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Review of the National Care Standards

The Royal College of Nursing (RCN) Scotland is a professional body and trade union for nurses and health care support workers, with around 40,000 members in Scotland.

We welcome that we have an opportunity to provide comments on this consultation phase of the National Care Standards review about the principles that should underpin the new standards. We have presented our comments under the headings below as opposed to in the feedback form, as we have made some comments about the review process and the wider context that the National Care Standards must work in. However we have tried to make it clear when the feedback relates to particular questions asked in the consultation, to aid analysis.

Our main comments on the proposals are as follows:

- While we welcome that the review of the National Care Standards is now finally underway, we are concerned about the slow timescale of the review especially given that the integration of health and social care will be in place from next April.
- The principles behind the National Care Standards must be fully aligned with the wider health and social care landscape and existing legislation, including the Public Bodies (Joint Working) (Scotland) Act 2014 and the Patient Rights Act (Scotland) 2011.
- Using the PANEL principles for applying a human-rights based approach, the principles behind the National Care Standards should only use the wording "*I am entitled"* if it is referring to legally

enforceable entitlements. It must be clear where accountability for the National Care Standards lies and how individual and organisational responsibilities are distinguished.

- There needs to be clarity about what is to happen to existing standards that services are currently inspected against, such as Healthcare Improvement Scotland's (HIS's) Older People in Acute Care standards, and whether these will be replaced. The National Care Standards must streamline and support an overarching framework for the quality of care, not duplicate or add multiple layers of standards that will be confusing for both staff and people receiving care.

Timescale and review process

The RCN has called for a review of the National Care Standards since 2011. While we are pleased that the Care Inspectorate and HIS are now taking this work forward, we are concerned about the slow progress and timescale of the review. The Scottish Government's 2014 consultation document proposed having new overarching quality standards in place from April 2015 and that further consultation on the content of the standards would take place during 2014-15. We have not been aware of any further consultation during 2014-15 and there appears to have been little progress made since 2014 and this current consultation.

The timescale given in this consultation document states that the new National Care Standards will not be fully implemented until 2018. With the integration of health and social care becoming operational in April 2016, integration joint boards and staff delivering care will have up to two years of working towards different standards of care in different settings. This is not conducive for supporting integration or the delivery of high quality care.

We suggest that the pace of the development of the new National Care Standards should be increased. The current timetable is also confusing. For example it says '*launch draft generic standards'* in March 2016 and then '*issue generic standards for consultation to providers'* in September 2016. A revised timetable that makes it clear when standards will be developed and when they will be consulted on, would be helpful.

Aligning the National Care Standards with the wider health and social care landscape

The quality improvement and scrutiny landscape of health and social care in Scotland is complex, with a multitude of standards, inspections and policy initiatives being led by a diverse range of organisations. Alongside this, the way health and social care is delivered is changing rapidly with the onset of integration. Introducing National Care Standards that will apply across all settings, including the NHS for the first time, is a major change. But it also presents a unique opportunity to pull together all the activity seeking to improve the quality of care delivered across Scotland into one cohesive framework.

The principles behind the National Care Standards must reflect this shifting landscape and be explicit in how they complement – and not compete with - existing principles, legislation and policies. Failure to do this runs the risk that both people receiving care and the staff who are delivering it will be overwhelmed with a myriad of different standards and principles that are confusing and not cohesive. In particular, the principles underpinning the National Care Standards must be explicit in how they align with:

- The National Health and Wellbeing Outcomes[1] and the Integration Planning and Delivery Principles[2] of the Public Bodies (Joint Working) (Scotland) Act 2014
- The health care principles in the Patient Rights Act (Scotland) 2011 and the Charter of Patients' Rights and Responsibilities[3]
- HIS's proposed new approach for reviewing the quality of care and their quality framework model[4]
- The NHS Quality Strategy[5]

For example, the National Care Standards should be a key vehicle for ensuring that the National Health and Wellbeing Outcomes for the integration of health and social care are met and this link between them should be made explicit. The review of the National Care Standards is also happening at the same time as HIS's own quality of care review. We are not aware how these two workstreams are being aligned, but they must be looked at in conjunction with each other to prevent them being in conflict and to avoid duplication of effort.

