




Protecting and promoting patients' interests – providers of NHS services

Your response to the consultation



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Protecting and promoting patients' interests – licensing providers of NHS services

Your response to the consultation

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Background

This document should be read in conjunction with the document entitled “Protecting and promoting patients’ interests – licensing providers of NHS services– a consultation on the proposals’. The Department of Health has launched a public consultation on the proposed regulations on Licensing of health providers and invites you to respond.

The Licensing consultation is about:

- who will need to hold a licence from a Monitor;
- the circumstances in which providers who are licensed can have a say in any changes to the standard conditions in their licence;
- the fines Monitor will be able to impose if a provider breaches its licence conditions, delivers services without a licence or fails to supply Monitor with required information.

Please return your responses, no later than **Monday 22 October 2012** to:

By email: Licensing.Exemptions@DH.gsi.gov.uk with the subject ‘Licensing Exemptions Consultation’.

By post to:

Licensing Consultation
Department of Health
Room 235 Richmond House
79 Whitehall
London SW1A 2NS

Many thanks for your response to this consultation. Please note that responses may be made public unless you state otherwise.

Personal Details

Organisation(s) represented: Barchester Healthcare

NHS trusts

Question 1: Do you think NHS trusts should be exempt from the requirement to hold a licence, but expected to meet equivalent requirements to those in the general, pricing (where appropriate), choice and competition and integrated care sectors of Monitor's licence?

Yes

No

Question 2: Is there anything you want to add?

Whilst our immediate response to this question is affirmative in relation to exemption, a time frame will be set for all NHS trusts to meet licensing requirements for Monitor. The important issue here is to agree the process for recognising when an organisation is not going to be able to meet the requirements through the NHSTDA. At that point, what ever proposals are put in place to retain local services provided by that trust (e.g. merger, joint venture etc.), the new host organisation must hold the Monitor licence, whichever sector they are from.

Private and voluntary providers of hospital and community services

Question 3: Do you agree that it is not appropriate to license small and micro providers of NHS funded services, at this stage, pending further review of costs and benefits?

Do you agree? Yes

No, proceed to question 7.

Question 4: If so, do you agree that providers of NHS services with fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million should be exempt from the requirement to hold a licence?

Do you agree? Yes, proceed to question 7 No

Question 5: Alternatively, do you think a *de minimis* threshold based on a provider fulfilling one of the two conditions would be more appropriate (e.g. <50 staff (WTEs) or <£10m turnover)?

Yes

No, proceed to question 6

If so, which?

<50 Staff (WTEs)

<£10m turnover

Question 6: If not, on what basis should small and micro providers be exempt?

We have deliberately avoided a 'yes or no' response here. Whilst we do not have a concern over the formula and definition, we do have concerns that small and micro providers have less capacity to maintain service continuity but may have an essential role to play for one health /social care community (unless such organisations are seen as 'commissioner requested services' which would make them not exempt). If, for example, a local hospice or translation service (to support access) was to fail from a business continuity perspective what mechanism would enable those essential services to continue?

Question 7: Is there anything you want to add?

The *de minimis* threshold as defined is a sensible one, if this approach is the one that emerges, as long as the lack of a licence does not prevent competition or innovatory agreements on care pathways and joint projects. The business rigour of the licensing process may be useful for providers to consider, even if they are exempt. Some mechanism for monitoring growth of providers will be important. The potential of new entrants into the market, particularly through the current AQP process (e.g. high street chains), will need to be considered. The relevant NHS income may be small, but the actual business turnover may be much greater. Some system for ensuring NHS income is protected in the overall business model will need to be in place.

Family Health Services

Question 8: Do you agree that providers of primary medical services and primary dental services under contracts with the NHS Commissioning Board should initially be exempt from the requirement to hold a licence from Monitor?

Do you agree?

Yes

No

Initially these areas should be exempted. However, it will be important to clarify how the CCG role is connected into the system linked to Monitor's overall role in relation to choice and competition. Some potential for commissioning services that increase income for family practitioners does exist (e.g. GPs or consultants referring individuals under their care to homes they manage), despite the safeguards laid out in the act. This area will need careful and ongoing scrutiny.

