AvMA response to the Department of Health Consultation on the Regulation of Nursing Associates in England:

Amendments to the Nursing and Midwifery Order 2001 and subordinate legislation to regulate nursing associates in England by the Nursing and Midwifery Council

Action against Medical Accidents

1.1. Action against Medical Accidents (AvMA) is the UK charity for patient safety and justice. Established in 1982, AvMA provides specialist support and advice to around 3,000 people each year who have been affected by lapses in patient safety. We have staff and trustees with extensive knowledge of and experience in patient safety and medico-legal matters including clinical negligence. AvMA works with government departments, health professionals, the NHS, regulatory bodies, lawyers and other patients' organisations to improve patient safety and the way injured patients and their families are treated following lapses in patient safety.

1.2. AvMA offers specialist services to the public, free of charge. AvMA's specialist services are its helpline, pro bono inquest service and advice and information services.

2. Introduction

2.1. There have been considerable changes to the healthcare workforce over the past 30 years. In particular, there has been an increasing trend to perceive professional roles, nursing and medicine in particular, as an assembly of individual tasks which can be broken up and delegated to healthcare support staff. This places a substantial proportion of front line care in the hands of a workforce which often falls outside any form of regulation, consistent training or professional standards. The risks to patients is that however apparently mundane a task, it is the broader knowledge and context which underpins the safe conduct of that task and which can be critical to patient safety. It also risks lowering standards overall if increasing aspects of care are perceived as not requiring professional input. We have seen this particularly in the context of provision of care in community settings.

2.2. It is therefore to be welcomed that the new role of nursing associate is to be subject to regulation and that this will be accompanied by a framework for education and training to ensure consistency of the standards that will apply. It would be hoped that in the future, nursing associates will replace the role of healthcare assistants in nursing roles so that we move away from an unregulated healthcare workforce.

2.3. In terms of patient safety, there are some important principles at play here, not least that there is a clear commitment in practice that nursing associates are there to complement and support registered nurses, not replace them. There is already evidence of the risks in terms of the over-reliance on healthcare assistants to fill gaps in the nursing workforce[i] [ii] and there is therefore a real risk that expediency in relation to workforce shortages and cost savings will accelerate this process when it comes to nursing associates. This will put patients at risk. Health Education England has described the role as: 'delivering a higher proportion of fundamental care nationally, at scale and pace.'[iii] We should be tackling the failures in workforce planning and the reasons why our health services are facing a critical shortage of nurses. If we allow the nursing workforce to dwindle, bearing in mind that nurses increasingly perform roles previously the preserve of doctors, then we will be left with a real deficit in terms of the expertise and experience required in modern day healthcare.

2.4. The role is described as part of the 'nursing team' but the underlying aims of the role are ill-defined in terms how the role will be employed in practice and the boundaries that will apply between this role and healthcare assistants and nurses. If should be possible to specify precisely what the gap is that the nursing associate

will be filling so that the role can be more clearly delineated from that of a registered nurse and to avoid nursing associates being employed in place of nurses.

2.5. In terms of education and training, there are significant questions over the capacity to provide good quality mentoring and supervision for the nursing associate role. This is in the light of the pressures already being faced with respect to placements for student nurses and in the context of the numbers of nursing associates that it is intended to introduce over the next few years. There is evidence to suggest that in relation to nurse training, one of the impacts of resourcing issues including a lack of support for nurse mentors, is the risk of lowering standards with pressures to pass student nurses who in reality fall short of the required standard. It also needs to be recognised that 'training' for nursing associates needs to be much more than task based training and that training has to be underpinned by education. It is not clear who will be responsible for designing on the job training

2.6. There are references to nursing associate apprenticeships for healthcare assistants and a shortened nursing degree apprenticeship scheme. Providing the standards, education and training required remains robust, having alternative routes to qualification as a nurse is a positive thing. However, the status of these apprentices will need to be clearly defined for both those employing as well as supervising the apprentices so that patients are not put at risk and the apprentices are not asked to undertake tasks or roles which they are not equipped to perform safely.

2.7. From the patients' perspective, it is important that patients can identify the nature of the professional who is providing their care - whether it is a registered nurse, a nursing associate, an apprentice or healthcare assistant. Patients should know who is providing their care so that if for example they have any concerns about the care or advice they are given, they can be more alert to the need to seek alternative advice. It is already very difficult for patients to be able to make that distinction. This includes clarity over titles for those in training and a common understanding of what that means in terms of their competence at any stage of the training pathway.

