



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

Your response to the consultation

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright 2012

First published August 2012

Published to DH website, in electronic PDF format only.

www.dh.gov.uk/publications

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

Your response to the consultation

Contents

Contents.....	5
NHS trusts.....	7
Private and voluntary providers of hospital and community services	7
Family Health Services.....	8
Adult social care	9
Objection percentage threshold	10
Share of supply objection percentage	11
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: SEQOL (Care & Support Partnership CIC)

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?

The licensing framework needs to allow change to happen and it should not inhibit innovation.

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

As the previous response, basing the de minimis using the number of WTEs being less than 50 would still mean a lot of small providers being caught who are just above the 50 WTE level.

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?

Licensing should be considered for adult social care providers for providing non-NHS funded care services as well. The recent Southern Cross experience could have been predicted sooner which would have helped with safeguarding the interests of service users and patients in Southern Cross's care homes.

CQC will cover the quality of care across both health and social care services but the licence will only cover NHS funded healthcare services. There is therefore likely to be a mismatch between the CQC's regulatory framework to the Monitor licensing framework. There should be a greater alignment between the two regulatory organisations. Consideration should also be made as to why there needs to be two separate regulators and whether there is greater synergy for one regulator for the whole health and social care sector.

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?

If the licensing regime applies to all organisations above the £10m threshold, then all the providers who have to obtain a licence should have equal weighting in the modification objective as the same licensing framework will apply to all the providers meeting the de minimis threshold so why should organisations with a larger turnover have a greater say in the modification system.

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?

If the licensing regime applies to all organisations above the £10m threshold, then all the providers who have to obtain a licence should have equal weighting in the modification objective as the same licensing framework will apply to all the providers meeting the de minimis threshold so why should organisations with a larger turnover have a greater say in the modification system.

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?

Agree that Monitor will need to enforce the licensing framework and a monetary penalty would add weight to the enforcement regime. However, a 10% penalty on NHS funded services income is highly excessive and disproportionate. The NHS standard contract includes a penalty regime for Referral to Treatment, which could be adopted for this purpose where a tiered penalty regime would be more appropriate. For example, take an organisation which has a turnover of £10m which is the de minimis for the licensing framework. A straight 10% penalty on this turnover would result in a penalty of £1m which would make the organisation insolvent. A more appropriate approach would to start with a penalty of 0.5% of turnover and then a further 0.5% for each non-compliant stage up to a maximum of 2% of turnover. So for a company with a turnover of £10m, the maximum exposure would be £200,000 at the cap of 2% which is still a significant penalty for a provider just over the de minimis threshold.

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>