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Council meeting, 4 December 2012

Regulating the adult social care workforce in England

Executive summary and recommendations

Introduction

At the last meeting the Council considered a paper discussing the regulation of adult social care workers in England.

The attached paper provides some further information, indicates the next steps and appends a draft policy statement for discussion and approval.

Decision

The Council is invited to:

- discuss and approve the policy statement at appendix 1 (subject to any amendments arising from the Council's discussion and any minor editing amendments).

- agree that further, incremental work to develop the proposals outlined in appendix 1 should be included in the Policy and Standards Department workplan for 2013-2014.

Background information

Outlined in paper and appendices.

Resource implications

Any resource implications will be accounted in the Policy and Standards Department workplan for 2013-2014.

Financial implications

No specific financial implications are anticipated at this stage.

Appendices

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- Appendix 1: HCPC policy statement (draft).
- Appendix 2: Health Care Complaints Commission (2012). Handling complaints information for unregistered health practitioners.
- Appendix 3: Code of conduct for unregistered health practitioners.

Regulating the adult social care workforce in England

1. Introduction

1.1 At its last meeting, the Council considered a paper discussing the regulation of the adult social care workers in England and reached a number of conclusions about how this might be explored further.

1.2 That paper said that if the Council agreed in principle to the policy proposals on this topic, its decisions and discussion would inform a draft HCPC policy statement to be considered at the Council meeting in October 2012. The idea behind this was that this would be concise statement, stripping out the background information included in the last paper, but articulating very clearly the Council's preliminary proposals, the objectives they sought to achieve and their benefits. This could then be used in communications with Government and key stakeholders, and as an agreed basis, in due course, from which to explore in further detail how these proposals might work in practice. This is attached at appendix 1.

1.3 Section two overleaf provides some more information about the 'negative licensing' arrangements which are in place in New South Wales.

1.4 Now that the overall direction in this area has been agreed at the level of principle, further work will be required in beginning to develop the proposals further. This would include but is not necessarily limited to considering further how regulation of CQC registered managers would work and how negative registration might be implemented (for example, links to CQC regulated activities and considering further the process that would be followed in considering complaints). This work would need to be planned flexibly to take account of any external policy developments including any early indications of the Government's view on the HCPC's preliminary proposals in this area and any changes in policy which might be indicted in light of the publication of the report of the Francis Inquiry early next year.

2. Negative licensing in New South Wales

2.1 One part of the proposal for how adult social care workers in England might be regulated is negative registration. This proposal is based upon the negative licensing model for unregistered health practitioners operated by the Health Care Complaints Commission in New South Wales (NSW), Australia.

2.2 Appendix 2 and appendix 3 to this paper include some further background information about the scheme including a description of how it operates and a copy of the mandatory code of conduct which applies to unregistered health care practitioners – practitioners who are not required by statute to be registered.

2.3 The cost of the scheme has to date been low, as a relatively small number of cases have been dealt with to date. Since the scheme was launched, there have been approximately 200 complaints about unregistered practitioners. 31 were investigated and 9 prohibition orders have been issued. However, the Commission has reported that the number of complaints it receives is increasing as awareness of the scheme grows.

2.4 In 2009-2010, 79 complaints were received about unregistered health practitioners. The groups complained about included professions which are also not regulated by statute in the UK such as psychotherapists, homeopaths and massage therapists, as well as some professions such as speech and language therapists and radiographers which are not regulated in Australia. Almost 50% of the issues raised were about professional conduct, with smaller numbers of complaints about treatment and information given to service users amongst other issues. In 2009-2010 four prohibition orders or public statements were issued, - 2 for dental technicians and prosthetists; 1 for a massage therapist; and 1 for a natural therapist.[1]

2.5 It is understood that the regulatory impact statement estimated that the costs of extending the scheme to the rest of the Australian states and territories would be up to approximately £400,000 for set-up costs and £345,000 per year running costs (excluding existing NSW costs). This compares to approximately £53m per year if statutory regulation was extended across a wider range of professions and groups.[2] Further information is being sought about whether any information is available about the costs per case of the existing NSW arrangements.

[1] Australian Health Ministers Advisory Council (2011). Options for regulation of unregistered health practitioners
www.ahmac.gov.au/
[2] Conversion from AUD to GBP correct as at September 2012.

