



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

#### REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

### CHAPTER 1

#### MONITOR

#### **61 Monitor**

- (1) The body corporate known as the Independent Regulator of NHS Foundation Trusts—
  - (a) is to continue to exist, and
  - (b) is to be known as Monitor.
- (2) Schedule 8 (which makes further provision about Monitor) has effect.

#### **62 General duties**

- (1) The main duty of Monitor in exercising its functions is to protect and promote the interests of people who use health care services by promoting provision of health care services which—
  - (a) is economic, efficient and effective, and
  - (b) maintains or improves the quality of the services.
- (2) In carrying out its main duty, Monitor must have regard to the likely future demand for health care services.
- (3) Monitor must exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services.

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- (4) Monitor must exercise its functions with a view to enabling health care services provided for the purposes of the NHS to be provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision) or the efficiency of their provision,
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (5) Monitor must exercise its functions with a view to enabling the provision of health care services provided for the purposes of the NHS to be integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of those health care services (including the outcomes that are achieved from their provision) or the efficiency of their provision,
  - (b) reduce inequalities between persons with respect to their ability to access those health care services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those health care services.
- (6) Monitor must, in carrying out its duties under subsections (4) and (5), have regard to the way in which—
  - (a) the National Health Service Commissioning Board carries out its duties under section 13N of the National Health Service Act 2006, and
  - (b) clinical commissioning groups carry out their duties under section 14Z1 of that Act.
- (7) Monitor must secure that people who use health care services, and other members of the public, are involved to an appropriate degree in decisions that Monitor makes about the exercise of its functions (other than decisions it makes about the exercise of its functions in a particular case).
- (8) Monitor must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—
  - (a) the prevention, diagnosis or treatment of illness (within the meaning of the National Health Service Act 2006), and
  - (b) the protection or improvement of public health.
- (9) Monitor must exercise its functions in a manner consistent with the performance by the Secretary of State of the duty under section 1(1) of the National Health Service Act 2006 (promotion of comprehensive health service).
- (10) Monitor must not exercise its functions for the purpose of causing a variation in the proportion of health care services provided for the purposes of the NHS that is provided by persons of a particular description if that description is by reference to—
  - (a) whether the persons in question are in the public or (as the case may be) private sector, or
  - (b) some other aspect of their status.
- (11) In this section—

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“health-related services” means services that may have an effect on people’s health but are not health care services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

### **63 Secretary of State’s guidance on duty under section 62(9)**

- (1) The Secretary of State may, for the purpose of assisting Monitor to comply with its duty under section 62(9), publish guidance on—
  - (a) the objectives specified in the mandate published under section 13A of the National Health Service Act 2006 which the Secretary of State considers to be relevant to Monitor’s exercise of its functions, and
  - (b) the Secretary of State’s reasons for considering those objectives to be relevant to Monitor’s exercise of its functions.
- (2) In exercising its functions, Monitor must have regard to guidance under subsection (1).
- (3) Where the Secretary of State publishes guidance under subsection (1), the Secretary of State must lay a copy of the published guidance before Parliament.
- (4) The Secretary of State—
  - (a) may revise guidance under subsection (1), and
  - (b) if the Secretary of State does so, must publish the guidance as revised and lay it before Parliament.

### **64 General duties: supplementary**

- (1) This section applies for the purposes of this Part.
- (2) “Anti-competitive behaviour” means behaviour which would (or would be likely to) prevent, restrict or distort competition and a reference to preventing anti-competitive behaviour includes a reference to eliminating or reducing the effects (or potential effects) of the behaviour.
- (3) “Health care” means all forms of health care provided for individuals, whether relating to physical or mental health, with a reference in this Part to health care services being read accordingly; and for the purposes of this Part it does not matter if a health care service is also an adult social care service (as to which, see section 65).
- (4) “The NHS” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities.
- (5) A reference to the provision of health care services for the purposes of the NHS is a reference to their provision for those purposes in accordance with that Act.
- (6) Nothing in section 62 requires Monitor to do anything in relation to the supply to persons who provide health care services of goods that are to be provided as part of those services.

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## **65 Power to give Monitor functions relating to adult social care services**

- (1) Regulations may provide for specified functions of Monitor also to be exercisable in relation to adult social care services.
- (2) Any regulations under this section must apply in relation to England only.
- (3) The regulations may amend this Part.
- (4) “Adult social care”—
  - (a) includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but
  - (b) does not include anything provided by an establishment or agency for which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of the Care Standards Act 2000.

