

ADDITIONAL LICENCE CONDITION

LICENSEE:

Wirral University Teaching Hospital NHS Foundation Trust (“the Licensee”)
Arrowe Park Hospital
Arrowe Park Road
Upton
CH49 5PE

DECISION

On the basis of the grounds set out below, and having regard to its Enforcement Guidance, Monitor has imposed the additional licence condition specified below on the Licensee pursuant to its powers under section 111 of the Health and Social Care Act 2012 (“the Act”).

THE LICENCE IS AMENDED AS FOLLOWS:

After Condition FT4, insert:

“Additional Licence Condition 1 – Additional governance requirements:

1. The Licensee must ensure that it has in place sufficient and effective Board, management and clinical leadership capacity and capability, as well as appropriate governance systems and processes, to enable it to:
 - a. address the issues specified in paragraph 2 effectively; and
 - b. comply with any discretionary requirement imposed or enforcement undertaking accepted under the 2012 Act in connection with those issues.
2. The issues referred to in paragraph 1 are:
 - a. the Licensee’s financial position and the need to secure the delivery of its services on a financially sustainable basis;
 - b. the need to ensure compliance with the A&E four hour maximum waiting time target on a sustainable basis; and
 - c. any other issues relating to governance or operations that have caused or contributed to, or are causing or contributing to, or will cause or contribute to, the breaches, or the risk of breach, of the conditions of the Licensee’s licence.
3. For the purposes of paragraph 1, an issue is addressed effectively only if it is addressed within a reasonable timescale, including any applicable timescale proposed in any discretionary requirement or any enforcement undertaking, or reasonably specified by Monitor.”

ANTICIPATED EFFECT OF THE ADDITIONAL CONDITION:

Monitor anticipates that the effect of imposing the additional condition would be as set out below under the heading(s) 'Need for Action' in the section below headed 'Grounds'.

INCIDENTAL OR CONSEQUENTIAL MODIFICATIONS REQUIRED AS A RESULT OF THE IMPOSITION OF THE ADDITIONAL CONDITION:

No incidental or consequential modifications are required to the Licensee's licence.

GROUND(S)

1. Licence

The Licensee is the holder of a licence granted under section 87 of the Act.

2. Power to impose additional licence condition(s)

2.1. Monitor is satisfied that the governance of the Licensee is such that the Licensee will fail to comply with the one or more of the following conditions of the Licensee's licence: CoS 3(1), FT4(2), FT4(5)(a), (b), (c),(d) and (f), and FT4(7).

2.2. Need for action

- 2.2.1 The Licensee is forecasting a deficit of £13.5m and a CoSRR1 at the end of 2015/16 and it plans to access distressed funding of at least £4.8m in December 2015. Its underlying deficit at the end of 2014/15 was £10.2m.
- 2.2.2 Monitor is satisfied that the Licensee did not identify and act upon the extent of its 2014/15 underlying deficit nor its forecast 2015/16 deficit and cash requirement in a timely manner.
- 2.2.3 The Licensee has a Recovery Plan in place, however Monitor is satisfied that the Licensee does not currently have in place permanent and sustainable internal capacity to implement that Recovery Plan and is reliant on external support, including an Interim Turnaround Director and Interim Deputy Chief Executive.
- 2.2.4 The Recovery Plan was devised at a late stage and does not return the Licensee to a break even position in 2016/17.
- 2.2.5 The Licensee failed to meet the four hour A&E wait target in Q4 2014/15 for the 5th consecutive quarter. Further internal action is necessary to enable achievement of the target on a sustainable basis.
- 2.2.6 In the light of these matters, and the other available evidence, Monitor is satisfied that the Board is failing to secure compliance with the Licensee's licence conditions and failing properly to take steps to reduce the risk of non-compliance.

2.2.7 Monitor considers that the imposition of the condition specified above would be appropriate for reducing the risk of non-compliance identified above.

3. Appropriateness of Imposition of Additional Licence Condition

In considering the appropriateness of imposing the additional condition proposed in this case, Monitor has taken into account the matters set out in its Enforcement Guidance.

THE REQUIREMENTS OF THE PROPOSED ADDITIONAL LICENCE CONDITION WOULD BE WITHOUT PREJUDICE TO (i) ANY DISCRETIONARY REQUIREMENTS IMPOSED UNDER SECTION 105 OF THE ACT, (ii) THE REQUIREMENTS OF ANY ENFORCEMENT UNDERTAKING GIVEN BY THE LICENSEE AND (ii) THE REQUIREMENT ON THE LICENSEE TO ENSURE THAT IT IS COMPLIANT WITH ALL THE CONDITIONS OF ITS LICENCE INCLUDING THOSE RELATING TO:

- **COMPLIANCE WITH THE HEALTH CARE STANDARDS BINDING ON THE LICENSEE; AND**
- **COMPLIANCE WITH ALL REQUIREMENTS CONCERNING QUALITY OF CARE.**

ANY FAILURE TO COMPLY WITH THE PROPOSED ADDITIONAL LICENCE CONDITION WOULD RENDER THE LICENSEE LIABLE TO FURTHER FORMAL ACTION BY MONITOR. THIS COULD INCLUDE REQUIRING THE LICENSEE TO REMOVE ONE OR MORE OF THE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS AND APPOINT INTERIM DIRECTORS OR MEMBERS, SUSPEND ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD AND/OR DISQUALIFY ONE OR MORE DIRECTORS OR MEMBERS OF THE COUNCIL OF GOVERNORS FOR A SPECIFIED PERIOD. THIS COULD INCLUDE ALSO OR INSTEAD ACTION UNDER SECTIONS 105 OR 106 OF THE ACT TO IMPOSE DISCRETIONARY REQUIREMENTS OR ACCEPT UNDERTAKINGS. MONITOR WOULD ALSO BE ABLE TO TAKE ACTION UNDER SECTION 89 TO REVOKE THE LICENSEE'S LICENCE.

MONITOR

Dated: 7 August 2015

Signed:

