

## **COMPANION DOCUMENT TO THE COMMONWEALTH CODE OF PRACTICE FOR THE INTERNATIONAL RECRUITMENT OF HEALTH WORKERS**

### **PURPOSE**

The Commonwealth Code of Practice for the International Recruitment of Health Workers has been deliberately kept brief to facilitate easy interpretation and implementation. It is supported by this '*Companion Document*', which provides information on definition of terms used in the Code, which may have different interpretations, and more detailed explanations of concepts.

2. Where possible, examples of activities undertaken by countries to address various elements of international recruitment have been shared. The Companion Document should therefore be used in conjunction with the Code.
3. The Companion Document is set out along the lines of the Code to facilitate the linking of information. The same participatory approach, using the e-working group, was taken to develop and finalise the Companion Document.

### **STATUS OF THE CODE**

4. Codes of Practice whether binding and legal – as with ILO conventions – or voluntary and associative – as with the Commonwealth Code of Practice for the International Recruitment of Health Workers – do not seek to challenge the right of health workers to migrate in pursuit of a range of advantages, but serve to safeguard the potential benefits that migration can bring.

### **Existing international guidelines, agreements, conventions and treaties relating to the movement of persons across borders**

5. The WTO's General Agreement on Trade in Services (GATS) covers the international movement of service providers as well as promoting other aspects of international trade in services. Under its terms, countries can choose whether or not to 'commit' health as one of the services covered by the agreement, and can define many of the terms and conditions upon which they do so. However, labour standards are completely absent from all WTO agreements at present, and therefore the role of ILO conventions is highly significant.
6. In addition to a range of ILO conventions covering such issues as freedom of association and other rights and obligations of employers, employees and governments, there are three conventions of particular relevance in the context of this paper. These are Convention 97, Migration for Employment Convention (Revised), 1949; Convention 143, Migrant Workers (Supplementary Provisions) Convention, 1975; and Convention 181, Private Employment Agencies Convention, 1997. ILO conventions, recommendations and reports, are available online at [www.ilo.org](http://www.ilo.org).

## GUIDING PRINCIPLES

### Transparency

7. Transparency, in the context of the Code, is the clear articulation of intentions, plans and activities to all stakeholders to achieve a certain goal. Transparency requires accountability among all stakeholders. Accountability requires clear explanation and free acceptance of responsibilities.

### Fairness

8. Fairness, in the context of the Code, means freedom from discrimination and dishonest recruitment practices. It demands that recruitment take place in conformity with agreed rules or standards.

9. Recruiters must provide information on the types of skills, experience, and numbers of recruits being sought. Details of the information that recruits should receive from recruiters should include the following:

- ***Nature and requirements of job***
  - registration requirements;
  - ethics pertaining to the profession;
  - indemnity protection;
  - the medico-legal environment.
- ***Country conditions***
  - the general condition of the country;
  - cost of living in the country;
  - housing and transportation arrangements;
  - taxation arrangements;
  - family rights, e.g. health, education.
- ***Contractual requirements***
  - hours and duties of work;
  - general location of work;
  - terms and conditions of employment, (e.g. salary, leave entitlement, training);
  - length of contract;
  - renewal and opt-out clause.
- ***Recruits' rights***
  - the right to representation by labour unions;
  - the right to representation by professional associations;
  - health and safety rights;
  - the right to leave, injury or sickness pay and unemployment insurance.

### Nature and requirements of job

10. Differences in recruitment, registration and pre-registration arrangements, and arrangements for testing language proficiency, should be clearly justified and stated. This should include full and accurate information about work permit status, and the rights and obligations arising from that status.

11. The nature and pre-requisites for the job as well as the work obligations and responsibilities of recruits must be clearly explained by recruiters, whether private or government, before the contract is signed.

### **Country conditions**

12. Advertisements by recruiting agencies have been known to capitalise on the recruiting country's positive geographic features and favourable economic conditions, with promises of attractive annual earnings. Often the earnings do not equate with the true cost of living in the recruiting country.

