Monitor
Making the health sector work for patients

tda Trust Development Authority
Quality. Delivery. Sustainability.

Price caps for agency staff: rules

November 2015

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1. Introduction

1.1. Monitor and the NHS Trust Development Authority (TDA) published a consultation on proposed rules for capping rates paid for agency workers on 15 October 2015. We have taken the 3,404 responses to the consultation into account. You can view our response to the consultation here. Monitor and TDA received very strong trust support for implementing price caps on agency workers.

1.2. We are implementing price caps for all types of agency staff. This document sets out the rules on price caps that will come into force on 23 November 2015. We have developed the rules with the support of clinical and financial leaders across NHS trusts, NHS foundation trusts, Monitor, TDA, the Care Quality Commission (CQC), NHS England and the Department of Health (DH).

2. Why price caps have been introduced and context

2.1. The price caps are intended to support trusts when they procure workers from agencies and to encourage staff to return to permanent and bank working. They should enable trusts to manage their workforce in a more sustainable way, reduce growing reliance and expenditure on agency staffing, raise clinical quality and improve the working environment for their staff.

2.2. Monitor and TDA recognise that trusts and foundation trusts need support to fill permanent positions. The Chief Nursing Officer for England and Health Education England (HEE) have developed workforce programmes for increasing the supply of staff in the short to medium term.

2.3. Monitor and TDA also recognise that trusts and foundation trusts need support to make the best use of their existing workforces. The price caps are intended to work alongside long-term planning to increase retention, training and recruitment of NHS staff, and ongoing support on workforce planning and rota management. Monitor and TDA will continue to work with trusts to better understand their approach to managing agency staffing, to benchmark them against best practice and support them to improve workforce management, including retention of substantive staff. Please contact agencyprojectsupport@monitor.gov.uk or TDA.Workforce@nhs.net for more information on the support available.

3. Organisations in scope

3.1. All trusts, including foundation trusts that are not in breach of their licence conditions, are required to report weekly on the number of shifts where they have made payments in excess of the price caps. This does not apply to ambulance trusts.

3.2. The rules on price caps apply directly to:

- all NHS trusts
- NHS foundation trusts receiving interim support from DH
- NHS foundation trusts in breach of their licence for financial reasons.

3.3. The price caps do not currently apply to ambulance trusts. Monitor and TDA will work with this group to develop further rules for these trusts.

3.4. Trusts have shown consistently strong support for price caps throughout the consultation process. It is important that we all work together to ensure compliance and thus maximise the benefit from the caps. If an individual trust overrides the controls, it will be more difficult for other trusts to comply with the price caps.

3.5. All other trusts are therefore expected to comply with price caps. The new value for money risk assessment trigger[1] means that Monitor will explicitly take into accounts trusts' inefficient or uneconomic spending practices, including any relating to agency spending, as a measure of governance. In assessing value for money, Monitor will look at the extent to which trusts have followed good practice, including these rules.

3.6. All trusts will be expected to use these rules to limit and reduce expenditure on agency staff over time.

4. Staff groups in scope

4.1. The price caps apply to the rates trusts pay per hour for agency workers.

4.2. The price caps apply to all staff groups covered by national pay scales:

- medical staff (including dental staff where applicable)

[1] Outlined in: www.gov.uk/government/uploads/system/uploads/attachment_data/file/455893/RAF_revised_25_August.pdf

- nursing and midwifery staff
- all other clinical staff
- all other non-clinical staff.[2]

4.3. GPs are not covered by these price caps, except where they are employed by a trust. Where this is the case, the appropriate equivalent medical price caps should apply.

4.4. The price caps apply to agency workers who are not contracted on an hourly basis, eg sessions or fee for service.

4.5. The price caps also apply to all staff providing NHS services at the trust and apply to all specialties and departments.

4.6. The price caps apply when:

- an agency fills a shift directly
- an agency finds a worker to fill a shift, but the trust pays the worker directly for that shift and pays the agency a finder's fee (all of this expenditure including payment to the worker, fees and on-costs should be classified as agency expenditure)
- staff are paid through their own limited/personal services company.

4.7. The price caps do **not** apply to:

- substantive/permanent staff
- bank staff (both in-house banks and outsourced banks)
- overtime payments to substantive/bank staff
- staff employed by a trust on a fixed-term contract.

