

A large, thick, green curved graphic that starts from the left edge of the page and curves downwards towards the right, framing the text below it.

# **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*

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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](mailto: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: Sue Ryder

## 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?**

N/A

## 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 (eg. <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?**

**Question 7: Is there anything you want to add?**

We support licensing providers in principle but have concerns about the burden that the licensing regime, as currently drafted, will place on charitable providers such as Sue Ryder.

The proposals as they currently stand will place a heavy burden on charitable providers of healthcare services such as Sue Ryder. We estimate that completing the paperwork necessary to meet the proposed licence could cost Sue Ryder up to £80,000<sup>1</sup>. This will divert our already scarce resources away from providing frontline care and we feel strongly that charitable funds should not be used to pay for non-essential bureaucratic work. There will be many other charities in a similar situation if this scheme is to be introduced.

We agree that it would not be appropriate to require small and micro providers to be licensed. Owing to the size of our organisation and our annual turnover we would not be exempt from the proposed licensing regime, even if an 'either/or' approach to the conditions was adopted. It is worth noting that whilst we have an annual turnover of around £80 million this is shared between 7 hospices and 6 neurological care centres. Although in terms of the total sum we are comparable to a large hospital, this spending is split across several sites and geographic locations. In practice we are therefore more comparable to a small or micro-provider. Further thought needs to be given to the position of large charities to ensure that they are not unfairly penalised under the new regime. Whilst the consultation document states that this approach has been deliberately chosen in order to ensure parity of treatment between the private and voluntary sectors, this ignores the fact that the two sectors are very different in their approach.

Licensing conditions would apply to half of our health and social care provision (hospice care) but not to our neurological care centres. However, we do receive continuing healthcare funding for some of our residents with complex neurological conditions. This is currently paid for by PCTs. We would like more information about how licensing will affect providers who receive funding from local authorities and PCTs, where joint commissioning arrangements are not in place.

We are supportive of having a licensing regime but believe it should be set up in such a way that it ensures parity of treatment across different sectors. As a charity providing health and social care we are already regulated by the Charity Commission, Companies House and the CQC. Creating a new regulatory framework will duplicate regulation already in place and place an extra burden on large charities such as Sue Ryder. A more appropriate solution might be to exempt charities from those parts of the Monitor licensing framework already covered by other regulatory structures.

## 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

**Question 9: Is there anything you want to add?**

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<sup>1</sup> This is an estimate as the licence conditions have not been finalised and the fees payable to Monitor have not yet been set. This figure is based on the fees matching those which we currently pay to the CQC (£42,000 in 2012), the potential need for us to recruit a new member of staff to fulfil the proposed requirement of having a full-time compliance officer (estimated salary £35,000 per annum) and the cost of the hours that existing staff members would have to spend meeting the licence conditions (estimated as costing at least £3000 per annum).



## 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:

Sue Ryder is not only a provider of healthcare but also of adult social care, both residential and in people's homes. Although it has been proposed that adult social care providers will be exempt from the licensing requirements, we will not be exempt because 50% of our business is made up of end of life and specialist palliative care. We know that the Government is in favour of greater integration of services and that there is already a legal requirement on providers registered with CQC to cooperate with other care providers (regulations made under the Health and Social Care Act 2008). We believe it would be useful to require adult social care providers to be licensed under the same regulatory regime, so that health and social care becomes more integrated. This would ensure that all adult social care providers would be subject to the same licensing requirements, regardless of whether or not they provide healthcare services.

**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

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?**

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?**

We have concerns regarding the proposals relating to protecting continuity of services. We appreciate that DH and Monitor will wish to take steps to ensure that commissioner requested services (CRS) are able to continue even when a provider's circumstances change. However, such steps need to be designed in such a way that they do not erode the well-established differences between treatment of charitable and non-charitable organisations. We already have to hold a certain level of reserves to demonstrate the charity's operations are sustainable. Monitor's suggestion would put charitable funds at risk. The fund created by risk pooling would be outside of the charity's control. The charity could find itself unintentionally subsidising private or public services.

Further thought needs to be given to this as the current proposals appear to conflict with charity legislation. We have set out our concerns in detail in our response to Monitor's consultation on this issue. In particular, we would like to see the onus for justifying the need for a service to be designated as CRS to be placed on the commissioners, with a clearly defined and transparent criteria for CRS designation, rather than the onus being on providers to demonstrate why a service should not be designated as CRS as has been proposed in the draft licence conditions.

One of the conditions of a CRS is a contribution to a risk pool, and so we also seek greater clarity on the likely costs of contributing to this levy. As a charity, Sue Ryder does not have unlimited funds and we are concerned that this requirement could place a severe financial burden on charitable providers.

If it is not possible to revise the licence conditions to ensure that charitable providers are not compromised under the proposals, then it would be necessary to exempt such providers from being obliged to offer commissioner requested services.

## 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.**

## How to Respond

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

e-mail [licence.exemptions@dh.gsi.gov.uk](mailto: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 website<sup>2</sup>.

### 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](mailto: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).

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<sup>2</sup> <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>