13. Potential recruits must therefore be given information, which includes details of relocating and living costs, so that they can make a careful assessment of whether the proposed move is of benefit.

14. They should also be given a fair assessment of:
- the quality of life and cost of living issues including physical security afforded by their future working and living environments;
  - access to education and health care for themselves and their dependents.

*The UK's main health care workers union, UNISON, and the Royal College of Nursing have both recently detailed the poor treatment of many nurses who found, after arrival, that the conditions of their work were very different from those promised. UNISON's national organiser for nurses speaks of 'rescuing' as many as 20 nurses a week who were being paid less than the agreed wages by private nursing homes. The nurses were deployed to provide ancillary tasks such as cleaning; they were charged fees for their own recruitment and their passports were withheld by the recruiting agency. In these and other ways, the agencies were abusing them and taking advantage of their vulnerability.<sup>1</sup>*

### **Contractual requirements**

15. There must be no discrimination to recruits in terms of pay and other employment conditions; access to training, education and other career development opportunities and resources; the right to join and have access to unions and other professional, vocational and representative organisations; and supervision and disciplinary arrangements.

16. The taxation regulations of the recruiting country need to be clearly spelled out, and the proportion of the recruit's salary that he/she is allowed to send to his or her own country for purposes of investment indicated.

### **Recruits' rights**

17. Recruiting countries need to protect the rights of the recruits: the experience of exploitation of nurses who are recruited as part of systematic recruitment campaigns by private agencies shows the need for much greater transparency and clarity about the terms of employment.

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<sup>1</sup> *Code of Practice for NHS Employers involved in the international recruitment of healthcare professionals*, Department of Health, London, 2001.

18. Recruits may experience other difficulties such as cultural adjustments, which can cause ethical problems, and may need counselling about the new culture. Advice on labour and licensing laws in the host country must be provided.

19. Health workers recruited from other countries should enjoy the same rights and responsibilities as those of the indigenous workforce, in line with ILO conventions.

20. Candidates for recruitment should be supplied with a range of information on the specific position, covering job description, a named institution at which they will work and terms and conditions. They should also receive 'information about their local community, including access to public services, established social networks, available cultural support and local places of worship'.<sup>2</sup>

*The UK Code of Practice for International Recruitment has sections on 'fair recruitment and selection', language proficiency and occupational health, and detailed procedures for obtaining work permits, professional registration and 'supervised practice' in advance of formal recognition. Its section on '**Working with commercial recruitment agencies**' seeks to ensure that the standards used by the NHS in international recruitment are applied by recruiting agencies working on behalf of the NHS.<sup>3</sup>*

### **Mutuality of benefits**

21. Mutuality of benefits recommends that both source and recipient countries should experience the benefits of international recruitment. It is an expression of reciprocity.

22. Recruiters may be in a position to consider ways in which they could assist source countries. Some strategies, which recruiters may wish to consider, can be through technical and financial assistance, access to specialist training and repatriation of skilled health workers.

23. It is expected that source countries would benefit from the enhanced skills and experiences of health professionals when they return. Measures should be taken to enable recruits to develop their qualifications, training, education and expertise so that, when returning home, they could add value to the health care systems in the source country.

24. Health professionals could be positively encouraged to return to their country of origin at the end of the contract period by the provision of air tickets and other incentives. These could form part of the recruitment package.

### **COMPENSATION**

25. The capacities of countries to recruit staff vary significantly. Many developing Commonwealth countries have expressed the view that recruiting developed countries should in some way compensate source countries for the loss of personnel they have trained at great

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<sup>2</sup> *ibid*, p.13

<sup>3</sup> *ibid*

expense. Compensation may be in a variety of ways, such as building capacity in training institutions and re-insertion training.

