Monitor
Making the health sector work for patients

Note for NHS commissioners of services from NHS foundation trusts about expiry of 'grandfathered' commissioner requested services (CRS) status in April 2016 and need to consider redesignation

As set out in Monitor's 2013 Continuity of Service policy, on 1 April 2016 all NHS services provided by NHS foundation trusts[1] that were authorised before 1 April 2015 will lose their automatic ('grandfathered') status as commissioner requested services (CRS).[2] CRS status is designed to provide greater assurance to commissioners regarding the ongoing provision of otherwise 'hard to replace' services. Monitor keeps the financial health of all providers of CRS under review to protect patients who use those services.

Commissioners can replace this automatic designation with a proactive identification of CRS specific to individual services in each provider. The CRS guidance issued in March 2013 asked commissioners to review CRS designations before the end of the grandfathering period, to avoid any CRS statuses unintentionally lapsing.

This note is to remind commissioners (i) of the end of the grandfathering period on 1 April 2016 and (ii) to consider whether they need to redesignate services as CRS before the grandfathering period expires.

Background

The concept of commissioner requested services was created to identify services which *"would have to remain in the locality should a provider fail because:*

a) either there is no alternative provider close enough; or

b) removing them would increase health inequalities; or

c) removing them would make dependent services unviable".

Commissioners have a role in protecting essential services by identifying them and designating them as CRS. In doing this, commissioners must have regard to Monitor's guidance here. We use our regulatory framework to identify and address risk of failure – or actual failure – at CRS providers.

[1] This does not apply to services commissioned from NHS trusts or independent sector providers.

[2] All services provided by foundation trusts previously defined as 'mandatory services' were automatically designated as commissioner requested services for three years on 1 April 2013.

All NHS services provided by NHS foundation trusts were automatically designated as CRS for three years on 1 April 2013, when the provider licence was introduced. Foundation trusts authorised after 1 April 2013 have automatically had their services designated until either 31 March 2016 or 12 months after their authorisation, whichever is later. This was to give commissioners time to review their service needs and identify 'hard to replace' services meeting one or more of the criteria *a)* to *c)* above. This automatic designation will expire for all NHS foundation trusts authorised before 1 May 2015 and within a year of authorisation for any others. We encourage commissioners to consider whether they need to redesignate services as CRS before then. As the guidance states, it is important that commissioners notify Monitor when they designate services as CRS.

CRS designation affects all NHS services commissioned from NHS foundation trusts. Commissioners also considering or actually reconfiguring services should in addition be aware that they must handle any significant service change or reconfiguration in line with their statutory obligations outlined in the guidance, *Planning, assuring and delivering service change for patients*, available here. Clinical commissioning groups (CCGs) have a statutory duty to follow this guidance. Anyone involved in changing or reconfiguring services should read this guidance to ensure NHS England can assure the plans against the government's four tests of service change:

- strong public and patient engagement
- appropriate availability of choice
- clear, clinical evidence base
- clinical support.

Existing services – CRS or not – may only be changed after completing the process set out in this guidance.

Purpose of CRS status

CRS status has two main consequences for patients and commissioners:

1) CRS providers come under Monitor's continuity of services licence conditions – where a CRS provider is in significant financial distress, we may ultimately use our powers to protect essential services for patients.

2) A provider cannot stop providing CRS without the commissioner's consent or, in the event of a dispute about whether a service meets the above criteria, Monitor's consent. While CRS decisions should always start with discussions between commissioners and providers, to minimise risks of disputes commissioners should refer to our guidance on CRS when designating services.

CRS status does not affect the basic contractual arrangements between commissioners and providers.

Benefits of designation

A CCG that recently reviewed its CRS designations as part of wider work to identify the local health economy's needs as part of a reconfiguration, gave this feedback on the process:

"To support the work of the contingency planning team in reviewing the financial sustainability of our local provider, we undertook an in-depth analysis of all our commissioned services to determine whether any services should be designated a commissioner requested service (CRS). This systematic and methodical review proved invaluable in fully understanding the composition, complexities, deprivation and needs of our local population. Furthermore, this analysis served to inform the availability of appropriate capacity and capability from local providers in meeting our commissioning requirements. The review also included a requirement to undertake an evaluation of inequalities within the population. This added a further level of rich intelligence and brought insightful perspectives on access to services and wider infrastructure considerations such as transportation travel times. This depth of analysis was instrumental in supporting essential reconfiguration and change in a transparent and structured way to ensure clinically safe and sustainable services for our local population."

What you need to do

Please tell us by 8 January at crs@monitor.gov.uk if you have already, during the grandfathering period, redesignated services provided by NHS foundation trusts as CRS or if you have plans to do so shortly. Commissioners should consider whether any of the services procured from NHS foundation trusts meet any of the CRS criteria above and, if so, whether they should designate them as CRS before 1 April 2016. Commissioners should have regard to our guidance cited above.

We expect commissioners and NHS foundation trusts to work collaboratively on this. Commissioners should initiate the designation process by writing to providers, indicating the services that are to be designated and the rationale for this. Providers have 28 days to consider whether the designation is unreasonable, otherwise CRS status is automatically conferred on those services. It is important that commissioners inform Monitor of this designation.

De-designation

Where a CCG does not actively redesignate as CRS a service that has grandfathered CRS status, the CRS service will automatically lapse on 1 April 2016[3] and no further action is necessary.

If you have any further queries, please contact crs@monitor.gov.uk

If there is sufficient interest, we may run webinars to support the sector early in 2016. If you would like to express interest in these, please use the e-mail above.

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[3] Or 12 months after authorisation in the case of NHS foundation trusts authorised after 1 April 2015.