## **66 Matters to have regard to in exercise of functions**

- (1) In exercising its functions, Monitor must have regard, in particular, to the need to maintain the safety of people who use health care services.
- (2) Monitor must, in exercising its functions, also have regard to the following matters in so far as they are consistent with the matter referred to in subsection (1)—
  - (a) the desirability of securing continuous improvement in the quality of health care services provided for the purposes of the NHS and in the efficiency of their provision,
  - (b) the need for commissioners of health care services for the purposes of the NHS to ensure that the provision of access to the services for those purposes operates fairly,
  - (c) the need for commissioners of health care services for the purposes of the NHS to ensure that people who require health care services for those purposes are provided with access to them,
  - (d) the need for commissioners of health care services for the purposes of the NHS to make the best use of resources when doing so,
  - (e) the desirability of persons who provide health care services for the purposes of the NHS co-operating with each other in order to improve the quality of health care services provided for those purposes,
  - (f) the need to promote research into matters relevant to the NHS by persons who provide health care services for the purposes of the NHS,
  - (g) the need for high standards in the education and training of health care professionals who provide health care services for the purposes of the NHS, and
  - (h) where the Secretary of State publishes a document for the purposes of section 13E of the National Health Service Act 2006 (improvement of quality of services), any guidance published by the Secretary of State on the parts of that document which the Secretary of State considers to be particularly relevant to Monitor’s exercise of its functions.
- (3) Where the Secretary of State publishes guidance referred to in subsection (2)(h), the Secretary of State must lay a copy of the published guidance before Parliament.

- (4) The Secretary of State—
  - (a) may revise the guidance, and
  - (b) if the Secretary of State does so, must publish the guidance as revised and lay it before Parliament.

## **67 Conflicts between functions**

- (1) In a case where Monitor considers that any of its general duties conflict with each other, it must secure that the conflict is resolved in the manner it considers best.
- (2) Monitor must act so as to secure that there is not, and could not reasonably be regarded as being, a conflict between—
  - (a) its exercise of any of its functions under Chapter 5 of Part 2 of the National Health Service Act 2006 (regulation of NHS foundation trusts) or under sections 111 and 113 of this Act (imposition of licence conditions on NHS foundation trusts during transitional period) or under paragraph 17 of Schedule 8 to this Act (accounts of NHS foundation trusts), and
  - (b) its exercise of any of its other functions.
- (3) Monitor must ignore the functions it has under sections 111 and 113 when exercising—
  - (a) its functions under Chapter 2 (competition);
  - (b) its functions under Chapter 4 (pricing).
- (4) If Monitor secures the resolution of a conflict between its general duties in a case that comes within subsection (5), or that Monitor considers is otherwise of unusual importance, it must publish a statement setting out—
  - (a) the nature of the conflict,
  - (b) the manner in which it decided to resolve it, and
  - (c) its reasons for deciding to resolve it in that manner.
- (5) A case comes within this subsection if it involves—
  - (a) a matter likely to have a significant impact on persons who provide health care services for the purposes of the NHS;
  - (b) a matter likely to have a significant impact on people who use health care services provided for the purposes of the NHS;
  - (c) a matter likely to have a significant impact on the general public in England (or in a particular part of England);
  - (d) a major change in the activities Monitor carries on;
  - (e) a major change in the standard conditions of licences under Chapter 3 (see section 94).
- (6) Where Monitor is required to publish a statement under subsection (4), it must do so as soon as reasonably practicable after making its decision.
- (7) The duty under subsection (4) does not apply in so far as Monitor is subject to an obligation not to publish a matter that needs to be included in the statement.
- (8) Every annual report of Monitor must include—
  - (a) a statement of the steps it has taken in the financial year to which the report relates to comply with the duty under subsection (2), and

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- (b) a summary of the manner in which, in that financial year, Monitor has secured the resolution of conflicts between its general duties arising in cases of the kind referred to in subsection (5).
- (9) Monitor’s general duties for the purposes of this section are its duties under sections 62 and 66.

