



Royal College of
General Practitioners

22nd October 2012

**Department of Health Consultation on Protecting and Promoting Patients’
Interests – Licensing Providers of NHS Services**

1. I write with regard to the Department of Health Consultation on Protecting and Promoting Patients’ Interests – Licensing Providers of NHS Services.
2. The Royal College of General Practitioners is the largest membership organisation in the United Kingdom solely for GPs. Founded in 1952, it has over 44,000 members who are committed to improving patient care, developing their own skills and promoting general practice as a discipline. We are an independent professional body with enormous expertise in patient-centred generalist clinical care. Through our General Practice Foundation, established by the RCGP in 2009, we maintain close links with other professionals working in General Practice, such as practice managers, nurses and physician assistants.
3. The College welcomes the opportunity to respond to this consultation. We support the principal proposals, and in particular the exemption of primary care services, as being, on the whole, sensible and proportionate – but with reservations that we have identified below.

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?

Yes, we agree that this is a proportionate approach – with the proviso that the statement at p.12 para.6 must also apply: ‘that all exemptions from the requirement to hold a licence would be conditional on a provider not supplying services that commissioners had identified as ones to which they wanted the continuity of services licence conditions to apply.’ It is possible to envisage providers playing games with the rules – for example where NHS or independent sector organisations form a new joint venture company and argue that they are a separate micro-provider and do not need to be licensed. It is

important in these circumstances that the commissioners should be able to make representations to Monitor for such a micro-provider to be licensed, in the event of its being seen as essential to continuity of provision in the local health system, and particularly if the aggregate size of the providers' operations exceeds the threshold.

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?

We very much agree that primary care services, which are in the main very small providers, should be protected from the need for additional regulation and licensing. For the typical GP practice, a licence from the CQC will be adequate, and we would be very reluctant to see this approach changed when, as anticipated, it is subject to review in the next parliament.

This said, there are two areas of concern which the Department of Health should consider:-

- Increasingly it may be the case that large corporate bodies (for example supermarket chains) are involved in providing primary care services (across medical, dental, pharmaceutical and optical services), and these may individually (unlike a GP practice or federation of practices) have a significant distorting effect on the local or even national health economy. Our intent is not to say here whether this is a good or a bad thing, but there should be consideration as to whether there is a case for such corporate bodies, when providing primary care services and if above a certain size, to be regulated differently.
- It is implied in the consultation document that, though Monitor will not regulate exempted services, such as primary care services, directly, it will place expectations on intermediate bodies, most obviously the NHS Commissioning Board, to apply an equivalent regulatory approach through its commissioning (e.g. para. 43 page 16:- 'we would also expect the Board to act on any recommendations that Monitor might make in relation to alleged failures to meet those obligations, which could include requiring action by GP or dental practices where appropriate.'). This regulation by proxy may be problematic – since bodies directly licensed by Monitor will have the right to make objections to the standard licensing conditions (see pages 19-21), but those indirectly regulated presumably will not. Primary care services will need to pay attention to the parameters of, and any changes to, Monitor's licence conditions, without any direct opportunity to raise concerns. This could begin to seem like regulation without representation.

We would argue that the text at para. 43 and elsewhere should be changed to indicate that the NHS Commissioning Board would be expected to consider any recommendations that Monitor might make (rather than be required to act on them), and that providers of exempted services should have the right to make representations to the Board in these matters.

4. We gratefully acknowledge the contributions of members of the College's Council and Centre for Commissioning in formulating this response.