

**A World Health Organization code of practice
on the international recruitment of health personnel**

Background paper



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1. Introduction.....	3
2. Towards a WHO code.....	3
3. The nature of a WHO code of practice	4
4. The development of a WHO code of practice.....	5
4.1 Key issues	5
4.1.1 <i>Objective(s) and guiding principles</i>	5
4.1.2 <i>International recruitment practices</i>	6
4.1.3 <i>Mutuality of benefits</i>	7
4.1.4 <i>National health workforce sustainability</i>	8
4.1.5 <i>Data gathering, research and information exchange</i>	8
4.1.6 <i>Implementation mechanisms: reporting and monitoring</i>	9
5. Next Steps	9

1. Introduction

This paper was prepared by the Secretariat to assist WHO Member States in considering the elaboration and negotiation of a WHO code of practice on the international recruitment of health personnel. The document is designed to facilitate discussions - nationally, regionally and globally – on the development of the final text of a WHO code of practice. It first describes the history of development of a WHO code of practice as well as the legal nature and significance of this proposed international instrument. The paper then highlights some key substantive issues that Member States may wish to consider when elaborating the text of a WHO code of practice, including those upon which there may be divergence among Member States. Finally, the last section presents the process recommended by the 124th Executive Board in January 2009 for moving forward the development of a WHO code of practice.

It should be stressed that this document is not intended to provide a comprehensive treatment of all of the possible elements of a WHO code of practice. Rather, the issues highlighted in this document as well as other possible issues need to be evaluated by each Member State. There is no single style or length for a code of practice. Some are detailed, while others are less so. In the end, the content of a WHO code of practice will depend upon WHO Member States.

The debate about international health worker recruitment and its impact on health systems has been pronounced in recent years. As a consequence of the globalization of health and health services, every country has an interest in the long-term objective of improving health systems in all countries. Towards this end, there is a need for global consultations to move to the next stage by establishing consensus on a WHO code of practice that effectively balances the interests of all countries.

Health worker migration and international recruitment also have a particular significance to primary health care, a global public health priority.¹ Primary health care systems in some developing countries are understaffed and extremely vulnerable to out-flow of personnel to urban areas and to other countries. In addition, primary health care systems in some developed countries, particularly in rural/remote areas, are dependent on internationally recruited staff. Consequently, achieving global consensus on a WHO code of practice could be an important factor in supporting improvements in the human resource components of primary health care.

2. Towards a WHO code of practice

The numbers of migrating health workers have significantly increased in recent decades, with patterns of migration becoming more complicated and involving more countries. While migration of health personnel can bring mutual benefits to both source and destination countries, migration from those countries that are already experiencing a crisis in their health workforce, particularly in the 57 countries identified by the 2006 World Health Report,² is further weakening already fragile health systems, and represents a serious impediment to achieving the health-related Millennium Development Goals.

In order to provide a global response, in 2004 the World Health Assembly adopted Resolution WHA57.19³, which “requests the Director-General to develop a code of practice on the international recruitment of health personnel, in consultation with Member States and all relevant partners.”

¹ World Health Report 2008 <http://www.who.int/whr/2008/en/index.html>

² World Health Report 2006 <http://www.who.int/whr/2006/en/index.html>.

³ http://www.who.int/gb/ebwha/pdf_files/WHA57/A57_R19-en.pdf

The Secretariat developed a comprehensive programme on the issue of health worker migration, in particular on the development of a WHO code of practice on the international recruitment of health personnel.⁴ To support WHO in developing a code of practice, a multi-stakeholder process, the Health Worker Migration Policy Initiative, was established. This initiative comprises: (i) a Migration Policy Advisory Council, led by the Global Health Workforce Alliance, and a nongovernmental organization, Realizing Rights: the Ethical Global Initiative, and (ii) a WHO-led Technical Working Group.

At its 122nd session in January 2008, the Board recommended that consultations with Member States on developing a code of practice should begin in early 2008 and that a draft code should be submitted to the Board at its 124th session in January 2009 and then, should the Board so decide, to the Sixty-second World Health Assembly (WHA) in May 2009.⁵

Following consideration of the development of the proposed code in several global fora, including the First Global Forum on Human Resources for Health held in Kampala, Uganda in March 2008 and the G8 Summit held in Toyako, Japan in July 2008, the Secretariat prepared a first draft of a WHO code of practice in August 2008. That text built upon existing national and regional codes of practice on health worker recruitment, global agreements and declarations, as well as the collaborative work of the Health Worker Migration Policy Initiative. On 1 September 2008, the Secretariat launched a global, web-based, five-week public hearing on the first draft of a WHO code of practice.⁶ In addition, in September and October 2008, informal discussions on health worker migration and on the development of a WHO code of practice took place at the WHO regional committees of the European Region, South-East Asia Region and Western Pacific Region. The Secretariat revised the text and prepared a draft code of practice in light of the comments received during the hearings.

At WHO headquarters, a progress report and a draft code of practice prepared by the Secretariat were presented to the 124th Executive Board (EB) session in January 2009.⁷ Member States expressed appreciation to the Secretariat for the work done in preparing a draft code of practice and it was agreed that more consultations and effective participation by Member States was essential to finalize and adopt a code. It was agreed that the Secretariat should prepare a Technical Briefing for the May 2009 World Health Assembly as well as a background paper on the development of a code of practice to support future national, regional and global consultations.

The WHO Regional Offices have been closely involved throughout the process of the development of a draft code of practice and have been engaged in several specific activities to be reported during their respective regional committees in Autumn 2009.