26. Compensation could also take the form of arrangements which would include the provision of training programmes. Such training should be relevant to the context of the source country so that the difficulties and frustrations experienced by returning recruits are minimised. There could be more general programmes to reciprocate for the recruitment of a country's health workers through the transfer of technology, skills and financial assistance to the country concerned.

## **STRATEGIES FOR ADDRESSING THE EFFECTS OF INTERNATIONAL RECRUITMENT**

27. 'Further dialogue is needed between developed and developing countries on the international recruitment of staff to balance the needs of developed countries to recruit, with the needs of developing countries experiencing shortages to retain staff.

28. Governments could also consider bilateral agreements to regulate the recruiting process, with the aim to *'minimize the adverse effects on the health care of the exporting countries.'*<sup>4</sup>

*The UK Code of Practice states that recruitment should take place only on the basis of bilateral agreements between countries at government level, and it suggests that such issues should be covered by Memoranda of Understanding.*<sup>5</sup>

29. Arrangements for recruitment between member governments could be conducted on the basis of these bilateral agreements in which both countries would have responsibility for ensuring compliance with the Code and meeting its obligations. Systematic recruitment could then take place between these two countries under the agreed conditions.

## **WORKING WITH PRIVATE RECRUITMENT AGENCIES**

30. Governments often state that whilst they observe ethical practices or are guided by Codes of Practice in the international recruitment of health workers, private recruitment agencies, which do not typically fall under the jurisdiction of the Ministry of Health, are not under any obligation to be so guided.

31. Governments should encourage and promote good practice among recruitment agencies by only employing and dealing with those agencies that comply with the Code. Agreements would then be made between private recruiters and the government of the country from which they are recruiting.

32. Governments may wish to consider the following as elements of a system for entering into 'auditable' arrangements with recruitment agencies:

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<sup>4</sup> 'Brain drain and health professionals', Tikki Pang, Mary Ann Lansang and Andy Haines, in *BMJ*, March 2, 2002.

<sup>5</sup> *Code of Practice for NHS Employers involved in the international recruitment of healthcare professionals*, Department of Health, London, 2001.

- governments keep a record of all recruiting agencies and other institutions engaged in international recruitment of health workers;
- governments and other institutions (those engaging recruitment agencies, or with power to issue licences or other forms of accreditation to them) ensure that the agencies are aware of this Code of Practice and comply with it;
- governments choose not to engage or accredit agencies whose practices are not compatible with the Code;
- recruiting agencies provide governments and recruits with their portfolio, business plan, equal opportunities policy and references from countries where they have successfully recruited;
- institution of an agreement between recruiting agencies and the government of any country in which they wish to recruit. To define and regulate such agreements, and to ensure a good standard of practice by recruiting agencies and the recruits themselves, the government may wish to designate a particular ministry or department to monitor and evaluate the implementation of these regulatory agreements or codes. This also implies that recruiting agencies should keep records in such a way that they are able to demonstrate compliance with Codes of Practice.

### **Monitoring private recruitment agencies**

33. Governments should set up regulatory systems for recruitment agencies, and should also develop systems to monitor the practices of such agencies.

34. Monitoring arrangements could include the design and implementation of early warning mechanisms to detect non-compliance at any stage. These mechanisms should be capable of detecting impacts such as general or specific staff shortages resulting from international recruitment.

35. Governments could consider providing incentives for recruitment agencies to comply with the Code.

*The UK Code of Practice emphasises that NHS employers should work only with recruiting agencies that adhere to the Code of Practice's ethical stance and neither directly nor indirectly (through sub-contractors) charge fees to the recruits. The Code outlines a number of detailed specific measures that should be taken to ensure these points are met by agencies.<sup>6</sup>*

### **MECHANISMS THAT BALANCE THE RIGHT OF HEALTH WORKERS TO SEEK EMPLOYMENT IN OTHER COUNTRIES AND THEIR RESPONSIBILITIES TO THE COUNTRIES IN WHICH THEY WERE TRAINED**

36. Many countries require health professionals, trained at their government's expense, to serve in their own country for a set period after graduation. Such bonds should be both fair and reasonable.

