

Royal College of Nursing response to Department of Health and Social Care consultation on 'Healthcare regulation; deciding when statutory regulation is appropriate

With a membership of close to half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

- 1. 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?**
 - 1.1. The RCN believes that any regulatory framework should prioritise patient safety while also meeting the needs of the profession. Any proposed approach to deciding which professions should be regulated must protect the role of the registered nurse and their crucial role in delivering safe and effective care to the public. There is a body of evidence that shows a direct link between nursing staffing levels and patient safety outcomes such as for every day that a patient was on a ward which had fewer than the average number of nurses, their chance of dying increased by 3%¹.
 - 1.2. As such, the power to remove a profession from regulation should never be applied to a safety critical profession such as nursing. Nursing is the largest healthcare professional group and includes a diverse range of practice. Nursing must therefore remain a regulated profession once any assessment from the Government has been undertaken as it is crucial to delivering safe care across the patient pathway.
 - 1.3. It is important to ensure that any regulation-based risk analysis framework reflects nursing as a modern safety-critical profession to ensure the protection of the public and prevent unnecessary obstacles or obstructions to delivering safe and effective care. The RCN therefore agrees that the risk of harm to patients should be the most important factor in deciding whether to regulate a profession, though we consider 'safety critical' to be more positive framing for the nursing profession. However, analysing the likelihood, severity, nature and cause of that harm will inevitably be subject to some interpretation, regardless of the method used. Therefore, there must also be transparency around the level of risk of harm to patients that would indicate a need for a profession to be regulated.
 - 1.4. Since 2007, the RCN has consistently called for the mandatory, statutory regulation of all Nursing Support Workers (NSW's) in the interests of public safety, and the RCN is committed to supporting steps towards mandatory regulation, in a standard setting capacity. This will become more important as the needs of the public being cared for by the nursing support workforce become more complex.

- 1.5. The RCN recommends that the UK Government review and consider all the lessons learned from introducing nursing associates in England, including the finding from the Professional Standards Authority (PSA)'s qualitative and quantitative analysisⁱⁱ which concluded that it is not possible to use the Right-touch assurance model on newly created roles. Any model used by the UK Government when deciding whether to regulate a health or care profession should be applicable to new roles as they are being created.
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2. **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?**
 - 2.1. The RCN is concerned with the UK Government's underlying assumption set out in this consultation that statutory regulation should only be applied where there is no other alternative. As stated by the UK Government in previous consultation materialsⁱⁱⁱ, statutory regulation is the most effective way of assuring the highest standards of practice and the safety of patients. As such, the RCN recommends that the UK Government take a more precautionary and proactive approach to public safety by encouraging statutory regulation where public safety is relevant rather than actively seeking alternatives to statutory regulation. An example of this is the physician assistant role. Regulation is not a barrier to entry for a safety-critical profession.
 - 2.2. Regulation has the potential to fulfil many important functions which the RCN thinks should all be considered in deciding whether or not to regulate a health or care profession. The RCN is concerned to see that the UK Government has specifically highlighted that conferring status or esteem on a profession should not be part of this assessment. Instead, the RCN believes that regulation, as a core function, can encourage and clarify a professional identity and status, which then supports not only recruitment and retention but also career pathways and development of the profession.
 - 2.3. Nursing specific regulation provides an opportunity to demonstrate the complexity and autonomy of the Registered Nurse role to the public. The nursing role has significantly progressed and evolved over the 100 years that it has been a regulated profession and it is important that other professions and the public continue to understand the role as it continues to evolve. There is often confusion on the profession's role in leading, designing, and delivering care and in the making of complex decisions in diagnosis and treatment. The RCN believes that regulation is able to clarify a professional's identity by acting as a clear framework on which to better define health and care team roles and responsibilities. This clarity then supports and underpins public safety.
 - 2.4. In addition to proportionality, targeted regulation and consistency, there are other factors that should be considered by the UK Government when deciding to regulate a profession that is not set out in this consultation. The UK Government should ensure there is an overall aim of reducing or minimising disruption to the healthcare sector as a whole; especially in a period of considerable fatigue and instability as a result of the pandemic. There can be

unexpected consequences when bringing a profession into regulation that can exacerbate burnout and similar symptoms. While these side-effects may not justify stopping a new profession from being regulated, they should be managed and mitigated.

