

100 hour pharmacies – making hay whilst the sun shines

A record number of 100 hour pharmacies were awarded NHS dispensing contracts last year with nearly one in twenty pharmacies in England now trading under this control of entry loophole. According to data published by the NHS Information Centre ⁽¹⁾, over 250 applications were passed in 2008-09, which marks the highest approval rate since the 100 hour loophole was introduced in 2005. The increase comes after the government refused to suspend 100 hour openings earlier this year whilst it carries out an overhaul of control of entry regulation and phases in Pharmaceutical Needs Assessments (PNAs).

The exemption guarantees an NHS dispensing contract to pharmacies which commit to opening for at least 100 hours a week irrespective of necessity or expedience. Although the exemption has proved to be popular with aspiring independent contractors who are either unwilling to pay for the goodwill of an existing pharmacy or prove the necessity or expedience for a new one and supermarket pharmacy chains whose financial resources allow them to accommodate the business infrastructure and overheads into their existing premises with little difficulty, it has not been popular with existing independent contractors and some of the large chain multiples who have viewed it as the main cause of dilution of the global sum available to pharmaceutical contractors for the funding of the provision of pharmaceutical services.

Around 450 pharmacies in England have benefited from the 100 hour exemption, the highest concentration of which are in the North West which boasts 79 such pharmacies compared to the South central region which has a mere 19.

The 100 hour exemption is by far the most popular method employed by aspiring contractors for opening a pharmacy under the four control of entry loopholes. 81 per cent of NHS dispensing contracts awarded under control of entry loopholes have been to 100 hour openings (450 out of 555) compared to 10 per cent for internet pharmacies (56 out of 555) and 8 per cent for pharmacies in large out-of-town shopping centres (46 out of 555). The remaining 3 pharmacies which have been granted an NHS dispensing contract under a control of entry exemption are those which operate within one stop primary care centres, two of which are based in the North West.

Control of entry exemptions will continue to operate while the government agrees legislative changes granting PCTs greater say over NHS dispensing contract applications. The recently enacted Health Act 2009 will place a primary obligation on each PCT to assess its area's pharmaceutical needs, such needs forming the basis of a PNA. Once drafted the PNA must then be published and updated in accordance with the secondary legislation made further to the Act ("the regulations"). The regulations, which have not yet been finalised, are expected to be ready by April 2010, which would then give PCTs time to develop their PNAs over the following year. It is therefore envisaged that control of entry regulations (and exemptions) will change to a PNA-based system around April 2011.

So if you are a pharmacist who is considering taking advantage of one of the four available loopholes, the clock is ticking before the loopholes are closed for good.

(1)http://www.ic.nhs.uk/webfiles/publications/Primary%20Care/Pharmacies/pharmserv9909/General%20Pharmaceutical_Services_in_England_1999_2000_to_2008_09.pdf

For pharmacy legal services, contact **Richard Hough**, a solicitor and pharmacist, at our Liverpool offices on 0151 600 3302 or at richard.hough@brabnerscs.com.