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<sup>6</sup> *ibid*

37. Responsibility for such obligations lies with the source country and the health worker. Recruiting countries would do well to be aware of, and therefore respect, these obligations.

## SELECTION PROCEDURES

### REGISTRATION

38. Recruits are often required to meet registration and licensure requirements in the recruiting country before they are allowed to practise. It is therefore recommended that:

- the recruiter ensure that the recruit is registered in his or her own country, and confirm qualification;
- recruited health workers be not exempt from the regulatory requirements which apply to all workers in the recipient country;
- potential recruits be fully and accurately informed of requirements and procedures for registration;
- pre-registration work be specified at recruitment. Pre-registration practice must be supervised: the recruit must not be given full responsibility for the management of patients or wards or clinics prior to registration. The work to be carried out after a recruit's arrival in the new job, but before registration, must be within the specified terms of the job concerned. Arrangements for pre-registration supervision should be clearly stated at the time of recruitment and adhered to thereafter;
- since the effects of indemnity and legal protection for health professionals have a high impact for health workers with respect to their ability to practise and meet claims, the likely costs of indemnity protection and the medico-legal environment of the recruiting country be made clear to the recruit during recruitment;
- medical ethics be adhered to in whichever country a medical practitioner seeks to practise, and similarly for other disciplines, professional ethics should be adhered to.

*'In Canada, the requirements for physicians with foreign qualifications to obtain a licence to practise medicine vary from province to province. Foreigners must also obtain the agreement of the relevant provincial ministry that their professional services are needed. Registered nurses must have been granted a provincial licence to practise in Canada before they can be granted entry as professionals. An employment authorisation issued at the time of entry can have a maximum duration of one year. Extensions may be granted in one-year increments, at the discretion of an immigration officer.'*<sup>7</sup>

Some countries – especially those federated states with multiple jurisdictions which each have responsibilities for health services and health human resources – may face particular challenges.

39. A number of regional trade agreements, such as the European Union and the North American Free Trade Agreement, have sought to simplify the regulatory environment and

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<sup>7</sup> *Code of Practice for NHS Employers involved in the international recruitment of healthcare professionals*, Department of Health, London, 2001.

ease the movement of health professionals by developing mutual recognition and harmonisation of standards. Similar networks and initiatives are operating in Africa and the Caribbean. Nurses associations and regulatory bodies in both those regions are committed to harmonisation of education standards and entry requirements into the profession. Nurses in the English-speaking Caribbean sit for the same registration examination. The countries of central, southern and eastern Africa, working through the East, Central and Southern African College of Nursing, are drawing up common standards and competencies. The aim in both regions is to enhance nurse mobility and to ensure quality nursing care.<sup>8</sup>

## **WORKFORCE PLANNING**

40. Where governments have expended resources to train, they may wish to consider strategies for ensuring that health professionals serve compulsorily for a specified period.

41. All countries should undertake measures to retain skilled health workers. They are also encouraged to put workforce planning high on the agenda, considering issues such as:

- terms and conditions of service;
- monitoring and evaluation of human resource strategies and activities;
- supply of graduates;
- recruitment and retention of staff;
- on-going training and maintenance of professional skills;
- work environment, with particular attention given to the resourcing and provision of health care at the community level and in rural areas;
- occupational health and safety.

42. Other issues surrounding the retention of health workers need to be examined and discussed, such as non-monetary compensation, improved infrastructure, appropriate facilities for childcare, transportation, housing, and continuing education.

43. Governments are encouraged to examine a variety of measures to retain health workers in the health sector.

44. Governments are encouraged to devise methods to collect and analyse data on national health workers' movements within and outside their borders, on a regular basis, in order to inform policy decisions and planning.

## **Work Environment**

45. Issues surrounding work environment include:

- training systems and capacity;
- pay and conditions of service;
- employment rights and labour representation;
- equal opportunities policies;
- career development programmes;
- management systems;
- models of care and specialisation.

