BY EMAIL

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TO: All NHS provider CEOs

Chief Executive and Chairman's Office
Wellington House
133-155 Waterloo Road
London SE1 8UG

Tel: 020 3747 0000

Dear Colleague

LOCUM AND AGENCY SPEND

Firstly, thanks for your efforts made this last year in reducing reliance on, and cost of, locum and agency staff. The latest forecasts indicate a reduction in spend from £3.7bn in 2015/16 to c. £3bn in this financial year.

It is clear from the data you provide that we have made the most progress with nursing agency staff, but that there is still a long way to go in tackling excessive costs for medical locums. I recognise that reducing locum spend comes with a distinct set of challenges that are different from agency spend more generally, and that we will need to work together if we are to recalibrate this part of the workforce market.

The appendix with this letter sets out in detail the additional actions we are taking to tackle this, and what we are expecting from colleagues in providers. The key issues are summarised below:

Personal Service Companies

There is still far too much use of Personal Service Companies (PSCs) to avoid tax. New HMRC rules coming into effect in April will have a material impact on this. HMRC will treat all public sector 'self-employed' contractors using a PSC as falling under IR35 and therefore treated for tax purposes as an employee. As a result of these new rules, we anticipate that providers will need to ensure all locum, agency and bank staff are subject to PAYE and on payroll from 1 April 2017. We realise that this will have substantial administrative implications for providers, and more guidance on this will follow soon.

Local Collaboration

NHSI continues to identify significant differences in the rates paid by providers in the same local workforce market, particularly around escalation rates ('break-glass' rates). This must be tackled on a collaborative basis. Therefore, the NHSI agency intelligence team will be working with you to make the rates paid more transparent and agree local escalation rates that all trusts locally should support and stand firm on.

Workforce supply

We are aware that trusts have been using agencies to employ individuals who are substantively employed at another NHS trust, and are often paying significantly higher rates for these additional hours. This is counterproductive for the NHS and cannot continue.

From 1 April 2017 trusts should not be using agencies to employ individuals who are substantively employed elsewhere in the NHS. Trusts subject to the agency rules will only be able to engage

substantive NHS staff working additional hours through staff banks, and / or overtime, and deduct PAYE as appropriate.

As you will be aware, almost a fifth of the medical locum spend is in the ED workforce. This is being made worse by notable workforce supply shortages in this area and a huge increase in demand for urgent and emergency care. We are therefore working with the Royal College of Emergency Medicine (RCEM) to develop a programme that helps address longer-term issues and that ensures that this important staff group is supported and working to the same standards as the substantive staff group. This work with RCEM will also help facilitate the switch to substantive employment for as many of these staff as possible. We will follow this up with more detail in April.

Transparency of rates paid

We currently have over five hundred agency staff earning in excess of £150k per year per whole time equivalent (WTE). Around one hundred of these individuals each earn in excess of £200k per year from agency work. We must all now work together to reduce this level of spend on any one individual. We believe that greater transparency is needed around the pay of these staff, and we will work with trusts to agree actions to achieve this; as part of this we may ask providers to publish rates paid to high-earning locums.

The high rates paid for temporary staff is a major problem for substantive staff performing the same duties. We are also working through how we tackle this, in addition to the actions outlined above and in the appendix. We are considering how rates paid can be more transparent and are looking at how rates are reported to us, frequency and how we can make this data more readily available and usable. For example, we intend to work with framework operators to enforce a greater level of transparency on rates, outlined in previously-published agency rules and framework agreements. Again, more detail will follow soon.

Data collection burden

I appreciate that we have made significant changes to data requirements and requests over this last year. This has played a part in the reduction in costs, but I have asked Dale Bywater to review the data flow and collections in this area to ensure we are not placing an undue burden on providers. We have agreed to work with NHS Employers to develop streamlined reporting, and to determine how we use this data to support your decisions at local and regional level.

I hope this makes sense and as always Dale and I are happy to discuss if you wish. We will also be publishing the contents of this letter in the monthly agency report next week. Thanks for your efforts and support in this area. Keep going…

Best wishes

Jim Mackey
Chief Executive, NHS Improvement

Appendix

Specific trust targets for reductions in medical locum cost:

- A national target to reduce medical agency expenditure by £150 million in 2017/18
- Each trust will be required to agree an improvement target on medical locum spending with NHS Improvement for 2017/18.
- This target will be agreed alongside any support a trust requires from NHS Improvement, and will be measured in monthly returns.
- It is recognised that trusts have already submitted ambitious plans to NHS Improvement in this area for 2017/18. In setting this target NHS Improvement is committed to actively support trusts deliver on these plans.

Personal Service Companies:

- It is clear that some locums are exploiting the benefits of working through Personal Service Companies (PSCs) and the reduced tax that can be paid by doing so. NHS Improvement has always discouraged the use of PSCs within trusts.
- HMRC has recently concluded the review of PSCs within the public sector and is introducing new rules which will change the way contractors using PSCs are taxed. This means they will be taxed the same way as a general employee, thus falling under what is called IR35. As a result we expect to see a significant reduction in the use of PSC from 1 April.
- To provide clarity NHS Improvement's view is that all Medical Locums will fall inside IR35 and thus tax must be deducted at source, either by the trust or agency depending upon engagement method.
- Trusts subject to the agency rules are not permitted to operate staff banks that allow payment through PSC or LLP with effect from 1 April 2017. All other trusts are expected to comply with this requirement.
- Providers are strongly encouraged to ensure that all staff are contractually paid via PAYE mechanisms. Where this is not the case, trusts should seek approval from NHS Improvement to pay via alternative means. The Agency Intelligence Team will contact trusts shortly with further guidance around the

approval process.

Local collaboration:

- NHS Improvement is currently working on various options of how we can share data more effectively and will be working closely with trusts and NHS Employers to develop a new set of tools to support providers going forward. This will allow providers to work collaboratively to reduce agency spending.

Workforce:

- With effect from 1 April 2017, trusts subject to the agency rules can only engage staff working additional hours, who are already substantively employed by the NHS (irrespective of which trust they are substantively employed by), through staff banks using standard PAYE payroll. All other trusts are expected to comply with this requirement.

- There are a number of examples of trusts who have successfully introduced innovative approaches to encourage agency staff to move into substantive posts. We will shortly share details of these approaches with all trusts to support their adoption across the sector.

- At the same time we are working with the Royal College of Emergency Medicine specifically on the use of locums in A&E, looking at further ways to ensure that locums in A&E departments who want to work substantively can do so and reducing the reliance of certain systems on ongoing locum support.

Transparency of rates paid:

- It is our intention to publish the total number of shifts each trust has reported above £120 per hour broken down by staff group. This will give trusts greater visibility of regional performance on high cost interims.

- Greater transparency is needed around the pay of locum staff earning in excess of £150k. We will give more details of proposed actions in coming weeks, but as part of this we may ask providers to publish rates paid to high-earning locums; similar transparency measures already exist in government, where the names and pay-bandings of civil servants and senior officials earning £150k and above are published.

Data collection:

- In our letter to the sector on 17 October 2016 we outlined that chief executives must have full sight of significant overrides and introduced a requirement upon trusts that the trust chief executive must personally sign off on all agency shifts by individual costing more than £120 per hour. Trusts are reminded that these CEO sign offs are now required.

- We also outlined the requirement to report this weekly to NHS Improvement for those trusts that were above their agency expenditure ceiling. We are now increasing this requirement to *all trusts subject to the agency rules*, and all other trusts are strongly encouraged to comply. The data will be collated within the weekly agency monitoring returns from March. The Agency Intelligence Team will write to each trust to outline how the collection will be undertaken.