NHS England

Commissioner Guidelines for Responding to Requests from Practices to Temporarily Suspend Patient Registration

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Commissioner Guidelines for Responding to Requests from Practices to Temporarily Suspend Patient Registration.

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Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

· Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and

· Given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities

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1. Formal List Closure

The GMS and PMS contracts allow for a Practice to request permission from its commissioner to close its list to new patients (Paragraph 29 of Schedule 6, Part 2 of the NHS (GMS Contracts) Regulations (as amended). This option exists to give practices a degree of workload control over the management of their services, particularly when there is unusual and sustained demand from patients or in situations of workforce or recruitment difficulties that affect a practices ability to provide services to an acceptable and safe standard.

As the commissioner also has a duty to ensure the availability of primary care services for the resident population it has certain powers with regard to these requests including agreeing to the length of the closure and the conditions that would need to exist to trigger a re-opening of the list. The commissioner will also need to consider the availability of alternative provision for new patients and any impact on neighbouring practices. Following changes to the formal list closure process in 2012 the commissioner does not have the power to halt practices' delivery of additional and/or enhanced services as a means to reduce practice workload thereby keeping the patient list open. Therefore list closure no longer carries such financial consequences for the practice as it was once thought to have and allows practices to continue to deliver holistic care to registered patients.

When a practice does formally close its list, the requirement is to close between three and twelve months; not less than three months. An approved closure notice must specify what the time period is.

2. 'Informal' or 'Temporary' List closure

While the GMS and PMS contracts do not allow for a 'temporary' or 'informal' list closure they do allow for a practice to refuse individual patient applications for inclusion in a contractors list of patients providing there are reasonable non-discriminatory grounds to do so (paragraph 17 of Part 2 of Schedule 6). See appendix A. In this guidance we distinguish a patient refusal on a case by case basis, based on the *patient* circumstances, from a refusal to allow a patient to join the list because of the circumstances surrounding the *provider* and so do not consider paragraph 17 to be appropriate in these circumstances.

Practices can however suffer unforeseen pressures which can reasonably be predicted to be short term. In these circumstances there may be a real or perceived risk to 'safe patient care' by accepting more new patients onto the list and action to address this by the practice should be received by the commissioner as a trigger for support and help

NHS England has seen a significant rise in the number of practices suspending registration on a temporary basis causing a significant problem for patients, neighbouring practices and commissioners in some areas.

Practices do not exist in isolation so when a practice restricts new patient registration, this has an impact not only on patients, but on neighbouring practices. It is for these types of circumstances that the formal list closure

procedure exists; to allow for a considered and managed approach to list management across all practices

Because of the potential impact of “temporary suspension” NHS England encourages practices to open a dialogue with their commissioner as early as possible when considering temporary suspension

These guidelines for commissioners, describe the circumstances where a temporary suspension by the contractor of patient registration *may* be appropriate and the conditions that should govern that decision such that the roles and responsibilities of both parties are not compromised.

3. Overview of current activity

The increase in temporary suspension of patient registration is a symptom of rising pressure in primary care, which creates a risk to patients, neighbouring practices and the commissioner; however the risk to patients being registered with an oversubscribed practice should also be taken into account.

4. Facts/Principles

Addressing practices seeking to ‘Informally’ or ‘Temporarily’ suspend patient registration onto their list should be in the context of the General Practice Forward View and NHS England’s commitment to supporting practices in difficulty. However, NHS England has a duty to ensure that patients have access to primary care.

- Core services includes operating an open list by fact of regulation and is how NHS England ensures access to services; the NHS Act confers a duty on the commissioner to ensure the provision of services
- Any actions considered by the commissioner should ensure, system wide, safe, quality and accessible core services to patients and be proportionate and sensitive to the providers concerned.
- NHS England and CCGs as Commissioners have a responsibility to address health inequalities
- Commissioners and providers must work together to ensure compliance with the Equality Act, ensuring the rights of those with protected characteristics are not directly or indirectly compromised.
- Good medical practice states that if a GP is aware that patient safety is being compromised, then they have a professional duty to act
- The unintended impact of any action needs to be considered in relation to both registered patients and unregistered patients in the locality as well as the impact on other local providers both primary (GP and pharmacy) and secondary care

