

Patients Association Response to “Protecting and promoting patients’ interests – Licensing providers of NHS services.”

Organisation(s) represented: The Patients Association

Response:

- 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 overseen by the NHS Trust Development Authority?**

No.

- 2. Anything to add?**

For the benefit of standardisation of practices and responsibilities across the NHS, Trusts should be expected to hold a license – especially if the expectation would be to for Trusts to ‘meet equivalent standards’. To allow for appropriate best practice to develop it is essential that all organisations within the NHS operate within the same clear and concise regulatory framework. In particular we would like to see more clarification as to how the NHS Trust Development Authority will operate within the new framework.

- 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?**

We remain concerned about consistency of regulation across secondary care and adult social care. Patients using service X should be able to expect the same service as those using service Y, irrespective of how many FTE staff they employ or what their turnover is. If small and micro businesses are exempted, protections need to be put in place to ensure that they provide a similar level of service to the NHS and larger companies. Patients are already suspicious of Any Qualified Provider and giving a seeming advantage to any of these providers would only heighten potential distrust. The Department of Health must be careful to avoid such a situation.

Furthermore, with regard to the proposed licence conditions on integrated care, it is as important to ensure that smaller providers are integrating care as larger providers. We would like to see a stronger duty to promote and ensure that all providers of care and treatment work towards integrating care.

- 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?**

As stated previously, patients in receipt of services have a right to expect the same standard of service irrespective of how many FTE staff they employ or what their turnover is. If small and micro businesses are exempted, protections need to be put in place to ensure that they provide a similar level of service to the NHS and larger companies.

5. Alternatively do you think that a de minimis threshold based on a provider fulfilling one of the two conditions would be more appropriate (i.e. <50 staff (FTEs) or <£10 million turnover)?

We have no particular views on this issue.

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

n/a

7. Is there anything you want to add?

n/a

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?

Yes

9. Is there anything you want to add?

We believe that the NHS Commissioning Board will have the ability to regulate these aspects of commissioning without the intervention of Monitor. We have already expressed our concerns directly to the Secretary of State with regards to the status of Competition Law in commissioning. We would reiterate these concerns, particularly in the light of pages 16 and 17 of this "Sector regulation: update on plans for consultation and implementation", published on 16th July 2012, Monitor's competition function is discussed. Specifically, the passages: "Monitor will...be able to take action against anti-competitive behaviour that acts against patients' interests...Monitor will do this through its licensing powers and, where relevant, by applying Competition Law." And the next paragraph where it says, "Neither competition law nor the licence will apply to commissioners. Instead, the rules for commissioners will be set out in regulations made by the secretary of State. These regulations will be sector-specific and enforceable by Monitor, rather than by the courts."

We do not understand how Monitor will be able to apply Competition Law in one breath only for it not to be applicable to it in another. Either it applies or it does not. There has never been a wholly satisfactory explanation of why Competition Law would not apply.

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 de minimis threshold?

Our concerns surrounding the proposed de minimis threshold are detailed above. This applies to adult social care venues providing NHS healthcare. Again, we would reiterate the importance of promoting and ensuring that integrated care becomes the standard by which all providers of healthcare are held.

- 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?**

See previous responses.

- 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 (i.e. <50 staff (FTEs) or <£10 million turnover)**

See previous responses.

- 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?**

- 14. If yes to any of the above, please provide details**

- 15. If you think there should be a different de minimis threshold, what is that threshold?**

- 16. Is there anything you want to add?**

- 17. Do you think a 20% threshold would be suitable for the standard condition modification objection percentage?**

We have no particular views on this issue.

- 18. If not, what figures do you think would be suitable?**

We have no particular views on this issue.

- 19. Is there anything you want to add?**

- 20. 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?**

We have no particular views on this issue.

- 21. Do you think the threshold itself should be 20% as with the objections percentage?**

We have no particular views on this issue.

- 22. Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?**

We have no particular views on this issue.

- 23. Is there anything you want to add?**

- 24. Do you think the calculation of turnover for the purposes of the variable monetary penalty maximum should be based on turnover from the provision of NHS funded services?**

We have no particular views on this issue.

25. If not, how do you think turnover should be calculated?

We have no particular views on this issue.

26. Is there anything you want to add?

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

We do not see why any of these proposals would adversely affect any protected groups.

28. If so please provide details.