Appendix 1
HCPC policy statement

Regulating the adult social care workforce in England

1. Introduction

1.1 The 2011 Command Paper 'Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers' committed that the Department of Health would explore the scope for the HCPC 'to establish a voluntary register of [adult] social care workers [in England] by 2013'.[1]

1.2 This paper sets out a preliminary proposal from the Health and Care Professions Council (HCPC) for how adult social care workers in England might be regulated.[2] This proposal has been developed to achieve the following objectives.

- To enhance public protection through a proportionate, targeted and cost-effective approach to regulation of this workforce.
- To support the delivery of high quality services in the care sector and the responsibility of individuals and organisations for those services.
- To complement other 'sector-led' initiatives aimed at assuring and improving quality.

1.3 Social workers are qualified professionals registered with their respective regulator in each of the four countries (including the HCPC in England). Social care workers are currently unregulated and include a wide range of individuals working in social care, including staff who work in residential care homes and those who provide domiciliary care.

1.4 The regulation of social workers and social care workers is devolved to each of the four countries. In England responsibility for adult social care sits with the Department of Health. Responsibility for social care with children and families sits with the Department for Education. The proposals in this paper therefore relate to adult social care workers in England only.

2. Adult social care workforce in England

2.1 The adult social care workforce in England has been estimated as numbering 1.63m individuals, with the majority working within the independent sector. 888,000 were estimated as working in locations regulated by the Care Quality Commission (CQC).[3]

[1] Department of Health (2011). Enabling excellence: Autonomy and accountability for healthcare workers, social workers and social care workers. http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124359

[2] For more information about the role of the HCPC, please visit: www.hcpc-uk.org/aboutus/

[3] Skills for Care (2012). The size and structure of the adult social care sector and workforce in England, 2012. http://www.skillsforcare.org.uk/research/research_reports/Size_and_structure_2012.aspx

2.2 This large workforce is characterised by relatively low rates of pay and significant numbers of part time workers. This poses challenges for the proportionality and cost-effectiveness of any approach to regulating this workforce. We have concluded that full statutory regulation for the whole of this workforce is unlikely to be a proportionate or cost-effective regulatory response.

3. Limitations of voluntary registration

3.1 The Health and Social Care Act 2012 has given the nine statutory regulators of health and care professionals discretionary powers to establish voluntary registers.

3.2 Our preliminary view is that there are significant shortcomings in a voluntary register being held by a statutory regulator which have the potential to affect their effectiveness and their ability to command public confidence. They include the following.

- Although an employer might make registration a condition of employment, there would be no legal compulsion for an individual to be registered.
- The regulator would be unable to demand information or compel witnesses as part of fitness to practise proceedings.
- A registrant removed from a voluntary register owing to serious concerns about their conduct or competence could remain in practise.
- There is potential for public confusion generally around the status of voluntary and statutory registers being held by the same organisation.

3.3 In addition, we consider that there would be considerable costs involved in establishing a voluntary register and paying for its operating costs until a critical mass of registrants had been achieved and the register reached a self-financing position. We have concluded that we would not be minded to establish a voluntary register for adult social care workers in England at this stage and have instead explored other options which would enhance public protection.

4. Our proposals

4.1 The model we are proposing has two parts.

Statutory regulation of CQC registered managers of care homes

4.2 All service providers registered by the CQC must have a registered manager for each of the 'regulated activities' they carry out.[4] Although some registered managers may be statutory regulated professionals, others will not. The CQC registration requirements ensure that individuals have the qualifications and experience necessary to manage the regulated activities but they do not put in place a binding code of conduct and ethics. The recent Winterbourne View

[4] http://www.cqc.org.uk/organisations-we-regulate/registering-first-time/regulated-activities

Hospital serious case review acknowledged this, referring to establishing registered managers as a profession with a regulatory body to enforce standards.[5]

4.3 The following are the potential benefits of this approach.

- The pivotal role that managers play in influencing the standards, culture and behaviour of their employees would be recognised.
- This approach would build-on the existing arrangements, increasing accountability by putting in place a binding and enforceable code of conduct and ethics.
- This approach would be proportionate and targeted by registering those individuals with direct responsibility for CQC regulated activities, rather than seeking to register all managers.

Negative registration

4.4 The second part is establishing a **'**negative register' of adult social care workers in England. This approach is used elsewhere in the world, notably in Australia.[6] The model would work as follows.

