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ROBSON / LAIDLER
ACCOUNTANTS

Coronavirus – an update for Dentists

Following, NHS England's publication of its third preparedness letter for general dental practices and community dental services regarding the emerging COVID-19 situation, the BDA have sought clarification of the impact on practices and now issued revised guidance, particularly for mixed dental practices.

NHS England are to formally provide additional guidance in their fourth preparedness letter which will be issued this week.

We have summarised the key points included together with our commentary:

2019-20 contract reconciliation

NHSE recognise that in most years dental activity is usually higher during the month of March and that this year the majority of dentists may have been impacted because of COVID-19. As such the year end reconciliation will therefore operate in the following manner:

- For the purposes of calculating year end contract delivery, NHSE will consider the year to be March 2019 – February 2020, and will apply March 2019 data instead of March 2020;
- For contracts delivering above 96% over this period we will then operate normal year end reconciliation with the ability to carry forward activity to 2020; and
- For contracts delivering below 96% over this period we will enter into normal clawback position up to 100% of total contract value (TCV).

Where information for March 2019 is not available or unrepresentative of performance in March 2020, practices should contact their local Area Action Team to arrange a different method to reconcile the 2019-20 contract. NHSE have confirmed that they expect Area Action teams should use common sense in agreeing a different methodology.

RL comments:
This gives clarity around the mechanism of how the current year will be balanced out. It is essentially normal rules but with a slight recalculation.

Practices should now not be disadvantaged by this measure.

2020-21 contracts

NHSE will revise the 2020-21 contract to reflect service disruption due to COVID19 for practices who are participating as required in the COVID response. The approach will aim to achieve the following:

- **Maintaining cash flow to provide immediate stability and certainty for dental practices.**

  This will be achieved by making monthly payments in 2020-21 to all practices that are equal to 1/12th of their current annual contract value.

- **Protecting the availability of staff to provide essential services during the response period to COVID-19**

  Practices are required to ensure that all staff including associates, nonclinical and others continue to be paid at previous levels.

- **Actively enabling staff time that is no longer required for routine dental activity to be diverted to support service areas with additional activity pressures due to COVID-19**

  NHS expects that dental practices will fully support the redeployment of professionals and staff working in general dental services to support the wider NHS response, as is happening across the rest of the NHS. We ask staff contact details are made available immediately and for practices actively to support any national or local calls for help. This will include helping to staff the new Nightingale Hospital that is being established in London and other similar facilities that may be established over the coming weeks.

- **Maintaining business stability to allow a rapid return to pe-incident activity levels and service model once the temporary changes cease**

  These arrangements will operate over a fixed number of months with an agreed end date

- **Fairly recompensing practices for costs incurred**

  Practices benefiting from continued NHS funding will not be eligible to seek any wider government assistance to small businesses which could be duplicative. This applies only to NHS dental income. So mixed practices can claim for furloughed workers in respect of private income and still receive their NHS income.

RL comments:
The intention of NHS England is clear in that they want to safeguard jobs of a highly skilled workforce and gain access to utilise this workforce to contribute to the wider COVID-19 response.

The impact of these changes will be entirely different for each practice, depending on the composition of the practice between NHS income and Private work. Ultimately NHS income will continue to be provided, whilst private income is likely to fall significant however practices will be able to access funding from the job retention scheme to cover wage costs for private members of staff.

Practices also need further clarification around employment rights for staff during the time that practices are closed. Whilst staff may be redeployed elsewhere in NHS services, they

will continue to accrue holiday and other contractual benefits whilst being seconded and as such practices may see staff coming back in a few months' time with a full years holiday entitlement to be taken over a shorter period of time, potentially at a time that practices are needing to work extra to complete UDA targets.

Steps to take for employed staff

Guidance from BDA suggests the following approach:

1. Determine what percentage of the practice income is NHS, and what percentage is private.

2. Practices can then claim pay for furloughed workers to the level of the proportion of private income and will have NHS income for the remainder.

3. Consider what to do with each member of staff. Staff can either be furloughed workers or eligible for redeployment. A member of staff cannot be part furloughed workers and part eligible for redeployment.

This will present difficulties with staff. The NHS money is conditional on staff being available to help in other areas. Which staff should be furloughed? Which staff should be on NHS money and subject to redeployment?

At present, there are no set rules. We therefore suggest practices and staff follow the following principles:

1. All employed practice staff should receive at least 80% of their pay (up to a maximum of £2,500). This is a government aim and is a condition of the continued NHS payments.

2. Over the course of this crisis, the proportion of money claims for furloughed workers as against total staffing levels should be in the same proportion as private income as against total income.

For example, say a practice income is £1m a year. Say £400,000 of that income is from private patients and £600,000 is from the NHS. The private income is therefore 40% of the practice income. Say the annual wage bill is £300,000. Say this crisis lasts 3 months (25% of the year).

During that three-month period, the wage bill is 25% of £300,000 = £75,000. The practice can claim 40% in respect of the £75,000 (£30,000) wages from the furloughed workers scheme. As employers can only claim 80% of the wages, the amount the employer can claim, and should pay staff, is 80% of £30,000 = £24,000. The remaining £45,000 should come from the continuing NHS contract payments.

Keep good records of what you claim.

