



**RCN Policy and International Department
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New Monitor in England

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Introduction

This briefing note sets out how the role of Monitor is changing under the Health and Social Care Act 2012. Although much is still unknown about how Monitor will implement the changes set out in law, this briefing provides an overview of what we know and raises some issues for nurses.

Original Monitor

Monitor was originally set up as the regulator for Foundation Trusts. Their role was to:¹

- Determine if applicant Trusts were fit to become FT's
- Ensure FT's comply with the conditions of their authorization as an FT
- Supporting FT development

Foundation Trusts were given more freedoms than NHS Trusts and given this, there was a new regulator set up to provide a framework to minimize the risk of FT's failing. That framework was primarily driven by finance, but over time has taken into account quality. Monitor also works with the Care Quality Commission (CQC) as CQC has the lead for the quality regulatory framework.

Monitor will continue with their role of assessing FT applicants, and managing the regulatory regime for FTs in the move towards a license (discussed below).

New Monitor

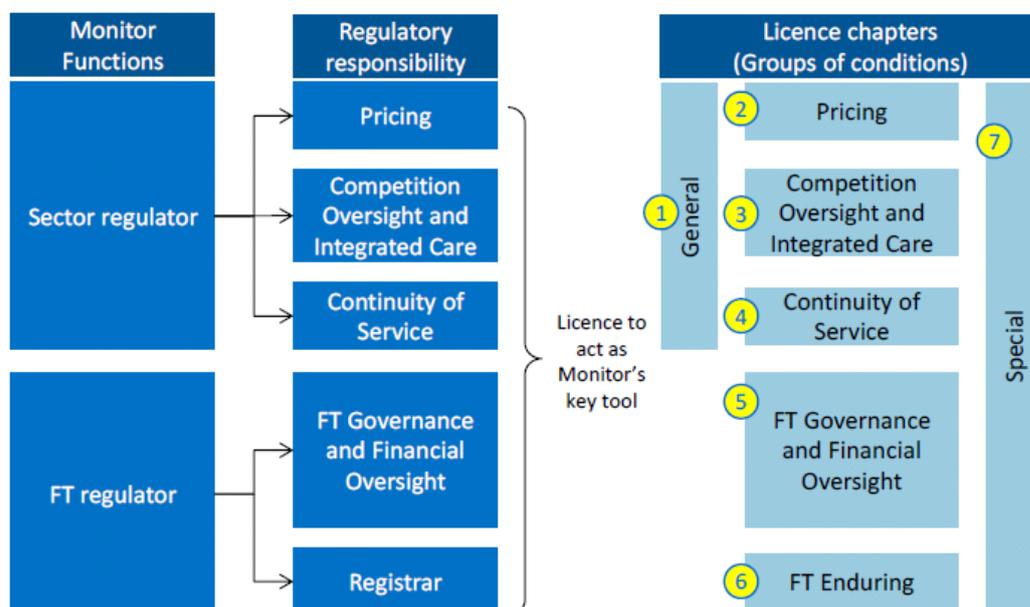
The Health and Social Care Act 2012 provides a new set of responsibilities for Monitor. The Act gives a remit to Monitor to be the sector regulator for health, with a primary duty to protect and promote the interests of people who use health care services by promoting provision of healthcare services which is: (a) economic, efficient and effective; and (b) maintains or improves the quality of services.

Monitor will have responsibility for:

- Setting prices/tariff (previously the responsibility of the Department of Health (DH))
- Enabling integrated care and prevent anti-competitive behaviour (building on the work of the Cooperation and Competition Panel which will be part of Monitor in the future)
- Support continuity of services

¹ <http://www.monitor-nhsft.gov.uk/about-monitor/what-we-do-0> [Accessed 27 Apr 2012]

Monitor has set out how their functions, responsibilities and license link up in the following diagram:



Source: http://www.monitor-nhsft.gov.uk/sites/default/files/Developing%20the%20new%20NHS%20provider%20licence%20a%20framework%20document_final151111.pdf

Monitor will deliver their new responsibilities primarily via their 'licence'. The licence will set out what is expected from providers. Full consultation on the licence will be conducted by Monitor during summer 2012, but Monitor has been engaging early and has set out early thoughts on the licence.

The licence will (subject to formal consultation) include:

1. General license conditions – includes requirement for providers to share information with Monitor
2. Pricing license conditions – including how to calculate tariff
3. Continuity of services license conditions – to ensure that those services designated by Commissioners as essential (termed protected services) can continue to be delivered, potentially via a special fund paid for by providers
4. Foundation Trust Governance and Financial Oversight license conditions – continuing Monitor's work as they already consider governance and finance as part of their compliance framework for existing FTs
5. Foundation Trust Enduring license conditions – particularly a registry of FTs
6. Competition Oversight and Integrated Care license conditions – to set out how Monitor will come to a view on whether there is anticompetitive behaviour. This will draw on the existing principles and rules for co-operation and competition (PRCC).

