

The voice of nursing in the UK

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

Dear Licensing Consultation colleagues at the Department of Health

Re: Protecting and promoting patients' interests – licensing providers of NHS services – Royal College of Nursing Response

This letter provides the RCN's response to the Department of Health's (DH) proposals for the licensing of providers of NHS services.

We have some general comments, as well as more detailed points to raise.

General comments

The RCN has repeatedly highlighted the need for checks and balances in the new NHS. This consultation is part of a suite of consultations (such as consultations from Monitor on the license) which all address key parts of these checks and balances. The RCN is responding to each of these, but we note that it is how all of these will work together in practice that will either provide the necessary assurance or not, as the NHS faces financial challenges and the new system beds down. We look in particular to the National Quality Board, with its membership across several of the key agencies (such as CQC and Monitor) to provide the forum for each of the members of the NQB to discuss and assure themselves as a collective group that each party knows its role and remit and its inter-relationship with others.

We also note that tensions between integration and competition still exist, and that in part, guidance will help, but in practice it is how some of the key agencies, such as Monitor operate, that will determine how successfully such tensions are managed.

Specific comments

The RCN agrees with the DH proposals that NHS Trusts can be exempt from holding a license as long as NHS trusts are required to meet equivalent requirements under the NHS Trust Development Authority. In practice the success or otherwise of this approach should be formally part of future plans of evaluation of licensing as planned by the DH during 2013.

The RCN believes that there is merit in taking a proportionate approach (which is in line with the suggestion that NHS Trusts can be regulated via the NHS Trust Development Agency), however we would also urge Commissioners to be clear about which services should be designated Commissioner Requested Services as this would, based on the DH proposals, bring some providers back into the scope of the licensing regime. Although there is still ongoing work on Commissioner Requested

Services we would hope that Commissioners would seek to set these out early and hence ensure coverage.

However, we do not support the proposed de minimis. This is because:

- the licence is a key check and balance in the system. The RCN is keen to ensure that there is sufficient oversight (of both quality and financial sustainability) in these difficult times
- the license, the process of applying for, and adhering to it, can flex. This is part of the benefit of the modular approach as well as provisions within each module. This can help meet the need for proportionality
- we are concerned that once a decision is taken to keep some providers out of the license, it will prove difficult to later bring them in versus having all providers in, and if shown to be disproportionate and bring no benefit, to remove them later

In addition, the problem with definitions for de minimis is their arbitrary nature, they don't account for the activities and/or local context of care, and it's not obvious why concern about care and/or financial sustainability doesn't necessarily materially change from 49 to 51 employees (which would either bring them in or out of scope of the license).

We also note that it is too early to make final decisions about Social Care and the scope of the licensing regime given ongoing work on this. The RCN however is keen to ensure that sufficient and robust checks and balances on the financial position of providers apply to social care too; but with many local authorities being responsible for funding places that the onus is on those organisations to avoid using either poor quality and/or unsustainable providers, with CQC acting as a further assurance on quality.

Please do not hesitate to contact the RCN should you wish to discuss these issues further.