



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

Your response to the consultation

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

Your response to the consultation

Contents

Contents.....	4
NHS trusts.....	6
Private and voluntary providers of hospital and community services	6
Family Health Services	8
Adult social care.....	9
Objection percentage threshold	10
Share of supply objection percentage	12
How Monitor will enforce licence conditions	12
Equalities Issues	13
How to Respond.....	15

Background

This document should be read in conjunction with the document entitled "Protecting and promoting patients' interests – licensing providers of NHS services– a consultation on the proposals'. The Department of Health has launched a public consultation on the proposed regulations on Licensing of health providers and invites you to respond.

The Licensing consultation is about:

- who will need to hold a licence from a Monitor;
- the circumstances in which providers who are licensed can have a say in any changes to the standard conditions in their licence;
- the fines Monitor will be able to impose if a provider breaches its licence conditions, delivers services without a licence or fails to supply Monitor with required information.

Please return your responses, no later than **Monday 22 October 2012** to:

By email: Licensing.Exemptions@DH.gsi.gov.uk with the subject 'Licensing Exemptions Consultation'.

By post to:

Licensing Consultation
Department of Health
Room 235 Richmond House
79 Whitehall
London SW1A 2NS

Many thanks for your response to this consultation. Please note that responses may be made public unless you state otherwise.

Personal Details

Organisation(s) represented: United Kingdom Homecare Association

NHS trusts

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?

Yes

No

Question 2: Is there anything you want to add?

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

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? X 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? X 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 (eg. <50 staff (WTEs) or <£10m turnover)?

Yes

No, proceed to question 6

If so, which?

<50 Staff (WTEs)

<£10m turnover

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

Question 7: Is there anything you want to add?

We agree that it would be disproportionate to require small and micro providers to obtain a Monitor licence.

The United Kingdom Homecare Association (UKHCA) is the professional association for homecare providers across the UK. We currently represent over 2,000 homecare providers across the UK and our aim is to promote high quality, sustainable homecare so that people can live at home for as long as they choose to. In our response we use the term homecare to refer to domiciliary care agencies, live-in care providers and home nurses' agencies.

We believe that providers who meet either of the *de minimus* threshold criteria should be exempt from obtaining a licence. The benefit of using the NHS turnover and number staff is that the possibility of requiring a licence from providers un-necessarily is reduced. For example, a provider with more than 50 staff which only provides a small amount of NHS funded care would not have to apply for a licence which would be a disproportionate administrative burden in relation to the value of the NHS work they provide.

Applying this threshold could be more complicated in social care, particularly in homecare. Due to the variability in the volume of work provided by local authorities and the NHS, it is common practice for homecare workers to be employed under zero hour contracts as providers are often unable to guarantee work for their staff. We believe that it would be particularly difficult for Monitor to establish 'full time equivalent' staff numbers and is one of the reasons why requiring social care providers to hold a licence, large or small would be impractical and we believe, unlikely to reap benefits justifying the cost of implementation.

As well as not being able to employ staff on fixed hours contracts, the fluctuating volumes of work affect the amount of NHS turnover throughout the year. We are seeing an increase in the practice of commissioning care without guaranteed or in some cases even indicative volumes. Whilst this practice can provide flexibility to the commissioner, it will make it more difficult to estimate if a provider will meet or exceed the threshold in a year and whether they will continue to be above the threshold for the following year. The Department needs to consider whether providers who hit or are just above the threshold need to do so for more than one year before requiring a licence.

We also believe that a distinction needs to be made explicitly clear about the provision of staff and the provision of health or care services. For example, homecare agencies may provide health and social care in the community funded by the NHS. They may also provide their local NHS with staff who are then directed by the NHS Trust they have been supplied to. We would argue that supplying staff should not count as NHS funded care as the care is directed and supervised by the NHS rather than the provider. As a result, the amount of income generated from the staff supply side of their business should be disregarded when calculating whether a provider meets the *de minimus* threshold.

Family Health Services

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?

Do you agree?

Yes

No

Question 9: Is there anything you want to add?

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

Adult social care

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

No, proceed to question 15

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?

Yes

No, proceed to question 13

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 (ie <50 staff (FTEs) or <£10m turnover)?

Yes

No

If so, which?

<50 Staff (FTEs)

<£10m Turnover

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?

Option 1: For fewer than 50 employees and income <£10m?

Yes

No

Option 2: For fewer than 50 employees only?

Yes

No

Option 3: For income <£10m only?

Yes

No

If yes to any of the above, please provide details:

Question 14: If you think there should be a different *de minimis* threshold, what is that threshold?

In considering the Department's specific comments regarding a different *de minimus* threshold for social care we have a number of comments:

We do not have any additional data on the level of NHS funding currently supplied to homecare providers and so like the Department, we can only assume that most providers will be out of scope due to their size.

We do not believe that a threshold based on NHS turnover alone would be appropriate due to the possibility of incorporating small providers into additional and burdensome regulation.

We believe that using criteria based on the percentage of turnover from the NHS would be inappropriate in social care. Some small providers may be generating most of their turnover through NHS funded services but the value of this may still be relatively low, certainly lower than £10 million. We would expect the impact of licencing based on percentage of NHS turnover to be that small providers would be un-necessarily licenced.

Question 15: Is there anything you want to add?

