Review of the Legislative Framework

Submission to the Health Professions Regulatory Advisory Council

The Registered Nurses' Association of Ontario

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Summary of Recommendations

1. RNAO recommends access to the following additional controlled acts for the profession of nursing:

    a. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis;

    b. Setting or casting a fracture of a bone or a dislocation of a joint;

    c. Applying a form of energy prescribed by the regulations under this Act (i.e. RHPA); and,

    d. Dispensing a drug as defined in subsection 117 (1) of the Drug and Pharmacies Regulation Act.

2. The current list-based approval process for Registered Nurse (Extended Class) prescriptive and diagnostic authority be moved to a broader, less restricted model, using options such as Drug Schedules or Formularies and open authority to diagnostic tests.

3. The title of Nurse Practitioner be protected.

4. Improve the effectiveness and efficiency of the current regulatory approval process.

5. Implement a systemic review of the legislative framework and regulation of the delegation process.

6. RNAO recommends that the performance of psychotherapy be regulated utilizing the most appropriate legislative strategy and that RNs with the required qualifications have the regulatory authority to practice it.

7. Appropriate liability coverage should be mandatory for registrants.

8. If in the course of an investigation, regulatory colleges discover unsafe practice settings, they should be required to report them to the Minister of Health for investigation. There should be provisions to protect a regulated health professional who reports an unsafe practice setting.

Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional organization for registered nurses who practice in all roles and sectors across Ontario. Our mandate is to advocate for healthy public policy and for nursing. It is in the context of this mandate that RNAO is pleased to respond to the Health Professions Regulatory Advisory Council's (HPRAC) request for feedback on the following issues:

1. The currency of, and any additions to, recommendations made by the council as part of the "five year review" of the *Regulated Health Professions Act (RHPA)* contained in its report *Adjusting the Balance;*

2. The currency of, and any additions to, the Council's recommendations in relation to the Colleges' quality assurance programs and patient relations programs;

3. The currency of, and any additions to, the Council's recommendations in relation to Colleges' complaints and discipline procedures;

4. Emerging issues respecting health professions regulation.

Registered nurses are the single largest group of health-care professionals in the province. The legislative environment in which we work has an impact on our practice, our working environment, and our relationships with other health-care professionals.

RNAO and its members are very supportive of the RHPA and the fundamental concepts that underlie the legislation – protection of the public and self-regulation. This legislative context has accommodated many advances in nursing over the last 14 years. While the structure of the legislation with overlapping scope of practice, self-regulation and protection of the public remains current, the legislation does require some changes to keep up with the changing practice environment.

Increased Access to Controlled Acts

Registered Nurses (RNs) and Registered Nurses Extended Class (RN(EC)s) need independent access to controlled acts that have become an integral part of their practice. These acts change both as nursing practice and roles evolve and as technology advances. Without this independent access, the profession is not truly self-regulating. Perhaps as important, expanded scope of practice for nursing will bring the following benefits: greater retention and recruitment of RNs; decreased administrative complexity and costs associated with delegation of acts that should be within the scope of nursing; and increased access to quality and timely care.

Recommendation #1:

RNAO recommends access to the following additional controlled acts for the profession of nursing:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis;

2. Setting or casting a fracture of a bone or a dislocation of a joint;

3. Applying a form of energy prescribed by the regulations under this Act (i.e. RHPA); and,

4. Dispensing a drug as defined in subsection 117 (1) of the Drug and Pharmacies Regulation Act.

Background

RNs should have the authority to perform these acts within nursing scope of practice based on knowledge, skill, and experience. This will ensure timely access to care, reduce the need for delegation, and support progression of care management in a timely way.

Communicating a diagnosis is often required to obtain consent for intervention and treatment. In a number of practice settings, RNs cannot practice without communicating a diagnosis. Therefore, they must either go through a time-consuming and expensive process of delegation or conduct their practice in a manner that does not technically violate the Act but allows them to communicate what they need to patients. Examples of the situations in which RNs need to communicate a diagnosis include:

- RNs in acute care settings who are caring for patients with secondary conditions, such as urinary tract infections, cannot communicate why they are administering drugs or other treatment. This hinders initiatives directed at patients to be attentive to medicines and other treatments that they are receiving in order to protect themselves against iatrogenic mishaps. Waiting for a physician to disclose a urinary tract infection could delay treatment, while an evasive answer about this new medication could undermine trust and rapport between the nurse and patient.

