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<b>Department:</b>	Flexible Staffing	<b>Effective Date:</b>	October 2023
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## STANDARD OPERATING PROCEDURE

### Medical & Dental (M&D) Agency Resourcing & Authorisation

#### 1. PURPOSE

To outline processes and operational authority for resourcing of temporary M&D agency requirements to ensure compliance with trust standing financial instruction, People Services practices and authorisation processes as set out by UHDB and NHS England (NHSE).

#### 2. THE BENEFITS OF FRAMEWORK AGENCIES

Approved frameworks support NHS England agency rules, helping trust to adhere to price caps and control expenditure.

Framework owners provide assurance that workers placed at your Trust have been checked against NHS employment standards.

All agencies are required to carry out checks on their candidates to ensure that they have a right to work in the UK and have the correct qualifications and experience to work in NHS clinical environments.

Approved Framework owners independently audit their agencies checking candidate's files to assure themselves these checks are taking place. If Agencies fail on-site audit they can be suspended from the framework until remedial action have taken place.

#### 3. SCOPE

Examples of agency work requirements covered in scope include Consultants, Registrar and SHO level cover - which includes FY2s, CT/ST1/2s and sometimes CT/ST3s, depending on specialty. Some GP trainees will also do in-hospital jobs at SHO level as part of their training. Agency cover is not routinely sourced for Foundation Year 1 medical cover.

Whilst the procedure outlines the process for requesting agency workers, this should be considered a last resort, in line with the agency rules as set out by NHSE. Alternative options should be fully considered prior to the request including bank staff utilisation (via Medical Staffing Teams), internal deployment of staff from other areas and recruitment options available. Agency cover should only be considered as a last resort.

For the avoidance of doubt, temporary requirements are defined as those requirements required for less than 3 months in duration. Where requirements are needed for more than 3 months in duration, a fixed term contract arrangement is more likely to be appropriate and this must be considered at the outset. Any extension of agency arrangements will not be automatically approved. Where the length of a requirement is initially unknown, this should be

reviewed after 2 months duration to agree a way forward and to ensure smooth continuity of service arrangements.

## 4. DEFINITIONS

**Break Glass** – reportable overrides to NHSE Agency Rules permitted on exceptional patient safety grounds only

**Framework Agreements** - nationally recognised agreements awarded to bodies approved by NHSE where satisfied that it meets all the requirements set out in the conditions for agency supply. For example, legal status, quality, value for money, compliance and governance controls

**Framework Providers** – a list of agency providers contracted to supply under nationally recognised framework agreements

**Non-Framework agencies** – agencies not approved for usage by NHSE. No assurances of working within IR35.

**Regional Cluster Agreements** – a regional agreement in place whereby NHS trusts collaborate using the national framework agreement with chosen framework providers for mutually beneficial arrangements

**NHSE Price Capped Rates** – price caps set by NHSE Agency Rules that outline the total amount a trust can pay per hour to an agency worker, except in exceptional patient safety circumstances

**Temporary requirements** - resourcing requirements less than 3 months in duration, with payment made on an hourly rate basis

**IR35 Regulations** - a government regulation set up to ensure all off-payroll staff are still paying the correct amount of income and national insurance tax as all other employees

**Direct Engagement (DE)** - the way of employing agency locums whilst ensuring they are booked within IR35 regulations

## 5. RESPONSIBILITIES

Process responsibilities are outlined in the table below for both in and out of hours.

### **5.1 IN HOURS (MONDAY TO FRIDAY 08:00 – 16:00)**

Operational authority for authorising agency staff sits with the Divisional Directors with delegated authority as agreed.

RESPONSIBLE PERSON / TEAM	RESPONSIBILITY
Executive Medical Director/Executive Team	To review and authorise all agency worker requests where the hourly rate is equal to or exceeds £100 per hour or above NHSE capped rates.

	<p>Authorisation is also required if the booking is via an off-framework supplier or if the booking is not via Direct Engagement</p>
Divisional Director	<p>To review and authorise all agency worker requests via on-framework agencies.</p> <p>To review and agree exit plan arrangements for agency staffing usage</p>
Flexible Staffing Team	<p>To advise and support managers with the process.</p> <p>To ensure appropriate authorisation is in place for all requests prior to sourcing cover</p> <p>To source agency workers, ensuring compliance with NHS employment checks and standardised rates, exceptions must be escalated, reviewed and authorised as appropriate</p> <p>To ensure requirements are cascaded in line with trust cluster response times and within framework agreement conditions</p> <p>To escalate any requests for non-framework/non-DE usage to Executive Medical Director</p> <p>To ensure appropriate payment is made to agency workers via approved payment system</p>
Senior Flexible Staffing Administrators/Workforce Planning Business Partner	<p>To review all requests to use non-framework providers</p> <p>To report any break glass instances to NHSE</p>
Requesting Managers	<p>To ensure all requests and enquiries relating to Agency cover are directed to the Flexible Staffing Team</p> <p>To ensure all requests have appropriate authorisation / sign off</p> <p>To ensure all shifts are available on Health Roster or input onto the Bank Staff system as appropriate</p>

**5.2 OUT OF HOURS (MONDAY TO THURSDAY 16:00 – 08:00 AND FRIDAY 16:00 TO 08:00 MONDAY)**

Operational authority for authorising bank and agency staff sits with the On-Call Consultant/On-Call Manager/Patient Flow Teams/Clinical Site Practitioners (CSP).

