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Protecting and promoting patients' interests – licensing 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

Contents

Contents.....	4
NHS trusts.....	6
Private and voluntary providers of hospital and community services	6
Family Health Services	7
Adult social care.....	8
Objection percentage threshold	9
Share of supply objection percentage	10
How Monitor will enforce licence conditions	11
Equalities Issues	12
How to Respond.....	13

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: Royal College of Ophthalmologists

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 X

No

Question 2: Is there anything you want to add?

This concession would mean less paperwork for NHS trusts who are at a great disadvantage in competing for work because they also have to provide training of surgeons and, in the interests of patients, treat complications of operations on NHS patients carried out in the private sector, such as sight threatening intraocular infection.

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

X 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 X

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

Yes X 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?

Small and micro providers could be exempt if the care they provide, whether of good quality or poor, would not lead to irreversible harm to the patient.

This could apply to *softer* services such as those listed in Annex A, with the exception of optometrists - .

Question 7: Is there anything you want to add?

In contrast, a provider of care which, if poorly carried out, could lead to irreversible harm, such as surgical, medical, psychiatric or investigational services, should be licensed.

Furthermore, the suggested *de minimis* threshold, where procedures are for example carried out infrequently by a GP, should not apply because this would go against the principle of a minimum frequency of performing procedures to maintain quality and safety.

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 X

Question 9: Is there anything you want to add?

As mentioned in 8, if irreversible harm could be done to patients, a license would be in order.

Your second proposal recommends that services already exempt from a requirement to register with CQC should not need licensing.

We propose that primary optometric services, although listed in Annex A, should be licensed. If such a service was poor, cases of glaucoma for example could go undiagnosed – leading to irreversible damage to sight.

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? Unable to comment.

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:

The need for a license would depend on what NHS services are being provided. If the services provided could, if delivered poorly, lead to irreversible harm, then a license would be in order.

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

Question 15: Is there anything you want to add?

Objection percentage threshold

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

Yes X

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 X

No

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

Yes X

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 X

No

Question 22: Is there anything you want to add?

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 X

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 X

If so, please provide details.

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>