- A statutory code of conduct would be set for adult social care workers in England, based upon core principles such as respect for patients; confidentiality; infection control; honesty and integrity and so on.
- Specific functions of that workforce could be protected by law (or a link could be made to those regulated activities within the purview of the CQC).
- There would be no requirement for adult social care workers to be registered but a 'negative register' would be maintained of those who had been found unfit to practise as an adult social care worker.
- Employers would be expected to resolve low level complaints, with an emphasis on re-training and remediation.
- Those cases involving more serious complaints, particularly where service users were placed at risk, would be reported to the regulator for investigation and, if appropriate, adjudication.
- The adjudication process would enable those unfit to practise as adult social care workers to be prevented from doing so by being included in the negative register. A range of other sanctions could also be imposed, including supervision, training, or conditions placed on practice.

[5]Margaret Flynn (2012). South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: A serious case review
http://www.southglos.gov.uk/Pages/Article%20Pages/Community%20Care%20-%20Housing/Older%20and%20disabled%20people/Winterbourne-View-11204.aspx

[6] Australian Health Ministers Advisory Council (2011). Options for regulation of unregistered health practitioners.
www.ahmac.gov.au/

4.5 The following describes some of the potential benefits.

- This approach would be proportionate and targeted by putting in place binding standards for all, whilst avoiding the cost and burden of seeking to register all adult social care workers.
- There would be effective mechanism for considering serious complaints and taking effective action to prevent continuing harm to service users.
- The 'negative register' would support rather than replace the responsibility of employers for the quality of their services.
- The model could potentially be scale-able to other parts of the health and social care workforce.

4.6 As a 'positive' register of social care workers would not be held, this model would need to be funded either by Government or through (a combination of) other arrangements such as through the CQC licensing fee paid by service providers.

4.7 In developing this model further, it might be necessary to consider how any arrangements can best protect the increasing number of service users who are recipients of direct payments and employ their social care workers directly. The absence of an employer or a 'managed environment' might lead to the conclusion that this is potentially a higher risk part of the workforce.

5. Links to the Independent Safeguarding Authority (ISA)

5.1 Negative registration would complement but not replace or duplicate the role of the ISA in baring individuals from working with vulnerable children and/or vulnerable adults. There are some key differences between the schemes.

- Negative registration entails a code of conduct which would apply to the whole of the adult social care workforce.
- A range of sanctions would be available, whereas the decision for ISA is about whether or bar to not.
- Negative registration would be about considering whether someone should be allowed to work in adult social care; the decision for ISA is about whether an individual should be preventing from working with vulnerable children and/or vulnerable adults.
- Negative registration would allow conduct issues relating to social care such as appropriate care; treating service users with dignity and respect; and breaches of confidentiality to be dealt with effectively.

5.2 We make referrals to the ISA as part of our existing remit where we consider they meet the referral criteria and to date only 36% of our referrals have resulted in a barring decision being made.[7] Cases where a decision not to bar has been reached have included serious cases involving sexual assault of patients and inappropriate sexual relationships with vulnerable service users. This illustrates the differences in thresholds which would be applied and the necessity for an

[7] Figure includes referrals made by the General Social Care Council (GSCC) prior to the transfer of the regulation of social workers in England to the HCPC.

approach which would ensure that effective action was taken in relation to those who are unsuitable to work in adult social care.

6. Conclusions

6.1 This paper has outlined a preliminary proposal for a proportionate and targeted approach to regulating adult social care workers to enhance public protection. The proposed model should be viewed in the context of other initiatives focused on assuring and improving quality such as CQC regulation of services and the Skills for Health and Skills for Care initiative to develop a code of conduct and induction standards for the sector.[8]

6.2 We consider that this regulatory model might be more effective than relying on purely voluntary or self-regulatory arrangements alone. If the Government considered that the proposals outlined in the paper might meet its policy objectives, further detailed work and engagement with stakeholders would need to take place.

[8] http://www.skillsforhealth.org.uk/about-us/press-releases/training-standards-and-code-of-conduct/

HANDLING COMPLAINTS INFORMATION FOR UNREGISTERED HEALTH PRACTITIONERS

HEALTH CARE COMPLAINTS COMMISSION

The following guidelines are aimed to assist practitioners in how to deal with complaints made to them or about them and the health service they provided.

Preventing complaints

Many complaints are the result of poor communication between the client and the health service provider.

It is crucial for a health service provider to obtain informed consent from their clients before performing any treatment or procedure. This includes clearly describing the nature of the treatment, any possible side effects and also what outcomes can be reasonably expected.

It is also crucial to adequately record the treatment provided. This will also help to respond to any concerns or complaints from clients at a later stage.

Resolving complaints

If you receive a complaint, it is generally recommended to deal with it directly when it occurs and try to resolve it with the person that complains.

The following guidelines provide some tips on how to best manage complaints at an early stage.