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<sup>8</sup> 'International Trade and the Nursing Profession', Judith A. Oulton, in *International Trade in Health Services: A Development Perspective*, UNCTAD, Geneva, 1998, p.130.



46. Countries should be encouraged to also collect data on the general labour environment, which includes school leavers and the unemployed, in order to be able to forecast the likely inflows of candidates into the various disciplines of the health sector. This information could assist countries in formulating strategies for attracting students into the health sector.

47. Some recruiting countries are adopting a more sensitive approach to the impact of recruitment on source countries.

*'Mrs Jane Ives, acting director of nursing at City Hospital, said she had not been aware of the crisis in the health service in Trinidad at the time of its recruitment expedition ... but would not be recruiting from the islands again. She said: "There was government advice at the time about not going to South Africa and we observed that. We were advised by an overseas recruitment agency, which specialises in nurses. We feel we did as much as could be expected at the time in making sure we did not do anything that anybody could feel unhappy about. Clearly, in the light of new Government guidance, we would not go there again. We do not believe that recruiting from abroad is a long term solution and are working very hard on our recruitment and our retention policy."*<sup>9</sup>

#### **STRATEGIES, WHICH HAVE BEEN USED BY SOME COUNTRIES TO STEM THE FLOW OF THE INTERNATIONAL RECRUITMENT OF HEALTH WORKERS, INCLUDE THE FOLLOWING:**

- demanding compensation from departing professionals trained at their government's expense;
- delaying departure through compulsory service;
- increasing salaries in the public health sector;
- permitting health professionals in the public sector to practise privately;
- providing incentives such as education benefits for children, housing, transportation, and day care facilities;
- multi-skilling and training new cadres of workers.

#### **APPLICATION OF THE CODE**

48. Governments need to ensure that they and other institutions and organisations concerned take all necessary steps to familiarise themselves and their agents with all the information required to evaluate the specific circumstances of countries in which they intend to recruit, and the possible impacts of recruitment on the capacity of the countries concerned to fulfil their obligations to their citizens to provide adequate health care services.

#### **THE NEED FOR ADOPTION OF THE CODE BY COUNTRIES OUTSIDE OF THE COMMONWEALTH**

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<sup>9</sup> Code of Practice for NHS Employers involved in the international recruitment of healthcare professionals, Department of Health, London, 2001.

49. Although the Commonwealth Code of Practice is concerned in particular with relations between Commonwealth countries, the context of the problem it is seeking to address is broader.

50. The recruitment policies and activities of a number of non-Commonwealth countries (notably the United States of America (USA), Saudi Arabia and other Middle Eastern countries with high GDPs based on oil wealth but with under-developed social services capacity) are a significant part of the pattern, impacting both directly and indirectly on Commonwealth countries.

*The recruitment of Canadian health care workers by the USA is a factor in the staff shortages, which drives in turn Canada's recruitment of health care workers from other Commonwealth countries, notably South Africa.<sup>10</sup>*

51. The Code of Practice could be developed into '*a declaration and international code of ethical guidelines*', to encourage broader acceptance and adoption by non-Commonwealth countries. International agencies such as WHO, the International Organisation for Migration, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations Development Programme (UNDP), the World Bank, the World Medical Association and the Council of International Organisations of Medical Societies could play a significant brokerage role in this activity.

52. A further role for international organisations – suggested by the *BMJ* – could be the provision of a forum for the discussion of the preservation of the intellectual property of a nation, embodied in part in its health professionals, by developing and developed countries<sup>11</sup>.

**Adopted at the Pre-WHA Meeting of Commonwealth Health Ministers 2003, Geneva on Sunday 18 May 2003**

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<sup>10</sup> *ibid*

<sup>11</sup> 'Brain drain and health professionals', Tikki Pang, Mary Ann Lansang and Andy Haines, in *BMJ*, March 2, 2002.