March 2019

Health and Social Care Committee NHS Long-term Plan: legislative proposals inquiry
Royal College of Nursing initial submission

Introduction

The proposed legislation update provides an ideal opportunity to introduce clarity on roles, responsibilities and accountabilities related to staffing for safe and effective care. Without these elements being addressed, it is likely that the nursing workforce crisis will continue to develop without clear recourse to hold Government and other bodies to account for the provision of sufficient nursing workforce to deliver safe and effective care. Existing workforce gaps will continue to negatively impact upon patient care and safety without intervention. It is important to recognise that any expanded powers for local decision-makers must be supported by a national accountability framework for workforce codified in law, as there will be national issues which cannot be resolved by sub-national structures such as Sustainability and Transformation Partnerships (STPs) and Integrated Care Systems (ICSs).

We welcome proposals to enable local decision-makers to come together more easily to provide joined-up services for local populations. Nursing is a profession which works routinely across organisational boundaries and sectors (e.g. public health, health and social care), so we are well aware of the benefits of enabling integration. However, we are seeking assurances on aspects which require appropriate safeguards or frameworks to ensure good standards of integrated service design and workforce planning.

We would like to emphasise that at this stage of the consultation timeframe, the RCN is still consulting members to further develop our positions and recommendations. We have therefore provided emerging views, and will provide a fuller response by 8th April, as requested.

1. Accountability for workforce

1.1. The RCN is clear that this opportunity must be taken to address the existing legal and structural ambiguity with regards to workforce which has contributed to the existing and widely recognised crisis. Existing policy levers, including the powers of Secretary of State for Health and Care, and duties assigned to organisations, do not currently clearly set out responsibilities for workforce strategy, planning and development which is aligned with each of their roles and functions. At every level of decision making about the health and social care workforce, from Government level to local provider, any determination about nurse staffing must be informed by legislation, Nursing and Midwifery Council requirements, national regional and local policy, research evidence, professional guidance, patient numbers, complexity and acuity, the care environment and professional judgement. Financial resources and expenditure must be in place to fully fund and support the delivery of workforce plans and the provision of nurse staffing for safe and effective care.

1.2. This requirement has already been identified by devolved administrations in Wales and Scotland. In England, devolved and fragmented structures of the commissioning, funding and delivery of health and care services create much room for ambiguity which is reflected in the actions of national and local players across health and care. All decisions regarding staffing for safe and effective care, from national bodies through to local organisations, should be based on assessment of patient and population needs, up to date evidence base, workforce planning tools, and the professional judgement of senior nurses. Health and care services should be understood and promoted as a safety critical industry, and the adequate provision of staffing recognised as a critical requirement for the delivery of safe and effective models of care.

1.3. The Secretary of State for Health and Social Care currently has an existing duty to promote a comprehensive health service, but does not have a specific duty to ensure that there is sufficient workforce to meet the needs of the population within health and care services. The power to issue an annual mandate to the NHS is limited to setting objectives for the current functions of NHS England. While it may be possible, in theory, for Government to address workforce shortages via NHS service commissioning channels, this is tenuous and open to interpretation. This ambiguity has played out consistently over time, including through the development of the recent Long Term Plan, necessitating that Government to commission a system-led national workforce group to analyse the issues, and make recommendations to Government. We consider that the development of an NHS delivery plan, which is fundamentally dependent on the securing of additional funding from Treasury, to be a demonstration that the current system is not effective.

1.4. Health Education England has some legal responsibilities, but do not currently have sufficient powers to take action or invest to increase the national supply of nurses in order to meet the needs of the population within health and care services.

1.5. Locally, providers are held to account for employing sufficient numbers of staff. However, they have no power to increase the national workforce supply and most are therefore struggling to recruit, remunerate and retain staff, as we have no credible national strategy in place which fully addresses these aspects. While local decision-makers may be held to account for local decisions on staffing for the provision of safe and effective services, but they are unable to resolve national workforce shortages.

1.6. In practice, the lack of clarity in terms of national accountability by Government and agencies means that policy and funding decisions have become reactive, rather than proactive, and solutions are limited and piecemeal. Rather than the establishment of safe and effective models of care, followed by funding, the financial envelope is determining how the health and care transformation is translated into action.