The detail of these is still being worked through. Some are potentially complex because of the underpinning policies developed by others. For example, the Department of Health has been working up the broad approach to continuity of services, setting out a process where commissioners will not need to designate these in advance, but rather after there are concerns about sustainability. This means that Monitor has to respond with a process that is flexible.

Joint working

Monitor will not be able to conduct all its activities in isolation. Monitor will have to work with:

- CQC, for both CQC and Monitor to develop and deliver a co-licence for a provider to be able to deliver NHS funded services
- The National Commission Board where they will need to work together on pricing and contracts

The Co-operation and Competition Panel (CCP) will also become part of Monitor to help on competition issues.

Details of how this will work are also work in progress. The RCN has previously been concerned about a focus on finance over quality, and it remains an issue that requires close work between Monitor and CQC. We also want to ensure that there is clarity over respective roles.

Managing the transition

Monitor will be formally taking up their new responsibilities in January 2013. All providers of NHS services will need a licence unless exempt. The DH is currently considering who might be exempt so it's unclear which providers will be exempt.

What will it mean for nurses?

The way in which Monitor implements their new responsibilities may also affect nurses:

- The **prices that are set need to include sufficient resourcing for quality nursing** input. The RCN has already raised with Monitor this issue and the RCN hopes to build on our early engagement with Monitor over time. That work is supported by members who can tell us their experiences in patient level costing
- **Monitor could approve or block service changes.** The view of Monitor to service changes, whether a merger, or a different form of collaboration, will affect what can be done in practice. If Monitor is concerned about a negative impact on competition it could block change, conversely Monitor could be really supportive where Monitor is convinced that there is a sound, patient focused, case for change. This could affect those nurses who currently work for providers and how their roles may change as services are changed in the future.
- **Monitor can enable integration.** The view of Monitor to proposals to deliver integrated care. Nurses play a crucial role in the patient pathway and can support patients as they move between health and social care. Monitor can be an enabler to such changes (whilst also balancing this against competition issues)

Some are concerned about the new responsibilities for Monitor and how well Monitor will manage some of the tensions. For example:

- How **Monitor will manage both setting prices, and a failure regime, including a fund to allow continuation of essential services.** The tension comes from the fact that the prices themselves are an important factor in the overall sustainability of an organisation (albeit not the only factor, given the absence of a price for all activity, and the success or otherwise of the provider in 'attracting' patients given patient choice). Monitor will also need to be mindful of the risk of cherry picking, as will others such as the National Commissioning Board.
- How **Monitor will be able to support integration**, which could mean larger providers as organisations merge, **whilst also protecting against anti-competitive behaviour** (which may be more likely to occur the fewer organisations are delivering care). Of course, integrated care may not mean mergers, but mergers have been an option pursued in the NHS in the past.

The RCN has also previously raised concerns about price competition, and we are pleased to note that this not formally part of Monitor's responsibilities and has been ruled out by Ministers. We also have previously raised concerns about a rush to FT status, and pleased to note that there is no longer a fixed timetable. We had been concerned about a lowering of the bar for FT status, particularly given previous sad experience in FTs such as Mid Staffordshire.

Nurses already have various types of engagement and involvement with Monitor. For example, the compliance framework for FT's includes infection control indicators, which forms the responsibilities of several nurses involved in infection control both from the commissioning and provider perspective. This is likely to continue.

More broadly, Monitor can help play an early role and minimize the scope for legal challenge relating to EU competition law. Much rests of how Monitor goes about their new responsibilities in practice.

There are also long standing concerns about FTs, for example RCN members have been concerned about a lack of transparency in some FTs. These issues may well remain in the future.

Tell us what you think

This briefing is intended to provide a brief review of the changes planned for Monitor and the Policy and International Department would like to receive comments/feedback from as many members as possible on this important issue - policycontacts@rcn.org.uk.

Further resources

RCN response to Monitor's tranche 2 consultation on the license
http://www.rcn.org.uk/__data/assets/pdf_file/0005/436748/13.12_RCN_Response_Monitor_tranche_2_engagement_final.pdf

RCN response to Monitor's Developing the Provider License: A Framework Document
http://www.rcn.org.uk/support/consultations/responses/proposed_amendments_to_the_nhs_foundation_trust_annual_reporting_manual_for_201112

NHS Confederation, <http://www.nhsconfed.org/priorities/NHS-reforms/Regulation/Pages/Monitor's%20role.aspx>