Optical Confederation
The voice of UK optics

Consultation on Protecting and Promoting Patients' Interests – Licensing Providers of NHS services

Thank you for inviting our comments on this consultation. The Optical Confederation represents the 12,000 optometrists, the 6,000 dispensing opticians and 7,000 optical businesses in the UK who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.

Introduction

As indicated in our previous responses to the Monitor consultations[1] in 2011 and 2012, as a sector, we fully support the Government's aims of, "promoting the provision of health care services which is: economic, efficient and effective; and maintains or improves the quality of those services", as well as the aim to, "protect and promote the interests of people who use health care services". We believe that the community eye care sector is the ideal exemplar of how this should operate, combining vigorous competition with effective regulation to deliver the high levels of quality, access, choice and value for the patient.

Already heavily regulated, including by our own sector-specific regulator, the General Optical Council, through our national NHS contract and NHS listing of practitioners, we have welcomed Ministers' announcement that the community optical sector will be exempt from additional and duplicatory regulation by Monitor.

Exemption for Community Optical Providers

We are pleased therefore to see this commitment included in this consultation and exemption for community optical providers under Section 82 of the Health and Social Care Act on the basis that

- community optical providers are not required to register with the Care Quality Commission on the grounds that effective alternative regulation is already in place and the low levels of risk involved
- there is no risk to continuity of services provision as providers compete vigorously for each and every patient

[1] http://www.opticalconfederation.org.uk/resources/consultations (Last accessed October 2012)

- and, when a practice does close, other providers are more than ready to take their place and guarantees are in place for safeguarding patient records and continuity of care.

As we have previously argued, community optical providers occupy a unique position in the NHS, operating in a regulated and vigorously competitive but otherwise genuinely open market. In addition to regulation under Companies House legislation, by the Office of Fair Trading and the Advertising Standards Authority:

- eye care services are recognised as low risk by regulators and insurers alike
- eye care services are delivered though a genuinely open and highly competitive market-driven system, which delivers quality, access, choice and value to patients
- providers compete vigorously to meet the needs and wishes of every single patient
- year on year, the competitive market improves quality and choice whilst driving down cost
- there is a zero risk of a failure in the sector adversely affecting patients
- patients are already protected by the double regulation of the General Optical Council on both optical bodies corporate (i.e. those who use the protected titles of optometrist or optician) and optical practitioners.

For further information on the case and the evidence we provided for exemption, please visit: http://www.opticalconfederation.org.uk/resources/consultations

Overall, we are pleased to see that the Department of Health has carefully considered proportionality and is keen to avoid duplication of responsibilities and requirements. We also agree with and support the Department of Health's targeted and phased approach to implementation (of Monitor licensing where applicable), based on clear objectives.

Information Requests from Exempt Providers

We note from the flowchart in Annex B that Monitor will have powers to request information from providers that are not registered with CQC. We would welcome further clarification about the nature, frequency and purpose of these information requests, as we are keen to avoid any unnecessary burdens on the optical front-line, the costs of which have inevitably to be passed on to patients or NHS commissioners.

In the past, all too often we have seen NHS bodies (in particular PCTs) overuse such powers purely to 'tick boxes' without due consideration of the value of such information against the burden of providing it. To avoid such an outcome, we suggest that since information relating to the provision of primary ophthalmic services will in any case be available from the NHS Commissioning Board, it would appear to be a sensible first port of call should

Monitor require information about community optical providers (including for example named directors, premises at which services are provided, NHS income, etc).

We can understand the reasons for Monitor retaining a power to request information from unlicensed providers, however we would urge that such information requests are not simply 'tick box' exercises, but operate on the basis of proportionality of risk, or where evidence of anti-competitive behaviour arises, with rigorous safeguards including consultation with the Optical Confederation where such information gathering is proposed.

Any Qualified Providers (AQPs)

As stated above, community optical services are exempt from CQC registration. In our experience to date, the implementation of exemptions has resulted on the unintended exclusion of community optical providers from bidding for AQP services across the country. We have written to the Secretary of State for Health, Department of Health and AQP officials to seek to resolve these and are hopeful that solutions found for CQC exemptions will also simply read-across to Monitor exemptions.

We look forward to discussing this further with the AQP team and Monitor, in due course.

Proposition 1: Over-riding requirement to protect continuity of services

We agree that Monitor should, in limited circumstances, have powers to impose additional regulation on a provider, although we would like to add that we cannot envisage any circumstances in which this would be relevant to primary ophthalmic services. We look forward to the consultation and opportunity to review the guidance on the criteria which would be applied in such circumstances.

Proposition 2: Licensing and the CQC

As stated above, we are pleased to see that the Department of Health has proposed to exempt primary ophthalmic services from licensing by Monitor. We would be happy to work with the Department should any changes be made to the scope of CQC registration.

We have responded to the specific consultation questions, as follows:

Questions 1-2:

Not applicable to our sector.

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?

As supporters ourselves of innovative and flexible solutions to service change at local level, within our established regulatory framework, we agree that it is sensible to exempt micro

and small businesses from Monitor licensing and we expect that this will be welcomed by such providers.

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?

Yes – these thresholds seem reasonable.

Questions 5-7:

Not applicable to our sector.

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?

We agree.

Dental and GP contractors are already regulated through the independent professional regulator for their sectors, their professional bodies, through their primary care contracts and through the NHS Performers Listing system. Primary care contracts are more tightly drawn than any other form of NHS contract. We believe that adding a further layer of regulation on top of this (i.e. licensing with Monitor) would be unnecessary, disproportionate and bring no added value.

We do not believe therefore that including dentists and GPs in the licensing regime would be a sensible use of NHS resources.

Question 9: Is there anything you want to add?

No.

Questions 10-25:

Not applicable to our sector

Question 26: Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?

No.