

Doctors to Fight Privatisation Law

Doctors have committed themselves to campaign for the repeal of the notorious Section 75 regulations that impose privatisation on the NHS under the Health and Social Care Act. The decision came at the Annual Representatives Meeting of the doctors' British Medical Association on June 24.

Another vote at the meeting proposed a boycott of the local Clinical Commissioning Groups established under the legislation. The boycott would be triggered if it was considered that the commissioning groups were being prevented from taking decisions in the best interests of patients.

The BMA has previously been restrained in its criticism of the government's health policies. Its vote came despite the NHS's competition enforcer, Monitor, soft-peddalling in its recently published draft guidance document on commissioning. The guidance outlines a number of scenarios in which Clinical Commissioning Groups and other commissioners could avoid inviting the private sector to bid for contracts to run medical services in hospitals and clinics.

Monitor's guidance builds on two get-out clauses emphasised by the Government when it was persuading the House of Lords to pass the Section 75 regulations: that no bidding would be required if there was only one capable provider of a service or if moving the service to a different contractor would damage the integration of NHS work.

Monitor's draft guidance says open bidding may not be compulsory when a contract is being issued if:

- a detailed review finds that the existing contractor is achieving high standards
- or a careful evaluation eliminates other potential contractors
- or offering a service to new bidders would undermine a linked service
- or the competitive bidding process would be disproportionately expensive for small contracts.

The draft guidance might not be as flexible as it first seems, however. A series of case studies published with the guidance suggest that commissioners' explanations for not using competitive tendering would have to be bomb-proof to avoid any risk of challenge.

In separate comments, Monitor has insisted that commissioners must "not simply roll-over existing contracts without first asking how good the service is."

Until test cases clarify what the guidance means, commissioners may feel it is safest for them to go to competitive tender if private companies are hovering.

Private sector health companies think they know what the guidance means: that they will not be getting everything they want, for now. David Worskett, chief executive of the NHS Partners Network, told Pulse magazine that it was "regrettable that the guidance did not go further – but we recognise the political reality."

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If Worskett's view is right, it is a tribute to the strength of the campaign against the Health and Social Care Act so far, and the BMA's decision to join it.