Consultation Response

January 2011

Dental Protection Response: Consultation on Regulatory Fees – Fees for all providers that are registered under the Health and Social Care Act 2008 from April 2011.

Introduction

Dental Protection is a wholly owned subsidiary of the Medical Protection Society (a mutual, not-for-profit membership organisation) and currently provides discretionary indemnity, support and assistance to over 55,000 current members working in 70 countries around the world. This includes approximately 70% of the dental profession in the UK (the proportion being higher than this outside Scotland) and the majority of the larger corporate organisation/bodies. It would be reasonable to assume, given the above facts, that about 70% of all providers of regulated primary dental care services would be members of this organisation and would therefore look to us for advice, guidance and support in relation to CQC and how it is impacting upon them. Dental Protection provides risk management and professional advice to providers of primary dental care and in the UK our advisory helpline responds to 18,000-20,000 calls a year from dentists and their staff. A significant proportion of these calls over the past six months have related to CQC matters and we would expect this to continue.

Background and Context

This consultation relates specifically to the proposed fee structure for all health care and adult social care providers that will be registered under the Health and Social Care Act 2008 (the 2008 Act). Subject to this consultation, the legal scheme of fees will begin in April 2011, and will include all registered providers including dental providers entering the registration system for the first time from 1 April 2011. The stated intention is that it will set the foundation for the long-term approach to fees.

Comments on the Draft Regulatory Impact Assessment

1. In this document, one of the stated objectives of inspection and regulation is that of being fair and transparent. Unless CQC discloses the details of the grant-in-aid payment that it receives from the Government, and the extent to which the 2011-2012 proposed registration fees include (for example) any recruitment and training costs arising from the expansion of CQC regulation and oversight into primary dental care and other groups, then the rationale for the charging structure cannot be said to be transparent.

   There are also widespread concerns within the dental profession – and a certain degree of anger – over the unfairness of primary dental care providers having to register with CQC by April 2011, just four months after the deadline for compliance with the “Essential Standards” of the guidance document HTM 01-05 on decontamination and infection control, when primary medical care providers have not had to deal with either of these additional challenges and costs, especially when

arising as it has in the middle of the worst economic conditions in living memory. Many dental practices working primarily in the NHS have been badly hit by financial clawbacks arising from a widely criticised NHS remuneration system, while many private dental practices have lost up to half of their gross income as a result of the economic downturn. The sense of unfairness is compounded by the fact that practitioners in England have been impacted by all of these pressures, while those in Scotland, Wales and Northern Ireland have been spared most of them.

We believe, from our many conversations with members of this organisation, that CQC has based its impact assessment on CQC registration alone and has underestimated the impact of the synchronicity of all these changes and the impact that they will collectively have on dental practices.

2. In the draft RIA, the evaluation of Option C (page 6 of the document) states that this approach takes full account of how provider markets are organised. In respect of primary dental care there is no evidence of any such understanding that is apparent from the approach to the fee structure, and indeed quite the reverse.

3. Providers of regulated services within primary dental care who are already fully compliant because they have previously invested heavily in their infrastructure, training, systems and processes, will pay the same as other providers who have not, and who will therefore consume a far larger share of CQC resources in achieving compliance as a result. This appears at first sight to be a somewhat perverse reward for past effort and performance.

4. There is a stated assumption that primary dental care providers will be “reasonably similar” to “private doctor services”, which seems remarkably simplistic.

Specific Comments on the Consultation Document

From the large number of contacts that we have already had with our members, we know that many providers remain unconvinced about CQC registration itself, and these doubts will inevitably surface again when the registration fees are due for payment.

The CQC will receive almost £13 million of additional revenue from primary dental care provider registration fees, over and above any Government grant-in-aid payment, all of which represents money that will no longer be available for the front-line treatment of patients and other investment into patient care, infrastructure and staff training. This is a significant diversion of funds away from service improvements and patient care and treatment in challenging economic times.

Many will question whether a loss of funds on this scale from primary dental care is actually sensible in the current economic climate, and whether it ultimately serves the best interests of patients. It will also be asked what evidence there is that additional regulation on this scale and at this cost is actually necessary or unavoidable in the context of a clearly-defined deficiency that needs to be addressed and is actively placing patients at risk and, if so, whether the type of regulation, and its detail (and therefore its cost) is proportionate to any identified deficiency and risk.

