

Public consultation on pharmacy applications

Scottish Health Council Briefing – February 2010

1 Introduction

This paper highlights recent changes and some associated challenges in relation to how NHS Boards are required to consult with the public on applications to the Pharmaceutical List. It follows the introduction of the new (Pharmaceutical Services)(Scotland) Regulations 2009 on 1 July 2009.

2 Background

New regulations

- 2.1 The guiding principle of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 is the assessment of whether a new provision of a pharmaceutical service is necessary or desirable to secure adequate provisions in a neighbourhood.
- 2.2 On 1 July 2009 new Regulations came into force which consolidated more than 20 amendments to the existing legislation since it came into being in 1995. The Regulations also introduce new provisions, clarify others and update a number of terms and definitions.
- 2.3 Significantly, the 2009 Regulations introduce a new duty on NHS Boards to consult on applications to the Pharmaceutical List with the public. This states that NHS Boards must take reasonable steps to consult with persons to whom pharmaceutical services may be provided as a result of that application. It replaces a previous requirement on Boards to consult with the public via the former Local Health Councils. It will also be for NHS Boards to consider how and who to consult with locally when a pharmacy application is received. In this context, the 2009 Regulations state that Boards may wish to seek advice from the Scottish Health Council on public consultation.

Recent applications

- 2.4 Over recent months there has been much public debate over applications to open pharmacies in Fife, Forth Valley, Borders and Orkney. All of these have been controversial in one way or another whether it is around who instigates the engagement process or who leads on the public consultation.

- 2.5 Each of the applications mentioned have generated press and media interest. More recently, they have been the subject of parliamentary questions in the run up to the issue of the 2009 Regulations. Much of the controversy is around the potential removal of dispensing rights from a general practice when an application is granted to another provider (such as a community pharmacy). In October 2009, a petition of around 2,000 signatures was lodged with the Scottish Government calling for new legislation to protect existing general practice dispensaries when a new community pharmacy is established.

3 Local advice and guidance – ensuring consistency

Process for consideration of pharmacy applications

- 3.1 It is estimated that NHS Boards will receive approximately 6 pharmacy applications per annum – possibly more and it is likely that the Scottish Health Council will receive requests, through its local offices, from NHS Boards for advice and guidance on who to consult with.
- 3.2 Whilst the introduction of the 2009 Regulations should make it much clearer for a number of stakeholders in terms of where the responsibility rests for public consultation, there remains a difficulty in terms of what advice and guidance the Scottish Health Council is able to offer due to time restrictions contained in the new Regulations.
- 3.3 When NHS Boards receive an application for a new pharmacy the 2009 Regulations state that the Board shall, within 5 working days, inform the Area Pharmaceutical Committee, the Area Medical Committee, any person whose name is included in the pharmaceutical list or whose interests may in the opinion of the Board be significantly affected if the application were granted and any Board whose boundary is within 2km of the proposed premises. Any person or body so notified has 30 days from the date of notification to make written representations about the application to the Board
- 3.4 Boards thereafter set up a Pharmacy Practices Committee to consider any objections to the application for entry to the Pharmaceutical list. Whilst there is no stipulated timescale for the establishment of a Pharmacy Practices Committee, experience shows that Boards tend to work to a 3 to 4 week period for setting up such a Committee.
- 3.5 When considering an application, the Pharmacy Practices Committee is required to consider five aspects: (i) the pharmaceutical services already provided in the area (ii) the pharmaceutical services to be provided (iii) any representations received, (iv) any information available to the Board which in its opinion is relevant to the consideration of the application and (v) any responses received following public consultation.

Scottish Health Council advice and guidance

- 3.6 Having recently considered this issue and the need to develop guidance for staff to ensure consistent advice is provided across Scotland, the Senior Management Team agreed that we should recommend that Boards consult, at a minimum, with for example Public Partnership Forums, Community Councils, patients (such as a sample of the practice population), patients' groups attached to general practices (where they exist), local community groups and patient support groups in the area including those which cover long term conditions such as asthma, arthritis, diabetes and so on.
- 3.7 The Senior Management Team also recommended a reasonable timescale of 2 months for Boards to gather feedback from their communities although this would delay the establishment of a Pharmacy Practices Committee since the Committee would need to have responses from the public at the time of its meeting.
- 3.8 Although some Boards would appear to have interpreted the Regulations to mean that they only have 30 days to engage with the community, in fact there is no timescale stipulated in the Regulations for Boards to consult with the public. It is important that the feedback received from Boards' consultation activities is used to inform the Pharmacy Practices Committee, ie after the public consultation.

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1 February 2010