## **68 Duty to review regulatory burdens**

- (1) Monitor must keep the exercise of its functions under review and secure that in exercising its functions it does not—
- (a) impose burdens which it considers to be unnecessary, or
  - (b) maintain burdens which it considers to have become unnecessary.
- (2) In keeping the exercise of its functions under review, Monitor must have regard to such principles as appear to it to represent best regulatory practice.
- (3) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impractical or disproportionate.
- (4) Monitor must from time to time publish a statement setting out—
- (a) what it proposes to do pursuant to subsection (1) in the period to which the statement relates,
  - (b) what it has done pursuant to that subsection since publishing the previous statement, and
  - (c) where a burden relating to the exercise of the function which has become unnecessary is maintained pursuant to subsection (3), the reasons why removal of the burden would, having regard to all the circumstances, be impractical or disproportionate.
- (5) The first statement—
- (a) must be published as soon as practicable after the commencement of this section, and
  - (b) must relate to the period of 12 months beginning with the date of publication.
- (6) A subsequent statement—
- (a) must be published during the period to which the previous statement related or as soon as reasonably practicable after that period, and
  - (b) must relate to the period of 12 months beginning with the end of the previous period.
- (7) Monitor must, in exercising its functions, have regard to the statement that is in force at the time in question.
- (8) Monitor may revise a statement before or during the period to which it relates; and, if it does so, it must publish the revision as soon as reasonably practicable.

## **69 Duty to carry out impact assessments**

- (1) This section applies where Monitor is proposing to do something that it considers would be likely—

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- (a) to have a significant impact on persons who provide health care services for the purposes of the NHS;
  - (b) to have a significant impact on people who use health care services provided for the purposes of the NHS;
  - (c) to have a significant impact on the general public in England (or in a particular part of England);
  - (d) to involve a major change in the activities Monitor carries on;
  - (e) to involve a major change in the standard conditions of licences under Chapter 3 (see section 94).
- (2) But this section does not apply to—
  - (a) the carrying out by Monitor of an analysis of how markets involving the provision of health care services are operating, or
  - (b) the exercise of functions under or by virtue of Chapter 2.
- (3) Nor does this section apply if it appears to Monitor that the urgency of the matter makes compliance with this section impracticable or inappropriate.
- (4) Before implementing the proposal, Monitor must either—
  - (a) carry out and publish an assessment of the likely impact of implementation, or
  - (b) publish a statement setting out its reasons for concluding that it does not need to carry out an assessment under paragraph (a).
- (5) The assessment must set out Monitor’s explanation of how the discharge of its general duties (within the meaning of section 67)—
  - (a) would be secured by implementation of the proposal, but
  - (b) would not be secured by the exercise of functions that Monitor has by virtue of section 72 or 73.
- (6) The assessment may take such form, and relate to such matters, as Monitor may determine; and in determining the matters to which the assessment is to relate, Monitor must have regard to such general guidance on carrying out impact assessments as it considers appropriate.
- (7) The assessment must specify the consultation period within which representations with respect to the proposal may be made to Monitor; and for that purpose the consultation period must not be less than 28 days beginning with the day after that on which the assessment is published under subsection (4).
- (8) Monitor may not implement the proposal unless the consultation period has ended.
- (9) Where Monitor is required (apart from this section) to consult about, or afford a person an opportunity to make representations about, a proposal that comes within subsection (1), the requirements of this section—
  - (a) are in addition to the other requirement, but
  - (b) may be met contemporaneously with it.
- (10) Every annual report of Monitor must set out—
  - (a) a list of the assessments carried out under this section during the financial year to which the report relates, and
  - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out during that year or a previous financial year relate.

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## **70 Information**

- (1) Information obtained by, or documents, records or other items produced to, Monitor in connection with any of its functions may be used by Monitor in connection with any of its other functions.
- (2) For the purposes of exercising a function under this Part, the Secretary of State may request Monitor to provide the Secretary of State with such information as the Secretary of State may specify.
- (3) Monitor must comply with a request under subsection (2).

## **71 Failure to perform functions**

- (1) This section applies if the Secretary of State considers that Monitor is failing, or has failed, to perform any function of Monitor's, other than a function it has by virtue of section 72 or 73, and that the failure is significant.
- (2) The Secretary of State may direct Monitor to perform such of those functions, and in such manner and within such period, as the direction specifies.
- (3) But the Secretary of State may not give a direction under subsection (2) in relation to the performance of functions in a particular case.
- (4) If Monitor fails to comply with a direction under subsection (2), the Secretary of State may—
  - (a) perform the functions to which the direction relates, or
  - (b) make arrangements for some other person to perform them on the Secretary of State's behalf.
- (5) Where the Secretary of State exercises a power under subsection (2) or (4), the Secretary of State must publish the reasons for doing so.
- (6) For the purposes of this section—
  - (a) a failure to perform a function includes a failure to perform it properly, and
  - (b) a failure to perform a function properly includes a failure to perform it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred; and “the health service” has the same meaning as in the National Health Service Act 2006.