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**tition regulations: an open letter to the BMA and the Academy of Medical Royal Colleges calls on them to make a joint public statement of opposition to the amended section 75 regulations. BMJ (Clinical research ed), 346. f1819. ISSN 0959-8138 DOI: 10.1136/bmj.f1819**

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DOI: [10.1136/bmj.f1819](https://doi.org/10.1136/bmj.f1819)

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# OBSERVATIONS

## HEALTH AND SOCIAL CARE ACT

### Act now against new NHS competition regulations

An open letter to the BMA and the Academy of Medical Royal Colleges calls on them to make a joint public statement of opposition to the amended section 75 regulations

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On 1 April the government is due to enact enabling legislation to the Health and Social Care Act, which will in effect require clinical commissioning groups to enter into competitive tendering for all NHS services. This contradicts clear promises made in the letter that former health secretary Andrew Lansley sent to clinical commissioning groups on 16 February 2012, which stated “it is a fundamental principle of the Bill that you as commissioners should decide when and how competition should be used to serve your patients’ interests.”<sup>1</sup>

The original section 75 proposals were withdrawn after widespread protests. Amended regulations were tabled, but there is widespread consensus (including Counsel’s opinion) that these do not change the underlying thrust. The amended regulations state that commissioners are not required to advertise if “satisfied” that the services can be provided by a single provider only. However, there remains the strong possibility that a decision not to tender will be challenged by a dissatisfied commercial provider, threatening to involve the clinical commissioning group in lengthy and expensive litigation. The only way a commissioning group can prove that services can be provided by a single provider only is to go to tender. Groups are therefore likely to practise “defensive tendering”—that is, tendering to protect themselves from risk of litigation from private providers. This would waste public money, and “wasteful” tendering could itself breach regulation 2 (for inefficiency).

Forcing clinical commissioning groups to practise competitive tendering will not only break government promises made about the autonomy of these groups, but it will also lead to inevitable acceleration of the privatisation of the NHS, which is already under way. While the government has repeatedly insisted that it will not privatise the NHS, what is happening now meets all criteria for the definition, including the criteria of the World Health Organization.<sup>2</sup> It is part of a wave of healthcare system privatisation forced on European Union countries by Washington’s requirement for legal harmonisation with US laws before the EU-US treaty that David Cameron will sign in June 2013. The rhetoric of these reforms is “the best interest of the patients,” but the reality is a raid on public service budgets and an attempt to open the door to co-payments and the expansion of private health insurance.

In its response to the Future Forum report<sup>3</sup> the government specifically undertook to rule out privatisation of the NHS. Health minister Simon Burns promised in a letter,<sup>4</sup> “We will never ‘privatise’ the NHS, will never pursue competition as an end in itself, and frontline staff (will have) the ability to take control of the services they can offer.” Deputy Prime Minister

Nick Clegg promised, “Yes to reform of the NHS—but no to the privatisation of the NHS.” The content of the section 75 regulations shows these statements were not and cannot be true. They are a classic set of privatisation regulations. Many countries have already been caught in the trap set by these regulations and are seeing healthcare costs climb and outcomes deteriorate—let us not follow them into an avoidable healthcare disaster.

Promises made to the profession and the public are now seen to mean nothing and full opposition to these regulations is the only possible response. Doctors are trusted by patients and the public and thus we have a duty to speak out when acts of vandalism are perpetrated on the health service we all work in and on which our patients and families rely.

We are appealing to the elected leaders of the medical profession to stand up and be counted at this last hour. Once again the future of the NHS is in your hands. We call upon the BMA and the Academy of Medical Royal Colleges to make a joint public statement of opposition to the amended section 75 regulations. It is not too late to change the direction of travel that the government is pursuing against the wishes of the profession and the public, and which these regulations will cement in place. Please act now.

Competing interests: JD, IB, DW, and CP have read and understood the BMJ Group policy on declaration of interests and declare the following interests: JD and CP are co-chairs of the NHS Consultants Association, a pressure group that believes the NHS should remain a publicly funded, publicly provided, and publicly accountable healthcare system. CP is co-leader and JD is on the national executive committee of the National Health Action Party, a new political party set up by healthcare professionals who oppose the increasing marketisation and privatisation of the NHS in England. JD is a founder member of Keep Our NHS Public, a campaigning organisation for a publicly funded, publicly delivered, and publicly accountable NHS.

Provenance and peer review: Not commissioned; not externally peer reviewed.

- 1 <http://falseeconomy.org.uk/files/lansley-ccg.pdf>.
- 2 [www.healthprofessionals4nhs.co.uk/wp-content/uploads/2012/01/Peedell-privatisation-is-inevitable-bmj.d2996.full\\_.pdf](http://www.healthprofessionals4nhs.co.uk/wp-content/uploads/2012/01/Peedell-privatisation-is-inevitable-bmj.d2996.full_.pdf).
- 3 [www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_127719.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_127719.pdf).
- 4 [www.independent.co.uk/voices/letters/letters-1000-more-doctors-join-call-to-reject-nhs-bill-2369043.html](http://www.independent.co.uk/voices/letters/letters-1000-more-doctors-join-call-to-reject-nhs-bill-2369043.html).

Cite this as: *BMJ* 2013;346:f1819

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