

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 3 – Licensing

Licence conditions

Section 103 – Standard condition as to transparency of certain criteria

816. The effect of this section is to require that Monitor must include a standard condition in all licences, which requires licence holders to act transparently in the setting and application of criteria for determining patient eligibility for particular services, for accepting or rejecting referrals, or determining the manner in which services are provided to that person. This is intended to ensure that providers act transparently in determining clinically appropriate care for patients and do not discriminate on non-clinical grounds. Nothing in this section will affect a person's entitlement to a particular treatment under the NHS. This transparency requirement will only operate wherever those services are subject to patient choice of provider. This will enable Monitor to minimise the scope for providers to make extra profits by 'cherry picking' - i.e. delivering a service only in less complex cases – by requiring them to be transparent about these matters. *Subsection (3)* specifies that certain powers conferred on Monitor, the Secretary of State, the Office of Fair Trading, and the Competition Commission by sections 100, 101 and 102 and Schedule 10 to modify licence conditions may not be used to omit such a condition from licences.