

Protecting and promoting patients' interests – licensing providers of NHS services

Response to Department of Health consultation from the NHS Trust Development Authority

Introduction

The NHS Trust Development Authority (TDA) will oversee and account for the performance of NHS Trusts from 1 April 2013, supporting them to provide high quality, sustainable services and move to Foundation Trust status or an alternative organisational form as quickly as possible. In carrying out this role, the TDA will work closely with commissioners, Monitor and the Care Quality Commission to ensure an aligned approach to oversight of NHS Trusts.

TDA position on licensing exemptions

The TDA's interest in this consultation centres on question 1, relating to the proposal to exempt NHS Trusts from the requirement to hold a licence, with the TDA ensuring that NHS Trusts comply with equivalent requirements as relevant. The TDA strongly supports this approach for the following reasons:

- The TDA will have the necessary powers to ensure NHS Trusts meet relevant licence conditions or equivalent conditions, for example on pricing, choice and competition and integrated care.
- Because of legal distinctions between NHS Trusts and NHS Foundation Trusts, not all aspects of the licence could reasonably be applied to NHS Trusts. For example, continuity of service conditions under the licence could not be applied to NHS Trusts as they remain subject to the Unsustainable Provider Regime operated by the Secretary of State. As such, any application of the licence could only be partial.
- Given that the TDA has a clear role in overseeing all aspects of NHS Trusts' activities on behalf of the Secretary of State, it would potentially create confusion over roles and responsibilities if NHS Trusts were licensed and therefore subject to oversight by Monitor. There would be a significant risk of "double jeopardy" for NHS Trusts under these circumstances.
- The government's policy is for all NHS Trusts to move to Foundation Trusts status or another organisational form as quickly as possible with the majority achieving this by 2014. Exempting NHS Trusts from the requirement to hold a licence would therefore by definition be a temporary measure and no permanent distinction would be made in the way different providers are treated.

Conclusion

The TDA has begun discussions with the Department of Health and Monitor about how a bespoke regime for NHS Trusts could be created to ensure that relevant licence conditions are applied whilst avoiding the risks set out above. The TDA remains committed to work with its partners to ensure that an effective system is in place and that a coherent and consistent regime is created.