3. The question of who goes on furloughed leave and who is on full pay and subject to redeployment should be subject to agreement between the practice and staff. Remember that redeployment is likely to be voluntary in any event. Practice managers and owners should meet with staff online to discuss options.

4. If employed staff are going to be at home regardless of whether they are furloughed or subject to redeployment, there is an argument that both should receive the same percentage of their pay (as none are working). That percentage will naturally fall between 80% and 100%.

5. You are able to rotate staff so that some are furloughed for three weeks and then put on possible redeployment leave for a period of time before being furloughed again.

6. Some staff will have good reason to be furloughed workers. But the BDA asks everyone to remember that there is a global pandemic and this skills and knowledge that dental staff have may be very helpful. All staff should therefore consider carefully whether they are in a position to contribute in some way to the national effort. There are a variety of roles, clinical support, that dental practice staff can undertake.

RL comments:
This is a fair and reasonable approach to being able to maximise income to the practice to cover off wage costs.

The concept of paying all staff at 80% to enable fairness across those designated as NHS workers and those designated as Private workers is an interesting approach which should see workers treat the same if they are at home unable to work. However, it is all subject to workers agreeing a change in terms and conditions on the NHS side and agreeing to furloughed on the private side and doesn't give guidance on what to do if employees refuse.

In addition, the reduction in pay for NHS workers is at odds with the guidance issued to staff who volunteer to be re-deployed into other areas of NHS, which confirms that they should expect their normal pay (i.e.100%). Does this mean that NHS workers' pay is therefore dependent on whether they volunteer to be redeployed?

We would recommend that practices take HR advice in these circumstances.

Steps to take for therapists and hygienists

Generally, Therapists and Hygienists are self employed undertaking private work. As such the practice has no obligation to continue to pay them and they should be directed to Government support for the self-employed.

RL comments:
Unfortunately, this is most likely to mean that therapists and hygienists do not receive any support as many will earn over £50,000pa and will therefore not qualify for government support.

Steps to take for self-employed associates

The guidance publication from NHS England is primarily aimed at practices, but it does give clear guidance that they expect associates to continue to be paid at previous levels, though this is only in relation to their NHS income.

Associates like employed staff and will need to be available to be re-deployed elsewhere within the NHS, though currently this is on a voluntary basis.

Ultimately the guidance is that Practices and Associates should come to an agreement for the basis of future payments, but the reality is that the agreement will differ for the payment of NHS contracted work and Private fee income.

NHS Income:

BDA Guidance states:
The starting point is that practices should continue to pay associates the NHS contract payments they would have received had COVID-19 not happened.

There are few hard and fast rules. We ask practice owners and associates to follow the following principles in working out pay for associates:

1. Payments to associates for March 2020: To calculate end of year figures for the contract year 2019-2020, NHS England is going to use activity figures from March 2019 instead of figures from March 2020. It therefore makes sense for practices, where possible, to pay performers for March 2020 based on their March 2019 activity. That won't always be possible or pragmatic. Where March 2019 figures are unavailable or unrepresentative, practices should pay associates based on their average UDA performance over the last few months. Where practices believe that the March 2019 figures would be inappropriate or unfair, they should discuss this with their commissioners, who have been asked to take a reasonable and common-sense approach.

2. Those who have been performing NHS dental services should continue to receive the same income had this crisis not happened. At present, it is not clear what sort of reconciliation there may be. Associates and practice owners should agree to share clawback in relation to this period if there is any.

3. Agreements to start or end associateships are, generally, likely enforceable and should be kept. In most cases, if a practice has agreed that an associate can start an associateship, the associates should start and should receive the NHS contract payments.

4. NHS Maternity pay, Parental leave pay, Adoption leave pay and Sick Pay should be payable in the normal way. Dentists returning from maternity leave whose 2019-20 figures may not be representative of their normal monthly activity should be treated fairly and a pragmatic solution should be agreed.

5. Dentists who are in the high risk groups and may not be able to work assisting the practice with telephone triage or able to be deployed should be treated fairly.

6. There is nothing to stop parties agreeing something different.

7. Parties should act fairly, professionally, with patience and understanding. It is a difficult time for everyone.

RL comments:
The guidance issued by BDA gives much greater clarification but falls short of giving any recommendation as to what to pay associates going forward.

The key point to remember is that NHS England will be applying a reduction to the NHS contract to take account of reduced variable costs (labs and materials etc) and it would seem fair to pass some of this on to the associate. Ultimately NHS directs that they should be paid at previous levels, which would of course would have had a deduction for lab bills in any case

Private fees:

There is no clarification or guidance as to the treatment of continuing to pay private fees. The default position must therefore be that Practices and Associates come to their own agreement.

RL comments:
There appears to be an expectation that private income will all but cease and therefore there will be no activity to pay over to Associates. Whilst this is ultimately the fairest position, some thought should be given to the treatment of capitation payments on dental plans which may continue to be received in the short term.

Conclusion

Ultimately, we are still waiting for NHS England to issue their fourth preparedness letter which should give final clarification on the steps to be taken, but we do not expect it to significantly differ from the guidance set out by the BDA.

The guidance is comprehensive and should now give practices a clear structured manner to move forward.

If you require any further assistance in performance of calculations or guidance on offers to associates etc then please do not hesitate to contact either Michael Smith msmith@robson-laidler.co.uk or Amy Park apark@robson-laidler.co.uk or call us on our office number 0191 2818191.