1.7. The RCN is calling for the following specific duties to be introduced to organisations which have the existing legal power to deliver them. Within Government, the Secretary of State for Health and Social Care should be explicitly accountable for the provision of workforce. Each player throughout the health and care system then needs a clearly defined role to the level and complexity of their responsibilities, so that they can be clear about their functional role in delivering sufficient nurses and nursing staff to meet population need, and ensuring those nurses and nursing staff are in the right place and the right time to deliver safe and effective care.

1.8. Government: The Secretary of State for Health and Social Care should be accountable to Parliament for ensuring an adequate supply of staff to provide safe and effective care, with regard for the wider workforce needs across all publicly funded and commissioned health and social care. This duty should include accountability for ensuring a fully costed and funded national workforce strategy, based on the assessed needs of the population. This duty would therefore also help to prevent further workforce supply and development problems in the future.

1.9. NHS arms-length bodies: National bodies such as NHS England, NHS Improvement and Health Education England (HEE), should hold clearly defined powers and duties related to the workforce, specific to their wider roles and responsibilities. For NHS England and NHS Improvement, this should include specific duties for workforce planning, supporting the system to implement plans. For HEE, this should include a duty and specific functional powers to enable quality of education and training, supported by funding to deliver the level of provision set out by the Secretary of State for Health and Social Care and within a national workforce strategy.

1.10. Integrated Care Systems: ICSs provide a good opportunity for supporting and coordinating local workforce activities. They are well placed to understand local population need, understand the relevant workforce requirements, and communicate this to national bodies.

1.11. Clinical Commissioning Groups (CCGs): CCGs should have a legal duty to understand local needs and plan services and workforce to meet this need. They should have responsibilities for delivering clear objectives as part of national workforce strategy. They should be accountable for enabling providers to deliver safe and effective services, and for escalating concerns about workforce and data gaps into the national system.

1.12. Providers: Providers, who are also employers, of publicly funded health and social care services (regardless of sector) should held accountable for demonstrating their corporate accountability for decisions on workforce planning to deliver safe and effective services, underpinned by evidence. These decisions should ensure that vacant posts are recruited to, and that shifts are staffed according to patient need and acuity. Providers should be required to regularly publicly report on staffing levels and skill mix for the range of services they provide.

1.13. If all of these responsibilities were in place, we believe that it is more likely that the system would have come together to make decisions how the workforce can be best utilised to deliver a comprehensive, quality care service to meet the needs of the population. Without these changes, the workforce crisis is likely to continue, with patients facing greater risk to their safety. It is clear that the ambitions of the Long Term Plan cannot be realised without resolving now who must be responsible for the actions we have described. It is important that Government and each player in the health and care system is fully clear on their workforce-related duties and accountability so that all can be confident about meeting the health and care needs of the population, now and in the future.

All of these positions are directly drawn from the RCN's principles for legislation for staffing for safe and effective care, published in Staffing for Safe and Effective Care: Nursing on the Brink, published in May 2018.

2 Specific responses to the proposals for a legislation update

The current proposals describe intentions which we welcome in principle. However, they require either expanding to include specific workforce duties, or the provision of further assurances to mitigate against unintended consequences. We set out our initial positions here, and ask that the Committee note that these are being further tested and strengthened in consultation with members and staff.

2.1 *Shifting from competition to collaboration.*

We welcome these proposals, and have some confidence in the safeguards set out. We are continuing to consult with our members and staff across England to test this initial position.

2.2 *Getting better value for the NHS.*

We welcome this proposal and believe that it would reduce lengthy and costly bureaucracy. However, further clarity is needed on the 'best value test'. Alongside the component parts set out in the proposals, we recommend that the 'best value test' includes Specific consideration of whether NHS Commissioners are obtaining best value from their resources in terms of:

- The likely impact on the workforce, and on any recruitment or retention strategies which are underway;

- The delivery of high-quality nursing practice, and in the delivery of safe and effective care; and
- Active consideration of relevant issues in making any decisions, with explicit regard to local population need and workforce issues.

Our recommendation is that guidance should be based upon a nationally agreed 'best value' framework, and that a clear mechanism is developed to assess the impact of this. Development of 'best value' approaches should involve clinical and patient groups, and take into account the current evidence base, as well as wider systemic issues and priorities. We are continuing to consult with our members and staff across England to test this initial position.