We note that the previous consultation in 2014 stated that the National Care Standards *"should sit above all existing standards, principles and codes of practice for health and social care".* While we are not clear how the standards can necessarily sit above other principles that may be in legislation, we do believe that they should be part of an overarching and consistent framework for what is quality care.

Accountability for the National Care Standards

The PANEL approach to human rights stresses the importance of accountability. It must be clear, across all health and care services, where accountability for delivering the National Care Standards lies. The Regulation of Care (Scotland) Act 2001 established the current National Care Standards and the regulatory framework for social care, and made clear accountability for delivering the National Care Standards. Currently there is a two-tier system to the regulation and scrutiny of health and care services. The Care Inspectorate licenses and regulates care services and HIS regulates certain independent and voluntary health services. However HIS does not have a regulatory function within the NHS. This consultation has not made it clear how the National Care Standards will be extended to apply to all services, including the NHS. Will this be done through introducing legislation or through existing performance management, assurance and scrutiny mechanisms?

The National Care Standards must distinguish organisational accountability from individual professional accountability. For example, what happens when there are not enough staff, or not enough staff with the right skills, to meet the standards expected of them? Individual staff members cannot be held accountable for an organisation's systemic issues. As we have raised in our recent evidence on the wilful neglect legislation proposals, in the vast majority of cases error or harm to patients is a result of a systemic failure rather than the actions of one individual. Setting out levels of roles and responsibilities may therefore be helpful within the National Care Standards.

[1] http://www.legislation.gov.uk/ssi/2014/343/schedule/made
[2] http://www.gov.scot/Topics/Health/Policy/Adult-Health-SocialCare-Integration/Principles
[3] http://www.gov.scot/Resource/0039/00390989.pdf
[4] http://www.healthcareimprovementscotland.org/our_work/governance_and_assurance/quality_of_care_reviews.aspx
[5] Scottish Government (2010) The Healthcare Quality Strategy for NHSScotland

General comments on the proposed principles

We support that the National Care Standards are taking a human-rights based approach and that the Care Inspectorate and Healthcare Improvement Scotland will be using the PANEL principles when applying this approach to the new standards.

However we have a few general comments to be considered:

- The use of the phrase "*I am entitled"* is a strong and evocative statement about the rights that people are entitled to. However, applying the PANEL approach, this only works if the principles are rights that are recognised as legally enforceable entitlements linked in to national and international human rights law[6]. We do not think that all the principles listed are legally enforceable entitlements (see our comments in the section below about "*I am entitled to a responsive service*"). To avoid being misleading, either the wording *"I am entitled"* should only be used if there is a clear legal basis, or alternative wording needs to be used. It would also be helpful to make clear which articles of human rights legislation the principles apply to.

- As outlined above, the National Care Standards will be operating in a complex environment, with many different principles about how care is delivered, already in legislation. The proposed National Care Standards principles should be mapped against all existing principles, including the Integration Delivery and Planning Principles and the health care principles in the Patients Rights Act (Scotland) 2011, so that they unify and complement existing principles and rights, not conflict them.

- As we outlined in our response to the previous National Care Standards consultation, there is a relationship between the rights and responsibilities of an individual receiving care. Within healthcare, there has been an emphasis on mutual partnership and coproduction. The Charter of Patients' Rights and Responsibilities[3] balances rights with responsibilities. The NHS Quality Strategy[5] emphasises partnership: "*There will be mutually beneficial partnerships between patients, their families and those delivering healthcare services which respect individual needs and values and which demonstrate compassion, continuity, clear communication and shared decision-making."* We think this is a positive way forward that makes clear the importance of sound relationships between people providing and receiving services in providing quality care.