We do not have any additional data on the profile of the homecare sector and concur with the speculation set out in the consultation that most social care providers would be exempt from obtaining a licence under the *de minimus* threshold. Recent reports on the homecare sector confirm it is mainly made up of small and medium sized providers, with most having fewer than 100 people using their service. A recent National Audit Office (NAO) report into competition in care markets found that the homecare sector has a much more fragmented structure than the care home market, with few large providers and many small ones. The report noted that the top ten homecare businesses in terms of market share represent only 15% of the market. The impact of this will continue to be that a single provider failure will only represent a tiny proportion of the homecare market. It is also true that service disruption to people using homecare is minimal when a new provider takes over, mainly due to the fact that the person's place of residence, and often staff, are not affected by the transfer.

The recent financial problems faced by Southern Cross have raised the question of whether there is a need for an economic regulator to monitor the financial standing of private care providers, in particular the finances of large providers. The problems of Southern Cross stemmed from unsustainable rent bills, falling bed occupancy rates and a drop in revenue from councils. The reason Southern Cross was so problematic was because it was the largest care home provider in the UK and large numbers of service users had to be placed with alternative providers. Southern Cross was also a complex company with complicated models of finance which involved loan financing and equity financing.

However, the homecare sector is fundamentally different from the residential care sector. Care is carried out in a person's own home and not in a care home. Homecare providers therefore do not own or rent properties, except for their Head Office and, in the case of larger providers, any branches they have. Financial barriers to entry are lower for homecare than for care homes, as capital investment is less, and homecare providers operate on modest profit margins. An analysis of the social care market for older people in London by RSeconsulting found that private sector profit margins in homecare were between 5 and 10%. Accordingly, homecare has an entirely different financial structure to residential care and to require all social care providers providing NHS funded care to be subject to additional regulation in response to the failure of Southern Cross would be disproportionate and un-necessary.

In addition to the licence, the proposal of extending Monitor's remit to cover all social care providers causes UKHCA considerable concern:

□ Monitor's experience is of large organisations. The homecare sector is mainly made up of small and medium sized providers. The draft licence conditions currently being consulted on by Monitor would not be an appropriate or proportionate way to regulate social care.

□ We believe it will be a blunt instrument, especially if it is applied to all providers. There is a risk of providers being disqualified because, although they are "for profit", they are willing to operate at a very low margin because they provide a justifiable return on investment, employ local people and carry out a socially important function.

It is also worth noting that only a small percentage of the total domiciliary care market is purchased by the NHS, Laing and Buisson estimated it to be only 4% in 2009. We believe this is likely to have increased and will continue to do so with NHS funds diverted to social care as well as Trust's facing penalties for emergency re-admission to hospital within 30 days of discharge. However, we also believe that the total value of NHS purchasing will continue to be spread over a large number of providers with numerous contracts or framework agreements. We also believe that NHS Trusts are likely to use more than one homecare provider in each area and in this case, it is unlikely that a supplier failure in a single locality would have a significant impact on service delivery.

In conclusion, we believe that requiring all social care providers providing NHS services above the *de minimus* threshold is disproportionate and un-necessary. The volume of work commissioned from homecare providers fluctuates throughout the financial year and the majority of staff work irregular hours under zero hour contracts. Both of these realities make it impractical for homecare providers to obtain a licence.

The social care sector is already heavily regulated and we believe that imposing additional licence conditions, at the providers cost will act as a disincentive for providers to work with the NHS at the very time when more health and social care integration is called for.

Yes

No

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

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

Question 18: Is there anything you want to add?

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

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?

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

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

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

Question 25: Is there anything you want to add?

As a professional association for domiciliary care providers, we have only submitted responses to the questions that are of interest to our members.

Equalities Issues

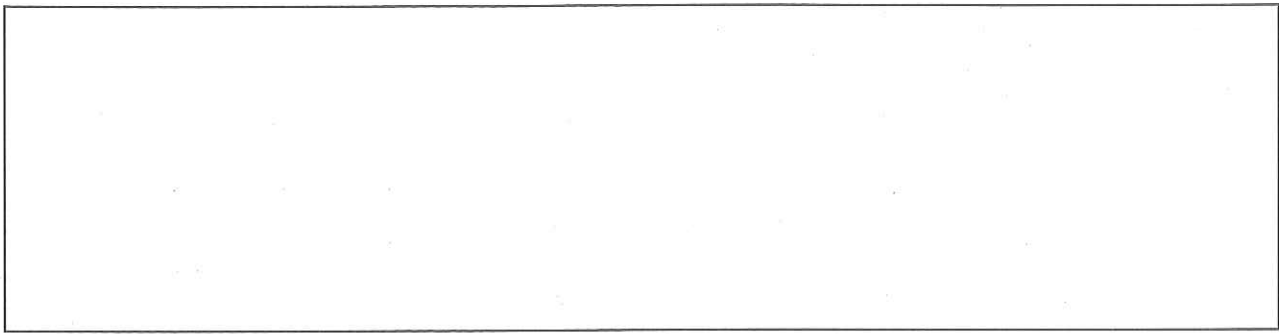
Question 26: Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?

Do you have any evidence?

Yes

No

If so, please provide details.



How to Respond

The deadline for responses to this consultation is **22 October 2012**.

e-mail licence.exemptions@dh.gsi.gov.uk

contact Licensing Providers of NHS services
Department of Health
Room 235
Richmond House
79 Whitehall
London
SW1A 2NS

online An online response form is available on the DH website¹.

Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

¹ <http://www.dh.gov.uk/health/category/publications/consultations/>

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in most circumstances, this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the consultations website at <http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>