4.8. Monitor and TDA want to send a clear signal to encourage substantive and bank working and so are not currently setting caps on trusts' directly employed staff and/or bank staff. Nevertheless, it is expected that trusts will maintain their bank pay rates at appropriate levels. We will consider introducing price caps on bank workers if bank pay rates rise significantly.

[2] This includes managers paid on an agency basis.

4.9. Separate rules will apply to procuring interim agency very senior managers (VSMs). Guidance on this will follow shortly.

5. Price cap tables

5.1. The price caps set are the maximum total hourly rate that trusts may pay for an agency worker from midday on 23 November 2015. Subject to monitoring, the maximum rates will be reduced on 1 February 2016 and 1 April 2016 as per Table 1. This means that by 1 April 2016 an agency worker should not be rewarded more than an equivalent substantive worker.

Table 1. Price caps as a percentage above basic substantive hourly rates

	Max. charge from 23 Nov 2015	Max. charge from 1 Feb 2016	Max. charge from 1 Apr 2016
Junior doctors	150% above basic	100% above basic	55% above basic
Other medical staff	100% above basic	75% above basic	55% above basic
All other clinical staff	100% above basic	75% above basic	55% above basic
Non-clinical staff	55% above basic		

Note: please see Annex 2 for more detail on how rates are calculated. Figures represent the maximum trusts can pay for an agency worker above substantive basic pay. The price caps cover all payments made by the trust, including worker pay and on costs.

5.2. We will then continue to monitor the implementation of the price caps and the intention is to reduce the caps further in 2016/17 if supported by ongoing monitoring.

5.3. The price caps represent the maximum that trusts can pay and should not be interpreted as standard or default rates. Trusts will want to, and should, continue to secure the majority of agency staff at rates below the price caps.

5.4. Trusts that currently pay agency staff below the capped rates are expected not to exceed the rates they currently pay.

5.5. The price caps include worker pay and all other elements of the payment, including all expenses such as travel and accommodation. They do not include travel costs as part of the role where these would normally be paid to a substantive worker, eg home visits. Trusts cannot pay other additional sums to agency workers or to agencies.

5.6. Tables 2 to 4 show the price caps, excluding any relevant VAT. They are based on 2015/16 pay scales and will be revised in light of any changes to contracts for substantive workers.

5.7. Table 2 states the maximum total rates for medical and dental staff. Rates are set for eight pay scales. Two different rates apply for 'core' hours and 'unsocial' hours. For the purposes of agency price caps, core hours are defined as 7am to 7pm, Monday to Friday (excluding bank holidays). Unsocial hours are all other hours. On-call hours should be treated the same as core or unsocial hours, depending on when they fall. Neither high cost area supplements nor regional supplements are applicable to medical staff. See Annex 2 for further details.

5.8. Tables 3 and 4 state the price caps for clinical and non-clinical Agenda for Change (AfC) staff. The figures presented here do not include the high cost area supplements. Three different rates are calculated for each band, in line with AfC definitions: day, night/Saturday and Sunday/Bank Holiday.[3]

5.9. There are different price caps for high cost supplement areas, in line with Agenda for Change. The full set of price caps can be found here.[4]

5.10. These rules apply regardless of the length of time an agency worker has spent on an assignment. Trusts will need to be aware of their responsibilities under the Agency Workers Regulations and to consider whether long-term reliance on agency staff is appropriate and sustainable within the price caps.

5.11. Where trusts have entered into bookings with agency staff before 23 November 2015 at rates above the price caps, where possible these should be renegotiated. If this is not possible, they should be reported as overrides (see Section 6. Compliance).

5.12. The price caps will be subject to monitoring from the date of implementation. The rules may be subject to further review based on the results of the monitoring.

