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15 May 2024

FILE REF: SHA/26169

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DECISION MAKING BODY: NHS ENGLAND – WEST MIDLANDS
("THE COMMISSIONER")

GMS CONTRACTOR: KINGSTANDING CIRCLE SURGERY,
26 ROUGH ROAD, KINGSTANDING,
BIRMINGHAM, B44 0UY
("THE CONTRACTOR")

DISPUTE RESOLUTION – NATIONAL HEALTH SERVICE (GENERAL MEDICAL SERVICES CONTRACT) REGULATIONS 2015

RE: NON-PAYMENT OF INFLUENZA VACCINATION PAYMENTS

1. Outcome

- 1.1 I am satisfied that the Commissioner can decline the claim for payments for the period the Contractor provided vaccinations to its patient population for the 2023/24 financial year as there is no dispute from either party that the claim for payments was submitted outside the 3 month timescale allowed from the date the vaccination dose was administered.
- 1.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

Advise / Resolve / Learn

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RE: NON-PAYMENT OF INFLUENZA VACCINATION PAYMENTS

1. INTRODUCTION

- 1.1 The above Contractor referred the dispute in relation to its General Medical Services Contract for dispute resolution under the provisions of Regulation 83 of the National Health Service (General Medical Services Contracts) Regulations 2015 (the “Regulations”).
- 1.2 The Secretary of State for Health and Social Care has directed that NHS Resolution exercise the functions of dispute resolution on their behalf. I, as an authorised officer of NHS Resolution, have made this determination.

2. APPLICATION FOR DISPUTE RESOLUTION

- 2.1 By an undated letter, received 28 February 2024, the Contractor applied to NHS Resolution, for dispute resolution.
- 2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute:
 - 2.2.1 Email from the Contractor dated 28 February 2024, with enclosures;
 - 2.2.2 Email from the Contractor dated 11 March 2024, with enclosures;
 - 2.2.3 Email from the Contractor dated 15 March 2024, with enclosures;
 - 2.2.4 Email from the Commissioner dated 22 April 2024, with enclosures; and
 - 2.2.5 A copy of the Contractor’s signed GMS Contract.

3. PARTIES SUBMISSIONS

The Contractor’s application

- 3.1 “I write with regards to a CQRS submission of 554 Flu vaccines which were given in September 2023 which was later declined and cancelled from the system by [MT], Contracts Managers on the 22 January 2024.

I was advised that we only had a 3 month window to claim for the vaccines given and this time had passed. On referring back to the service spec which had been filed along with the completed sign up form I noted the payment instruction as shown:

10.2.3 practices submitting claims to the Commissioner (NHS England) for payment monthly wherever possible and practices must:

A) validate and submit a claim to the Commissioner (NHS England) for payment within six months of the date of the administration of the completing dose of the vaccine save where paragraph 10.2.23(b) applies

B) validate and submit a claim to the Commissioner (NHS England) for payment within three months of the date of the administration of the completing dose of the vaccines where the vaccination is co-administered with a COVID-19 vaccines

C) ensure that claims submissions are validated to enable the Commissioner (NHS England) to correctly calculate the payment.

I challenged this with [MT] only to establish that it was actually the 22/23 service spec and not 23/24. I was also informed that it was in fact only 3 months to claim for any flu vaccines given now rather than the previous 6 month window which has been in place for numerous years.

This prompted me to return to my emails as I could not understand why this had been filed with the current years claim year.

I found the initial email from 18 April asking practices to sign up no later than 30 June to the services and this did [sic] the 22/23 service spec attached. It did have a note saying the 23/24 service was not available at this time. As many know Practice Managers receive so many emails per day it is about picking out the important information and getting the job done.

On further discussions with [MT] he confirmed that a later email had been sent out which contained the new spec and did also mention the change in payment terms. This email was sent out on 11 August which when I searched for this email it had not been opened.

Last year was a pretty tough year for myself personally and for the practice as our senior GP had reduced his commitments to the practice significantly so a lot of time was spent searching for and recruiting a new GP then ensuring they were given all the support and knowledge required to step into the role of a GP Partner. We also lost 2 members of staff, one to maternity and one to retirement which again I was busy ensuring staff were replaced and ensuring they were given the correct support and everything with regards to compliance was completed. All of this whilst continuing to run the practice on an everyday basis and [TEXT REDACTED BY NHS RESOLUTION].

[MT] did pass on details of whom I could raise my concern with regards to the cancellation of payment. I sent an email to [SB] but was advised that they are unable to amend the rules due to practice or personal circumstances.

I am deeply saddened that this is what the NHS has come to with regards to General Practice being on such a tight rope that any slip up we will be penalised at the cost of ourselves and our patients.

General Practice is under more and more pressure daily and contract changes are being thrown at us. We are expected to sign up to new services without all of the information provided to us yet we are still the ones who have to deal with patients day in and day out.

