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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	7
Adult social care.....	8
Objection percentage threshold	9
Share of supply objection percentage	10
How Monitor will enforce licence conditions	11
Equalities Issues	12
How to Respond.....	13

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: Independent Mental Health Services Alliance

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?

IMHSA believes that the licensing regime should be proportionate and avoid any unnecessary overlap with contractual responsibilities with other NHS organisations, such as the NHS Trust Development Authority and Commissioning Board.

If high standards of patient care and sustainable services can be guaranteed by another NHS body, NHS Trusts could be exempt from holding a licence until they achieve Foundation Trust status. However, exempt organisations must have a clearly defined and governed list of services that they can provide to ensure they do not provide services that should be regulated by Monitor at a lower level of quality that may lead to compromises in service delivery.

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? 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? 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?

In previous consultation responses, IMHSA has raised concerns at the impact of licensing conditions on smaller providers, who may struggle to achieve conditions designed for larger independent operators and Foundation Trusts.

As such, we would welcome efforts to minimise the burden on smaller providers, so long as the safety and stability of patient services, which is paramount, can be assured. This could be achieved through existing mechanisms, including scrutiny from the Care Quality Commission, local authorities and new Healthwatch organisations, subject to further cost-benefit analysis from Monitor and the Department of Health.

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 highlighted above, if other NHS bodies can offer assurance that services offered are safe and sustainable for patients, then consideration should be given to exempting them from holding a Monitor license, in order to limit administrative burdens. Many primary care providers, and dental practices, are small businesses who would meet the *de minimis* criteria outlined elsewhere in the consultation.

The proposals allow Monitor to recommend remedial action in an advisory capacity. This seems a sensible arrangement to allow the NHSCB to draw on Monitor's expertise, without requiring another tier of services to be placed fully under the licensing regime.

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?

Question 15: Is there anything you want to add?

The consultation states that the Department of Health does not currently hold enough information in order to make an informed judgement on licensing combined social care and NHS service providers. Indeed, this consultation contains a call for evidence from respondents.

While IMHSA agrees that joint providers should be effectively regulated, we do not believe it is possible to make a judgement at this stage as to the licensing of this diverse sector. The Department of Health and Monitor should reserve judgement on this issue until responses to the forthcoming Market Oversight of Social Care Consultation have been fully considered and a fuller picture of the sector, and the potential impact of licensing on the continuity and quality of care, has been developed.

Objection percentage threshold

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

Yes

No

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

Question 18: Is there anything you want to add?

IMHSA welcomes the opportunity for providers to object to modifications to the standard licensing conditions. We recognise the balance that needs to be struck between recognising legitimate concerns and preventing unnecessary delays in modifying the licence.

Setting the objection percentage threshold at 20%, following established practice in other regulated markets, seems an effective way of striking this balance and triggering a review of any modification by Monitor.

However, allowing larger providers a proportionally large say in when the objection criteria are triggered risks stifling cost effective and innovative licence modifications, which could benefit patients. As such, IMHSA would recommend independent scrutiny of the appeals process, from an established body such as the Competition Commission, to ensure complaints are justifiable and in the best interests of patients.

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?

IMHSA recognise that the market for NHS providers is diverse. However, in some specialist areas, such as secure mental health and eating disorder services, larger providers account for the majority of NHS service provision.

As such, a threshold that recognises the impact that change in the licence may have on a large supplier of NHS-funded care is to be welcomed.

However, care must be taken that this threshold does not have the unintended consequence of shutting out the voice of smaller providers, who may provide valuable care in a specialised service area and may be disproportionately affected by modifications to the licence. As highlighted above, there is also the risk that large providers could use their weight to actively block modifications to the licence that would benefit patients and improve services. Any objection regime should take this possibility into account.

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?

Question 25: Is there anything you want to add?

IMHSA would highlight that the Care Quality Commission already has an existing enforcement mechanism for breaches of their CQC licensing. Providers, and increasingly service users, understand these processes. Rather than developing an entirely new system, it would be prudent for Monitor to build on the existing system.

We agree with the Department of Health that a consideration of the total turnover of providers would have been unfair and disproportionate, given the intention of the licensing regime is to protect the continuity of NHS-funded services.

Therefore, any penalty for breach of conditions should focus on turnover delivered from the NHS income previously mentioned.

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>