- In an emergency department, RNs cannot communicate the results of a pregnancy test. This results in patients waiting for long periods while physicians deal with more acute cases.

- In high schools, public health nurses work under medical directives to communicate the results of pregnancy tests and refer clients who test positive for counseling. Similarly, in sexual health clinics, public health nurses must operate under medical directives to communicate diagnoses about sexually transmitted diseases.

The regulation which governs the application of energy needs to be updated. It has not kept pace with technological changes; while some acts are outside nursing scope (like defibrillation), similar acts (like fibrillation) are in the public domain. RNs regularly perform acts such as adjusting cardiac pacemakers.

In a variety of contexts, RNs dispense medication as a routine part of implementing medical directives, generally for clients who meet specific criteria or as a delegated act to respond to a particular patient's situation. This is common in remote communities but also pertinent in the following examples:

- In an out-patient clinic, an RN may dispense an insulin pen to a diabetic patient to take home.
- In an emergency room, an RN may dispense the first dose of an antibiotic for a child with an ear infection when the pharmacy will not be open until the next morning.

- Birth control pills are dispensed by public health nurses in a sexual health clinic.
- Public health nurses dispense medication such as Ritalin, insulin, or allergy shots in a school setting.
- In psychiatric units, RNs dispense drugs to patients who are leaving the unit for the weekend.

Community health nurses working in remote settings have often been responsible for setting or casting a bone fracture or joint dislocation. RNs with the required knowledge, skills, and experience should be authorized to set and cast.

The experience of our members is that delegation and medical directives for these four acts consume large amounts of time and resources, and that these resources would be better directed to patient care.

Prescriptive and Diagnostic Authority for RN(EC)s

Recommendation #2:

> The current list-based approval process for Registered Nurse (Extended Class) prescriptive and diagnostic authority be moved to a broader, less restricted model, using options such as Drug Schedules or Formularies and open authority to diagnostic tests.

Background

The cumbersome process that governs RN(EC)s' authority to prescribe must be reformed. It prevents RN(EC)s from operating at their full scope of practice; results in unnecessary duplication and misallocation of resources in the health-care system; and impedes access to care. The same issues arise in relation to their authority to order diagnostic tests.

The list-based approval process is unwieldy and troublesome. However, with the proposed regulation of acute care nurse practitioners into the extended class, the listing of specific drugs and diagnostic tests in regulation and legislation will become impossible. Because RN(EC)s will have much more diverse clinical areas of expertise and practice, a listing of specific drugs and tests for this class of RNs will not be feasible.

Protection of the Title of Nurse Practitioner

Recommendation #3:

> The title of Nurse Practitioner be protected.

In Ontario, the title Nurse Practitioner is widely used but not protected under current legislation. The Canadian Nurses' Association advocates for title protection across the country, and other jurisdictions have protected the Nurse Practitioner title.

Delays in Regulatory Approval

Recommendation #4:

> Improve the effectiveness and efficiency of the current regulatory approval process.

Background

RN(EC)s' practice is unduly constrained both by the process for determining diagnostic and prescriptive authority, but also by delays in the regulatory process. Regulatory changes contemplated by the College of Nurses of Ontario for both acute care and primary health care RN(EC)s will facilitate their practice. Delays in the current regulatory system of approval hamper RN(EC)s' practice and Ontarians' access to timely health care from the appropriate provider.

Delegation

Recommendation #5:

> Implement a systemic review of the legislative framework and regulation of the delegation process.

Background

There is considerable confusion in practice environments about the conditions and processes required for delegation and for the acceptance of delegation. At the same time, RNs' experience is that many resources are diverted to administrative aspects of delegation that might otherwise be directed to patient care. The expansion of the controlled acts authorized to nursing, as described above, would reduce the resources directed to delegation. However, it will not necessarily reduce the confusion. Furthermore, an environment of technological change and evolving practice means that delegation will continue to be a frequently used mechanism. Greater clarity on delegation and the acceptance of delegation is crucial to enhance practice environments and protect the public. Finally, clarification on the legislative and regulatory parameters of delegation will also limit the potential for delegation to be used inappropriately as a result of cost pressures.

Psychotherapy

Recommendation #6:

> RNAO recommends that the performance of psychotherapy be regulated utilizing the most appropriate legislative strategy and that RNs with the required qualifications have the regulatory authority to practice it.

