

Models of Health Professional Regulation

– legislative and policy frameworks

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Overview

- What is 'regulation'?
- Approaches to regulation
- External drivers of reform
- Policy considerations
- Summary



What is 'regulation'?

- Legal perspective
 - enforcement of [legal] rules
 - direct government/state action/control
- Sociological perspective
 - interaction of people, perceptions and processes
- Broad perspective
 - any form of governance that influences/guides behaviour and outcomes



Approaches to regulation

- Government regulation
- Self regulation
- Quasi-regulation
- Co-regulation
- Meta-regulation



Government regulation

- Rules made by government are imposed to control or direct defined aspects of conduct/behaviour
- Preferred where conduct creates high risk and/or significant impact for community
- Systems of monitoring, inspection, auditing or policing compliance
- Punitive consequences of non-compliance



Government regulation

- Disadvantages
 - Challenge for drafters of legislation to cover all potential situations comprehensively
 - Loopholes and ambiguities exploited through "creative" compliance
 - High costs to maintain compliance, monitoring and enforcement
 - Difficult to change so innovation stifled
 - Disciplinary matters may be slow



Self regulation

- Profession has sole responsibility for establishing and enforcing standards or rules of conduct for members of the profession
- Rules made by those with experience and expertise in the area of practice
- No government involvement in development or implementation



Self regulation

- Disadvantages
 - Standards of practice/conduct can serve the interests of the profession rather than community interests
 - May limit competition or create unfair commercial advantage
 - Lack of transparency to public scrutiny
 - Inadequate enforcement due to apathy or lack of legal power



Self regulation

- Suggested advantages
 - More responsive to concerns and interests of the profession
 - Compliance more likely because driven by profession
 - Rules can be changed and updated more easily than government regulation



Quasi-regulation

- Professional practice is influenced indirectly by other government rules, instruments and standards
 - public health legislation
 - tax legislation
 - funding mechanisms
 - hospital standards



Co-regulation

- Standards of practice/conduct established by the profession are referenced in legislative framework
- More contemporary approach than government only or self-regulation only
- Government does not have a regulatory role
- Accountability issues may still arise



Meta-regulation

- Profession responsible for direct regulation but accountable to government
- Government regulates the regulators through policy and legislative frameworks
- Standards of practice/conduct established by the profession within legislative framework including government approval/endorsement
- Matrix of regulation with horizontal and vertical relationships between regulators



Teubner's regulatory trilemma

- Effectiveness influenced by
 - clarity, complexity and specificity of rules
 - strategies used to regulate behaviour
 - adequacy of resources
- Responsiveness requires
 - congruence between values represented in regulatory approach and professional norms
- Coherence with underlying values of legal system
 - fairness, accountability, consistency and predictability
 - ** also of health system



External drivers of reform

- Governments
 - local and global economic factors
- Community
 - increased access to information
 - increased awareness and expectations
- Funding agencies
 - private versus public
 - efficacy and quality
- Variety of policy initiatives to ensure safe, effective, efficient and sustainable health service delivery



Policy considerations

- Identifying purpose of/need for statutory regulation
 - protection of the public
 - health workforce aspects
 - politico-economic aspects
- Governance structure
- Adequacy of resources
- Community engagement and involvement
- Efficiency, transparency, accountability and fairness of processes and decisions



Policy considerations

- Standards
 - practice, competency, accreditation
 - specific versus common elements
- Achieving compliance
 - command – collaboration balance
- Disciplinary processes
 - restorative – punitive balance
 - jurisdiction specific mechanisms
- Restricted practices and restricted titles
- “Critical mass” concept



Summary

- A variety of regulatory approaches exist and coherence will limit universality of any legislative and policy frameworks
- Process of evolution/reform will continue globally
- Professions must engage with regulatory bodies, government and policy makers (and vice versa)
- Strive to identify the elements that could be considered as universal within and between jurisdictions and professions
- Remember core objective is the community interest so involve community in evolution/reform

