

Interim agency very senior manager approval process

October 2016

1. Summary

NHS Improvement is implementing an approval process for the procurement of interim agency very senior managers (VSMs) by trusts.

Trust spending on agencies has increased to the extent that it is one of the most significant causes of deteriorating trust finances. Agency staff are more expensive than both bank and permanent staff. In 2015/16, NHS providers spent £3.6 billion on agency staff. We have already introduced agency rules that cover price and wage caps for agency staff. These rules address VSMs procured through an agency

We recognise that VSMs have a role in supporting NHS organisations to make key operational and strategic improvements and that sometimes these roles need to be filled on an interim basis through an agency. However, we know that the NHS often gets poor value for money from agency expenditure. We cannot continue to spend on this scale without getting maximum value for money. The approval process will require trusts, as outlined below, to demonstrate value for money when appointing to these roles.

2. Scope

From 31 October 2016, these rules will apply to:

- all NHS trusts
- NHS foundation trusts receiving interim support from the Department of Health (DH)
- NHS foundation trusts in breach of their licence for financial reasons.

Throughout this document 'trusts' refers to 'all trusts in scope of the rules' unless otherwise specified.

All other foundation trusts are strongly encouraged to comply with this process.

For this approval process, 'very senior manager' is defined as all non-clinical, non-medical posts on local terms and conditions above band 9 Agenda for Change.

Trusts will be required to secure advance approval from NHS Improvement before:

- signing new contracts with agency VSMs where the daily rate exceeds £750, including on costs
- extending or varying existing contracts where the daily rate exceeds £750, including on costs
- incurring extra expenditure to which they are not already committed, where the daily rate for an agency VSM exceeds £750.

Appointments that have been approved via the VSM approval process are recommended to be for one year at most.

This document assumes a 'daily rate' will apply to a working day of at least 7.5 hours.

3. Rationale

Given the current level of provider deficit we cannot continue to spend on this scale without getting maximum value for money. This rule is being implemented alongside the agency rules that apply to all staff groups employed by NHS trusts and NHS foundation trusts: nursing, medical, all other clinical and other non-clinical staff. We are putting an approval process in place at a national level so that we ensure as far as possible that only maximum value for money appointments of interim agency VSMs are made.

4. The approval process

Interim agency VSM contracts with a daily rate over £750 require prior approval by NHS Improvement (the £750 threshold includes on costs of: holiday pay, employer national insurance, employer pension contribution, administration fee/agency fee and any other fixed or variable fees or payments to the worker or agency (eg travel, accommodation, finder's fee, bonuses)).

All business case approval forms from trusts should be sent to NHSI.agencyrules@nhs.net and will be reviewed by a sub-committee of NHS Improvement's Agency Operational Implementation Group.

Trusts are required to secure advance approval from NHS Improvement before extending or varying existing contracts or incurring extra expenditure to which they are not already committed, where the daily rate for an agency VSM is over £750 (including on costs of: holiday pay, employer national insurance, employer pension contribution, administration fee/agency fee and any other fixed or variable fees or payments to the worker or agency (eg travel, accommodation, finder's fee, bonuses).

The approval process comes into effect on 31 October 2016 and applies to all interim contracts (made on or after that date), including those where contractual negotiations are in progress (on that date).

NHS Improvement recognises that in some circumstances trusts engage directly with a worker via a limited/personal services company (PSC). Trusts must only engage directly with a VSM working via a PSC where they are assured that the worker is complying with the obligations set out in HMRC guidance and have proof from the worker that they have complied with IR35 legislation. If the individual cannot provide adequate assurance that they are operating within the law the trust must not engage with the individual via that arrangement.

5. Having a business case approved

Please send business case approval forms to NHSI.agencyrules@nhs.net

The Agency Operational Implementation Group will review each business case against several assessment criteria. For proposed agency VSM expenditure within the scope of the approval process (as outlined in the previous section), trusts are required to provide evidence of the value against the criteria outlined below.

Assessment criteria	
Criteria we are assessing	What we are looking for
The candidate	<ul style="list-style-type: none"> • Why is an interim appointment being made rather than a substantive appointment? • Please describe the impact on the trust's objectives, staff and patient care if approval is not given for this remuneration package
Clear remit	<ul style="list-style-type: none"> • Evidence that the scope is clear, defined and well thought through • Detail of how the scope has been developed including any engagement with patients, clinicians, commissioners or suppliers

Substantive appointment	<ul style="list-style-type: none"> Steps you will take to make a substantive appointment to this position, including bringing this candidate onto a substantive position, if appropriate
Alternative options	<ul style="list-style-type: none"> Steps taken to fill this role before engaging an agency to recruit to the position. Specifically, efforts made to recruit to this post on secondment from within the organisation or the organisation's sustainability and transformation plan area must be described. If no action can be demonstrated here the application is likely to be automatically rejected.
Resourcing route	<ul style="list-style-type: none"> Details of the resourcing method, including how you reached the decision that this is the best way to meet your business requirements, evidence of sourcing the best value and evidence of negotiation over rates.
Financial case	<ul style="list-style-type: none"> Details of how you have calculated the remuneration package, by reference (as relevant) to benchmarked costs, justification for the period of engagement required and evidence of the market engagement you have done to calculate the financial case. Details of extra costs and estimated expenses. Details of the basis of payment and why this will achieve best value, eg does the contract propose a fixed fee, contingent fee, etc, and how will any risks within the payment structure be managed?

Approval will be given to business cases that clearly demonstrate maximum value for money against the assessment criteria. To be given permission to proceed trusts will need robust, evidence-based answers to all the questions above. NHS Improvement will either give permission to proceed, request further information and re-assess or refuse permission to proceed. All decisions to refuse permission to proceed are final.

Business cases can be submitted either during or at the end of a recruitment process. However, cases submitted before the end of the recruitment process should provide sufficient details to provide assurance that the criteria will be met, specifically that the trust has a robust recruitment plan in place and the financial estimates in the case are accurate and not subject to change if approval is given.

Cases do not need to be long. Strong cases can be presented concisely and without excessive supporting statements. Poorly written or excessively long cases are likely to take us longer to decide on.

On completion of the approved appointment, trusts must submit a report to NHS Improvement detailing the benefits of the work and value add.

6. Compliance

Evidence suggesting organisations are seeking to avoid this approval process is likely to be subject to follow up by NHS Improvement and may risk rejection, or providers having previous approval reconsidered and potentially removed.

Compliance with these rules, as with the agency rules, will explicitly be taken into account in the 'broader value for money' considerations that form part of the [Single Oversight Framework](#).¹ Non-compliance with this process may be evidence that a trust is not achieving maximum value for money in this area and this may therefore lead to regulatory action.

Please send all queries to NHSI.agencyrules@nhs.net

About NHS Improvement

NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

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¹ <https://improvement.nhs.uk/resources/single-oversight-framework/>