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Parliamentary Under-Secretary
of State for Quality
Department of Health
Richmond House
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Dear Lord Howe

*Protecting and promoting patients' interests – licensing providers of NHS services
A consultation on proposals*

I write in reference to the Department of Health's consultation on the legal framework for implementing sector regulation for providers of NHS services. The Care Quality Commission (CQC) welcomes the opportunity to contribute to this consultation. We are responding in the form of this letter rather than the template because we would like to offer some broader observations. These are in addition to our response to the specific consultation questions which have most relevance to CQC's responsibilities (and are listed below).

CQC is committed to strengthening how we work with strategic partners. We are working closely with Monitor to develop our existing information sharing agreement for the introduction of the provider license in 2013 and also a joint application service for providers from 2014. More generally, we are contributing our learning from the experience of establishing a national system of registration and we and Monitor are increasingly thinking together, rather than separately, as we develop our approaches. As well as protecting people's safety and driving improvements, by working more closely with strategic partners we will avoid duplication and lighten the regulatory burden on providers.

Monitor's new licensing system creates a close relationship, and in some cases interdependency, between CQC and Monitor. In order to ensure the successful implementation of the framework for sector regulation, it is essential that CQC is fully involved in decision-making. We welcome how the Department has done this to date and we are pleased to see comments and views expressed previously, reflected in the consultation proposals. We look forward to discussion as proposals are finalised.

There are significant risks in setting up this new system alongside other changes in the care landscape. To introduce regulation smoothly and efficiently, our view is that it is essential that the Department starts with small numbers of providers and that any expansion in scope is done on a planned basis with sufficient lead times to assess costs and benefits, and to allow regulatory systems to be designed and implemented efficiently.

Questions 1 & 2

Sector regulation should not introduce unnecessary duplication for providers of services. CQC supports the principle that in order to be in scope for licensing, a provider must be in scope for registration with CQC. Therefore it is proportionate that NHS trusts are exempt from the requirement to hold a licence with Monitor but expected to meet equivalent requirements, performance managed by the NHS Trust Development Authority.

Questions 3 & 4

We agree that it is not appropriate to licence small and micro providers at this stage. This will ensure that sector regulation is proportionate and achieves its aims by targeting providers that exert the most significant market power within the NHS funded market. Exempting small and micro providers at this stage will allow the evidence base on the cost and benefits of sector regulation to develop in order to inform future decisions about exemptions.

Question 7

The "de minimis" threshold of exempting providers with less than 50 WTE employees AND £10million NHS turnover is appropriate to try to identify those providers with significant market power. However, the possibility of "scope creep" will need to be managed to ensure that volumes do not exceed the envisaged 1,000 providers. For example:

- NHS turnover is easily accessible from the NHS contract and commissioners could have a role in identifying providers requiring a licence. However without further guidance, providers are likely to use different methodologies to calculate WTE, leading to inconsistency (e.g. a census on one day of the year compared to an annual average). Therefore further guidance may be required.
- providers who do not need a licence currently, but think that they may exceed the *de minimis* threshold in the future, may apply prospectively.
- a licence may be seen as a kite mark and providers who are exempt may apply anyway.

CQC and Monitor are currently developing our approach to joint licensing based on an understanding of volumes of less than 1000 providers. The impacts, particularly including costs and investment in systems development, change significantly with different volumes of providers. We are proceeding prudently but will need to keep in dialogue with the Department's officials as any changes in planning assumptions could create additional costs.

Question 8

CQC agrees that providers of primary medical services and primary dental services under contracts with the NHS Commissioning Board should be exempt from the requirement to hold a licence. This reduces duplication with the role of the NHS Commissioning Board.

Question 9

Exemption at this stage allows more evidence on the impact of sector regulation to be gathered in order to inform future decisions about exemptions for this sector. It would also allow time to consider the different arrangements of market entry and the role of commissioners in shaping the market in this sector.

Questions 15

The existence of a *de minimis* threshold could influence provider behaviour whereby an existing provider may split their organisation and register as multiple small companies all trading under one brand with CQC in order to achieve exemption from the requirement to hold a licence. This might be a more likely scenario for adult social care providers of NHS funded care who do not meet the *de minimis* threshold. If this were to happen CQC would be likely to be the first to detect it and we will notify Department officials if it appears to happen.

Finally, CQC would welcome an early indication from the Department on when you will be able to share the outcome to your consultation due to the implications for the delivery of joint licensing. We look forward to continuing the constructive and productive tripartite dialogue between CQC, the Department and Monitor.