Consultation paper

Options for regulation of unregistered health practitioners

February 2011
In November 2010, the Australian Health Workforce Ministerial Council\(^1\) (AHWMC) agreed that a national consultation should be undertaken to consider whether there is a need for strengthened regulatory protections for consumers who use the services of unregistered health practitioners.

A new national registration scheme for health practitioners, the National Registration and Accreditation Scheme, commenced operation on 1 July 2010. Practitioners from ten health professions are now registered nationally and may practise in any State or Territory. A further four professions are scheduled to enter the National Scheme from 1 July 2012. National Boards have been set up, one for each regulated profession, with extensive powers to protect the public. However, these powers do not extend to practitioners in health professions and occupations where registration is not a prerequisite for practice (referred to here as unregistered health practitioners).

A number of government reports and inquiries in New South Wales, Victoria and South Australia, have raised concerns about public protection in relation to unregistered health practitioners. Of particular concern are the small number of practitioners who engage in serious misconduct that would suggest they are not ‘fit and proper’ to provide health services. In such cases, the conduct may be so serious that, if the practitioner had been registered, the conduct would have resulted in cancellation of their registration and removal of their right to practise. Sometimes the practitioner has committed offences under a number of different laws, repeatedly and over an extended period.

In 2007, the NSW Parliament enacted legislation to address what was seen as a gap in regulation to strengthen public protection for health consumers who use the services of unregistered health practitioners. The NSW scheme established a statutory Code of Conduct that applies to any unregistered practitioner who provides health services. It also established powers for the NSW Health Care Complaints Commission to investigate breaches of the Code and issue prohibition orders if necessary. A prohibition order may limit or attach conditions to the practitioner’s practice, or prohibit them from providing health services altogether. Breaches of a prohibition order are subject to prosecution through the courts. Legislation is before the South Australian Parliament which, if enacted, will establish a similar regulatory scheme in that State.

This consultation paper sets out current regulatory arrangements that apply to unregistered health practitioners. It provides details of the NSW regulatory scheme and the Code of Conduct that applies to all unregistered health practitioners who provide health services in that State.

A number of options are proposed for consideration. They are:

Option 1: No change – rely on existing regulatory and non-regulatory mechanisms
Option 2: Strengthen self-regulatory arrangements – a voluntary code of practice
Option 3: Strengthen health complaints mechanisms – a statutory code of conduct

The consultation is intended to gather information and views to assist in determining the adequacy of existing protections for consumers who use the services of unregistered health practitioners.

\(^1\) The Australian Health Workforce Ministerial Council is established under the Health Practitioner Regulation National Law Act 2009 and comprises Health Ministers of the governments of the Commonwealth and all States and Territories.
practitioners and, if further public protection measures are required, what these should be and how they should be structured and administered.

Respondents are asked to consider whether regulatory protections such as those in NSW and under consideration in South Australia are required in all States and Territories, and the extent to which uniform arrangements are necessary or desirable for the terms of the code of conduct and for its enforcement.

Interested parties are invited to make submissions addressing the issues raised in the paper. Questions have been placed throughout the paper to assist with submissions. Questions are attached to assist you in making your submission.

The full version of the consultation paper is available at the following address:

www.ahmac.gov.au
Section 2 – SCOPE

- If you are a professional association, can you provide an estimate of the number of unregistered health practitioners you believe to be practising in your profession or field.

Physiotherapy assistants and other support workers – for example indigenous health workers, personal trainers, paid carers, physiotherapy students, massage therapists, rehabilitation therapists, etc, practice within the physiotherapy profession. However there is at present no accurate data on their numbers in the workforce (and no mechanism to collect this data).

The population of unregistered health practitioners could thus be very large depending on how an ‘unregistered health practitioner’ is defined.

Section 4 – THE PROBLEM

Risks

- What do you think are the risks associated with the provision of health services by unregistered health practitioners?

There is a limited risk of harm to the public from most unregistered health practitioners however there is a potential risk at present that a support worker could do work that is the restricted practice of a registered health practitioner. There are many examples where this can potentially take place:

- A physiotherapist may be employed as a physiotherapy assistant (e.g., if the physiotherapist has overseas qualifications and is awaiting the outcomes of an assessment), however they undertake activities that fall outside of the accepted scope of those workers in Australia.

- Unregistered health practitioners may practice in areas very similar to that of a regulated health practitioner and may, intentionally or otherwise, perform restricted procedures, e.g. musculoskeletal therapists undertaking restricted practices such as cervical spine manipulation which is a treatment modality that should be provided by a registered health professional. Within the field of physiotherapy there are a range of unregistered workers who at times may lead the public to think that they have comparable skills to physiotherapists such as musculoskeletal therapists, rehabilitation therapists, sports therapists, massage therapists, personal trainers etc.

- Another clear example is highlighted in the consultation – where deregistered practitioners may continue to practise in their previous profession as an unregistered support worker.