[3] Although some agencies and frameworks may define unsocial hours differently, the caps must be adhered to, with reference to AfC definitions.
[4] www.gov.uk/guidance/rules-for-all-agency-staff-working-in-the-nhs

Table 2: Maximum total hourly rates for all medical and dental staff (£)

Grade and shift type		Max. charge from 23 Nov 2015	Max. charge from 1 Feb 2016	Max. charge from 1 Apr 2016
Foundation year 1	Core	£32.54	£26.03	£20.17
	Unsocial	£39.31	£31.45	£24.38
Foundation year 2	Core	£40.36	£32.28	£25.02
	Unsocial	£48.76	£39.01	£30.23
Registrar (SP1-2) / Core Medical Training	Core	£45.76	£36.61	£28.37
	Unsocial	£55.30	£44.24	£34.28
Registrar (SP3+)	Core	£57.05	£45.64	£35.37
	Unsocial	£68.94	£55.15	£42.74
Dental core training	Core	£56.15	£44.92	£34.81
	Unsocial	£67.84	£54.28	£42.06
Specialty Doctor / Staff Grade	Core	£66.43	£58.13	£51.48
	Unsocial	£88.57	£77.50	£68.64
Associate Specialist	Core	£82.21	£71.94	£63.72
	Unsocial	£109.62	£95.92	£84.96
Consultant	Core	£97.22	£85.06	£75.34
	Unsocial	£129.62	£113.42	£100.46

Note: The price caps are the maximum total hourly rate payable by a trust to an agency, including worker pay and all other elements of the payment. They exclude VAT. These are maximum rates – trusts are expected to continue to secure lower rates for most transactions.

Table 3: Maximum total hourly rate for all other clinical staff, for trusts where no high cost area supplement applies (£)

Grade and shift type		Max charge from 23 Nov 2015	Max charge from 1 Feb 2016	Max charge from 1 Apr 2016
Band 1	Day	£15.70	£13.74	£12.17
	Night/Saturday	£23.55	£20.61	£18.25
	Sunday/Bank Holiday	£31.41	£27.48	£24.34
Band 2	Day	£18.19	£15.92	£14.10
	Night/Saturday	£26.20	£22.92	£20.30
	Sunday/Bank Holiday	£34.20	£29.93	£26.51
Band 3	Day	£19.89	£17.41	£15.42
	Night/Saturday	£27.25	£23.85	£21.12
	Sunday/Bank Holiday	£34.61	£30.29	£26.82
Band 4	Day	£22.73	£19.89	£17.61
	Night/Saturday	£29.55	£25.85	£22.90
	Sunday/Bank Holiday	£36.36	£31.82	£28.18
Band 5	Day	£28.80	£25.20	£22.32
	Night/Saturday	£37.44	£32.76	£29.02
	Sunday/Bank Holiday	£46.09	£40.33	£35.72
Band 6	Day	£35.65	£31.19	£27.63
	Night/Saturday	£46.34	£40.55	£35.92
	Sunday/Bank Holiday	£57.04	£49.91	£44.20
Band 7	Day	£41.87	£36.64	£32.45
	Night/Saturday	£54.43	£47.63	£42.18
	Sunday/Bank Holiday	£66.99	£58.62	£51.92
Band 8a	Day	£48.61	£42.54	£37.67
	Night/Saturday	£63.19	£55.30	£48.98
	Sunday/Bank Holiday	£77.78	£68.06	£60.28
Band 8b	Day	£58.33	£51.04	£45.21
	Night/Saturday	£75.83	£66.35	£58.77
	Sunday/Bank Holiday	£93.33	£81.66	£72.33
Band 8c	Day	£69.31	£60.64	£53.71
	Night/Saturday	£90.10	£78.84	£69.83
	Sunday/Bank Holiday	£110.89	£97.03	£85.94
Band 8d	Day	£83.42	£73.00	£64.65
	Night/Saturday	£108.45	£94.90	£84.05
	Sunday/Bank Holiday	£133.48	£116.79	£103.45
Band 9	Day	£100.63	£88.05	£77.99
	Night/Saturday	£130.82	£114.47	£101.39
	Sunday/Bank Holiday	£161.01	£140.88	£124.78

Note: The price caps are the maximum total hourly rate payable by a trust to an agency, including worker pay and all other elements of the payment. They exclude VAT. These are maximum rates – trusts are expected to continue to secure lower rates for most transactions

Table 4: Maximum total hourly rate for all non-clinical staff, for trusts where no high cost area supplement applies (£)