2.8. There needs to be absolute clarity over roles to ensure that patients are protected as well as nursing associates not being required to practise outside their area of education, training and competence. AvMA continues to see examples of both qualified healthcare professionals and healthcare support workers working outside of their competence and role directly resulting in harm to patients. This could be anything from a healthcare assistant being tasked with undertaking early warning scores and not having the knowledge to understand the significance of what they are monitoring, to a nurse practitioner being allowed to take on a clinical decision making role which goes beyond their personal competence and training. The increasing blurring of lines between different professional roles as well as support roles, combined with a lack of awareness that some individuals experience of the gaps in their own clinical knowledge – 'the not knowing what they don't know', can be a key factor in causing avoidable harm. Whilst it is quite possible to train an individual to undertake a specific clinical task, the risk comes with the lack of context for that task in terms of their knowledge base. This is often combined with organisational pressures to undertake tasks and provide care beyond their education, training and competencies.

2.9. We have particular concerns about the generic approach to the training and regulation of nursing associates and the suggestion that they will be equipped to practise across what are rightly considered specialist areas of nursing in the fields of adult, child, mental health and learning disability. This fails to recognise the very different skills, attributes and knowledge that will equip the nursing associate to

meet the needs of patients across these diverse areas of care. A generic role ignores the particular needs of the individual patient. For example, people with learning difficulties are already at a significantly greater risk of avoidable harm within healthcare. If anything, this would be an ideal opportunity to support nursing staff by giving nursing associates and other support workers more specialist training not less.

2.10. In addition, there is also the question of how it will be possible to assess the standard of care being provided by a nursing associate registrant if there are no specialist benchmark standards. At the very least, there should be the option to acquire additional accreditation in these specialist areas to provide assurance both to patients and to employers and with a requirement on employers to ensure their nursing associates have the appropriate education and experience for the particular role they are employed in.

2.11. The consultation refers to nursing associates being trained to a level to allow them 'to support nurses in the assessment, planning and evaluation of care' and that they must exercise a 'significant level of judgment'. As above, history would suggest that 'support' could very quickly come to mean, 'undertaking', given the pressures and staff shortages faced by the NHS. That is an obvious risk to patient safety. The term 'support' needs to be clearly defined as it is open to very wide interpretation. Safe and effective delegation is a skill and relies on the competence of each person in the chain of delegation – from doctor to nurse to nursing associate to healthcare assistant. Any weakness in the chain, the greater the risk to the patient as the skills and knowledge become increasingly diluted the further down the chain you go. There are also significant issues for the nurses who will be tasked with mentoring, supervising and delegating to nursing associates and the implications for their own registration.

2.12. The CQC should be tasked with monitoring the deployment of this role and ensuring nursing associates along with healthcare assistants are not being asked to work outside their education training and competencies.

2.13. Nursing associates need to have unfettered access to ongoing good quality education and professional development to ensure they continue to be equipped to fulfil the role. This is not just about 'training' people to undertake specific tasks, but providing the education that will underpin safe practice. As with nurses, there should be ongoing revalidation.

Consultation Questions

Question 1: Do you agree that nursing associates should be identified on a separate part of the NMC's register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Yes. This is important in terms of identifying and underlining that these are distinct roles with different levels of education, training and competencies.

Question 2: Do you agree that nursing associates (in England) should be subject to the same registration requirements as nurses and midwives? If not, please set out

why you disagree, any alternative suggestions and any evidence to support your views.

Yes.

Question 3: Do you agree with the approach taken to allow the NMC to recognise comparable training undertaken outside England, including applicants gaining qualifications in the EEA, overseas and Scotland, Wales and Northern Ireland, for the purposes of registration as a nursing associate in England?

This needs to be approached with considerable caution given the problems encountered with respect to the registration of nurses from the EEA and overseas that has historically allowed for unsafe variations in the level of training and competencies of nurses being admitted to the register. It will be essential to identify and apply learning from the issues identified from the registration of nurses, and particularly given this is a new role which is as yet untested with respect to where the potential risks are and the standards that will ultimately apply. It is difficult to see how at this stage, it would be possible to assess equivalence in standards when we are still at the stage of establishing standards within England.

Question 4: Do you agree that these transitional arrangements are fair and would allow the NMC to ensure that applicants with a nursing associate qualification from an HEE course or from an Institute for Apprenticeships approved English apprenticeship meet the required standard for entry on the nursing associate part of the register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

The introduction of nursing associates has been somewhat back to front with the training commencing before the standards were in place. It is therefore important that the NMC is empowered to assure the standards of the first cohorts of nursing associates.

Question 5: Do you agree that the NMC's Registrar should not have the power to annotate a nursing associate's entry in the register to enable them to prescribe in an emergency? If you do not agree, please set out your reasons why, any alternative suggestions and any evidence to support your views.

Agree. There has to be clarity over roles and responsibilities to avoid individuals being under pressure to practise outside of their training and competencies.

Question 6: Do you agree with the proposed approach for education and training for nursing associates including the approval of courses and setting post-registration training requirements? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Yes. This will be an important role for the NMC in terms of ensuring consistency of standards.

