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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

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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: Arthritis Care

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?

No response to this question.

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

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

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

If so, which?

<£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?

Many modestly sized third sector providers will have NHS turnover of less than £10million, but may also have an excess of 50 employees if their entire UK staff are taken into account, including those who are not involved in provision of health services, (and in the current economic climate, many of whom may be part time posts). These “mid range” third sector bodies, of which Arthritis Care is one, would struggle to meet the administrative and financial pressures of a licensing regime that large private sector providers could easily absorb. Therefore, we recommend that only the £10million financial threshold for liability for licensing requirements be adopted. If Monitor are minded to adopt different criteria for third sector liability for the licensing regime, we recommend that the third sector be offered the opportunity to consult on it. **General comments.** If the third sector is to be subject to a licensing regime it must be proportionate to the capacity of the sector to meet the requirements of, i.e. enable potential providers to comply with the regime requirements without imposing an excessive burden on finances, staff resources or administrative hurdles, etc. It should not be likely to result in the sector being unfairly disadvantaged in terms of competing for contracts / AQP status against large private sector bodies. In principle we have no objection to a licensing regime that makes reasonable requirements with regard to quality standards of services, financial probity, being properly constituted, and general “fit and proper” probity tests, etc. However, there are some hurdles that would effectively shut the sector out from being able to compete with large private firms; requirements to hold large cash bonds or reserves is one example. Already there have been examples of third sector providers being unable to compete with large for – profit firms due to the imposition of financial preconditions (<http://www.nursingtimes.net/nursing-practice/clinical-specialisms/district-and-community-nursing/900-nurses-in-virgin-community-services-deal/5043361.article>) Another is such requirement is that of having expensive IT hard/software that are compatible with the NHS, already in place at the commencement of the tendering process. An alternative would be to allow potential bids from providers on the basis that if they won contracts of a certain size, relevant IT infrastructure would be in place before contracts commenced, and the contract price would be sufficient to cover the full costs of delivery.

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?

No response to this question.

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:

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

No response to this question.

Question 15: Is there anything you want to add?

No response to this question.

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?

No response to this question.

Question 18: Is there anything you want to add?

No response to this question.

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?

No response to this question.

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?

No response to this question.

Question 25: Is there anything you want to add?

No response to this question.

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.

No response to this question.

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>