2.3 *Increasing the flexibility of national NHS payment systems.*

We welcome this proposal based on its intention to provide greater flexibility to reflect local factors, and to support better flow through care pathways. We are mindful that current payment systems can act as a disincentive to early intervention and timely from acute settings. We are continuing to consult with our members and staff across England to test this initial position.

2.4 *Integrating care provision.*

The RCN has consistently been supportive of the stated aims and underpinning objectives of sustainability and transformation initiatives across the health and social care system in England but we have previously raised concerns about how this has been applied in practice.

The formation of more Integrated Care Providers could lead to potential changes for staff who may have to work across sectors or across different settings. These changes could offer welcome opportunities, such as more autonomous working. However, if financial considerations and cost-saving measures are prioritised, the introduction of providers who have a greater remit, could result in unsafe nurse and nursing staff levels and skill mix, unless matched with greater transparency and scrutiny.

Any reduction in the number of registered nurses; or dilution of the skill mix; or inappropriate substitution of registered nursing staff with support staff, would have a detrimental impact on patient care. Integrated Care Providers should therefore only be formed if it can be demonstrated that there will not be an adverse effect on the pay, terms and conditions of any staff involved, and that their plans promote patient safety and effective care.

If the Secretary of State for Health and Social Care is to be given duties to create new NHS Trusts, there need to be safeguards to ensure that decisions are based on evidence, and made with the involvement of nursing staff. There must be a mechanism for scrutinising these decisions, and ensuring that opportunities for data collection and reporting are enhanced, and not diminished, through structural changes to providers.

We also seek reassurance that increased deployment of the Integrated Care Provider contract will not lead to a diminishment of the nursing voice or leadership role within services, as they come together under one contract. We are continuing to consult with our members and staff across England to test this initial position.

2.5 *Managing the NHS's resources better.*

Under these proposals, NHS Improvement would have expanded powers to direct mergers or acquisitions involving NHS foundation trusts where there are 'clear patient benefits'. Further clarity is needed as to how patient benefits would be quantified and measured. This should be expanded to take into consideration the wider contextual factors involved in mergers, such as the impact upon nursing staff, pay, terms and conditions, and upon ongoing recruitment and retention strategies.

We are continuing to consult with our members and staff across England to test this initial position.

2.6 *Every part of the NHS working together.*

CCGs and NHS providers would be given the ability to create joint committees which could exercise functions and make joint decisions. We recommend that these committees should be given specific functions or remits related to assessing local population needs, workforce planning and contributing towards the delivery of a national workforce strategy.

We are continuing to consult with our members and staff across England to test this initial position.

2.7 *Shared responsibility for the NHS.*

We welcome the introduction of a shared duty. We consider this an ideal opportunity to include a specific duty related to the workforce, through expansion of the proposed duty. We are continuing to consult with our members and staff across England to test this initial position.

2.8 *Planning our services together.*

We welcome this proposal, and recommend that these arrangements also be expanded. There should be explicit duties for CCGs entering into joint arrangements to understand local needs and plan workforce to meet this need, and this requires local collaboration. They should be responsible for escalating concerns about workforce and data gaps into the system. They also need responsibilities for delivering clear objectives as part of national workforce strategy. With these responsibilities, they should be accountable for enabling providers to deliver services with the workforce they need to ensure safe and effective care.

We are continuing to consult with our members and staff across England to test this initial position.

2.9 *Joined-up national leadership.*

The RCN broadly supports the proposals. Expanding powers for the Secretary of State for Health and Social Care provides a clear opportunity to articulate the new duties for workforce that we have called to be included in this legislation. The existing mechanisms have proven not to be sufficient for the Secretary of State to direct the system with regard to workforce, as we have set out above.

We note that there could be potential for conflict of responsibilities within lead national NHS organisation, specifically between system financial pressures and efficiency, and meeting a comprehensive service to meet the health needs of the population. It will be important to

understand and gain assurance on the mechanism for transparent decision making and resolution in these types of conflict.

We are continuing to consult with our members and staff across England to test this initial position.

About the Royal College of Nursing

The RCN is the voice of nursing across the UK and the largest professional union of nursing staff in the world.

For further information, please contact: Charli Hadden, Policy Adviser – charli.hadden@rcn.org.uk