What happens in cases, when complaints are lodged with the Health Care Complaints Commission will be outlined in the second part of these guidelines.

Why people complain

Complaints and the reason for them are different. Often people complain because:

- they want an acknowledgement that something went wrong and an explanation of why
- they want an apology for the distress they experienced
- they do not want to see other people facing a similar problem
- they want to improve the service for themselves or others in the future
- they want someone to be blamed, punished or held accountable for what happened
- they want compensation.

Tips for responding to a complaint

When facing a complaint there are some basic steps to follow in responding to the concerns the client has.

- Acknowledge the complaint
- Try to resolve the complaint directly with the complainant
- Be aware of differing views of what happened and what was said
- Reassure the complainant
- Have a complaint handling mechanism already in place

General principles

Timeliness

Respond to complaints as soon as possible, even if it is just to explain the process.

Give a commitment to a certain timeframe and stick to it. Keep the complainant informed and if there is a delay and explain the reasons for this.

Address all aspects

Provide a full response that addresses the important issues and shows the complainant that the complaint has been taken seriously.

Acknowledge areas of disagreement, or varying accounts without dismissing what the complainant has said.

Try not to be defensive

Acknowledge the distress of the complainant.

Acknowledge any errors that did occur and apologise, if appropriate. In any event be sympathetic.

Try to understand the situation from the complainant's perspective. Find out what would resolve the matter for them, for example a written response, a phone discussion, changes in policy or procedure, a meeting.

Avoid official or technical language, jargon and clichés. Consider the cultural background and the use of interpreters.

Lessons learned

Where there has been an error, outline what went wrong, how it happened, what is being done to stop it happening again, and that you are sorry that it happened.

When a complaint is lodged with the Health Care Complaints Commission

The Health Care Complaints Commission is an independent body dealing with complaints about health service providers in NSW.

This includes complaints about unregistered practitioners, such as naturopaths or masseurs.

What is an unregistered practitioner?

An unregistered practitioner is any health practitioner, who is not required to be registered under *Health Practitioner Regulation National Law (NSW)*, or who provides services that are unrelated to their registration.

What is the legislative framework for dealing with complaints?

The key features of legislation regarding complaints against unregistered health practitioners are:

- A code of conduct for unregistered health service providers that came into effect on 1 August 2008.
- The Health Care Complaints Commission's power to deal with and investigate complaints about an unregistered health service provider breaching the code of conduct.
- The Commission's powers to take action against unregistered health practitioners, including issuing prohibition orders.
- It is an offence for an unregistered health service provider to continue to provide a health service in breach of a prohibition order.
- It is an offence for health

practitioner whose registration had been cancelled to provide health services in breach of an order of the relevant Tribunal or Council.

- Any health practitioner whose registration has been cancelled and who continues to offer a health service must inform clients about that cancellation before commencing to provide that health service.

Code of Conduct

A code of conduct for unregistered health practitioners came into effect on 1 August 2008. The Code is contained in Schedule 3 of the Public Health Regulation 2012.

The intention of the code is to set out the minimum practice and ethical standards with which unregistered health service providers are required to comply.

The code of conduct informs consumers what they can expect from practitioners and the mechanisms by which they may complain about the conduct of, or services provided by, an unregistered health service provider.

The key aspects of the code are that the health practitioner:

- must provide health services in safe and ethical manner.
- if diagnosed with an infectious medical condition, must ensure that he or she practises in a manner that does not put clients at risk.
- must not make claims to cure certain serious illnesses.
- must adopt standard precautions for infection control.
- must not dissuade clients from seeking or continuing with treatment by a registered medical practitioner and must accept the rights of their clients to make informed choices in relation to their health care.
- must not practise under the influence or alcohol or drugs.
- must not practise with certain physical or mental conditions.
- must not financially exploit clients.
- is required to have an adequate clinical basis for treatments.
- must not misinform their clients.
- must not engage in a sexual or improper personal relationship with a client.
- must comply with relevant privacy laws.
- must keep appropriate records.
- must keep appropriate insurance.
- must display code and other information (with some exceptions)
- must not sell or supply an optical appliance without proper authorisation.

Powers of the Commission

The Commission has the power to:

- issue an order prohibiting the person from providing health services for a period of time
- issue an order placing conditions on the provision of health services
- provide a warning to the public about the practitioner and his or her services.

To do so, the Commission must find that the provider has:

- breached the code of conduct; or
- been convicted of an offence under Part 2A of the Public Health Act; or
- been convicted of an offence under the Fair Trading Act 1987 (NSW) or the Trade Practices Act 1974 (Cth) relating to the provision of health care services.

