agreement is two years from the date that the ICF Agreement was signed by the ICF provider. There is an option for NHSE to extend one or more times to a maximum of 4 years from the date of that ICF Agreement.
<p>How do I find out more about the ICF?</p>	<ul style="list-style-type: none"> Detailed information is available on the NHS England ICF Portal If you have any questions that are not answered through this online portal or in this document, please email us at increasingcapacityframework@nhs.net

Question	Answer
<p>What does the ICF allow?</p>	<ul style="list-style-type: none"> The ICF allows: <ul style="list-style-type: none"> Commissioner(s) e.g. CCG(s) or NHSE to put in place a contract with a ICF provider; or NHS Trust(s) or NHS Foundation Trust(s) to put in place sub-contract(s) with a ICF provider. Purchasers are able to award a contract or sub-contract to a ICF Provider by a direct award (in certain circumstances – see below) or by undertaking a mini competition
<p>Contracting via the ICF</p> <p>Can direct awards be made? What is the maximum duration of a direct award contract/sub-contract?</p>	<ul style="list-style-type: none"> The ICF allows a contract or sub-contract to be awarded within the first 6 months following a provider’s appointment to the ICF and in certain other circumstances without the need for any mini-competition The duration of any such NHS Standard Contracts or Sub-Contracts awarded within the first 6 months must not exceed 6 months (no extensions). The ICF Provider Database indicates when each provider was appointed to the ICF. All ICF providers are within the 6 month window until at least 26 May 2021. Direct awards may be made after the 6 month window has closed, but subject to certain conditions. Please refer to the Buyer’s Guide.
<p>When should mini-competitions be run?</p>	<ul style="list-style-type: none"> Mini-competitions must be run where the circumstances for a direct award do not apply. Throughout the entire term of the ICF, purchasers will have the option to undertake a mini competition for an NHS Standard Contract or Sub-Contract (as appropriate) for Nationally Priced Services or Locally Priced Services. Mini-competitions can be simple and straightforward - see item 5 in ‘Guidance for Purchasers’
<p>Can the ICF be used for insourcing?</p>	<ul style="list-style-type: none"> No, the ICF cannot be used for insourcing. There is a separate framework, established by NHS SBS, that relates to insourcing. Detailed information about the SBS framework is available on the Buyer’s Guide.

	Question	Answer
Contracting via the ICF (continued)	Do the ICF terms and conditions allow for purchasers to exit their arrangement with an ICF provider if that provider's capacity is no longer required?	<ul style="list-style-type: none"> Each ICF provider has entered into an ICF Agreement with NHSE that entitles NHS organisations to place contracts or sub-contracts (as applicable) for services with ICF providers on terms and at prices determined by the ICF. Any contract or sub-contract placed under the ICF will be on the terms of the NHS Standard Contract or the template sub-contract published by NHSE, as appropriate, so will provide for termination on notice in the usual way.
	Can the ICF be used to provide for referrals via eRS?	<ul style="list-style-type: none"> CCGs are encouraged to use the ICF to place NHS Standard Contracts to facilitate treatment of patients referred via eRS (their own and those of other CCGs - see item 9 in 'Guidance for Purchasers') Each contract should specify clearly which services it covers, from which facilities they are to be provided
21/22 funding and ICF pricing	What funding is available for 21/22?	<ul style="list-style-type: none"> Allocations for 21/22 will include funding for independent sector provision for purchase of services through the ICF. It is up to local systems to decide how to allocate this funding to utilise additional capacity and activity within the IS to maintain the elective and cancer pathways. Spend should be managed holistically.
	How have the ICF prices been agreed?	<ul style="list-style-type: none"> The ICF provides the prices and any discounts offered by a ICF Provider in respect of Services for which the National Tariff specifies a national price (to be renamed 'unit price' in 21/22) and/or a best practice tariff or other non-mandatory published rate. The ICF does not provide for purchase of services at prices above the national price or other prices stated in the current National Tariff, but does provide for addition of local MFF.
	What is the 21/22 National Tariff?	<ul style="list-style-type: none"> The 21/22 National Tariff won't be published until after the start of Q1. Prices set by the 20/21 National Tariff continue to apply until the 21/22 National Tariff is published. This will be automatically applied in relation to services delivered after the date of publication of the 21/22 National Tariff.

Question		Answer
21/22 funding and ICF pricing (continued)	What happens for services with no national price?	<ul style="list-style-type: none"> • Where no national prices or other published prices are set out in the National Tariff, it is down to local price negotiation. • Central NHSE/I sign off is not required for local price negotiations. • Purchasers are asked to benchmark local prices to the most recent local prices, which is often 2019/20 rates (with inflation to bring it to a current price base). • Where there are not appropriate existing comparable rates, purchasers are asked to benchmark prices on a sensible basis, e.g. with reference to rates outside of the local system, or by derivation from block payments divided by aggregate levels of activity.
Payments to ICF providers	Is there a mechanism in place to prevent cash flow issues for ICF providers?	<ul style="list-style-type: none"> • NHSE has confirmed that where parties to contracts awarded via the ICF have agreed an Expected Annual Contract Value (EACV) based on an Indicative Activity Plan, the Commissioner may make payments on account as per SC36.24 – 36.34 of the NHS Standard Contract. • This is not a permission to set up a block payment, since there will need to be a true up on actual activity-price cost outturn
Reporting requirements for ICF providers	What are the reporting requirements for ICF providers?	<ul style="list-style-type: none"> • Providers should submit data weekly and monthly for inpatient and outpatient activity for all NHS funded activity • Further details of data reporting requirements can be found in the Buyer's Guide.
	Why are these reporting requirements important?	<ul style="list-style-type: none"> • The data allows provider organisations to submit a complete account of the activity they have undertaken under the ICF. • Reporting is mandatory for ICF providers and is a condition of payment.
	If a ICF provider cannot submit activity on SUS, can the cost still be recovered via the ICF?	<ul style="list-style-type: none"> • Yes. Although NHSE/I encourages all ICF providers to submit via SUS and this is the direction of travel, it is not currently mandated. • The ICF provider will be expected to submit via non-SUS reports which are validated by the appropriate NHS Trust.

	Question	Answer
Operational considerations	Will PPE be provided to ICF providers?	<ul style="list-style-type: none"> We are awaiting guidance on provision of PPE for ICF providers for Q1. This will be shared when it is available.
	Will Lateral Flow Testing Kits be provided to ICF providers?	<ul style="list-style-type: none"> Lateral Flow Testing Kits will be provided to ICF providers. The next delivery of lateral flow testing kits to ICF providers is expected to be at the end of March.
	What are the succession arrangements for NHS patients in the IS on 31 March 2021 and beyond?	<ul style="list-style-type: none"> The Q4 Contracts expire on 31 March 2021. The Directions under which NHSE has been exercising commissioning functions on behalf of CCGs for the purposes of those Contracts also expire on 31 March 2021. This means that NHSE cannot commission services which are the responsibility of CCGs to commission after that date. In recognition of that, and in order to ensure both clinically appropriate care for patients following the expiry of the Q4 Contract and appropriate recompense for the IS Provider in respect of that care, succession arrangements will apply in respect of all Q4 Contracts. Guidance on these succession arrangements is available under the Frequently Asked Questions section of the ICF portal.