- The principles make no reference to carers. With the Scottish Government's commitment to supporting carers, and an explicit outcome about carers in the National Health and Wellbeing Outcomes, we would expect the National Care Standards to also reflect this. The Standards of Care for Dementia in Scotland[7] is an example of standards that reflect the rights and needs of a person receiving care and their carers. The principles – and the National Care Standards as a whole – also have to be considered from the perspective of people who do not have capacity to make their own decisions.

Specific comments on the principles

- *I am entitled to be respected* – though dignity is mentioned in the supporting wording, we suggest amending this so that it is about "*dignity and respect"*. Dignity is one of the principles of the current National Care Standards, it is given high prominence in the Charter of Patients' Rights and Responsibilities and it is one of the integration planning and delivery principles. In addition, the issue

[6] As stated in the 'Legality of rights' part of the PANEL approach, Scottish Human Rights Commission
[7] http://www.gov.scot/Publications/2011/05/31085414/0

of dignity frequently arises in inspection reports from the Mental Welfare Commission, HIS and the Care Inspectorate.

- *I am entitled to be included* – we think this should be amended to be more about "participating in decisions about my care".

- *I am entitled to a responsive service* – there is an inevitable tension between what an individual may desire from a service and what, in reality, a service that has to meet the needs of an entire population, while operating within budget constraints, can provide. "*Responsive service"* is hard to define and this principle risks creating a false expectation. We believe it needs to be more about accessing appropriate, evidence-based care to meet the person's needs and anticipating the care people may require (e.g. though an anticipatory care plan). For example, the Charter of Patients' Rights and Responsibilities talks about "*the right to safe and effective care*" and that "*care and treatment you receive must be suitable for you, carried out lawfully and based on recognised clinical guidance and standards where these exist*". Similarly, one of the three quality ambitions in the Quality Strategy is about being effective, defined as *"the most appropriate treatments, interventions, support and services will be provided at the right time to everyone who will benefit".*

- *I am entitled to personal wellbeing* – we did not feel that we understood what this principle and the accompanying phrase "*realise my potential"* meant.

Putting the principles into practice

Consultation question: For these principles to be met, what general standards are needed?

The general standards need to be specific, measurable, focused on patient outcomes and be able to be applied consistently across all care settings. The key domains that HIS recently consulted on as part of its quality framework, would be useful starting point for the types of general standards to consider: person-centred care, safety, effectiveness, leadership, governance, workforce and quality improvement. As we outlined before, HIS and the Care Inspectorate need to be clear how this quality framework relates to the National Care Standards. Will the National Care Standards adopt a version of the quality framework to apply across all services?

The National Care Standards need to reflect the importance of having a skilled, engaged and supported multi-disciplinary workforce to deliver safe, effective and person-centred care. From the point of view of nurses and healthcare support workers, this needs to include standards around staffing and skill mix; the implementation of the National Workforce and Workload Planning Tools (where available); access to training, continuing professional development, support and supervision; mechanisms for raising and acting on concerns and whistleblowing; and effective clinical and care governance. The National Care Standards must also incorporate the current national work being led by the Chief Nursing Officer on a national assurance system for nursing and midwifery care[8].

The National Care Standards need to strike a balance between respecting someone's right to have participation and control of their care, with the responsibilities of staff – who are professionally accountable for the care they give – to safeguard patients from harm and ensure that services are safe, effective and person-centred. Staff need to feel empowered and supported to allow people to have more control in the decisions that affect their care. The National Care Standards also need to be considered from the perspective of staff delivering care, to help them understand what is expected from them and

how they can uphold patients' rights, and to reflect that they have rights themselves that need to be upheld.

As the general standards need to apply across *all* settings, the Care Inspectorate and HIS will need to test the applicability of standards in a diverse range of care settings. We suggest that this testing is factored in to the development and consultation process for the new standards next year.

