Royal College of Nursing Scotland

RCN Scotland's response to the Scottish Government's Consultation on Amendments to the Regulation of Independent Health Care

https://consult.gov.scot/safety-openness-and-learning/amendments-regulation-independent-healthcare/

April 2023

1. Do you agree that further regulation of independent health care services in Scotland is needed?

Yes.

Please see our answers below.

2. Do you agree that independent health care services provided by pharmacists and pharmacy technicians which are not provided from a registered pharmacy or under the terms of an NHS contract should be regulated by Healthcare Improvement Scotland?

Yes.

Regulation will support RCN members who interact with such services on a professional basis. It will ensure that our members can have the same confidence in independent health care services as the public can.

3. Do you agree that independent medical agencies where services are provided by a medical practitioner, dental practitioner, registered nurse, registered midwife, dental care professional, pharmacist or pharmacy technician should be regulated by Healthcare Improvement Scotland?

Yes.

We note that Section 10F (2) of the National Health Service (Scotland) Act 1978 defines an 'independent medical agency'; that Healthcare Improvement Scotland (HIS)'s power to regulate such agencies already exists in that same Act; and that the first proposal is simply to commence the relevant existing provisions of the Act so that HIS can use those powers. That being the case, we support the first proposal.

We also support the second proposal to widen the definition of an 'independent medical agency' to include 'independent health care services provided by a dental practitioner, registered nurse, registered midwife, dental care professional, pharmacist or pharmacy technician.' We recognise that this would mean that any health care service provided in Scotland (whether online or otherwise) by any of these individuals would be regulated by HIS.

Our support rests on the fact that we support nursing as a robustly regulated profession, and we agree with the principle of regulating for public confidence and safety and for professional quality. Alongside supporting and protecting the public, the regulation of individual nurses and other nursing staff supports and protects the nursing profession by helping to ensure that nursing staff provide high quality, safe and effective care. By extension, we also agree with the principle of regulating services for

public confidence and safety and for quality, including those owned and/or operated by RCN members.

We also agree with the exemption for nurse agencies regulated by the Care Inspectorate. We are not aware of any problems with that regulation and so we see no need for dual regulation.

4. Do you agree that unregulated independent medical agencies operating entirely online and headquartered in Scotland, should be regulated by Healthcare Improvement Scotland?

Yes.

If independent medical agencies are to be regulated, then those that operate entirely online should be included in that regulation. The distinction between the physical and the online presence of a service is no longer meaningful in terms of the protection of the public.

5. Do you agree that Healthcare Improvement Scotland should be able to cancel the registration of any independent health care service that fails to pay its continuation fees after a certain period of time?

Yes.

We support this proposal in principle and practice. It is not appropriate for such services to be allowed to continue to operate if they are unable or unwilling to comply with the applicable regulatory regime.

However, we wish to highlight a potential risk to staff. If an independent health care service had its registration withdrawn this could mean that staff, including any RCN members who worked there, faced losing their jobs as the service would be unable to carry on operating. We would not want to see a situation arise where the potential closure of a service for non-payment of continuation fees came as a surprise to staff. Although it is an employer's responsibility to give their staff notice of redundancy it could be the case that an independent health care service that fails to comply with certain requirements of its registration might also fail to appropriately meet other responsibilities.

We understand from HIS that the current notification and enforcement process does not adequately capture the issue of the failure to pay continuation fees. This is largely because of the issue with legislative commencement that is set out in this consultation. That being the case, if the proposed changes go ahead, we suggest that the system of notice of cancellation of registration is adapted to require HIS to make public its intention to cancel a registration due to non-payment of continuation fees.

This notice should be published sufficiently in advance of the date on which the employer must, by law, give notice of redundancy to the employees to ensure that those employees can make themselves aware of it. It would seem that the most appropriate place for publication, to ensure that employees can easily check for notices, would be the HIS website. It is possible that any bad publicity attaching to a service because of publication of such a notice may act as an extra incentive for the owners of the service to pay their continuation fees on time.

6. What are your views on how further regulation of independent health care in Scotland might affect the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex?

We do not presently hold data that would enable us to usefully comment on this question.

7. The Fairer Scotland Duty places a legal responsibility on certain public bodies in Scotland to actively consider how they can reduce inequalities caused mainly by people's financial situation. What are your views on how further regulation of independent health care in Scotland might affect this inequality?

If an independent health care service fails it may cause significant and unexpected financial burdens to fall upon those who use it, in the interim whilst they try to find an affordable alternative, and subsequently if that alternative is more expensive. There is also an obvious financial impact on those who work there if they lose their jobs. Regulation that is intended to help support the stability of the service, and so avoid failure, can contribute to ensuring that inequalities caused by financial hardship in situations of failure do not arise.

8. What are your views on how further regulation of independent health care in Scotland might affect access to safe, high-quality public services in island communities?

We do not presently hold data that would enable us to usefully comment on this question.

9. What are your views on how further regulation of independent health care in Scotland might affect respecting, protecting and fulfilling the rights of children and young people as set out in the UN Convention on the Rights of the Child?

We do not presently hold data that would enable us to usefully comment on this question.