

10 March 2010

Richmond House
79 Whitehall
London
SW1A 2NL

The Earl Howe
House of Lords
London
SW1A 0PW

Tel: 020 7210 3000

Dear *Meddie*

Following the debate on the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, I thought it might be helpful if I were to write to you on the points raised that I was not able to address in my concluding remarks.

Hyperbaric therapy

Firstly, I would like to address the question raised about whether hyperbaric therapy is a regulated activity or not. Where hyperbaric therapy is carried out for medical or treatment purposes, it is a regulated activity.

Hyperbaric therapy is excluded from the registration system where the primary use of the decompression chamber is under the Diving at Work Regulations 1997, the Work in Compressed Air Regulations 1996 or otherwise in work related situations. This is because, in these situations, there is oversight by the Health and Safety Executive and the decompression chamber is not being used primarily for medical or treatment purposes.

Where a medical practitioner provides services under the National Health Services Act 2006 (i.e. as an NHS practitioner) but also provides services privately in a surgery or consulting room other than under that Act, they are not required to register separately in respect of their private practice (paragraph 4 of Schedule 2). However, this exemption from registration does not apply where hyperbaric therapy is being carried out in that surgery or consulting room by or under the supervision or direction of a medical practitioner (see paragraph 5 (h) of Schedule 2).

Therefore, where hyperbaric therapy is carried out for medical or treatment purposes, it is a regulated activity.

Defence medical services and dental services and medical services provided by employers and government departments

Secondly I would like to clarify that defence medical and dental services and medical services provided by employers and government departments are not required to register with the Care Quality Commission under these Regulations.

However, while services provided directly by the Defence Medical and Dental Services will not require registration with the Care Quality Commission, any such services provided to the armed forces in England under an arrangement with the NHS or under

contract with the independent sector would fall within the definition of regulated activities and will therefore be required to be registered with the Care Quality Commission under the Regulations.

The Healthcare Commission (one of the predecessors to the Care Quality Commission) undertook a review of Defence Medical Services provided in England and overseas. Under section 73 of the Health and Social Care Act 2008, the Commission may carry out similar reviews of those services under agreement with the Ministry of Defence and the Care Quality Commission may be well placed to provide independent assurance as to whether these services are meeting the safety and quality requirements that apply to similar non-Defence Medical Services. We are working with the Ministry of Defence on determining the best way to assure these services.

The exclusion for employers is to ensure that occupational health services provided by an employer and insurance medicals where arranged by an employer are not required to register with the Care Quality Commission. The exclusion for Government Departments is intended to ensure that occupational health services provided by JobCentre Plus for example to assess incapacity benefits do not fall within the scope of the new registration system. These occupational health services are not directly involved in the provision of healthcare, they assess whether people are fit to work, and therefore we have excluded these from the new registration system.

Inspector training and consistency in assessment


Finally you asked about how the Care Quality Commission's inspectors will be trained and how the Commission will ensure consistent assessment across the country. The Commission will use a number of mechanisms to ensure that the Regulations are interpreted consistently across the country, between assessors and inspectors, and over time.

The Commission's *Guidance about Compliance* sets out how the Commission will judge compliance with the registration requirements. This is supported by the *Judgement Framework*, which will guide each assessor and inspector in reaching judgements on compliance, based on the impact and likelihood of a breach of the registration requirements. A supplementary document, *Setting the Bar*, sets out a framework for the appropriate regulatory response to concerns about a provider's compliance. All assessors and inspectors will undertake training as part of an extensive national training programme to ensure consistent decision-making.

The Commission's national enforcement lead, and a team of regional enforcement inspectors, will provide advice and support to all assessors and inspectors. The Commission's central legal team will act as an additional check on the consistency of enforcement decisions.

In addition, the Commission also has quality monitoring systems to provide assurance of the quality and consistency of decisions made by assessors and inspectors.

I am copying this letter to Lord Alderdice and placing a copy of the letter in the library.

Yes


GLENYS THORNTON

cc: The Lord Alderdice