<b>RESPONSIBLE PERSON / TEAM</b>	<b>RESPONSIBILITY</b>
On Call Director	To review and authorise any off framework/above price cap/non-DE agency requests.
Senior Manager On-Call	To review the risk assessment and authorise any on-framework requests which fall below the NHSE capped rates
Medical Staffing/Patient Flow Teams/Clinical Site Practitioner	Complete Risk Assessment outlining rationale and justification
Flexible Staffing	To advise managers and other service users of the out of hours process according to site specific arrangements  To ensure appropriate payment is made to agency workers
Senior Flexible Staffing Administrators	To report any break glass instances to NHSE

## **6. SPECIFIC PROCEDURES**

### **6.1 AGENCY STAFFING REQUESTS**

To be considered, requests for temporary staffing are expected to fall under the following categories:-

- where the manager is actively going through the recruitment process, and there is a gap between a leaver and replacement being found that cannot be managed temporarily in the team
- where a new business Case has been approved for additional staffing
- in exceptional circumstances, where the authorisers are satisfied that there is evidence that a temporary worker is required to avoid risks to patient safety, activity or income.

All requests for agency cover should be directed to the Flexible Staffing Team (with the exception of urgent, unplanned cover requirements out of hours which should be directed to the Medical Staffing Team (QHB) and Patient Flow Team (RDH) as under 5.3).

Requests for agency cover exceeding four weeks in duration will only be accepted by the Flexible Staffing Team where a Medical & Dental Agency Request Form (Appendix 1) has been fully completed and formally authorised (the form is the preferred method of

authorisation, together with email approvals). Agency usage is normally only approved for a maximum of 3 months in duration, extensions for current bookings should be requested as outlined in 6.2.

The form authoriser should review all requests in relation to grade, cost and hours to determine if there is a more alternative cost effective solution to bank or agency usage, and agree an exit plan to minimise usage.

Where temporary staffing requirements are requested and authorised via either Gold Command/ Senior Manager On Call/On Call Director/Executive Medical Director for urgent contingency measures, this will be accepted as trust financial authorisation.

All approved agency usage must be procured via the trust regional cluster arrangements, where possible. Where regional cluster suppliers have been unable to source a suitable worker within the agreed response time, other national framework providers should be approached to source a suitable worker.

Any overrides to the national framework agreement rules are permitted on exceptional patient safety grounds only via the 'break glass' provision and the trust is required to report all incidences to NHSE.

All overrides exceeding the regionally agreed cluster rates / NHSE hourly capped rates by 50% or more require Executive Medical Director approval.

## **6.2 EXTENSION REQUESTS**

Requests for the extension of agency bookings will only be accepted by the Flexible Staffing/Medical Staffing Team where a Medical & Dental Agency Extension Form (Appendix 2) has been fully completed and formally authorised by the Divisional Director and Executive Medical Director

The authoriser should review exit plan actions to date and adjust the exit plan to minimise usage as necessary.

## **7. Trust Policy Breaches**

### **7.1 Off framework bookings**

If the Flexible Staffing Team has been unable to source a locum via a framework supplier but an off-framework supplier is able to supply, this must also be signed off by the Executive Medical Director.

Off-framework suppliers bring risks with engaging with them. They don't have to adhere to any set standards or regulations and by engaging with them, we must adhere to their policies which can include large fees and extended notice periods/intro fees among other issues. For this reason, it is a last resort and must be signed off at all levels.

### **7.2 Non-DE bookings**

Any non-Direct Engagement bookings need to be authorised by the Executive Medical Director. A non-DE booking is more expensive to the Trust as we have to pay 20% VAT on top of the hourly rate, it prevents the doctor being within IR35 regulations and also means the Trust can't guarantee the correct tax deductions are being made as non-DE bookings are a known scheme for paying less income tax.

## 8. APPENDICES

- Appendix 1 – Medical & Dental Agency Request Form
- Appendix 2 – Medical & Dental Agency Extension Form
- Appendix 3 - Medical & Dental Agency Request Flow Chart
- Appendix 4 - Medical & Dental Agency Extension Flow Chart