- The commissioner has the right to assign patients throughout the period that the list is not formally closed having due regard to the quality and safety of services and the reasons behind the list closure in the first place

5. Issues to be taken into consideration

NHS England acknowledges that things can rapidly change within practices. These may include for example;

- An immediate and unpredicted shortfall in the availability of staff e.g. through sickness or a delay to a staff appointment
- An unpredicted surge in demand
- An unexpected event affecting a practices ability in the short term to provide the full range of services normally available e.g. a flood or a fire (See Force Majeure provisions of the standard GMS, PMS and APMS contracts).
- Impact on a practice of an unfavourable CQC inspection where remedial action temporarily affects normal service provision

In some circumstances the action required to remedy a problem may take several months and in others just a few weeks for example, a planned short term suspension of registration as part of a recovery plan through the vulnerable practice programme. Alternatively, practice capacity may be temporarily compromised by premises development or IT upgrades. Under these circumstances it would be usual to expect planning and communication with patients in advance with a specific start and end date and disruption measured in weeks not months

In all but exceptional circumstances Practices should approach the commissioner in advance so that an action plan that minimises the impact on patients can be considered jointly at the earliest opportunity and so that immediate support from the commissioner can be put into action. A request to temporarily suspend patient registration should be considered by the commissioner as a trigger for support as it should for a formal application to close the list

This guidance does not prescribe what length of time an approval of a temporary list suspension is appropriate as this will vary depending on the circumstances. The key words are unpredictable and/or short term. In circumstances where there is a known history of difficulty in recruitment including the availability of locums or the circumstances affecting the practice can be predicted to last longer e.g. a planned refurbishment or a rebuilding programme scheduled to last month's say following a flood or a fire, the formal list closure procedure should be encouraged. In both cases the practice's eligibility for support through the Practice Resilience Programme should be considered by the commissioner.

6. Process to be adopted

All practices should be encouraged to contact their commissioner at the earliest possible opportunity i.e. at the point that suspension to registration is being considered so that the provider and commissioner can work together to agree what support is required.

At this point commissioners should

- seek to understand the reasons behind the action
- engage the LMC at the time of a decision as the LMC also carries a responsibility for representing all their affected parties
- Facilitate what action needs to take place by the practice and/or by the commissioner for the list to be re-opened. If actions can reasonably be expected to take longer than 3 months then the Practice should be asked to make a formal application to close its list.

Actions should trigger consideration of the practice resilience programme or use of section 96 e.g. a diagnostic/review of the difficulties faced and recommended action

At the end of the agreed period where temporary suspension of patient registration has occurred, the list would normally re-open. There are only two alternative outcomes;

1) If the situation is almost resolved for example an appointment has been made but the post not yet filled (for example by a week or two later) an extension to the temporary arrangement can be negotiated
2) Despite support to deliver an action plan the practice continues to feel compromised. The commissioner should then consider an application for formal list closure, which will require wider consultation. The parties will need to agree the status of the practice list during the formal process, whether, having regard to all local circumstances, the practice should continue to operate a temporary suspension to patient registration.

These guidelines have been drafted in recognition of the immediate pressures facing some practices; they do not however sanction the term ‘open but full’. Where a practice is failing to engage with the commissioner, and unilaterally seeking to determine its own restrictions on patient access, without consideration of the impact on patient access generally or the implications for neighbouring practices, then contractual action may need to be considered

Appendix A; paragraph 17 of Part 2 of Schedule 6
Refusal of applications for inclusion in the list of patients or for acceptance as a temporary resident

17.—(1) The contractor shall only refuse an application made under paragraph 15 or 16 if it has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

(2) The reasonable grounds referred to in paragraph (1) shall, in the case of applications made under paragraph 15, include the ground that the applicant does not live in the contractor's practice area.

(3) A contractor which refuses an application made under paragraph 15 or 16 shall, within 14 days of its decision, notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reason for it.

(4) The contractor shall keep a written record of refusals of applications made under paragraph 15 and of the reasons for them and shall make this record available to the Primary Care Trust on request.