

National Pharmaceutical Supply Group Position Statement (December 2017): Signing of Non-Disclosure Agreements by Hospital Trust Chief Pharmacists

Purpose: This National Pharmaceutical Supply Group (NPSG) statement sets out the recommended position for NHS Hospital Trust Chief Pharmacists in the event of a request from a supplier for them to sign a Non-Disclosure Agreement (NDA).

Guidance:

- NHS Hospital Trust Chief Pharmacists should not sign Non-Disclosure Agreements. This is consistent with NHS England, Department of Health (DH) and National Institute for Health and Care Excellence (NICE) positions on the matter.
- If you have any queries relating specifically to a Patient Access Scheme please contact PASLUMail@nice.org.uk or call Carl Boswell on 0161 219 3805.
- If you have any general queries about this statement please contact Jane.kelly19@nhs.net or Justine.scanlan@rlbuht.nhs.uk

Background:

This position statement is published by NPSG in response to reports from Trust Chief Pharmacists who have been required to sign Non-Disclosure Agreements by suppliers in order to access NHS prices for medicines. This position statement clarifies the NHS's approach to dealing with confidential information, and specifically, with requests for bespoke 'non-disclosure agreements' associated with the supply of medicines, medical technology devices or other goods and services.

- The NHS recognises the importance of the confidentiality of price discounts, rebates and commercial agreement terms to suppliers, particularly for medicines where UK discounts may impact on international reference prices, so disclosure could inhibit suppliers from offering best value to the NHS.
- Simple Discount Patient Access Schemes (PAS) may be approved with the level of discount to remain confidential in NICE guidance if requested, whilst complex PAS arrangements are not entitled to confidentiality. Equivalent arrangements entered into specifically as part of a commercial agreement with NHS England (for example as part of a Managed Access Agreement developed as part of the NICE appraisal process) may be confidential. Prices entered through public sector procurement processes through the Commercial Medicines Unit, NHS Supply Chain and similar collective or trust bodies are treated as confidential to the NHS.
- A number of suppliers have approached NHS provider organisations to put in place bespoke 'non-disclosure agreements' as a condition of supply of their goods. There are examples of poorly worded NDAs having been signed that are contrary to the NHS standard contract under which providers are reimbursed for services, leaving organisations in breach of either a signed NDA or their contract, and of onerous terms adding substantially to local cost burdens.
- To avoid the substantial costs involved for each supplier of goods and services, and for

each individual NHS organisation, with a plethora of individual agreements, the NHS has implemented a single comprehensive national standard governing all its conduct in relation to matters of confidentiality which are set out in Schedule 3 of the NHS contract for the supply of goods and services, in section 1.1 to 1.6.

- The essence of the standard terms is that staff employed by or contracted to NHS organisations will only disclose confidential information outside the NHS where required to do so under legislation and regulation, but within the NHS, NHS organisations and NHS contracting and commissioning authorities will exchange confidential information freely as necessary to fulfil legitimate functions including commissioning, purchasing, ordering, invoicing, benchmarking, and audit.
- This single comprehensive standard means there is no requirement for additional measures such as NDAs and NHS organisations are instructed not to develop or sign such agreements, but instead to make use of the NHS contract for the supply of goods and services, which keeps costs down for both NHS and suppliers. All suppliers can have confidence that NHS bodies will act consistently in relation to clear national standards in this area.
- Should suppliers have entered into additional NDA documents with NHS organisations these documents should be terminated with the NHS standard contract terms having primacy in the conduct of business.
- For the avoidance of doubt this means neither suppliers nor NHS organisations may make commercial terms conditional on non-disclosure to other NHS provider organisations or contracting authorities.
- Suppliers with any concerns about or ideas for the improvement of these provisions should contact their industry association. Industry associations may make representation to the NHS to be addressed in further updates to the NHS contract for supply of goods and services where such proposals reflect good practice and would be beneficial to industry and the NHS without increasing the burden of transaction costs.

When arriving at a position on this matter NPSG have taken into consideration the following:

- The concept of confidentiality which is enshrined in the NHS contract for the supply of goods and services¹.
- The potential for the signing of a NDA to create an administrative burden over and above normal supply, being incompatible with the simple discount scheme criteria as stated by Patient Access Scheme Liaison Unit (PASLU)².
- Paragraph 5.46 of the Pharmaceutical Price Regulation Scheme (PPRS) scheme which addresses access to discount prices³.
- The current position taken by NHS England, DH and PASLU not to sign NDAs.

- That NHS England correspondence to Trusts and NICE documents already state that prices are commercial in confidence.
- The practicalities of enforcing an additional pricing non-disclosure mechanism on Trust Chief Pharmacists given the myriad NHS stakeholders who require or have visibility of the price in question.
- Where access to the medicine in question has been agreed through a PAS with NICE the requirement for an NDA prior to accessing the medicine is potentially a breach of the approved PAS.

References:

1. NHS Terms and Conditions for supply of goods and provision of services: Contract version https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587617/2a_contract_version_goods.docx
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582541/3_contract_version_services.docx
2. <https://www.nice.org.uk/about/what-we-do/patient-access-schemes-liaison-unit>
3. <https://www.gov.uk/government/publications/pharmaceutical-price-regulation-scheme-2014>