

## CHANGES TO PERFORMANCE FINES

Recent changes to national policy have meant that NHS providers are now being held to account in different ways over national performance targets, such as waiting times. Traditionally, one of the tools commissioners have employed has been financial penalties on providers, so that providers would be fined if they failed to deliver on a national performance target. However, within most local health systems this is no longer taking place in recognition of the challenges the sector is under. This article outlines the recent changes to performance fines and what this means for providers.

### How providers have been historically performance managed

Each year a contract is agreed between individual Clinical Commissioning Groups (CCGs) and NHS providers, and throughout the year CCGs hold providers to account based on the terms of this contract. There are provisions within the contract whereby commissioners can fine a provider for non-performance against a number of national standards, some of which the NHS is legally required to deliver as part of the NHS constitution.

These performance standards include, among others:

- Referral to treatment waiting times for non-urgent consultant-led treatment waiting no more than 18 weeks from referral. Trusts are expected to achieve a 92% threshold.
- No more than 1% of service users waiting six weeks or more from referral for a diagnostic test.
- No more than 95% of A&E patients waiting longer than four hours for an admission, transfer or discharge.
- No more than 93% of patients referred urgently with suspected cancer by a GP waiting more than two weeks for their first outpatient appointment.
- No more than 85% of patients waiting longer than two months (62 days) from urgent GP referral to first definitive treatment for cancer.

There are more standards on cancer waits, ambulance response rates, cancelled operations and mental health.

### The financial reset

During the 2016/17 financial year, things began to change however. Following a provider sector end of year deficit worth £2.5bn in 2015/16, the national bodies intended to 'reset' the sector's financial position. As part of this 'financial reset', the national bodies recognised that performance fines were exacerbating the adverse position; in 2015/16 they amounted to around £600m. Clearly, imposing fines or refusing to pay the full cost of treatment was counterproductive given the enormous pressures faced by trusts. At the same time, the national bodies did not want to give providers a free pass and still wanted to hold them accountable for performance.

Therefore, as part of a broader programme, trusts were asked to submit monthly performance trajectories on certain standards in order to receive money from a new sustainability and transformation fund (STF) that would supplement provider income. The standards for which trajectories had to be submitted were:

- The four-hour A&E waits.
- RTT 18-week incomplete pathways.
- 62-day cancer waits.

A 'fine amnesty' was agreed with the sector and a rule was included in the 2016/17 contract that exempted trusts from contractual penalties if a performance trajectory had been agreed.

For the *remaining* performance standards (which included 12-hour trolley waits, six week diagnostic waits and ambulance response times), the submission of an assurance statement, confirming a provider's commitment to delivering the standard, was all that was needed. Financial incentives were no longer attached to these remaining standards as contract penalties were again suspended but with these standards there was no condition attached to receiving STF monies.

To recap: it was at this point that providers (who were eligible for STF), and who had agreed performance trajectories for the three standards mentioned previously and submitted assurance statements for the remaining standards, were no longer subject to contract performance penalties. The only performance related 'financial jeopardy' faced by these providers was the withdrawal of STF money for failure to deliver the three performance standards

In 2017/18 the arms length bodies decided to focus on finance and the 4 hour A&E standard, thus removing the financial incentive for the remaining two standards (62 day cancer and 18 week RTT). But, with trajectories already agreed for these standards, they remained exempt from the contractual penalties. In March 2017 it was reported that Simon Stevens and Jim Mackey had written to trust leaders confirming the simplification of the performance element of the STF which would now solely focus on hitting accident and emergency targets.

Some have interpreted this decision to mean acceptance of the provider performance challenge. Although it should be clear that performance is being closely monitored by NHS Improvement via the submitted trajectories and through the single oversight framework. And, of course, performance continues to be actively managed by boards.

## What does this mean for the sector?

NHS providers have been subject to performance fines for a long time. Yet at a time of unprecedented financial constraint, many were frustrated by a policy mechanism that placed more financial risk onto the sector.

System leaders have **shifted their position on performance fines** multiple times over recent years, in order to balance the priorities of the provider sector. In short this comes down to whether financial balance should be prioritised over the sector achieving performance targets.

A question also remains over the future of performance management with the creation of Sustainability and Transformation Partnerships (STPs). Is fining a trust helpful when commissioners and providers should be working together collaboratively, based on a whole population management approach?

The challenge therefore remains: providers must continue to deliver high quality care whilst remaining financially sustainable.