National Disability Insurance Scheme (NDIS) – Code of Conduct

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The Dietitians Association of Australia (DAA) is the national association of the dietetic profession with over 6000 members, and branches in each state and territory. DAA is a leader in nutrition and advocates for food and nutrition for healthier people and healthier nations. DAA appreciates the opportunity to provide feedback on the NDIS Code of Conduct consultation by the Department of Social Services.

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DAA interest in this consultation

The DAA is focused on the nutrition, health and wellbeing of all Australians. DAA is concerned that NDIS participants have equitable access to safe and competent professional services to support them to realise their potential for physical, social, emotional and intellectual development.

The Accredited Practising Dietitians (APD) program, administered by DAA, is the platform for self-regulation of the dietetic profession in Australia. It provides an assurance of quality and safety for those accessing dietetic services. APDs are health professionals with nutrition and dietetic knowledge and skills who work with people with disability to support their participation in and contribution to social and economic life to the extent of their ability.

Recommendations

1. The principle of mutual recognition should apply such that health professionals do not have to address multiple codes of conduct.
2. In the event of requiring health professionals to comply with additional requirements under the NDIS, then any training required should be free of charge, brief, available in flexible delivery mode, and available online.
3. Terminology should be clearer with regard to registration for NDIS purposes and regulation for health professionals.
4. Regarding requirements for the provision of services to NDIS participants, there should be consistency and equity for health professionals regulated under the Australian Health Practitioner Regulation Agency (AHPRA) or the National Alliance of Self-Regulating Health Professions (NASRHP)
5. More information should be provided to show why greater expectations are placed on providers registered to provide services to NDIS participants.
6. Further detail should be added to more clearly define responsibilities for regulatory activity.

Discussion

Other codes

1.2 What is included in the NDIS code of Conduct? states that consideration has been given to broader policy. However, DAA would like to see greater consideration given to existing codes of conduct with which health professionals have complied for many years. We note for example that there is no reference to the National Code of Conduct for health care workers.

Self-regulating professions such as Dietetics already have a *Code of Conduct*[1] and accompanying materials such as the *DAA Statement of Ethical Practice*[2] to support robust safety and quality mechanisms. In fact, a low risk to the public was one of the criteria used by State and Territory Parliaments to decide that Dietetics and a

number of other allied health professions should not be regulated under the Australian Health Practitioner Regulation Agency (AHPRA).

Furthermore, the 2014 report of the Independent Review of the National Registration and Accreditation Scheme found that the high-regulatory-workload group comprised five professions: dental, medical, nursing and midwifery, pharmacy and psychology. These accounted for 87.5 per cent of registrants and 95.5 per cent of all complaints and notifications in 2012–13.[3] In other words, most allied health professions attracted very few complaints and notifications.

DAA recommends that mutual recognition applies such that practitioners providing services to NDIS participants who are subject to existing comprehensive codes of conduct for professions regulated under AHPRA or the National Alliance of Self-Regulating Health Professions (NASRHP), should not have an additional burden of compliance with the NDIS Code of Conduct.

In the event that allied health practitioners providing services to NDIS participants must demonstrate compliance with the NDIS Code of Conduct then any training required should be free of charge, training should be brief and available in a flexible delivery mode (e.g. online) and should be required equally by those registered under AHPRA or self-regulated under NASRHP. This is to limit barriers for health practitioners to enter the market as an NDIS provider.

Who will be covered?

1.3 Who will be covered by the NDIS code of Conduct? states that the Code of Conduct will apply to all providers and workers who are funded under the NDIS. It is assumed that the term "*registered*" NDIS providers refers to being registered with the NDIA. But equally it could refer to health professionals registered under AHPRA. Similarly, the term "*unregistered*" is not qualified further.

DAA recommends clarification of terms used in the document to distinguish providers registered to provide services under the NDIS, and providers regulated as health professionals under AHPRA or NASRHP.

Requirements for providers or unregistered providers under the NDIS

There is no rationale provided in the document as to why there are different requirements for providers who are registered or not registered under the NDIS. Perhaps it is because the risk faced by participants able to self-manage is perceived to be less than for those with NDIS plans managed by the NDIA. Nevertheless, this should be made clear. DAA supports an approach which manages risk faced by NDIS participants proportionately. Risk management must be balanced with least burden in administrative processes to register with the NDIS and with ongoing provision of services under the NDIS.

