Self-certification: guidance for NHS foundation trusts

April 2017

Introduction

1. NHS foundation trusts are required to self-certify whether or not they have complied with the conditions of the NHS provider licence (which itself includes requirements to comply with the National Health Service Act 2006, the Health and Social Care Act 2008, the Health Act 2009, and the Health and Social Care Act 2012, and have regard to the NHS Constitution), have the required resources available if providing commissioner requested services, and have complied with governance requirements.

What is required?

2. Providers need to self-certify the following after the financial year end:

<table>
<thead>
<tr>
<th>NHS provider licence condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>The provider has taken all precautions necessary to comply with the licence, NHS Acts and NHS Constitution (Condition G6(3))</td>
</tr>
<tr>
<td>The provider has complied with required governance arrangements (Condition FT4(8))</td>
</tr>
<tr>
<td>If providing commissioner requested services, the provider has a reasonable expectation that required resources will be available to deliver the designated service (Condition CoS7(3))</td>
</tr>
</tbody>
</table>

3. The aim of self-certification is for providers to carry out assurance that they are in compliance with the conditions.

4. It is up to providers how they carry out this process. Any process should ensure that the provider’s board understands clearly whether or not the provider can confirm compliance. To aid this process, we have provided templates which boards can use if they find it helpful.
5. This note helps NHS foundation trusts understand what each condition means and, if needed, how to use the templates. Because it is up to them how they go about self-certification, the guidance is necessarily high level and should be read alongside:

a. the templates
b. NHS provider licence (last updated 14 February 2013)
c. the designation framework: defining CRS and location specific services (last updated 28 March 2013)
d. the well-led framework for governance reviews (April 2015)
e. the NHS foundation trust code of governance (July 2014)

6. If you have any questions not addressed in this note or in any of the additional documents referred to, please contact your regional lead.

Condition G6

7. Condition G6(2) requires NHS foundation trusts to have processes and systems that:

a. identify risks to compliance
b. take reasonable mitigating actions to prevent those risks and a failure to comply from occurring.

Providers must annually review whether these processes and systems are effective.

8. Providers must publish their G6 self-certification within one month following the deadline for sign-off (as set out in Condition G6(4)).

Using the template?

9. Providers should choose ‘confirmed’ or ‘not confirmed’ as appropriate for the declaration. Providers choosing ‘not confirmed’ should explain why in the free text box provided.

Condition FT4

10. NHS foundation trusts must self-certify under Condition FT4(8).

11. Providers should review whether their governance systems achieve the objectives set out in the licence condition.

12. There is no set approach to these standards and objectives but we expect any compliant approach to involve effective board and committee structures, reporting lines and performance and risk management systems.

13. NHS foundation trusts can find further information on governance by referring to:

a. well-led framework for governance reviews (April 2015)
b. the NHS foundation trust code of governance (July 2014)
c. Single Oversight Framework (September 2016).

Using the template?

14. Providers should select ‘confirmed’ or ‘not confirmed’ for each declaration as appropriate and set out relevant risks and mitigating actions in each case. Where providers choose ‘not confirmed’ for any declaration, they should explain why in the free text box provided.

Training of governors

15. Providers must review whether their governors have received enough training and guidance to carry out their roles. It is up to providers how they do this (but see Monitor’s guide for governors for additional guidance).

Using the template?

16. Providers should choose ‘confirmed’ or ‘not confirmed’ as appropriate for the declaration. Providers choosing ‘not confirmed’ should explain why in the free text box provided.

Condition CoS7

17. Only NHS foundation trusts designated as providing commissioner requested services (CRS) must self-certify under Condition CoS7(3).

What is commissioner requested services designation?

18. A CRS designation is not simply a standard contract with a commissioner to provide services. Commissioner requested services are services commissioners consider should continue to be provided locally even if a provider is at risk of failing financially and which will be subject to regulation by NHS Improvement. Providers can be designated as providing CRS because:

- there is no alternative provider close enough
- removing the services would increase health inequalities
- removing the services would make other related services unviable.

19. For more detailed guidance, refer to the designation framework: defining CRS and location specific services (28 March 2013).

How can I know if my foundation trust has been designated CRS?

20. Foundation trusts authorised before 1 April 2016 will have been specifically notified by their commissioner if they have been designated CRS. They do not need to complete the CoS7 declaration if they have not been notified.
21. Foundation trusts authorised on or after 1 April 2016 are automatically CRS-designated for all services for 12 months from the date of authorisation. During this period, they must complete the CoS7 declaration. After 12 months, unless they have received a specific designation from a commissioner, they are not designated a CRS provider and the CoS7 declaration is not required.

Using the template?

22. The template requires CRS-designated foundation trusts to select ‘confirmed’ for one of three declarations about the resources required to provide designated services:

a. the required resources will be available over the next financial year
b. the required resources will be available over the next financial year but specific factors may cast doubt on this
c. the required resources will not be available over the next financial year.

Required resources include: management resources, financial resources and facilities, personnel, physical and other assets.

Only one declaration should be confirmed (and providers do not need to state the other two are not confirmed). Providers should explain the reasons for the chosen declaration in the free text box provided.

Sign off

23. The board must sign off on self-certification, taking into account the views of governors.

Deadlines

24. Boards must sign off on self-certification no later than:

b. FT4: 30 June 2017.

Audits

25. From July, NHS Improvement will contact a select number of NHS trusts and foundation trusts to ask for evidence that they have self-certified. This can either be through providing the templates if they have used them, or by providing relevant Board minutes and papers recording sign-off.