Protecting and promoting patients' interests: The Lesbian & Gay Foundation's response

Introduction

The Lesbian & Gay Foundation (www.lgf.org.uk) will respond to the consultation incorporating any likely impact upon itself and its lesbian, gay and bisexual, and trans (LGB&T) service users. The Lesbian & Gay Foundation is a vibrant charity committed to achieving more positive outcomes for LGB&T people, with a wide portfolio of well-established services and new initiatives. The LGF is also the lead organisation of the Department of Health funded National LGB&T Partnership.

The Lesbian and Gay Foundation is based in Manchester, and supports over 40,000 lesbian, gay, bisexual and trans (LGB&T) people each year. In addition to a wide range of health and advocacy services, it also undertakes research, information provision and policy campaigning on a national scale. As a result, the Lesbian & Gay Foundation provides more direct services and resources to more LGB&T people than any other organisation of its kind in the UK. The LGF is reported by service users to be one of the first points of contact for them when they have been at a crisis point in their lives. We campaign for a fair and equal society where all lesbian, gay and bisexual people can achieve their full potential, and our mission is: 'Ending Homophobia, Empowering People'.

Consultation questions

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, overseen by the NHS Trust Development Authority?

Question 2: Is there anything you want to add?

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?

> Providing this does not lead to a situation where the possession of CQC registration and Monitor licence becomes a condition of an organisation's ability to bid for contracts – unless there are incentives built into contracts through CQUINs which incentivise engagement with the third sector to deliver

services, should they be unintentionally excluded from delivering larger contracts.

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?

There should be exemptions, but these exemptions should not work against an organisation's ability to contract for NHS services. Rigorous licensing could prove to be over-burdensome on smaller providers, yet it is important to ensure that possession of CQC registration and Monitor license becomes a condition of an organisation's ability to bid for contracts.

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

The financial threshold should be the one applied – an organisation could have far in excess of 50 staff, but only a small element of this may be NHS commissioned work. Alternatively, there could be very small organisations delivering large scale projects. However, if they are a main contract holder and sub-contract out, it needs to be considered whether the threshold should be on the total contract amount, or the amount they retain.

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

If Monitor is about good governance, exemption could be based on whether or not you are governed by any other body. For example, charities are governed by the Charity Commission, and bad governance is dealt with through this. If there are no other formal forms of redress, then no exemption should apply.

This could also apply to those small organisations that have to register as a CQC provider, but could be exempt from Monitor as they are already regulated by the Charity Commission.

Question 7: Is there anything you want to add?

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?

Question 9: Is there anything you want to add?

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.

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?

Exemptions should be based on the same criteria as for other providers of NHS services – see previous comments.

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 (i.e. <50 staff (FTEs) or <£10m turnover) ? If so, which?

See previous comments.

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?

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?

If an organisation delivers adult social care and also delivers health care, exactly the same requirements should be applied, irrelevant of the fact that the organisation delivers social care too. There needs to be clearer guidance and communication on the roles and requirements of CQC and Monitor in relation to different service provision

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

Question 17: If not, what figure do you think would be suitable?

Question 18: Is there anything you want to add?

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?

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

Question 21: Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?

Question 22: Is there anything you want to add?

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 services?

Question 24: If not, how do you think turnover should be calculated?

Question 25: Is there anything you want to add?

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

> Organisations in the LGB&T sector tend to be smaller organisations, and many are providers of NHS services, as they have the knowledge, experience and reach to provider specific LGB&T services. Rigorous licensing could prove to be over-burdensome on smaller providers, yet it is important to ensure that possession of CQC registration and Monitor license becomes a condition of an organisation's ability to bid for contracts. Otherwise, LGB&T communities will end up missing out on the specific services they need if LGB&T providers are excluded from a fair and open tendering process due to not having a CQC registration or Monitor licence.