Stages in the complaints process

When dealing with complaints about unregistered health practitioners the Commission will generally take the following steps:

1. Commission receives complaint

When the Commission receives a complaint, it will contact the complainant to clarify the issues; notify the provider and seek their response to the complaint.

2. Assessment

When assessing a complaint the Commission may obtain health records to assist the assessment of clinical issues; and may seek advice from independent experts in the area.

The Commission assesses all relevant information, including the complaint, any response from the provider, health records and any expert advice.

At the end of the assessment, the Commission may:

Refer to another body
In some cases, it is appropriate to refer a complaint to another body to be dealt with by them. This may include referral to a body such as the Therapeutic Good Administration or the Office of Fair Trading to consider taking appropriate action.

Refer to Resolution Service
Often a complaint may be resolved with the assistance of a Resolution Officer or independent conciliator. Participation in resolution or conciliation is voluntary.

Discontinue
The Commission can discontinue dealing with a complaint for many reasons including the age of the matter or that it might be better dealt with by some alternative means of redress.

Investigate
The Commission refers complaints about individual practitioners for formal investigation where it appears that there is:

- a breach of the code of conduct, and
- a risk to public health or safety.

3. Investigation

The purpose of an investigation is to obtain information so that the Commission can determine the most appropriate action (if any) to take. The focus of investigations is on the protection of public health and safety.

At the end of an investigation the Commission may:

Terminate
That is to take no further action. This involves cases where the investigation found no evidence of inappropriate conduct, care or treatment.

Refer matter to Director of Public Prosecutions
The Commission may refer the matter to the Director of Public Prosecutions for the consideration of criminal charges.

Make comments
The Commission will make comments to a health practitioner where poor care or treatment was provided, but there is insufficient evidence to justify placing conditions on the practitioner, making a prohibition order, or issuing a public warning.

Issue a public warning
If the Commission finds that that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, the Commission may issue a public warning.

This allows the Commission to quickly and effectively warn the public about unregistered health service providers who provide services that are a risk to the public.

Issue a prohibition order placing conditions
If the Commission finds that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, the Commission can issue a prohibition order that places conditions on the provision of health services.

The power to limit a prohibition to a particular type of health service allows the Commission to take action to protect the public from those aspects of the person's practice that are of particular concern or danger to the public whilst allowing the person to continue to practise in areas that do not present a risk.

The unregistered practitioner must advise potential patients of the provisions of the prohibition order before treating them. A breach of the order is a criminal offence.

Issue a blanket prohibition order
The final option open to the Commission if it finds that that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, is the issuing of a prohibition order against an unregistered health practitioner.

The power to impose a blanket prohibition on a person providing health services allows the Health Care Complaints Commission to ensure that unregistered health service providers who have practiced in a highly unethical or dangerous fashion are prohibited from providing future health services to the public.

Right to appeal

The practitioner has the right to appeal against the Commission's decision. The appeal has to be made to the Administrative Decisions Tribunal within 28 days from the date of the Commission's decision.

Communication with the health service provider

In dealing with a complaint against an unregistered health practitioner, the Commission is obliged to communicate with the practitioner during the handling of the complaint against them. The key steps where the Commission will usually communicate or notify a practitioner are:

- on receipt of the complaint
- after an assessment decision has been made
- in the closing stages of an investigation the Commission must notify the practitioner that the Commission is proposing to either:
  - make comments to the practitioner
  - issue a public warning
  - place conditions on the practitioner, or
  - issue a prohibition order.

This allows the practitioner to make a submission in relation to the proposed action.

After receipt of the practitioners submission, if the Commission decides to place conditions, or issue a public warning or prohibition order the Commission will provide the practitioner with a statement of this decision.

Communication with other parties

In addition to communicating with the practitioner, the Commission is obliged to notify an employer when it decides to investigate a practitioner.

More information

For more information about the Commission, please visit the website www.hccc.nsw.gov.au.

Contact the Commission

Office address
Level 13, 323 Castlereagh Street
Sydney NSW 2000

Hours of business
9.00am to 5.00pm Monday to Friday

Postal address
Locked Mail Bag 18
Strawberry Hills, NSW 2012 or
DX11617 SYDNEY DOWNTOWN

Telephone	(02) 9219 7444
Toll Free in NSW:	1800 043 159
Fax:	(02) 9281 4585

People using telephone typewriters [TTY] please call (02) 9219 7555

Email:	hccc@hccc.nsw.gov.au
Website:	www.hccc.nsw.gov.au

Interpreter Service

People who prefer a language other than English can contact us through Telephone Interpreter Service (TIS National) on 131 450 (Monday to Friday 9.00 am - 5.00 pm).