Our patients are the reason we sign up to these services, we endeavour to offer a high standard of care and we like that we are able to offer our patients these services in their own practice where they feel comfortable and safe. There is very little money over from giving the flu vaccines in house after we have paid staff and service charges but we continue to do so in good faith.

The majority of the 554 vaccines that were given in September were given on Saturday 23 September. We had 2 GPs, 2 Nurses, 2 HCA's, 4 admin members and myself from 7am in the morning until 4pm all of whom came in at the weekend on their day off.

The service fees for the 554 vaccines totalled £5573.24 so as you can imagine by the time all of the above staff were paid and costs to open and run the surgery for the day were covered there was very little for us to invest into further services but even so, by not having this claim approved, it will certainly be a disinvestment of further resources to an already underserved community.

We were one of the first practices to sign up to offer COVID vaccines when we were needed and we continued to have regular contact with all of our patients during the pandemic. We are only just starting to see the effects from stepping down from giving the COVID vaccines at our surgery and we did this so we could concentrate more on the patients within our practice.

We ask that you look at our case with a view to understanding how much pressure is actually placed on general Practice at the present, Practice Managers are human, mistakes can happen and we do have a life outside of General Practice which isn't always plain sailing.

Who is actually being penalised for this claim not being approved. What are they achieving by holding this back!

It seems that they are just going to drive more 'Good' Practice Managers and GPs out of General Practice with this approach.

I have also attached a letter of support from our Local Medical Committee."

LETTER OF SUPPORT FROM BIRMINGHAM LOCAL MEDICAL COMMITTEE
DATED 27 FEBRUARY 2024

"We would strongly support this practice being remunerated for the flu vaccinations delivered in September.

Historically there has always been a 6/12 window to make this claim and this change sent to very busy and under pressure PMs was not well communicated.

The practice has had a very difficult and challenging year with staff sickness and reduction in hours, yet still strived to provide an excellent service.

The practice has incontestably given these flu vaccines at an early juncture, which is exactly what patients require. There is an incontestable moral obligation to pay for this well delivered service and not penalise a small business on petty bureaucratic grounds.

We hope you will consider sensibly and compassionately this reasonable appeal."

Representations

The Commissioner's representations

- 3.2 "I am in receipt of your email and provide the following response in our representation on the matter in dispute.

For accuracy, please note that I work for and act on behalf of NHS England Midlands and not Birmingham and Solihull ICB as your letter suggests.

The Midlands approach has been for several years, to pay only in line with the parameters which are clearly set out in the seasonal influenza contract [sic] and service specification and are also in line with NHSE Standing Financial Instructions which are a legally binding agreement and therefore we do not have the authority to approve payments outside of these parameters.

As you will no doubt be aware the claim window moved from the previous 6 month window to the 3 month window for the Autumn/Winter 2023/23 flu season. The Practice were sent an email on 11 August 2023 which contained the 2023/23 specification and detailed the change; the Practice Manager has confirmed that she unfortunately did not open this email.

The Enhanced Service Specification – Seasonal Influenza Vaccination Programme 2023/24 clearly outline what the Practice must do to claim payment:

[PRN00627-gp-seasonal-influenza-enhanced-service-specification-v2.pdf \(england.nhs.uk\)](https://www.england.nhs.uk/prn00627-gp-seasonal-influenza-enhanced-service-specification-v2.pdf)

*11.2.3 Practices submitting claims to the Commissioner (NHSE) for payment monthly wherever possible and Practices must: (a) validate and submit a claim to the Commissioner (NHSE) for payment **within 3 months** of the date of the administration of the completing dose of the vaccines; and (b) ensure that claims submission are validated to enable the Commissioner (NHSE) to correctly calculate the payment. [Emphasis added by the Commissioner.]*

Whilst we sympathise that the Practice experienced recruitment problems, we are unable to breach the Standing Financial Instructions that are in place as it is clear the Practice did not claim within the 3 month window.

The Practice has made reference in the correspondence that they were issued with the previous year flu specification at the time when they signed up for flu Autumn/Winter 2023/24.

Our response to this is that we do send out the Enhanced Services sign-up sheets in or around February each year, for the coming year, however, the service specifications for Seasonal Flu are not normally published until around August, just before the flu season starts. As we cannot send out the enhanced service sign-up sheets without a service specification attached, we send out the current service specification, so for the 2023/24 sign-up sheets, we sent out the 2022/23 specification. We did state that the specifications are **for reference only and we also confirmed that the new specifications would be sent out as soon as they were published**. [Emphasis added by the Commissioner.]

We can confirm that for the flu season 2024/25, the specs have (unusually early) been published and are going to be sent out shortly to Practices, along with the sign-up sheets.

Should you require any additional information, please do not hesitate to contact me.”

The Contractor’s representations

3.3 No representations were made by the Contractor.

Observations

The Contractor’s observations

- 3.4 No representations were made by the Contractor in response to the Commissioner's representations.