Question 7: Do you agree that the NMC should be permitted to select either a nurse or nursing associate as a visitor to inspect nursing associate education and training programmes? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Yes. It will be some time before there are sufficient numbers of experienced nursing associates to fulfil this role.

Question 8: Do you agree with the approach to fitness to practise with regards to nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

In terms of the current fitness to practise procedures, yes, but there is a real need to overhaul fitness to practise procedures to ensure that it is less cumbersome, more responsive, quicker and effective in addressing unsafe practice.

Question 9: Do you agree with the proposed approach for appeals against registration and Fitness to Practise Committee decisions for nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

As above in response to Qu.8.

Question 10: Do you agree with the proposed approach for the selection of registration appeal panel members to hear nursing associates' registration appeals? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Yes.

Question 11: Do you agree with the approach to offences regarding regulation of nursing associate's in England? Do you agree with the proposal that, where the matter concerns the use of the nursing associate title, nursing associate qualifications or an entry in the nursing associate part of the register, the offences in article 44(1) to (3) of the Nursing and Midwifery Order (described above) will be offences only if committed in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views

Yes but it is to be hoped that the other countries within the UK will be looking to replace the healthcare assistant role with nursing associates in due course.

Question 12: Do you have any comments on these proposed consequential amendments? The closure of sub-part 2 of the register is discussed further at para 3.4

Outside AvMA's remit.

Question 13: Do you agree with the removal of the screener provisions at articles 23 and 24 of the Nursing and Midwifery Order? If not, please set out why you disagree, any alternative suggestions and any evidence to support your view.

See response to Qu.8

Question 14: Do you agree with the closure of sub-part 2 of the nurse part of the register to all new applicants? If not, please set out why you disagree, any alternative suggestions and evidence to support your view.

Yes. Most patients and the public would be surprised to learn that the sub-part 2 register was still in existence and that nurses were being admitted to the register that did not meet the requirements for registration under sub-part 1. With the introduction of nursing associates, it is an opportune time to close the sub-part 2 part of the register.

Question 15: Do you have any further comments on the draft Order?

No.

Question 16: Do you agree with the costs and benefits identified in the table above? If not, please set out why you disagree, any alternative impacts you consider to be relevant and any evidence to support your views. We are keen to identify evidence on the likely benefits of statutory regulation and whether regulation will enable nursing associates to carry out any additional activities (benefit B1 above).

- Nursing associates should be subject to revalidation.

- Any costs incurred by nursing associates needs to be proportionate to the anticipated pay rates for this role as well as taking into account it is quite possible that many may be working part-time.

- Patient safety: there are both risks and benefits attached to this role in terms of patient safety. As set out above, the main risk comes from how 'support' is interpreted in practice and the need to avoid inappropriate delegation of responsibility to nursing associates as well as the drivers for replacing nurses with nursing associates. It will also be important to monitor the impact the introduction of this role may have on numbers of nurses entering training and whether given the removal of training bursaries for nurses, more will opt for the nursing associate role leading to an even greater reduction in new nurse entrants. Replacing the role of healthcare assistant with nursing associate would be a positive in terms of patient safety providing a more consistently educated, trained and regulated healthcare workforce.

- Increased patient redress: this relies on the overall effectiveness of the NMC's fitness to practise procedures which as set out above, are in need of modernising.

Question 17: Our initial assessment assumes that nursing associate training numbers will increase to 5,000 per year in 2018 and 7,500 per year in 2020 and beyond, in line with the Secretary of State for Health's commitment to expand training numbers. We have assumed a 10% annual attrition rate during training and 4% per year attrition rate from fully qualified nursing associates leaving the NMC register. Do you agree with this these growth assumptions? If not, please set out why you disagree, any alternative forecasts and any evidence to support your views.

It is essential that resources are made available to fully evaluate the pilot so that any issues can be addressed, particularly around on the job training and access to good quality mentoring and supervision, as well as issues around how the role is being deployed in practice and the risk areas that have been identified.

It would be a significant risk if we simply go ahead with increasing numbers of nursing associates if there are fundamental flaws with the implementation of this new role that are not addressed prior to extending the scheme to a much larger pool of individuals. This would be unfair on those individuals and potentially present a significant risk to patients. The NMC will also need to time to evaluate their role and the standards against which nursing associates will be assessed.

Question 18: Do you think that any of the proposals for how we are intending nursing associates are regulated will help achieve any of the following aims:

It is generally the case that providing alternative routes into a role will broaden access to a wider pool of individuals. That is to be welcomed.

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[i] http://www.bbc.co.uk/news/uk-england-31746583

[ii] https://www.nursingtimes.net/healthcare-assistants-carry-out-nursing-tasks/5019391.article

[iii] https://www.hee.nhs.uk/sites/default/files/documents/FAQs%20Final%20nursing%20associate%20June%202017.pdf