

Response to DHSC consultation on Healthcare regulation: deciding when statutory regulation is appropriate

March 2022

Consultation description

- 1 Under the Health and Care Bill, the government is seeking additional legislative powers to ensure that the regulation of health and social care professionals is proportionate and best protects the public from harm.
- 2 This consultation considers how the powers to introduce and remove professions from regulation might be used in the future. It seeks views on:
 - 2.1 the proposed criteria to make decisions on which professions should be regulated
 - 2.2 whether there are regulated professions that no longer require statutory regulation
 - 2.3 whether there are unregulated professions that should be brought into statutory regulation
- 3 Link to consultation document: www.gov.uk/government/consultations/healthcare-regulation-deciding-when-statutory-regulation-is-appropriate/healthcare-regulation-deciding-when-statutory-regulation-is-appropriate.

Our response to consultation questions

The criteria for deciding whether to regulate a profession

Q1 Do you agree or disagree that a qualitative and quantitative analysis of the risk of harm to patients is the most important factor to consider when deciding whether to regulate a health or care profession? (agree, disagree, don't know)

Agree.

- 4 A key determinant of whether a profession should be regulated is an assessment of the risk posed to users of services and the wider public and an evaluation of the evidence available. We therefore agree that decision to regulate a health or care profession should be based on:
 - 4.1 An assessment of the risk to users of services and the wider public

4.2 A qualitative and qualitative analysis of risk

4.3 An evaluation of the evidence

- 5 The Professional Standards Authority (PSA) has developed a methodology for assessing the risk of harm presented by different health and care occupations and in 2016 it was piloted to inform decision making to regulate the emerging role of the Nursing Associate (NA).
- 6 At the time the methodology was applied the scope of the role of the NA had not been defined to the level needed to assess risk of harm, data about the distribution of the workforce across different settings was not available and education standards and curricula had not been finalised. This meant the PSA was unable to objectively advise on the type of oversight and assurance needed for the NA workforce.
- 7 This scenario poses a conundrum for decisions to regulate new and emerging professions therefore we recommend that the chosen methodology can be applied to new groups as well as existing ones.
- 8 If regulation is deemed necessary, it's important that the appropriate body takes on regulation of a new profession and can do so effectively. This would include taking on all of the responsibilities of a professional regulator: setting entry and practice standards, specifying requirements of education and training, maintaining a register and overseeing robust fitness to practise processes.

Q2 Do you agree or disagree that proportionality, targeted regulation and consistency should also be considered in deciding whether to regulate a health or care profession? (agree, disagree, don't know)

Agree.

- 9 We support that view that decisions about whether to introduce statutory regulation should be based on proportionality, targeted regulation and consistency. We also agree with the proposals that conferring status or esteem on a profession should not be used as a reason for regulation.
- 10 We recommend that decisions should follow the principles in the PSA's Right-touch regulation. Right-touch regulation emphasises the importance of understanding the problem before the solution, basing decision on evidence and checking for unintended consequences.

Removing a profession from statutory regulation

Q3 Do you agree or disagree that the currently regulated professions continue to satisfy the criteria for regulation and should remain subject to statutory regulation (agree, disagree, don't know)

Agree.

- 11 In our view it is essential for public protection that the nursing and midwifery professions remain regulated and we welcome the government's commitment to doing so. It's important that regulation is able to keep pace with the changes in

health and social care services, with the flexibility to protect the public where necessary. We have welcomed the Government's proposals to reform the regulation of healthcare professionals.

Unregulated Professions

Q4 Do you agree or disagree that currently unregulated professions should remain unregulated and not subject to statutory regulation? (agree, disagree, don't know)

Don't know.

- 12 We don't have a view on this question. The regulation of professions is ultimately a matter for the government and Parliament to consider. We encourage an assessment based on public protection and public confidence considerations.
- 13 We agree that statutory regulation should only be chosen when it clearly provides the best safeguards for public protection, reducing harm and maintaining public confidence in the professions.
- 14 The decision-making process should include engagement with the public and potentially impacted regulators and professional bodies too.

About us

- 15 We are the UK's independent regulator of nursing and midwifery professions. We regulate around 745,000 nursing and midwifery professionals. Our purpose is to promote and uphold the highest professional standards in order to protect the public and inspire confidence in the professions. Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. Our core role is to **regulate**. To regulate well, we **support** our professionals and the public. Regulating and supporting our professionals allows us to **influence** health and social care.
- 16 Our website has further information about who are and what we do at:
www.nmc.org.uk/about-us/our-role/.