



Help the
Hospices

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

A response from Help the Hospices

October 2012

Help the Hospices is the leading charity supporting hospice care throughout the UK. We want the very best care for everyone facing the end of life.



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Introduction

Help the Hospices is the national membership body for hospice care, representing 218 hospices around the UK. We welcome the opportunity to comment on the proposals relating to the licensing of providers of NHS services.

Fundamentally, we do not believe that it was the policy intention for local charitable hospices to become caught in the proposed licensing arrangements. Local hospices are, by their very nature, small, local providers of care within their communities for whom the inappropriate introduction of licensing would, in our view, result in a disproportionate increase in regulatory burden.

Independent local charities provide the vast majority of hospice care within England, and a majority of the specialist palliative care beds available within the healthcare system. However, the NHS only funds a small proportion of the care and support that hospices provide, often through an unspecified grant contribution, with enormous local variation in the level of support provided. Local hospices receive on average just 34% of their total expenditure from NHS sources. In practice, this means that on average, individual local charitable hospices in England receive £1.5m per year from NHS sources (although there is wide variation in amount of NHS funding received).

The Government has recognised that the current funding arrangements for hospices are unsustainable, and has begun work to develop a new funding system for hospice and palliative care which is not due to be implemented before April 2015.

Despite this low level of NHS income, local charitable hospices are, nonetheless, significant providers of care within their local communities, employing a range of staff to provide the care and to generate the resources to enable them to meet local needs. On average, local charitable hospices employ around 100 staff, and across the country benefit from the contribution of more than 100,000 volunteers who are vital to the delivery of high quality care.

Under the proposals contained within the consultation document, most local hospices would be required to hold a licence as they would not qualify for exemption. In our opinion, this would be inappropriate and disproportionate.

We are responding separately to the Monitor consultation on the proposals relating to the detail of the NHS provider licence.

In this response, we provide comment on the consultation questions that are relevant to local hospices.

Summary

Help the Hospices recommends that:

- The *de minimis* threshold for exemption from licensing should be either fewer than 50 employees or less than £10 million in NHS turnover
- The calculation of Whole Time Equivalent employees should take in to account whether staff are engaged in the delivery of NHS funded care
- The Department of Health should ensure that Monitor has robust consultation processes for proposed modifications to the licence, and should specify a minimum period for such consultation
- The proposals for weighting objections to modifications based on a providers' share of supply should be dropped, as this would have the effect of significantly disadvantaging smaller local providers of care.

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 (e.g. <50 staff (WTEs) or <£10m turnover)?

Do you agree? Yes No, proceed to question 6

If so, which? <50 Staff (WTEs) <£10m turnover

Question 7: Is there anything you want to add?

Help the Hospices believes that many small providers of healthcare services would find themselves required to hold a licence if the qualification for exemption was less than £10 million in NHS turnover and fewer than 50 WTEs. We firmly believe that a 'two-test' exemption would be deeply problematic.

Most local hospices are small providers of care, delivering an important service within their local communities. On average, the NHS funds just 34 per cent of the costs of hospice care¹, although there is wide variation in the amount of NHS funding that is provided. In practice, this means that the NHS contributes, on average, just £1.5 million per year to individual local hospices within England – well within the definition of 'small provider' used by the Department of Health.

¹ Help the Hospices (2011) Hospice Accounts: An analysis of the accounts of UK independent voluntary hospices for the year ended 31 March 2010. London: Help the Hospices.

In most instances, the NHS funding takes the form of a grant contribution towards the costs of the care provided. Only very rarely do commissioning or contracting arrangements between the NHS and local hospices include specific service volumes, patient numbers or even service descriptions.

Despite being small providers from an NHS turnover perspective, local hospices employ a range of staff to provide the care and support, and to generate the resources to enable them to do so. On average, we estimate that local hospices in England employ 100 WTEs across a range of roles.

The proposed qualification for NHS turnover (i.e. the amount of NHS income derived) separates the resources deployed from different sources in the delivery of NHS funded care. We believe that if the Department of Health decides to include a test for exemption relating to the number of WTEs, it would be necessary to separate those staff engaged in providing NHS funded care from those who are not. For example, local hospices employ a significant number of staff to generate the fundraised income that resources the majority of hospice care. It would, in our view, be entirely inappropriate to include such staff who have no role in the delivery of care that is NHS funded within the calculation of WTEs.

We therefore recommend that the proposal set out in paragraph 41 of the consultation document (that it would be more appropriate to exempt a provider where it had either fewer than 50 employees or less than £10 million in NHS turnover) is a more appropriate approach to take, provided that only those employees engaged in the delivery of NHS care are included in the calculation.

We are also deeply concerned that even if a hospice was technically exempt from the requirement to be licensed based upon the *de minimis* thresholds, if a Clinical Commissioning Group chose to designate the service as 'Commissioner Requested', that hospice would find itself within the scope for licensing. In our opinion, this would be a disproportionate and inappropriate outcome which would significantly increase the regulatory burden for such a small organisation.

Objection percentage threshold

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

Yes

No

Question 18: Is there anything you want to add?

Help the Hospices is pleased to see that any modifications to the licence will be subject to consultation, with a threshold for objection that would trigger further steps.

In general terms, we agree that a 20 per cent objection rate from affected providers is an acceptable level to require further steps to be taken by Monitor before it could implement such modifications.

If such a threshold is introduced, it will be vital to ensure that Monitor has robust and timely consultation arrangements that allow potentially affected providers sufficient time to respond. We believe that it would be helpful for the Department of Health to specify a minimum period of consultation for such proposals.

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?

Help the Hospices is deeply concerned about the proposal to weight the voice of providers in objecting to modifications by their share of supply.

In our view, such a move would significantly disadvantage small providers of care within a local health economy, such as charitable hospices. Individually, hospices are small providers of care, but collectively local charitable hospices spend over £745 million each year, of which less than £200 million is funded by the NHS. Weighting the voice of providers against individual licence holders' scale and share of the market would inevitably benefit large, national providers of care at a time when the centre of gravity within the NHS is becoming more local.

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 25: Is there anything you want to add?

Help the Hospices agrees that NHS turnover should be used to calculate the maximum variable monetary penalty that Monitor will be permitted to impose on providers who breach a licence condition or fail to hold a licence when required to do so.

We agree that it would be inappropriate for total turnover to be used to calculate the maximum level of such penalties. This is particularly true for charities such as local hospices for which NHS funding would only be a small proportion of their income.