Grade & shift type		Max. charge from 23 Nov 2015
Band 1	Day	£12.17
	Night/Saturday	£18.25
	Sunday/Bank Holiday	£24.34
Band 2	Day	£14.10
	Night/Saturday	£20.30
	Sunday/Bank Holiday	£26.51
Band 3	Day	£15.42
	Night/Saturday	£21.12
	Sunday/Bank Holiday	£26.82
Band 4	Day	£17.61
	Night/Saturday	£22.90
	Sunday/Bank Holiday	£28.18
Band 5	Day	£22.32
	Night/Saturday	£29.02
	Sunday/Bank Holiday	£35.72
Band 6	Day	£27.63
	Night/Saturday	£35.92
	Sunday/Bank Holiday	£44.20
Band 7	Day	£32.45
	Night/Saturday	£42.18
	Sunday/Bank Holiday	£51.92
Band 8a	Day	£37.67
	Night/Saturday	£48.98
	Sunday/Bank Holiday	£60.28
Band 8b	Day	£45.21
	Night/Saturday	£58.77
	Sunday/Bank Holiday	£72.33
Band 8c	Day	£53.71
	Night/Saturday	£69.83
	Sunday/Bank Holiday	£85.94
Band 8d	Day	£64.65
	Night/Saturday	£84.05
	Sunday/Bank Holiday	£103.45
Band 9	Day	£77.99
	Night/Saturday	£101.39
	Sunday/Bank Holiday	£124.78

Note: The price caps are the maximum total hourly rate payable by a trust to an agency, including worker pay and all other elements of the payment. They exclude VAT. These are maximum rates – trusts are expected to continue to secure lower rates for most transactions.

6. Compliance

6.1. The rules include a 'break glass' provision for trusts that need to override the caps on exceptional safety grounds. These should be used only after all possible alternative strategies have been explored and only used for patient safety reasons. Overrides should be used within a robust escalation process sanctioned by the trust board.

6.2. All trusts, including foundation trusts that are not in breach of their licence conditions, are required to report weekly the number of shifts where they have made payments in excess of the price caps and complete a short qualitative survey. The weekly monitoring return template (available here) must be signed off by a relevant board member, eg director of finance, medical director, director of nursing, director of human resources.

6.3. Any payments in excess of the price caps will be scrutinised by Monitor and TDA, and excessive use and failure to make rapid improvements to workforce management may lead to regulatory action as appropriate. This would include trusts boards being required to develop a clear workforce strategy on how the overrides will be avoided in the future (see Section 9. Enforcement).

6.4. Trust boards have primary responsibility for monitoring the local impact of price caps and ensuring patient safety. Trust boards need to ensure they are following robust and effective governance processes, and the overrides are only for patient safety reasons and could not have been avoided through flexible workforce planning. If you envisage effects on services, you should also contact your commissioners.

6.5. Monitor, TDA, CQC and the Chief Nursing Officer for England emphasise the importance of trusts and commissioners fulfilling their responsibilities for safe staffing, as set out in the joint letter of 13 October 2015 from Sir Mike Richards, Dr Mike Durkin, Jane Cummings, Sir Andrew Dillon and Ed Smith and also detailed in the National Quality Board (NQB) guidance (including the 10 expectations published in November 2013).[5]

[5] www.england.nhs.uk/wp-content/uploads/2013/11/nqb-how-to-guid.pdf

6.6. Commissioners also have an important role in supporting the price caps. Where problems with staff capacity and capability pose a threat to quality, commissioners should use commissioning and contractual levers to bring about improvements. These levers include considering support to enable trusts to deliver contract activity safely and to the required quality.

7. Interaction with nursing framework rules

7.1. The rules launched on 1 September 2015 on expenditure ceilings for agency nursing staff and the mandatory use of approved frameworks still apply.

7.2. Trusts must continue to procure agency nursing and care staff via approved framework agreements. They must do so at rates compliant with the price caps.

- Where trusts are using an approved framework agreement with maximum rates, the terms and conditions of the framework do not prohibit trusts paying below those rates (as the tendered rates are maximums). Trusts are expected to negotiate rates that comply with price caps. In many cases this will mean negotiating rates that are lower than framework maximum rates.
- There may be cases where trusts are using an approved framework agreement, but the framework has fixed prices that are higher than the price caps. Currently, the framework may define paying below the fixed rates as going 'off-framework'. Monitor and NHS TDA want to be clear that trusts would not need to report an override to the framework rule in their weekly monitoring returns as long as:
    - the trust is complying with the price caps
    - the trust is framework-compliant in all aspects except that it is paying a lower rate.