HANDLING COMPLAINTS INFORMATION FOR UNREGISTERED HEALTH PRACTITIONERS

HEALTH CARE COMPLAINTS COMMISSION

Frequently Asked Questions

Do I have to display the code of conduct for unregistered practitioners if I practice in a hospital or medical centre?

You do not have to display the Code of Conduct, if you work in the public health system, or at a private hospital or private day procedure centre.

Clause 17 of the Code of Conduct states all health practitioners have to display the full code of conduct and the approved notice about how a client can make a complaint to the Health Care Complaints Commission, **except** health practitioner that work:

- in any premises of the public health system
- Private hospitals and day procedures centre
- Premises of the Ambulance Service of NSW
- Premises of approved providers that fall under the *Commonwealth Aged Care Act 1997,* such as nursing homes.

Must the code of conduct be displayed in an educational institute, where students are providing a health service under supervision?

Yes, unless the premises fall under the exemptions listed above.

If a practitioner wrongly claims to be a member of an association, is this a matter for the Health Care Complaints Commission?

The Health Care Complaints Commission is interested in patient care and risks to public health. The Commission does not deal with matters of membership, education, or qualifications, unless they have a negative impact on the health service provided to the client.

For example, if a practitioner performs a procedure that is outside their expertise and training, they are in breach of clause 3 (2)(b) of the Code of Conduct, which provides that ‘a health practitioner must not provide health care of a type that is outside his or her experience or training’.

If a practitioner gains a commercial advantage from falsely claiming membership of an association, the Department of Fair Trading may investigate false or misleading advertising.

If an unqualified practitioner provides some form of therapy, is this a matter for the Health Care Complaints Commission?

If a practitioner performs a procedure that is ‘outside his or her experience and training’, they are in breach of clause 3 (2)(b) of the Code of Conduct.

Qualifications may not be the crucial issue on their own, rather the code of conduct requires the practitioners to have an adequate clinical basis for treating or diagnosing an illness or condition [clause 11].

Can a complaint be resolved directly with the practitioner or their professional association instead of lodging a complaint with the Health Care Complaints Commission?

Yes, the Health Care Complaints Commission encourages complainants to try to resolve their concerns directly with the health practitioner.

Can a professional organisation / association or registration authority make a complaint about one of their members?

Yes, anyone can make a complaint to the Commission. That includes the person that received the health service in question, as well as their family or other concerned parties.

If you are concerned about the conduct of another unregistered practitioner, are you obliged to report this to the Health Care Complaints Commission?

No, there is no obligation for anyone, including for unregistered practitioners to report concerning conduct of another practitioner to the Commission.

However, depending on the nature of the complaint, we would recommend that you refer a potential complainant to the Commission, if there are serious issues of public health and safety.

Complaints about sexual assault or other criminal action should be referred to the police.

Will the Commission inform a health practitioner that a complaint has been made about them?

Yes, when receiving a complaint, the Commission usually notifies the health service provider and asks them to provide a response. However, the Commission may decide not to notify a provider, if it would prejudice the following investigation or could threaten the health and safety of a person.

When handling complaints, the Commission observes the principles of procedural fairness. Before taking any adverse action like issuing a prohibition order or public warning, the Commission would give the provider a full and fair opportunity to respond to the complaint.

Does the Health Care Complaints Commission contact the association the provider is a member of, to inform them that a complaint has been made?

No; the Commission is bound by the *Health Care Complaints Act* when dealing with complaints, and is unable to notify an association or professional body about a complaint that was made against one of their members.

After assessing a complaint, the Commission may refer a complaint to an association or professional body for its action.

At the conclusion of an investigation, the Commission also has the power to refer its findings to a professional body or association.

When the Commission, decides to take adverse action, such as issuing a public warning or prohibition order after investigating a complaint, it may then inform the

professional bodies as well as the general public.

Is a complaint about a certain practitioner ever made public?

Generally, the Commission cannot disclose information about a complaint. In exceptional circumstances and only for the purposes of the *Health Care Complaints Act*, the Commission may disclose information about a complaint to protect the public health and safety.

However, if after investigating a complaint, the Commission decides to take adverse action, such as issuing a public warning or prohibition order, it would then inform the public through its website www.hccc.nsw.gov.au.

