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

Your response to the consultation

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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

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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: Central and North West London NHS foundation trust

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 Yes

No

Question 2: Is there anything you want to add?

This is subject to them being required to meet all the requirements of FTs including around the compliance framework with regard to mergers acquisition and investment. The overarching must be that this is time limited so that there is a firm end date to such an exemption

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 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 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 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?

If the organisation is truly a small provider then this is OK but as currently framed it is concerned with the level of NHS activity and might be a very large social care provider undertaking a small amount of NHS work or a large private contractor likewise having a small element of NHS. Either way it is inappropriate for these organisations not to be licensed. It is also the case that an entity might establish a different business for each bid and keep them below the threshold, but the parent is over the threshold. The threshold for this should be 50 staff and £2.5m. In the community this is far more appropriate than £10m and it should refer to whole organisation including parent company or associates.

Question 7: Is there anything you want to add?

When aligning the requirements of different regulators this needs aligning so that a small nursing home is required to register for CQC so should it be required to meet the threshold for NHS funded care.

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 No

Question 9: Is there anything you want to add?

To the extent that they are only providing the PMS work they should but where whether in that guise or other corporate entity they enter into providing services funded by CCG they should be liable to be licensed

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 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?

Please refer to answer at 6 above, there should be one standard only

Question 15: Is there anything you want to add?

There is a very concerning issue about existing NHS funded care that is undertaken by Foundation Trusts moving to local authorities and falling outside the licence requirements and not being included in the main purpose of the organisation. In this Trust that is approximately 23% of income. There needs to be clarity both in the new areas eg sexual health and addictions as well as section 75 agreements

Objection percentage threshold

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

yes Yes

No

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

Question 18: Is there anything you want to add?

It needs not to be 20% of total organisations but of those affected. Some conditions will not impact on all organisations. It needs to be clear would Health Education England Income count in this case?

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 Yes

No

Question 20: Do you think the threshold itself should be 20% as with the objections percentage?

yes 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 Yes

No

Question 22: Is there anything you want to add?

There has to be recognition of the extent of social care provided as the Mental health services and some community services operate across those boundaries and decisions on the licence will impact on the joint health and social care teams. There also needs to be clarity in all areas where tariff is not in place how the geographic factor is built in

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 No

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

Turnover should recognise the whole organisational structure not just the NHS element, recognising the body behind the supply not just the element that relates to NHS funded care.

Question 25: Is there anything you want to add?

There is the issue about the organisations that structure their delivery to minimise their liability whilst having the corporate resources to meet a larger fine

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 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>