- 2.5. Additionally, if the UK Government and regulators want to instil confidence in the professions they regulate, there must be visible and meaningful assessment of the impact of any potential regulatory changes upon people with protected characteristics, informed by understanding of the unique distribution of the people on their professional register. The unique constitution of the nursing workforce is ample reason for the professional regulation of nursing not to be compromised by streamlining regulation or merging regulators.
 - 2.6. The UK Government must also undertake appropriate engagement and consultation in advance of making any decisions on regulating professions. Despite health and social care being devolved matters within the UK, regulation is often effectively UK wide. Full four country engagement, with regards to the UK Government and work with devolved administrations, as well as support for a UK-wide regulator such as the Nursing & Midwifery Council, should be part of the development of any new proposals.
 - 2.7. For nursing, regulation is able to provide a framework for clear standards, shaped by the Royal College of Nursing as the UK professional body. The RCN is seeking to enter a delegated relationship with our regulator, the Nursing and Midwifery Council (NMC), to determine UK applicable standards for nursing education and practice, including those for advanced level practice.
- 3. Do you agree or disagree that the currently regulated professions continue to satisfy the criteria for regulation and should remain subject to statutory regulation?**
- 3.1. Safety critical professionals should be regulated, and the RCN is therefore clear that any regulatory framework must include nursing. The RCN is clear that nursing meets, and will continue to meet, the UK Government's criteria as outlined in this consultation. There must be profession-specific regulation for nursing to offer full public protection. Regulators must be able to understand and appreciate the context with which their registrants practice and operate within and that is variable across the regulated professions.
- 4. Do you agree or disagree that currently unregulated professions should remain unregulated and not subject to statutory regulation?**
- 4.1. As the pandemic has shown, a key component of being a healthcare professional is the need to use professional judgment when navigating areas such as complex clinical or ethical issues. However, the current direction of healthcare policy points to the increase and extension of non-registered roles in the delivery of health care. The RCN is observing this in the context of rising demand and a massive shortage in the UK registered nursing workforce. As such, concerns around public protection, accountability and care standards persist.

- 4.2. Nursing support workers (NSW's) support the registered nurse in the provision of nursing care. This term encompasses a wide range of roles and titles which may include nursing associate (in England), assistant practitioner, health care assistant, health care support worker and nursing assistant in different parts of the UK. There is significant concern that NSWs are being increasingly expected to use similar judgement in a far broader space which has previously only been occupied by the registered nurse which the evidence demonstrates to be detrimental to patient safety. So that all individuals are able to remain and work within their scope of practice, the RCN believes these reforms create an opportunity to provide clarity and distinction of respective professional boundaries in the context of increasing and complex responsibilities of a variety of roles.
- 4.3. Any future consideration of expansion of UK regulatory approaches must first take into account the specific context already in place within each country in the UK, across a variety of roles, where differing approaches to NSWs have emerged, taking learning and insight into account through to the development of a framework approach for consideration.

For further information, please contact:

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March 2022**

ⁱ Griffiths P, Maruotti A, Recio Saucedo A, Redfern O C, Ball J E, Briggs J, Dall'Ora C, Schmidt P E, Smith G B and Missed Care Study Group (2019) Nurse staffing, nursing assistants and hospital mortality: retrospective longitudinal cohort study, *BMJ Quality and Safety*, 28(8), pp. 609–617.

ⁱⁱ https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/interim-report-on-oversight-of-nursing-associates-november-2016.pdf?sfvrsn=72717120_13

ⁱⁱⁱ Page 13

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