Consultation on new licensing regime for providers of NHS services – Department of Health, October 2012

Submission by the Patient Liaison Group of the Royal College of Surgeons of England.

The Patient Liaison Group (PLG) of the Royal College of Surgeons of England is an independent body, which reports regularly to the College's Council. Comprising a majority of lay members (including its Chair), it provides a patient, carer and public perspective across core College business. This submission represents the considered views of the PLG itself, and not necessarily those of the wider College or of its members.

Summary

It is vital that there are high standards of patient safety and care by whoever is providing NHS services and that patients and the public are properly protected. We believe the driving force behind the licensing is patient safety and patient protection and that these must take precedence over any commercial considerations.

The Patient Liaison Group (PLG) of the Royal College of Surgeons of England welcomes the opportunity to respond to the Government's consultation on licensing providers of NHS services. We have responded to the specific questions raised in the consultation document below.

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?

As the system overseeing NHS trusts is to continue and will be run by the NHS Trust Development Authority (NHSTDA), we believe it would be an unnecessary duplication for trusts to be required to have a licence from Monitor. However, to ensure that patients have confidence in the system, it is vital that the same standards are being enforced by NHSTDA, the NHS Commissioning Authority for GPs (NHSCA currently called NHSCB) and by Monitor; otherwise the situation will be piecemeal and patients will be confused as to expectations and requirements. Using the same standards will help to give patients and the public confidence

that the system is effective as they will have an understanding of what to expect. We would also like licensing organisations to undertake unannounced visits to proactively monitor standards in the interests of patients.

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?

The PLG agrees that at this stage it would seem appropriate not to burden small/micro providers with extra administrative burdens. However we would wish to see continued and active monitoring of this position to ensure that patient safety is promoted and high quality care is offered to all. We would also wish to see checks to ensure that it is not possible for organisations to play the system.

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?

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?

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

Question 7: Is there anything you want to add?

The PLG recognises the work that the Department has undertaken in setting out the issues in Annex C and these are more extensive than we would have identified as a patient group. The PLG recognises that high quality care can occur in both small and large establishments as can poor quality care. What is important is consistent, high quality care and patient safety. Ideally we believe that the same standards should apply to all care and all organisations offering care no matter the nature of the provider, the sector that they are in, or their size. To promote patient safety and to allow comparison between providers, the PLG endorses the proposal (section 34) that 'independent providers' are treated in the same way as NHS providers. We recognise that there are particular issues which opening up NHS provision through the Any Qualified Provider development brings, but we have concerns about introducing commercial criteria into the provision of care as this is likely to run counter to standards of good practice and patient safety.

In the long-term we do not agree that small providers should be exempt from the requirement to hold a licence, although we recognise that this might be the only sensible way forward in the short-term. The arbitrary nature of a *de minimus* threshold means there will be issues for those providers close to the threshold. We suggest that, in the interests of patient safety and continuity of services etc - there may need to be a 'soft introduction' of the new licence for those close to the threshold so that it is possible to gauge how easy it is for them to comply with the conditions before Monitor imposes sanctions. For example, patients' continuity of care is not going to be helped during 2013 if those providers close to the threshold are laying-off staff to get under the 50 employee threshold. We suggest that the best approach might be to have a phased introduction of licensing so that eventually it applies to all with the phasing starting with the largest first and then gradually covering the smaller organisations. Such an approach would also signal to providers that there is little point in attempting to play the system as over time the requirements will reach them.

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?

Yes. Given the current evidence and the role of the NHSCA it would appear sensible to not include GPs and dentists, offering general primary care, in the Monitor licensing, at least until after the Government review next year.

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?

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?

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?

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?

From our experience of care homes in our local areas, the PLG understands why the Department is considering if it is worth trying to extend Monitor's licensing requirements in this area, with the majority of care being provided by small/micro providers. Additionally, the 'grey area' between 'social' and 'health' care, does, as suggested, make it hard to know where the boundaries lie in terms of local authority and DH responsibility. However, for the credibility of the licence, patient safety, and in the stated aims of this document, for licensing to be simple and clear having different grade extensions for health care providers based solely on the fact of <u>where</u> health care is carried out (i.e. in a hospital or in a large care home) appears to be anomalous. If there <u>are</u> large-scale providers of health care within a care setting (even though the extent of this is still to be established) then there needs to be level playing field and such providers should be included.

We also have concerns that organisations may attempt to re-designate / rebadge themselves in order to limit the licensing and monitoring they are subject to and this carries the risk of eroding the protection that patients currently have.

A pragmatic approach may be to delay the inclusion of health care in social care settings till April 2014, in the same way as other independent providers. By then, the Government review will have hopefully analysed how well the Monitor licensing system is working and be in a better situation to apply it to 'grey areas'. We would not like to see this situation drift simply due to uncertainty about how many providers this will affect, especially given that this sector is predominantly care of the elderly – which often falls drastically short of the best patient care.

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

As outlined above, the PLG is concerned that health care for older people may slip through the licensing system, on the basis that much of it may be being carried out in a social care setting and the majority of this will be exempt, even though the GP's role in that provision will be covered by NHSCB.