Background

There is serious risk of harm to clients from psychotherapy. As a result, it is in the public interest to regulate this practice so that potential harm to the public is minimized. Any regulation of psychotherapy must take into account the diverse needs of marginalized communities, and maintain access to services for those communities.

Professional Liability

Recommendation #7:

> Appropriate liability coverage should be mandatory for registrants.

Background

RNAO believes very strongly that mandatory liability coverage serves the interests of nurses and is an important component of the self regulatory environment. The mandatory nature of the coverage will ensure equality of access to legal assistance for all registrants, regardless of where they practice and what financial resources are available to them. Universal access to legal assistance for nurses will also enhance the fairness and transparency of the discipline process.

Quality Assurance

Recommendation #8:

> If in the course of an investigation, regulatory colleges discover unsafe practice settings, they should be required to report them to the Minister of Health for investigation. There should be provisions to protect a regulated health professional who reports an unsafe practice setting.

Background

RNs are responsible and accountable for their standard of practice. However, practice settings are a significant determinant of the ability of health professionals to provide safe and effective care. Insufficient staff and clinical resources have an impact on the quality of nursing care and subsequent health outcomes. Practice settings have an impact on the responsibilities outlined in the RHPA. The proposed recommendation would require the Colleges to report to the Minister on unsafe practice settings discovered in the course of an investigation. This would move the onus for addressing safety issues that arise out of practice settings to the appropriate body.

Key issues of concern in the report *Adjusting the Balance*

RNAO supports the following recommendations in *Adjusting the Balance* for their intent and the likelihood they will strengthen protection of the public from harm and support self-regulation:

- RNAO believes that Recommendation 4 is a move in the right direction to ensure appropriate use of the exemption for routine activities of daily living (ADL) by requiring informed and explicit consent. However, it is not sufficient to protect the public, in particular at-risk populations, from harm. It should be strengthened to include the requirement that the person receiving care or their substitute decision-maker must be able to understand, provide input to, and monitor the care provided in order to fully direct the care they receive. Furthermore, the ADL exemption for controlled acts should be limited to situations where:
  - An unregulated provider is trained in the procedure by a regulated health professional;
  - The performance of the procedure is limited to specific clients;
  - There are clear mechanisms for monitoring the performance of the provider by a regulated health professional; and,
  - There are clear mechanisms for appropriate monitoring of the clinical condition of the client by a regulated health professional.

- Recommendations 18, 19 and 20 will provide support to and strengthen the role of public members by improving the selection process and improving orientation and training for members.
- Recommendation 23 will ensure that the complainant and the member are provided with an opportunity to comment on the recording of information they provide to a college in the

course of a complaint investigation. This recommendation will provide all parties with the same right to review. The recommendation can improve the accuracy of the record which will enhance the decision-making process.

- The proposal of Recommendations 53 and 54 to give responsibility to the Minister of Health and Long-Term Care for public education programs will strengthen public awareness about the regulatory system.
- Assigning responsibility to the Minister of Health and Long-Term Care for the enforcement of the RHPA as it applies to non-members will address significant issues of safety and harm to vulnerable populations in Ontario (Recommendations 55, 56 and 57).

RNAO does not support the following recommendations in *Adjusting the Balance*:

- Recommendation 14 proposes merging the Fitness to Practice and the Discipline Committees. The mandates and purposes of these two committees must remain distinct. Fitness to Practice proceedings should take a compassionate, non-adversarial approach in dealing with professionals who are ill. They should not result in public or professional sanction. These cases require speedy resolution as there is often a very real and immediate danger to the public. The Discipline Committee hearings deal with allegations of professional misconduct or incompetence. The two processes should remain distinct and two separate committees appear to be an appropriate way to maintain that distinction.
- Insofar as recommendations (29 and 42) would require the results of alternative dispute resolution to be in the public domain, we do not support them.
- Allowing complainants to have party status at disciplinary hearings as put forward in Recommendations 39, 40 and 41 would create an unfair and inequitable process for registrants.
- Additional requirements to publish information on the register as suggested in parts a-d of Recommendation 48 and Recommendation 49 are unwarranted. Given that screening committees do not make findings of fact nor assess the credibility of information, placing all screening decisions on the public register would be unfair to members and counter-productive from a public interest perspective.