

October 2012

Dear Sir/Madam

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 149,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

The BMA welcomes the opportunity to respond to this consultation on licensing providers of NHS services. We have limited our response to those areas of most significance. We hope this submission will be of use and look forward to continuing a constructive dialogue with the Department of Health in the future.

1. NHS trusts

The BMA agrees that NHS trusts should be exempt from licensing, but expected to meet equivalent requirements to those in the general, pricing, choice and competition and integrated care sectors of Monitor's licence, overseen by the NHS Trust Development Authority (NHSTDA). We note that a memorandum of understanding between Monitor and the NHSTDA will underpin this arrangement. This will need to be accompanied by an extremely strong commitment to partnership working between the two, at all levels of the organisations, to ensure a consistent and fair approach for all NHS providers despite the two, distinct regulatory frameworks. Commissioners need to be confident that foundation trusts (FTs) and NHS trusts are regulated in the same way and are equally required to meet certain standards, for example around integration and choice and competition.

2. Small and micro-businesses

The BMA agrees that providers of NHS services with fewer than 50 employees and income from NHS hospital and community healthcare services of less than £10 million should be exempt from the requirement to hold a licence, pending further review of costs and benefits. We are reassured that these services will still be required to register with the CQC so will remain subject to quality regulation. It seems sensible to use existing EU definitions for small and micro businesses, rather than duplicate effort by developing a new set of definitions. This would also provide clarity and consistency for those involved in regulation, helping to keep the system as simple as possible.

3. Primary medical services

The BMA agrees that providers of primary medical services under contracts with the NHS Commissioning Board should be exempt from the requirement to hold a licence. It is our view that GP contractors are already properly and sufficiently regulated through their professional bodies and primary care contracts. As such, the extra burden of being required to hold a licence from Monitor would be unnecessary and disproportionate. Given that GPs will soon be required to register with the CQC, and the ongoing role of the NHS Commissioning Board in holding primary care contracts, we would go further than the consultation and propose that this exemption should be made permanent.

4. Objection and share of supply percentages

We accept the proposed 20% thresholds for the objection and share of supply percentages. We believe that variations in the costs of providing NHS services should be taken into account when calculating share of supply, to avoid certain types of providers, such as large urban FTs, from wielding a disproportionate amount of power.

5. Definition of turnover

The BMA believes the calculation of turnover for the purposes of the variable monetary penalty maximum should be based on turnover from provision of NHS funded services, rather than on total turnover.