7.3. Price caps can only be overridden to protect patient safety. If price caps must be overridden to procure an agency worker, and this also constitutes an escalation above framework rates, then this must be reported as both an override to the price caps rule and an override to the framework rule.

8. Support

8.1. Monitor and TDA staff are happy to discuss the price caps and challenges you may be facing locally. You can speak to your Monitor/TDA regional contact or get in touch through the following email addresses: agencyprojectsupport@monitor.gov.uk and TDA.Workforce@nhs.net

8.2. Where trusts are struggling to comply with the price caps, we will seek to work with them to identify the causes of the issue and help and ensure that trusts are doing all they can to apply best practice. If you envisage effects on services, you should also contact your commissioners.

9. Enforcement

9.1. For foundation trusts, Monitor will consider compliance in accordance with its enforcement guidance. Under the new risk assessment framework, Monitor may investigate NHS foundation trusts if there is sufficient evidence to suggest inefficient and/or uneconomical spending at a trust, for instance regarding agency and management consultant spend.[6] TDA will continue to work with NHS trusts through application of the accountability framework and will also investigate trusts that are not managing their agency spend effectively.

9.2. Any payments in excess of the price caps will be scrutinised by Monitor and TDA, and excessive use of overrides and failure to make rapid improvements to workforce management may lead to regulatory action as appropriate. This would include trusts boards being required to develop a clear workforce strategy on how the overrides will be avoided in the future.

9.3. Before considering any action, we will seek to understand the degree to which a trust is aware of the issue and has a credible plan to address it. We expect providers to take the lead in developing and implementing workforce solutions.

9.4. While trust boards are ultimately accountable for compliance with the rules, we will seek to support trusts in implementing them and addressing issues. The plan in Table 5 sets out how we intend to approach non-compliance..

[6] Outlined in: www.gov.uk/goverment/uploads/system/uploads/attachment_data/file/451387/Risk_Assessment_Framework_updated_August_2015_final.pdf

Table 5: Monitor/TDA's response to non-compliance

1. Test trust's understanding of the issue and the ability to address it	
Trust explains to Monitor/ TDA the reasons behind its level of override(s)	Trust provides: • a clear understanding of the causes of the override(s) • evidence of appropriate and effective governance and workforce management processes, eg activity plans and links between staffing and financial plans • evidence of best practice in considering other options before the trust overrode the controls
Trust develops an evidence-based plan to return to compliance	Plans must be signed off by the trust's director of nursing/medical director/human resources director/director of finance as appropriate, endorsed by the executive team and approved by the board The plan should reference processes that both control costs and preserve patient safety
Trust delivers this plan	Monitor and TDA will request information on whether the trust is meeting the plan via the reporting cycle or more frequently
2. If necessary, provide best practice support to develop a solution	
Trust seeks support via relevant best practice teams	If the trust is unable to deliver the plan, or considers that it needs external support immediately, then the trust should work with experts to go through any or all of step 1 above. Experts may include the Monitor and TDA's Agency Rules Team and/or the Workforce Efficiency Team A follow-up plan should be agreed with the central bodies, referencing the gap between actions to date and best practice and how this will be closed
3. Escalation if controls are still being overridden	
Present case to Monitor/TDA	If the trust is still unable to meet the price caps despite following steps 1 and 2 above, then the board may be requested to explain to Monitor/TDA why this is the case. We will use this interaction to identify the degree to which the board understands the problem and has engaged with it

9.5. Monitor and TDA consider that all elements in the approach above – developing and implementing plans, leveraging central support, identifying necessary exceptions – can be achieved via routine engagement with trusts. If, however, we consider that trusts are not doing all they can to carry out these steps to meet all the agency rules in a timely manner, then we may need to use formal powers to apply the steps described above.