1.3.1 Registered providers

1.3.1 states a compulsory orientation module will be introduced for registered providers delivering supports. In the event that health professionals are required to comply with codes in addition to existing codes of their profession, then DAA recommends all providers should be required to comply, that there be no charge for this and that the time required should be minimal.

1.3.4 *Coordination of regulatory activity*

The Discussion Paper states that "*the Commission will coordinate any regulatory activity with the professional body or other regulator to ensure there is no duplication and manage any overlapping areas of regulation*." The diagram in Appendix A describes regulatory activity in a very generic schema.

DAA would like to see responsibilities for the various regulators more clearly detailed and mapped from the outset, including a hierarchy of responsibility. This would guide NDIS participants or others who wish to make a complaint, as well as guiding regulators regarding their responsibilities.

A responsibility hierarchy would show the roles of the Commission, professional bodies, ombudsmen and other relevant parties.

DAA is aware that some NDIS participants have experienced problems in accessing products and services because of lack of agreement at the interface between the NDIS and health. A hierarchy of responsibility would clarify responsibilities at the interface between sectors.

A hierarchy of responsibility would detail the obligations for reporting outcomes to all relevant professional bodies, government agencies etc and taking action to prevent harm to more participants. This would address issues of practitioners moving and practising in another jurisdiction if a serious complaint against them has been upheld in a different jurisdiction.

A hierarchy of responsibility would also detail which agency will be responsible for informing unregistered providers not registered with NDIS (e.g. providing services to self-managed recipients) of the NDIS Code of Conduct requirements? How will they be monitored and how will participants who self-manage know that unregistered providers they want to use who are not registered with NDIS are adhering to the requirements?

DAA recommends that a system be implemented to collect data on complaints and notifications, to analyse such data and to publicly report on this data. This would support improvements to the NDIS safety and quality framework, inform improvements to service delivery and promote confidence in the NDIS.

1.4 *Reporting*

"*Registered providers will also be required to notify the Commission of reportable incidents…"*. There is no explanation as to why only registered providers are required to notify the Commission of reportable incidents. If the Code is to apply, it should apply equally to all providers.

2.1 *Promote individual rights to freedom of expression, self-determination and decision-making.*

DAA agrees with the intent of this chapter but suggests that more work needs to be done to build skills of care workers and health professionals in the area of supported as compared with substitute decision making. This suggestion comes from the experience of DAA members who report differing views from time to time between care workers and health professionals regarding the implementation of advice to support healthy lifestyles. Care workers may view this as restrictive practice, but health professionals view this as a duty of care. Communication between various parties working with an NDIS participant is important, along with understanding of supported decision making to meet participant needs and to avoid complaints arising from lack of agreement about restrictive practice and duty of care.

Scenario 2.8.2 – Worker

The scenario describes "*an NDIS participant who requires a PEG feeding tube to gain sufficient nutrition. He has a nurse, Tara, from Nursing Inc. visit weekly to maintain his feeding tube*." We suggest the scenario be modified as it would not be usual for a nurse to visit weekly for this purpose. Also, there is no mention of the nurse contacting the Accredited Practising Dietitian who we would expect to be involved in the participant's NDIS Plan to ensure nutrition and hydration needs are met and to troubleshoot. It seems the only short-coming identified is related to note-taking and no mention is made as to whether appropriate clinical care was provided. DAA would be pleased to provide further advice about a scenario involving nutrition support via PEG feeding tube.

References

1. Dietitians Association of Australia Code of Professional Conduct for members with Australian recognised dietetic qualifications, and non-members with APD status. Available at https://daa.asn.au/wp-content/uploads/2017/01/2013-Code-of-Professional-Conduct-member-and-APD.pdf Accessed 8 June 2017.

2. Dietitians Association of Australia Statement of Ethical Practice for members with Australian recognised dietetic qualifications, and non-members with APD status. Available at https://daa.asn.au/wp-content/uploads/2016/12/2014-Statement-of-Ethical-Practice-Member-and-APD.pdf Accessed 8 June 2017.

3. Snowball K. Independent Review of the National Registration and Accreditation Scheme for health professions. Final report December 2014. Australian Health Ministers' Advisory Council; 2014