14th December 2012

Department of Health consultation on Performers List Regulations 2013

1. I write with regard to the Department of Health consultation on Performers List Regulations 2013.

2. The Royal College of General Practitioners is the largest membership organisation in the United Kingdom solely for GPs. Founded in 1952, it has over 46,000 members who are committed to improving patient care, developing their own skills and promoting general practice as a discipline. We are an independent professional body with enormous expertise in patient-centred generalist clinical care. Through our General Practice Foundation, established by the RCGP in 2009, we maintain close links with other professionals working in General Practice, such as practice managers, nurses and physician assistants.

3. The College welcomes the opportunity to respond to this consultation.

Minimum service to remain on performers list
Q2.1a: Do you think that the power to remove a performer where they have not provided a minimum service should replace the existing power to remove a performer where they have not provided services within 12 months?

There is not currently a consensus on minimum service levels. The RCGP’s recommendation of 200 sessions over 5 years is a reasonable guideline and would have the advantage of bringing the performers list in line with revalidation.

Any move to further define minimum service on a per week basis will be difficult, as running the risk of excluding many groups (such as new parents and those with medium to long-term illness) and activities useful to the profession, health service and patients (such as academic general practice and volunteer work abroad).

Further, the alternative proposal – to take the current 12 month rule and extend it into the revised system – will also be damaging for these groups. We would argue that a GP who is out of UK practice for up to two years, but can demonstrate that they have retained their skills and kept up-to-date sufficiently to achieve revalidation, should also remain on the performers list. Unless this is clarified, there is a risk that this will be a major deterrent to volunteer and academic practice, and many GPs will fall into the gap of being able to revalidate but not being able to return to the performers list.

Q2.1b: If you agree that this power should be provided, do you think that:

a) it should apply the same to all groups of performers (medical, dental and ophthalmic); or
b) different measures should be in place for each group of performers?

As discussed above, it is difficult to determine minimum service levels for general practice, and therefore not in our view at present appropriate to extend the same criteria to the other groups.

Q2.2: Please explain what you think are appropriate minimum level(s) of primary care services.

As above – 200 sessions over 5 years is a reasonable gauge, along with the two year out of service limit. So far as possible the levels established for the performers list should be congruent with those for revalidation.

Q2.3: What groups do you consider should be subject to an exemption and what other measures do you think should be taken to ensure that this proposal does not impact unequally on specific groups?
Any minimum service levels set *must* be about competence. If a practitioner is not deemed to be competent to be on a performers list because of lack of service, then it is hard to see why an exemption should apply because of some circumstances and not others. This is why we have argued for service levels that match those determined for revalidation, so as not unreasonably to exclude those taking maternity or paternity leave, or undertaking academic or volunteer roles.

**National Performers Lists**

Q2.4: We consider that it is appropriate to set up national performers lists for England. Do you agree?

Yes, we do agree. Some have suggested that, given the number of GPs working across the borders between England and the Devolved Countries, and those transferring between them, it might at some point be useful to establish a UK-Wide performers list.

**Establishment of the Disclosure and Barring Service**

Q2.5: Do you agree that the requirement to undertake a criminal records check in every case should be removed from the Performers Lists Regulations? This would mean that the NHS CB could undertake these checks but would not be under a blanket duty to do so in every case.

This was a divisive question with those with whom we consulted. Some noted the bureaucratic nature of CRB checks and welcomed the proposal – provided there was to be clear guidance on when it would be appropriate not to seek a check. Others felt that, in the interests of patient safety and confidence in the system, it was appropriate to retain the compulsory checks.

**Suspension**

Q2.6: Do you agree with our proposal to implement the recommendation to enable immediate suspension where it appears that a performer's conduct creates a serious risk to the public? If not, please explain why not.

Yes, this is clearly in the interest of patient safety. However, a clear definition of ‘serious risk’ is needed to prevent abuse, and it is essential that when any performer is suspended under these circumstances there is a hearing within 48 hours.
Q2.7: Do you agree that guidance is the best way of setting out the range of support that the NHS CB should consider providing to suspended performers?

Yes, guidance is appropriate, if it does not limit the range or manner of this support, so long as the actual duty to provide support remains clear.

Q2.8: Do you agree with our proposal to implement the recommendation to have additional options at suspension hearings?

Yes, we agree.

Q2.9: Do you agree that the current arrangements for reviewing suspensions (modified to provide for reviews to be held by the NHS CB) are an adequate and cost effective measure?

Yes, but with the reservation that we would wish to see the suspended performer have the right to appeal, as described, should the investigation be protracted. This would be fair, and still cost effective as it is to be hoped it would only rarely be applicable.

Q2.10 Do you agree with the proposal not to take forward the recommendation of the Performers List Review to widen the powers to suspend performers?

Yes, we agree.

Indemnity/Insurance

Q2.11: Do you agree that the requirement to demonstrate adequate indemnity or insurance arrangements should be incorporated into the draft regulations?

Yes, we agree.

Changes arising from the performers lists review - questions

Q2.12: The draft regulations incorporate changes recommended by the Performers List Review (see Annex C). Do you consider that these recommendations have been adequately incorporated into the draft regulations?

Yes, we do.

Q2.13: If not, please say which recommendations you think have not been adequately addressed? Please explain why not.
Q3.1: Do you agree that performers should be required to submit their last appraisal, if they have one, when they apply to join the performers list?

No, we do not agree with this proposal. It should only be necessary to provide evidence that the performer has had a satisfactory appraisal, and should not be required to disclose the content of that appraisal unless there has been a performance concern. The primary role of appraisal is as a means of formative assessment – the more that appraisals are shared with external parties, as proposed here, the less useful it may be, for some doctors at least, in this capacity.

Inquests

Q3.2: Do you think regulation 9(2)(h), which requires a performer to report when they are a ‘properly interested person’ at an inquest (subject to the exceptions shown there), achieves the recommendation?

Yes, we do.

General

Q3.3: Do you have any other comments on the draft regulations or the policy changes described in this consultation document?

It will be important to give greater consideration to links with the devolved countries, for all those doctors who work across the borders or move between the countries.

Equality

Q4.1: Do you consider that the proposed regulations will impact differently for different groups in relation to any of the protected characteristics under the Equality Act 2010?

As set out, the minimum service proposals (and indeed the 12 month provision) would have different impacts for a number of groups – for example older doctors who may be more likely to work fewer sessions, or those undertaking extended leave to care for children or other family members – more often, but not exclusively, women.

Question 4.2: If you have answered ‘yes’ to question 4.1, are there any measures you would suggest that would address this?
As we have already suggested the proposal that GPs can be removed from the performers list if they have not provided service for 12 months should be amended to match the revalidation requirements – this would reduce any unfairness here.

4. We gratefully acknowledge the contributions of the College’s Council and experts in medical education in formulating this response

Yours sincerely

Professor Amanda Howe MA Med MD FRCGP
Honorary Secretary of Council