

Promoting professionalism and reforming regulation in healthcare

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Local Government analysis: The Department of Health (DH) recently published a consultation on improving the regulation of healthcare professionals. Laura Williamson, chartered legal executive, and Laurence Vick, legal director, both of Enable Law, explain the purpose of the consultation and its potential implications.

Original news

Views sought on proposed reforms of healthcare professionals' regulation, [LNB News 31/10/2017 31](#)

The four UK governments are seeking views on the reform of the regulation of healthcare professionals with the aim of finding ways of simplifying regulation and enabling regulators to be more responsive to changes in the sector. The consultation closes on 23 January 2018.

What is the purpose of the consultation and what is the government proposing?

The DH's consultation on reforming the regulation of healthcare professionals opened on 31 October 2017 and will close on 23 January 2018. The consultation paper considers how the current system of regulating healthcare practitioners can be transformed in order to achieve these five objectives:

- protecting the public from harm
- supporting the development of a flexible workforce
- dealing with concerns in a proportionate and responsive fashion
- providing support to professionals in delivering high quality care
- increasing efficiency

A central proposal mooted in the consultation is that the number of regulatory bodies be reduced from the current nine, to three or four. At present, the nine organisations govern the educational requirements to enter each profession, as well as overseeing the continuing fitness to practice of their members.

The consultation paper states that patients currently have difficulty determining which organisation to raise concerns with when they are unhappy with treatment they have received. Another point raised is that healthcare professionals in the same hospital are currently governed by multiple different organisations, and are therefore held to differing standards of professional conduct. The government's view is that there should be more consistency.

A central pillar of the consultation paper is that, rather than being reactive and only involving themselves once concerns are raised, regulatory bodies should provide greater support to their members before problems develop. Each regulatory body is already charged with ensuring that its members continue to meet the standards of conduct and performance expected, but the paper suggests more can be done to support development, such as a revamped system of revalidation.

The proposals also suggest that regulators be more responsive and flexible in the way in which they respond to individual complaints and deal with fitness to practice investigations, and should be able to evolve as professional responsibilities and circumstances change.

What are the strengths and weaknesses of the present system of regulation and what do you think is the probable outcome of this consultation?

The current system has faced criticism for the lack of transparency that exists in relation to how patients' complaints and concerns about individual practitioners are dealt with. The number of regulatory bodies, and the confusion this provokes in patients, means that from the outset the system is difficult to navigate.

The legislative framework behind the current regulatory regime is over 150 years old, and attempts to make changes over the years have led to a hotchpotch of confusing rules and procedures. A further criticism is that the current approach to dealing with fitness to practice investigations is adversarial in nature, making it too bureaucratic and unapproachable for both members and complainants.

A particular criticism raised in the consultation paper is that the current system has a strong focus on dealing with concerns about registrants and that a large proportion of the nine organisations' expenditure is channelled into fitness to practice investigations. Mediation as a means of resolving disputes, which was previously rejected by the government, is now being reconsidered as a potential way of resolving cases at an early stage.

While the current system of regulation is far from perfect, concerns have been raised regarding some of the government's proposals. The current regulatory bodies cover a wide range of healthcare professions from dentists, chiropractors, dental nurses and optometrists, to physiotherapists, hearing aid dispensers and paramedics, as well as doctors and nurses. Could only three or four organisations run a satisfactory regulatory regime to cover the many facets of their members' roles?

Each profession not only requires completely different qualifications, but has their own particular concerns and priorities. One of the strengths of the current system is surely that each organisation can be moulded to fit in with their members' requirements. Organisations where the members are of the same, or similar, profession are likely to have less conflicting priorities.

Opinion on the proposals is being sought from patients, healthcare professionals, employers and the public. There are likely to be a wide range of opinions garnered following the consultation period. While many will agree that change is needed, not least to improve patient safety, there is likely to be some criticism of the government's proposals and a lack of trust as to the motives behind the plans. There will be those concerned that this is another attempt by the government to gerrymander funds away from the NHS, and professionals within the NHS may be concerned as to whether a larger regulatory body covering many different professions will be able to properly support their continuing professional development and interests. It will be interesting to see how many and which of the proposals will make it past the consultation stage, particularly with the government's current preoccupation with Brexit.

What will the likely practical effects be if the government decides to go ahead with its proposal?

The General Medical Council (GMC), the regulatory body which regulates doctors, says it welcomes the changes. Charlie Massey, GMC chief executive, has said that 'the current legal framework is too prescriptive, and makes many of our processes slow, inflexible and heavy-handed'.

It is perhaps little wonder that change is welcomed when you consider that when the GMC embarks on an investigation the current regime sets out very rigid rules for how it must proceed. For instance, any investigation must take a minimum of six months. In addition, the investigation and tribunal process must be followed before a doctor can be struck off the register, even where criminal proceedings have found a doctor guilty of gross negligence or worse.

Perhaps then, change to the current outdated regime will be transformative and improve the system for both patients and those working within healthcare. Practical changes could mean that investigations move at a much faster pace with fewer resulting in final tribunal hearings. Mediation could be used where appropriate as a tool to resolve disputes.

It is not clear what effect, if any, the changes will have on whistleblowing within the NHS. Many whistleblowers in the NHS fear they will be victimised by their employers if they raise concerns, and in some cases their own trusts have made what subsequently turn out to be malicious referrals to the GMC and other professional bodies.

However, some advances have been made. The GMC for example, is now legally obliged to publish an annual report detailing the action it has taken as a result of whistleblowing disclosures made to it, the first to be published in October 2018. With so much reorganisation in the pipeline, will whistleblower protection be given the attention it deserves?

In addition, care must be taken that the proposals do not become, in reality, a cost-cutting measure. With the NHS increasingly under pressure, it has to be hoped that increased efficiency is not prioritised over the other objectives set out in the consultation paper, in particular, that of reducing harm to patients.

Interviewed by Alex Heshmaty.

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