4. CONSIDERATION

- 4.1 As part of this consideration of the application for NHS dispute resolution, I required an up-to-date version of the contract in dispute containing all variations agreed since the contract was signed. This was provided and has not been disputed by the Commissioner.

- 4.2 From the information provided to me I am satisfied that the application for dispute resolution has been made within the time limits set out in the Regulations.

- 4.3 Although I have not been provided with a copy of any correspondence between the Contractor and the Commissioner that would document that local dispute resolution has taken place, I note that the Contractor submitted the text from the Commissioner into the body of an email dated 11 March 2024 which read as follows:

"Thank you for your email, [TEXT REDACTED BY NHS RESOLUTION]"

Unfortunately, whilst I appreciate the position of the practices NHS Commissioners have been very clear now for a number of years on our position with regards to practice sign up and flu claims. The responsibility of practices to adhere to their contractual obligation and our ability to contravene SFIs. We are therefore working within the guardrails and guidance we are given with regards to flu claims/invoices and are unable to amend the rules due to practice or personal circumstances.

I appreciate this is disappointed, however I am unable to change or approve the claim being put forward due to the timescales not being achieved and adhered to by the Practice on this occasion."

- 4.4 I am therefore content that local dispute resolution was entered into and that an agreement between the parties could not be reached, prior to referral for NHS dispute resolution.

- 4.5 The application for dispute resolution concerns the non-payment of seasonal influenza vaccines for the financial year 2023/24. In this regard, I have been provided, by the Commissioner, with a copy of the "Enhanced Service Specification – Seasonal influenza vaccination programme 2023/24". The content of the specification has not been disputed by the Contractor.

- 4.6 I note that the period in question, the year 2023/24, is covered by the above specification.

- 4.7 There is no dispute between the parties that the practice provided the vaccinations, or that the practice – by its own admission – was late to provide the claims for the vaccination doses administered but that this was due to a misunderstanding of the period of time to submit claims having changed from 6 months (as it was for previous years) to 3 months.

- 4.8 Both parties agree that the specification that was initially sent out with the sign-up sheet for the 2023/24 Influenza programme was not the current years specification, however I note the Commissioner's comment that this approach is not historically uncommon for the Midlands area due to the scheme programme not being published until closer to the start of the 'flu season'. I note that the Contractor has not disputed that the correct specification was sent on 11 August 2023 and states instead that this was unfortunately not opened, due in part to the difficult circumstances surrounding the practice at the time.

4.9 I note that the Enhanced Service Specification – Seasonal Influenza Vaccination Programme 2023/24 states:

*“11.2 Practices will **only** be eligible for payment in accordance with the ES where **all** of the following requirements have been met and payment is condition on:*

...

11.2.3 Practices submitting claims to the Commissioner (NHSE) for payment monthly wherever possible and Practices must:

(a) validate and submit a claim to the Commissioner (NHSE) for payment within 3 months of the date of the administration of the completing dose of the vaccine; and

(b) ensure that claims submission are validated to enable the Commissioner (NHSE) to correctly calculate the payment.”

[Emphasis added by NHS Resolution.]

4.10 I further note that the Enhanced Service Specification – Seasonal Influenza Vaccination Programme 2023/24 states:

“10.6 Practices must ensure that they comply with all reporting and monitoring requirement to enable the Commissioner (NHSE) to calculate payments accurately.”

4.11 I have not been provided with information to state when the claim for payment was submitted by the Contractor but that an agent of the Commissioner rejected the claim on 22 January 2024. The Contractor states that “The majority of the 554 vaccines that were given in September were given on Saturday 23 September.” I consider that, in order to be compliant to the Programme Specification, any claim for vaccinations given on 23 September 2023 would need to be submitted by 23 December 2023. As I have not been provided with the information to state when the claim was submitted, I take the view that the very nature of the application for dispute resolution being before me provides confirmation from the Contractor that it agrees that the claim was not submitted in the 3 month period.

4.12 Whilst I can appreciate and have sympathy to the pressures that the Contractor was under, both in a personal and professional manner, I cannot be satisfied that the Contractor submitted the claims for the vaccinations within the 3 month timeframe as set out in the Programme Specification. Furthermore, I consider that the Contractor had advance notice of the correct specification for the 2023/24 Programme as this was sent to all practices on 11 August 2023 albeit the Contractor having unfortunately not opened the email, in part due to the abovementioned pressures. Having issued the Programme Specification, the onus was on the Contractor to ensure it was aware of its content including the relevant timescales for claims and the consequences of non-compliance with the specified timescales.

5. DECISION

5.1 I am satisfied that the Commissioner can decline the claim for payments for the period the Contractor provided vaccinations to its patient population for the 2023/24 financial year as there is no dispute from either party that the claim for payments was submitted outside the 3 month timescale allowed from the date the vaccination dose was administered.

5.2 I note that neither party has submitted a claim for interest. I make no determination in this regard.

**Head of Appeals
NHS Resolution**