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

A response from Care UK

Introduction

Care UK provides care across the primary, community and secondary acute health care, mental health and social care sectors. We care for more than a million people every year, through more than 50 NHS primary care services, six elective treatment centres, eight mental health rehabilitation hospitals, 89 care homes and 12 day care centres. We also provide more than 150,000 hours of domiciliary, supported living and rehabilitation care every week. As such we are one of the few independent sector organisations that currently deliver services across the health and social care sector.

Care UK has contributed to the responses made by key sector organisations in both health and social care – the NHS Partners Network, the English Community Care Association and the Independent Mental Health Alliance. This response provides supplementary comment where appropriate, but does not seek to duplicate the responses already made on behalf of the sectors in which we operate.

Specific questions

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?

No.

2. Is there anything you want to add?

Care UK believes that the wider regulatory framework must be constructed in such a way as to ensure a fair playing field for providers. Differing degrees of oversight resulting from exemptions for NHS Trusts, even for a limited period, present a potential risk to this. If NHS Trusts are exempted, it will be important for both Monitor and the NHS Commissioning Board to demonstrate to other providers, including both the independent sector and Foundation Trusts, that the regime is consistent across different regulatory bodies. Joint oversight, as proposed by the NHS Partners Network would help to ensure this.

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.**

Yes.

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 healthcare services of less than £10 million should be exempt from the requirement to hold a licence?**

No.

5. **Alternatively, do you think a de minimis threshold based on a provider fulfilling one of the two conditions would be more appropriate (ie <50 staff (FTEs) or <£10 million turnover)?**

Yes.

If so, which

<£10 million turnover

6. **If not, on what basis should small and micro providers be exempt?**

n/a

7. **Is there anything you want to add?**

No.

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 requirements to hold a licence from Monitor?**

Yes, subject to the comments below.

9. **Is there anything you want to add**

As indicated in response to Question 2, Care UK is concerned that consistent oversight of providers is brought about as part of achieving a fair playing field.

The exemption of providers of primary medical services, in particular GP practices who will have a pivotal commissioning role through CCGs, from licence conditions is a potential inequality.

It is essential that the principles underpinning the proposed licence conditions, including, for example, the requirement to promote integrated care, are applied consistently across the providers and commissioners who will be responsible for meeting patients' needs.

If an exemption is initially given, it will be essential for the forthcoming government review to address the consistency of oversight and its impact on outcomes for patients and commissioners.

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?

Care UK believes this decision needs to be informed by the forthcoming Market Oversight of Social Care consultation.

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?

n/a – see Q10

12. Alternatively, do you think a de minimis threshold based on an adult social provider fulfilling one of the two conditions would be more appropriate (ie <50 staff (FTEs) or <£10 million turnover)?

n/a – see Q10

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 <£10 million
Option 2: For fewer than 50 employees only?
Option 3: For income <£10 million only

Yes to all options.

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

n/a – see Q10

15. Is there anything you wish to add?

The way in which licensing is introduced by Monitor and the way in which regulation is developed across both the health and social care sectors will be critical to

outcomes. As such the decision on whether providers of adult social care, who are already licensed by CQC, should also hold a licence from Monitor should be informed by the forthcoming Market Oversight of Social Care consultation.

The current consultation states that the Department of Health does not currently hold sufficient information and evidence to make an informed judgement on licensing combined social care and NHS service providers.

Detailed decisions in this area should be deferred until the Market Oversight of Social Care consultation has concluded and a joined up set of recommendations produced.

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

Yes.

17. If not what figure do you think would be suitable?

n/a

18. Is there anything you want to add?

No.

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.

20. Do you think the threshold should be 20% as with the objections percentage?

Yes.

21. Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?

Yes.

22. Is there anything you want to add?

No.

23. Do you think the calculation for the purposes of the variable monetary penalty maximum should be based on turnover from provision of NHS funded services?

Turnover should be calculated on the basis of earnings from the specific NHS service area concerned, not from total income derived from the NHS. This calculation better balances the wider continuity of service agenda – by not putting the stability of other service lines at risk – with the need for a meaningful deterrent for failure to meet licence requirements.

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

As Q23

25. Is there anything you would like to add?

No.

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

No.