Will there be public warnings regarding practitioners who have complaints against them?

The Commission will only publish details of those practitioners against whom it has issued a prohibition order or public warning after full investigation. Complaints that are otherwise dealt with are not publicised.

Can the Health Care Complaints Commission give warnings regarding certain services and treatments?

Yes, if following an investigation, the Commission believes that a certain treatment or health service poses a risk to the public health and safety, it can issue a public statement that informs or warns about a certain treatment or health service.
[*Health Care Complaints Act*, section 94A (1)]

Will the Health Care Complaints Commission monitor the number of complaints it receives about unregistered health practitioners?

Yes, the Commission monitors all complaints it receives; this includes complaints about unregistered health practitioners. The Commission releases statistical data in its annual report about the number and nature of complaints it receives and deals with.

Code of Conduct for unregistered health practitioners

Made under the Public Health Regulation 2012, Schedule 3

1 Definitions

In this code of conduct:

health practitioner and ***health service*** have the same meaning as in the *Health Care Complaints Act 1993*.

Note. The *Health Care Complaints Act 1993* defines those terms as follows:

health practitioner means a natural person who provides a health service (whether or not the person is registered under the Health Practitioner Regulation National Law).

health service includes the following services, whether provided as public or private services:

(a) medical, hospital, nursing and midwifery services,
(b) dental services,
(c) mental health services,
(d) pharmaceutical services,
(e) ambulance services,
(f) community health services,
(g) health education services,
(h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
(i) services provided in connection with Aboriginal and Torres Strait Islander health practices and medical radiation practices,,
(j) Chinese medicine, chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatry and psychology services,
(j1) optical dispensing, dietitian, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services
(k) services provided in other alternative health care fields,
(k1) forensic pathology services,
(l) a service prescribed by the regulations as a health service for the purposes of the *Health Care Complaints Act 1993*.

2 Application of code of conduct

This code of conduct applies to the provision of health services by:

(a) health practitioners who are not subject to the scheme for registration under the Health Practitioner Regulation National Law (including de-registered health practitioners), and
(b) health practitioners who are registered under the Health Practitioner Regulation National Law who provide health services that are unrelated to their registration.

Note. Health practitioners may be subject to other requirements relating to the provision of health services to which this Code applies, including, for example, requirements imposed by Part 2A of the Act and the regulations under the Act relating to skin penetration procedures.

3 Health practitioners to provide services in safe and ethical manner

(1) A health practitioner must provide health services in a safe and ethical manner.
(2) Without limiting subclause (1), health practitioners must comply with the following principles:
(a) a health practitioner must maintain the necessary competence in his or her field of practice,
(b) a health practitioner must not provide health care of a type that is outside his or her experience or training,
(b1) a health practitioner must not provide services that he or she is not qualified to provide,
(b2) a health practitioner must not use his or her possession of particular qualifications to mislead or deceive his or her clients as to his or her competence in his or her field of practice or ability to provide treatment,
(c) a health practitioner must prescribe only treatments or appliances that serve the needs of the client,
(d) a health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances,
(e) a health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate,
(f) a health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable,
(g) a health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving,
(h) a health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving,
(i) a health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation,
(j) a health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.

4 Health practitioners diagnosed with infectious medical condition

(1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.
(2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

5 Health practitioners not to make claims to cure certain serious illnesses

(1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer and other terminal illnesses.
(2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.

6 Health practitioners to adopt standard precautions for infection control

(1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.
(2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure within the meaning of section 51 (3) of the Act must comply with the relevant regulations under the Act in relation to the carrying out of the procedure.

Note. The Act defines ***skin penetration procedure*** as any procedure (whether medical or not) that involves skin penetration (such as acupuncture, tattooing, ear piercing or hair removal), and includes any procedure declared by the regulations to be a skin penetration procedure, but does not include:

(a) any procedure carried out by a health practitioner registered under the Health Practitioner Regulation National Law, or by a person acting under the direction or supervision of a registered health practitioner, in the course of providing a health service, or
(b) any procedure declared by the regulations not to be a skin penetration procedure.

7 Appropriate conduct in relation to treatment advice

(1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.
(2) A health practitioner must accept the right of his or her clients to make informed choices in relation to their health care.
(3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.
(4) A health practitioner who has serious concerns about the treatment provided to any of his or her clients by another health practitioner must refer the matter to the Health Care Complaints Commission.