The document includes the text reproduced below:-

Objectives and principles[1]

1. Adequacy: fee income, when added to grant-in-aid from the Government, should provide adequate resources for us to carry out our statutory duties and our operating plan with regard to our registration functions. This means that we should be able to recover our costs as defined, but also that we should not exceed the costs related to the provision of the services we charge for. Our annual operating plan includes efficiency targets and is agreed with the Department of Health and used by them to hold us to account.

2. Fairness: our long-term scheme of fees should comply with the spirit and the letter of the law, including provisions of the Health and Social Care Act 2008 and other relevant legislation such as competition law. This includes being fair in any cases where we treat providers differently.

3. Simplicity: fees should be as simple as possible for us to administer and for providers to understand what they must pay and when, and be as convenient as possible for providers when making payments.

4. Evolution: the way we communicate with providers about fees and involve them in planned changes, and the way we calculate fees, should ensure that there is a planned evolution over time, without any radical or unexpected changes. We must ensure that the scheme does not destabilise the market, that future entrants to the scheme can be included with relative ease, and that likely changes to the market can be accommodated.

The stated objective is that this fees scheme forms the framework for how CQC will charge fees from April 2011 onwards.

The document also states:-

'*We carried out a further review to identify how best to segment provider types so that large providers would not disproportionately subsidise smaller providers and the scheme could account for the difference in relative size of the many small providers*.'[2]

However this would not appear to fit comfortably with the proposed fees where the provider provides dental services. In fact the opposite appears to result with larger providers being disproportionately subsidised by smaller providers – although it is of course recognised that there are administrative economies of scale when a single registration covers more than one (or multiple) locations. As proposed, a provider with more than 100 locations would pay £480 or less per location, whereas a provider with one location would pay £1,500 per location. It is important to note that where a provider provides solely NHS dentistry, there is no provision for it to recover these fees from the Department of Health or from any other source. In the private sector the cost can and will be passed directly on to patients. In either setting, the costs may impact on the provision of dental services to patients and we are already aware of practices that are closing as a direct result of the ever-increasing regulation, and cost of regulation, of UK dentistry. When this happens in an area of limited service availability, this has the capacity to create the separate problem for patients of access to any kind of dental services.

[1] CQC consultation Fees for all providers registered under the HSCA 2008 from April 2011 page 8
[2] CQC consultation Fees for all providers registered under the HSCA 2008 from April 2011 page 9

Whilst the stated objective that the proposals must ensure that CQC collects an appropriate level of income so that, when combined with grant-in aid, it is able to discharge its statutory obligations[3] is logical, the consultation document does not detail the amount of grant in aid sought by CQC and how this was calculated and why such a relatively high level of fees is being proposed for dental providers.

Summary – Response to Consultation Questions

1. Do you agree with our proposals to charge fees based on the categories and bandings we have set out above?

   No – for reasons set out above the proposed system would appear to be unfair with smaller providers paying a disproportionate share of fees.

2. Do you agree with our proposals to charge fees at the levels we have set out above?

   No – for reasons set out above.

3. Do you agree with our proposals to charge separate fees to providers that carry out services that span within or across categories?

   Not applicable to dental providers.

4. Do you agree with our proposals to incorporate registration and variation applications fees into a single annual fee?

   Yes - Dental Protection supports the simplicity of rolling the charges for registration together with any variation fees as this approach will minimise any likelihood of under-notification of variations, which could place providers at risk under the registration provisions and associated legal requirements.

   We believe that this will be particularly beneficial in the first year or two following the inclusion of primary dental care providers in CQC registration and oversight when the administrative weight of changes in registration will be the greatest.

   However, the merged charges must be seen to be fair and transparent in subsequent accounting process in order to demonstrate that there is no cross subsidy between groups and that fees are set realistically.

5. Do you agree with our proposals to streamline payment dates for annual fees so that all providers pay a single fee on a specified date each year, and on the same date thereafter?

   Yes this would be logical if the fee level is appropriate.

[3] CQC draft regulatory impact assessment – Consultation on fees from April 2011

Further Information

DPL would welcome an opportunity to discuss our comments in more detail. Please do not hesitate to contact me if you require any further information or clarification on the issues raised in this response.

Sue Boynton LLM BDS
Dento Legal Adviser

T +44 (0) 113 241 0351
F +44 (0) 113 241 0601
E sue.boynton@mps.org.uk