Consultation question: How would specialist standards support these principles?

For the National Care Standards to be effective, they need to be specific and meaningful for both people receiving care and for the staff who deliver it. We therefore agree that there should be specific standards for particular aspects of care. However these must be careful to complement and not duplicate existing standards. It is not clear how the proposed new National Care Standards will fit in with existing standards, such as the Older People in Acute Care standards, the Healthcare Associated Infection standards and the Standards of Care for Dementia in Scotland. Having different sets of standards, which do not clearly link together, will be confusing and will duplicate effort for staff having to comply with multiple sets of overlapping standards. This is not the purpose or original intent of the review. We assume that existing standards will be incorporated into the suite of specific standards and not be duplicated, however clarity on this is important.

The development of specific standards will need to involve full consultation with people using services, their families and carers, and health and social care professionals, over the areas these specific standards need to cover. We assume, from the initial timetable published, that there will be further consultation on this in 2016. It would be helpful to see plans for this in more detail. The RCN wishes to be involved in the further development of both the general and specific standards.

We also note in England there has been the development of NICE Quality Standards. There may be aspects of these, or learning from the process, that could apply in Scotland.

Other comments on implementing the National Care Standards

How the National Care Standards will be implemented is critical. This includes how they are communicated to people using services, carers and families, and services themselves; how staff are trained and supported to meet the standards; how they are embedded in organisational processes of clinical and care governance, assurance and improvement; and how they are monitored, assessed and scrutinised. Implementation must not just be about regulation and inspection, but also about supporting services to meet the standards and continually improve the quality of care they deliver. This requires appropriate resources, training and improvement support. Bodies such as HIS have an improvement, as well as scrutiny function, which must not be lost.

There needs to be consistency and transparency in the inspection process. Inspection methodology must be robust and be carried out by those with the expertise and understanding of the specific environment. With the Care Inspectorate and Healthcare Improvement Scotland working more closely together, there needs to be parity between the two organisations, in terms of training and approach, to support consistency.

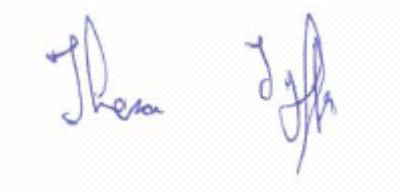
[8] http://www.gov.scot/Publications/2015/09/8281/downloads

The National Care Standards should be an integral part of the internal assurance processes and clinical and care governance activities of NHS Boards, integration joint boards, local authorities, and third and independent sector organisations. NHS performance management and annual review processes should take the National Care Standards into account. The new integration partnerships have a key role in ensuring that services meet the National Care Standards and that these drive forward the National Outcomes for Health and Wellbeing. Commissioning arrangements need to ensure that commissioned services meet the National Care Standards. The scrutiny activities and joint inspections of partnerships by the Care Inspectorate and HIS will also need to look at outcomes against the National Care Standards. Other bodies, such as the Mental Welfare Commission and the Scottish Public Services Ombudsman, will also need to take the National Care Standards into account.

It would also be helpful, once the National Care Standards have been developed, to map them against the codes of conduct for staff of the various regulatory bodies. This would be particularly useful for those professionals, such as nurses, who undergo revalidation, so that they can consider how their own day to day regulated activity can support the delivery of the standards.

We look forward to being involved in the further development of the new National Care Standards. As outlined above, we think that the review needs to step up the pace and make explicit the links between the National Care Standards and the wider health and social care landscape. Mapping the National Care Standards against existing standards policies and legislation, will help make it clear where accountability for the new National Care Standards lies and will help streamline and create an overarching framework for quality care that is clear for both people receiving care and the staff who deliver it. If you would like to discuss anything further in this consultation response, please contact Helen Malo, Policy Officer, at helen.malo@rcn.org.uk.

Yours sincerely,



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