8 Health practitioners not to practise under influence or alcohol or drugs

(1) A health practitioner must not practise under the influence of alcohol or unlawful drugs.
(2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to practice and must refrain from treating clients in circumstances where his or her ability is or may be impaired.

9 Health practitioners not to practise with certain physical or mental conditions

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practise or that places clients at risk of harm.

10 Health practitioners not to financially exploit clients

(1) A health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.
(2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other health practitioners.
(3) A health practitioner must not provide services and treatments to clients unless they are designed to maintain or improve the clients' health or wellbeing.

11 Health practitioners required to have clinical basis for treatments

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.

12 Health practitioners not to misinform their clients

(1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.
(2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked about those matters by a client.
(3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

13 Health practitioners not to engage in sexual or improper personal relationship with client

(1) A health practitioner must not engage in a sexual or other close personal relationship with a client.
(2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

14 Health practitioners to comply with relevant privacy laws

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' health information, including the *Privacy Act 1988* of the Commonwealth and the *Health Records and Information Privacy Act 2002*.

15 Health practitioners to keep appropriate records

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.

16 Health practitioners to keep appropriate insurance

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

17 Certain health practitioners to display code and other information

(1) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner carries on his or her practice:
(a) this code of conduct,
(b) a document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General.
(2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises.
(3) This clause does not apply to any of the following premises:
(a) the premises of any body within the public health system (as defined in section 6 of the *Health Services Act 1997*),
(b) private health facilities (as defined in the *Private Health Facilities Act 2007)*
(c) premises of the Ambulance Service of NSW (as defined in the *Health Services Act 1997*),
(d) premises of approved providers (within the meaning of the *Aged Care Act 1997* of the Commonwealth).

18 Sale and supply of optical appliances

(1) A health practitioner must not sell or supply an optical appliance (other than cosmetic contact lenses) to a person unless he or she does so in accordance with a prescription from a person authorised to prescribe the optical appliance under section 122 of the Health Practitioner Regulation National Law.
(2) A health practitioner must not sell or supply contact lenses to a person unless the health practitioner:
(a) was licensed under the *Optical Dispensers Act 1963* immediately before its repeal, or
(b) has a Certificate IV in optical dispensing or an equivalent qualification.
(3) A health practitioner who sells or supplies contact lenses to a person must provide the person with written information about the care, handling and wearing of contact lenses, including advice about possible adverse reactions to wearing contact lenses.
(4) This clause does not apply to the sale or supply of the following:
(a) hand-held magnifiers,
(b) corrective lenses designed for use only in diving masks or swimming goggles,
(c) ready made spectacles that:
(i) are designed to alleviate the effects of presbyopia only, and
(ii) comprise 2 lenses of equal power, being a power of plus one dioptre or more but not exceeding plus 3.5 dioptres.
(5) In this clause:

cosmetic contact lenses means contact lenses that are not designed to correct, remedy or relieve any refractive abnormality or defect of sight.

optical appliance has the same meaning as it has in section 122 of the Health Practitioner Regulation National Law.

CONCERNED ABOUT YOUR HEALTH CARE?

The Code of Conduct for unregistered health practitioners sets out what you can expect from your provider. If you are concerned about the health service that was provided to you or your next of kin, talk to the practitioner immediately. In most cases the health service provider will try to resolve them.

If you are not satisfied with the provider's response, contact the Inquiry Service of the Health Care Complaints Commission on **(02) 9219 7444** or toll free on **1800 043 159** for a confidential discussion. If your complaint is about sexual or physical assault or relates to the immediate health or safety of a person, you should contact the Commission immediately.

What is the Health Care Complaints Commission?

The Health Care Complaints Commission is an independent body dealing with complaints about health services to protect the public health and safety.

Service in other languages

The Commission uses interpreting services to assist people whose first language is not English. If you need an interpreter, please contact the **Translating and Interpreting Service (TIS National) on 131 450** and ask to be connected to the Health Care Complaints Commission on 1800 043 159 (9.00 am to 5.00 pm Monday to Friday).

More information

For more information about the Health Care Complaints Commission, please visit the website www.hccc.nsw.gov.au.

Contact the Health Care Complaints Commission

Office address: Level 13, 323 Castlereagh Street, SYDNEY NSW 2000
Post address: Locked Mail Bag 18, STRAWBERRY HILLS NSW 2012

Telephone: (02) 9219 7444 Toll Free in NSW: 1800 043 159
Fax: (02) 9281 4585 E-mail: hccc@hccc.nsw.gov.au
People using telephone typewriters please call (02) 9219 7555