Annex 1: Definitions

Price caps	Price caps are the maximum total amount of money, exclusive of VAT, that a trust can pay per hour for an agency worker. These include all related costs (eg employer pension contribution, employer national insurance, holiday pay for the worker, administration fee/agency charge), whether or not paid to the worker or the agency.
Medical staff	Medical staff are defined as all practising doctors who are registered with the General Medical Council, who are employed in that capacity.
Other clinical staff	Other clinical staff are defined as those registered clinical staff who are not already included as part of 'Medical staff', eg nurses, allied health professionals etc.
Non-clinical staff	Non-clinical staff include but are not limited to estate and maintenance staff, and administration and clerical staff. Non-clinical positions also include managers.
Agency staff	Agency staff are defined as those who work for the NHS but who, for the purposes of the transaction, are not on the payroll of an NHS organisation offering employment. Where trusts employ a method of direct engagement (or 'finder's fee') for individual shifts or periods of employment, all costs associated with this supply (including the pay to the worker and on-costs through the NHS provider) should be classified as agency spend. Procurement should be classified as agency expenditure where: • an in-house bank is unable to fill a shift directly and sources the shift from a third-party agency • an outsourced bank (including but not limited to NHS Professionals) is unable to fill a shift directly and sources the shift from a third-party agency • an agency fills a shift directly • an agency finds a worker to fill a shift, but the trust pays the worker directly for that shift and pays the agency a finder's fee (all this expenditure including payment to the worker and on-costs should be classified as agency expenditure).
Bank staff (not in scope of rules)	Expenditure on shifts through both in-house and outsourced banks should be classified as bank and not under the scope of the price caps rules. This includes outsourced banks that are provided by organisations including, but not limited to, NHS Professionals. However, where these organisations are used to source shifts from a third-party agency, expenditure on those shifts should continue to be classified as agency expenditure. For the avoidance of doubt, agency shifts supplied through neutral or master vendor arrangements should continue to be classed as agency spend. Procurement should be classified as bank where:

	• an in-house bank provides a shift directly • an outsourced bank (including but not limited to NHS Professionals) provides a shift directly.
Agenda for Change (AfC)	AfC allocates posts to set pay bands (1 to 9) based on the principle of equal pay for equal value and harmonising uplifts for unsociable and geographical regions. All staff working for providers are subject to AfC except doctors, dentists and very senior managers.
Very senior managers (VSMs)	VSMs are defined as those who are not subject to AfC; they are above band 9. They are currently paid on the discretion of the provider they work for. There is published guidance for NHS employers on VSM pay; however this is not currently enforced for providers. VSMs are usually chief executives, executive directors or other senior directors.

Annex 2: How the price caps are calculated

This annex illustrates the methodology behind the calculation of the price caps.

The price caps are as stated in Tables 2 to 4, and are not formally defined by this methodology.

The price caps have been calculated based on a percentage uplift on substantive salaries.

Baseline calculation

The baseline is calculated from the substantive annual pay for each band or grade and converted to an hourly equivalent figure. This assumes a 52.18-week year for all staff. It also assumes a 37.5-hour week for Agenda for Change (AfC) staff and a 40-hour week for medical staff.

Core hours for junior doctors receive the Band 1C uplift (20%) and unsocial hours receive an uplift at the mid points of bands 1B and 1A (45%). Unsocial hours for other medical staff receive an uplift of 33.3%.

Price caps for AfC staff take into account existing AfC rules on unsocial hours for substantive staff.

Price caps for AfC staff also take into account existing AfC high cost areas supplements, at 5% for Fringe, 15% for Outer London and 20% for Inner London. Rates for the different high cost area supplements are presented in the full price cap rate tables.

Uplift calculation

Price caps for all staff from 1 April 2016 are calculated at 55% above this hourly rate. This takes into account holiday pay (annual leave and bank holidays), employer

National Insurance contributions, a nominal employer pension contribution and a modest agency fee.

Initial price caps have been set reflecting existing rates paid and take effect from 23 November 2015. Subject to monitoring, they will be reduced on 1 February 2016 and 1 April 2016.

	Max. charge from 23 Nov 2015	Max. charge from 1 Feb 2016	Max. charge from 1 Apr 2016
Junior doctors	150% above basic	100% above basic	55% above basic
Other medical staff	100% above basic	75% above basic	55% above basic
All other clinical staff	100% above basic	75% above basic	55% above basic
Non-clinical staff	55% above basic		

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