Question 9: Is there anything you want to add?

The consultation documentation does not deal adequately with the situation of services for older people, services for people with learning difficulties and mental health services, all of which may enter into partnerships or funding arrangements that might require licensing.

Adult social care

Question 10: Do you think providers of adult social care who also provide NHS services should be required to hold a licence, unless they fall below a *de minimis* threshold?

Yes

No, proceed to question 15

Question 11: If so, do you think that threshold should be fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million?

Yes

No, proceed to question 13

Question 12: Alternatively, do you think a *de minimis* threshold based on an adult social care provider fulfilling one of the two conditions would be more appropriate (ie <50 staff (FTEs) or <£10m turnover)?

Yes

No

If so, which?

<50 Staff (FTEs)

<£10m Turnover

Question 13: Do you know of any adult social care providers who also provide NHS services who would not fall below this specific *de minimis* threshold?

Option 1: For fewer than 50 employees and income <£10m?

Yes

No

Option 2: For fewer than 50 employees only?

Yes

No

Option 3: For income <£10m only?

Yes

No

If yes to any of the above, please provide details:

Whilst we are not specifically aware of organisations to which these limits would apply we acknowledge that they may well exist.

Question 14: If you think there should be a different *de minimis* threshold, what is that threshold?

See Q15: there is too little differentiation in the consultation between those providers who have a percentage of NHS income only as a result of CHC funded placements through the standard nursing home contract and those who have greater breadth and diversity of provision. The consultation makes no reference to NHS income managed through a pooled budget arrangement, which can therefore appear as LA income: e.g. learning disability services, re-ablement services, intermediate care. This means that NHS financial contributions may be significantly higher than they appear. Please also see our response to question 6: a single operator care home may provide an essential local service.

Question 15: Is there anything you want to add?

The consultation does not take into account the fact that some adult social care providers (including Barchester Healthcare) also provide independent hospital services and/or a range of services in collaboration with NHS foundation trust organisations. Providers are starting to develop integrated care pathways and/or niche services which are better for service users than simple CHC funded placements into nursing homes. We are assuming the licence is essential in order to provide assurance and to sustain the potential to develop more of these services into the future.

Objection percentage threshold

Question 16: Do you think a 20% threshold would be suitable for the standard condition modification objection percentage?

Yes

No

Question 17: If not, what figure do you think would be suitable?

Question 18: Is there anything you want to add?

Share of supply objection percentage

Question 19: Do you think the share of supply threshold should be calculated by defining share of supply as the number of licence holders affected by the proposed modification, weighted by NHS turnover?

Yes

No

Question 20: Do you think the threshold itself should be 20% as with the objections percentage?

Yes

No

Question 21: Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?

Yes

No

Question 22: Is there anything you want to add?

A weighting formula seems cumbersome and very difficult to achieve given the differences between small niche providers and large integrated providers, with much greater breadth and depth either in geographical terms or in terms of service lines.

How Monitor will enforce licence conditions

Question 23: Do you think the calculation of turnover for the purposes of the variable monetary penalty maximum should be based on turnover from provision of NHS funded turnover?

Yes

No

Question 24: If not, how do you think turnover should be calculated?

Question 25: Is there anything you want to add?

Equalities Issues

Question 26: Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?

Do you have any evidence? Yes No

If so, please provide details.

Small organisations offering services to minority groups or services to people with very specialised needs (e.g. people with learning disabilities and other needs) must not be put in a situation where their funding or ability to accept referrals from licensed organisations is under threat because they are not themselves licensed.

How to Respond

The deadline for responses to this consultation is **22 October 2012**.

e-mail licence.exemptions@dh.gsi.gov.uk

contact Licensing Providers of NHS services
Department of Health
Room 235
Richmond House
79 Whitehall
London
SW1A 2NS

online An online response form is available on the DH website¹.

Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's [Information Charter](#).

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

¹ <http://www.dh.gov.uk/health/category/publications/consultations/>

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the consultations website at

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>