

BOARD OF GOVERNORS

MONITOR – CONSULTATION ON THE INTERPRETATION AND APPLICATION OF THE PRIVATE PATIENT INCOME CAP – JUNE 2008

Report of the Trust Secretary

1. Purpose

This paper is a briefing note on the Monitor Consultation paper on the interpretation and application of the private patient income cap.

2. Background

One of the key controls in the legislation on NHS Foundation Trusts is the cap that an NHS FT is allowed to earn from private patient charges. The limit is set so that the proportion of income earned from private charges does not exceed the proportion of income accounted for by patient charges in the base year (2002/03). This safeguard exists to ensure FTs focus on their principal purpose of providing goods and services for the purposes of the health service in England. Under current arrangements, the private patient cap ranges from 0% in some Trusts to over 30% at the Royal Marsden. Our cap is set at 2%.

3. The role of Monitor

The 2006 Act requires Monitor, as Regulator, to develop detailed rules based on the interpretation of the legislation.

To date, Monitor has interpreted “private charges” as meaning “charges imposed in respect of goods and services provided by the NHS foundation trust to patients other than patients being provided with goods and services for the purposes of the health service”. This excludes, among other things, the following scenarios:

- Charges to NHS patients for car parking, telephones, private rooms etc.
- Income from joint ventures, associates over which the NHS FT has no direct control.
- Provision of goods and services to other bodies which provide healthcare to private patients.

Monitor considers that there are two clear tests for inclusion of income within the PPI cap:

1. The PPI cap only relates to income arising from charges for goods and services provided to **patients**.
2. Charges relating to provision of goods and services to persons who are **patients for the purpose of the health service** are not included in the PPI cap (eg. car parking, telephones, private rooms).

4. Response to the Unison challenge

Unison issued a challenge in December 2007 on their existing interpretation on the basis that “income...derived from private charges” should include income under exclusions previously interpreted by Monitor.

This consultation paper provides three interpretations of the legislation and asks for consultees (which will include Unison) to confirm which interpretation is preferred or to offer an alternative interpretation.

Option 1 is to stay within the current interpretation. Option 2 makes income earned from Associates and Joint Ventures count towards the PPI cap. Option 3 includes investments and income received from the provision of goods and services to third parties and income from charitable donations that are funded by the provision of private healthcare. If this option were to be adopted, the baseline for the PPI cap would need to be recalculated to include this wider range of services.

5. Responding to the consultation

The response deadline is 9 September 2008.

Monitor sets out 6 questions to which it requires a response, as detailed in page 32 of the Consultation paper. Questions 1 to 4 are fairly straightforward. Question 5 requires some analysis of the impact of the different interpretations on the Trust, which will need to include fact as well as opinion. Question 6 is an opportunity to provide additional comment.

The Trust's stand on the issue will depend on its response to Question 5 and the cumulative response to Question 5 from FTs will enable Monitor to undertake an impact analysis of the different interpretations which it can use to inform its future stand on the PPI cap.

6. Proposal

Members of the Board of Governors are invited to respond to the Consultation paper, which will also be considered by the Board of Directors. The Trust Secretary will coordinate the Trust's response, and would welcome Governors' comments by the end of August, so that a final response can be prepared, which will be agreed with the Chairman. The final response will be circulated to the Board in September.