There are a number of unregistered health professions that are very well self-regulated and the health services provided by their practitioners pose low risk to the public. These professions are represented by professional associations whose members are required to strictly abide by their own robust regulatory framework which already includes a code of conduct. These professions would include those with access to Medicare rebates such as audiology, speech pathology, and dietetics.

The APA contends that for these professions, existing self-regulatory arrangements are adequate and most efficient and it is appropriate not to impose any unnecessary regulatory burden.
Section 6 – THE OPTIONS

- What do you think of the various options?
  - Option 1: No change
  - Option 2: A voluntary code of practice for unregistered health practitioners
  - Option 3: A national statutory code of conduct for unregistered health practitioners

Further regulatory action in the form of Option 3 is preferred. The APA believes that this option provides for a reliable regulatory framework that can easily be enforced and is effective, through its preventive, educative and punitive function.

There should however be the establishment of two tiers to recognise professions that are adequately self-regulated. For these professions, unregistered practitioners should be required to be members of their respective professional associations.

A criterion to recognise self-regulated professions could be recognition from Medicare.

- What do you think are the costs and benefits of the three options?

There can also be significant costs involved in bringing an unregistered health practitioner to a tribunal. There will also be costs incurred in the development and implementation of the regulatory framework, including the cost of an extensive education campaign to inform the public and health professionals about these new regulations.

The APA contends that the benefit of having a regulatory framework that protects the public outweigh these costs.

Extent to which national uniformity is desirable (section 6.3.1)

- Do you think there should be a nationally uniform code of conduct for unregistered health practitioners or are different codes in each State and Territory acceptable?

There should be a nationally uniform code of conduct, consistent with the Australian Health Practitioner Regulation Agency’s (AHPRA) code and conduct for registered health practitioners.

- Should there be nationally uniform or nationally consistent arrangements for investigating breaches of the code and issuing of prohibition orders, or should States and Territories each implement their own arrangements?

While there should be nationally consistent arrangements for investigating breaches of the code, the APA acknowledges that the individual States and Territories may have their own agencies that perform these functions (e.g., HCCC in NSW).

- Should there be a centralised administrative body that administers the regulatory scheme, or should it be administered by each State and Territory government?

The APA believes that it would be most efficient if there is a central administrative body that administers the regulatory scheme.

Scope of scheme (section 6.3.2)

- If a statutory code of conduct were to be enacted, to whom should it apply?
The APA believes that the code should apply to all unregistered health practitioners, with the exception of self-regulated health professions for the reasons that are referred to above.

- Should it apply to registered practitioners who provide health services that are unrelated to their registration, for example, a registered nurse who is working as a naturopath or massage therapist?

Yes, however in such cases the registered profession's code of conduct should take precedence where there is any overlap, and there needs to be a mechanism in place so disciplinary action for unrelated services provided could also affect the offender's status as a registered practitioner.

As referred to above, it is also crucial that the regulatory framework has a mechanism to prevent a deregistered health practitioner from returning to practice as an unregistered practitioner.

**Administrative arrangements (section 6.3.3)**

- Do you have a preferred option for the legislative and administrative arrangements through which a code of conduct for unregistered health practitioners is administered and complaints about breaches of the code are investigated and prosecuted?

The code of conduct should be administered nationally (Option 3B) through a national Complaints Commissioner for unregistered health practitioners. Should the Commissioner be supported by AHPRA, it is important that there needs to be an adequate level of staffing at the agency to accommodate the additional administrative workload.

**Content of a national code of conduct (section 6.3.4)**

- What do you think should be included in a national statutory code of conduct?

As referred to above, it is vital that the code prevents unregistered health practitioners from claiming to practice within the scope of registered health practitioners and prevent them from practising outside the scope of their training, and this must be strictly enforced.

Unregistered health practitioners should be able to demonstrate appropriate competence in their field and this should be enforceable.

Unregistered health practitioners should not diagnose or treat illness without an adequate clinical basis.

The code should include advertising guidelines (similar to AHPRA guidelines) to prevent unregistered health practitioners from making unrealistic or misleading claims.

**Financing of scheme (section 6.3.7)**

- How do you think a regulatory scheme to investigate and prosecute breaches of a national statutory code of conduct for unregistered health practitioners should be funded?

The APA has no opinion over how the scheme should be financed, however we acknowledge that it may involve registration / accreditation of presently unregistered health practitioners. There are further advantages to registration, for example being able to capture accurate workforce data and the ability to inform the public and facilitate easily identification of health practitioners who are under investigation or who have had their registration revoked.
CONTACT DETAILS:

Name: Jonathon Kruger  
Manager, Policy and Professional Standards Division  
Australian Physiotherapy Association

Address: PO Box 437  
Hawthorn BC VIC 3122

Email: jonathon.kruger@physiotherapy.asn.au

Are you a:

- Professional association

Would you like to be informed of the outcome of the consultation? Yes

Thank you for taking the time to make a submission.