3. The nature of a WHO code of practice

In international practice, states use a wide variety of instruments to facilitate international cooperation, including binding instruments, such as treaties, and voluntary, non-binding instruments, such as resolutions, declarations and codes of practice. The choice to use a non-binding code of practice to address concerns about the international recruitment of health personnel reflects the will of WHO Member States, as expressed in resolution WHA57.19. This resolution makes clear that a WHO code, like most intergovernmental codes, such as the Commonwealth Code of Practice for the International Recruitment of Health Personnel, should be designed as a non-binding instrument. Such codes typically recommend voluntary standards of behaviour to states and other actors and are adopted as formal resolutions of intergovernmental organizations.

⁴ A thorough review of the Secretariat's activities in support of the development of the Code can be found in EB 124/13 http://www.who.int/gb/ebwha/pdf_files/EB124/B124_13-en.pdf

⁵ EB122/16 Rev.1 http://www.who.int/gb/ebwha/pdf_files/EB122/B122_16Rev1-en.pdf

⁶ A summary of the public hearing is described in document EB124/Info.Doc/2.

⁷ EB124/13 http://www.who.int/gb/ebwha/pdf_files/EB124/B124_13-en.pdf

Today the use of non-binding approaches to international cooperation is increasingly important and commonly used in a variety of areas of international concern, ranging from the environment to arms control to global fisheries issues. A code of practice formally adopted by the World Health Assembly is the expression of the will of the international community in its widest possible global health forum. The process of negotiating a code of practice can initiate a dialogue among and within WHO Member States and other actors that may expand awareness and national and multilateral action on this critical global health concern. In addition, a WHO code of practice may encourage countries to enter into further bilateral or multilateral agreements to formalize their commitments to mutually agreeable policies and practices on health worker migration.

Over the past decade or so, a number of codes of practice and similar instruments have been developed to address concerns arising from the migration of health personnel. However, a formally adopted WHO code of practice would be the first international instrument on health worker recruitment developed with a worldwide scope applicable to both source and destination countries.

The WHO code of practice will be most effectively implemented when Member States are able to incorporate its goals and principles into national policies and law. To ensure that there is support for these policies, Member States should take steps to consult with all relevant actors, including recruiters and employers, health professional organizations, academic and research institutions and non-governmental organizations in the development and implementation of a WHO code.

4. The development of a WHO code of practice

4.1 Key issues

International health workforce migration is a complex and multidimensional global health challenge. The following subsections describe some of the key issues that Member States may wish to consider when elaborating the text of a WHO code of practice, including those upon which there may be divergence among Member States. It should be stressed that this document is not intended to provide a comprehensive review of all of the possible elements of a WHO code of practice. Rather, the subsections below highlight some key issues in order to provide a catalyst for further discussion on a WHO code of practice. Selected questions related to the key issues are proposed in a box at the end of each sub-sections. These questions aim at facilitating the discussions and consultations.

Member States may wish to use the draft code of practice⁸ prepared by the Secretariat as a starting point for discussions on the development of the final text of a code of practice.

4.1.1 Objective(s) and guiding principles

An important area requiring consensus by Member States is the determination of what objective(s) and guiding principles should guide the development of a WHO code of practice. International instruments typically include introductory provisions that set forth the instrument's objective(s) and guiding principles. An instrument's underlying purpose is identified as its objective(s). Guiding principles set forth standards that frame the instruments development in very general terms.

Certain key issues on the introductory provisions of a code of practice, including the objective(s) and guiding principles have emerged during consultations. With respect to the objective(s), a question has arisen as to whether a WHO code of practice should focus on establishing voluntary principles, standards, and practices of international recruitment or whether the scope of this instrument should be broadened to address the impact of health worker migration on health systems generally.

⁸ EB124/13 http://www.who.int/gb/ebwha/pdf_files/EB124/B124_13-en.pdf

During consultations, issues have also arisen with respect to the elaboration of guiding principles and how such principles should be operationalized in other sections of the text. For example, one issue that has emerged is how to balance the individual rights of health workers to leave any country, including their own with the enjoyment of the highest attainable standard of health for the population in both source and destination countries. While health workers have a human right to migrate to countries that wish to admit and employ them, and destination countries can appropriately strengthen their health systems by employing foreign health workers, large-scale migration can have a devastating impact on the health systems of source states. Similarly, there is a divergence among states on how to balance the interests of source and destination states in the guiding principles and how these principles should be reflected in the remainder of the text of a WHO code of practice.

The process of determining the code's objective(s) and guiding principles can help to build consensus among Member States on a code of practice. States may not agree on single, specific solutions to any one problem, but they may be able to agree upon a common goal and on general principles that should guide their efforts in achieving that goal. This may provide countries with a framework within which to draft subsequent code language.

Box 1: Objective(s) and guiding principles

What objective(s) and guiding principles should guide the development and implementation of a WHO code of practice?

4.1.2 International recruitment practices

One key issue that has emerged in the discussions with respect to the elaboration of a code of practice is how such an instrument should promote equality of rights and opportunities for internationally recruited health workers. The rights of migrant workers are generally recognized in the corpus of international human rights law. All persons, regardless of their nationality, race, legal or other status, are entitled to fundamental human rights, including migrant workers. There have been reports from some countries that international health workers have been exploited, being misled about their career prospects, pay levels and employment conditions.

Principles of transparency and fairness are considered as key in the recruitment process of migrant health workers. There is a divergence among some states on whether and how such broad principles should be incorporated in a code of practice. In particular, some have suggested that a code of practice should include specific provisions encouraging states to regulate and monitor recruiters and employers. In addition, some have also suggested that a code of practice should include a specific provision calling upon Member States to ensure that services performed in connection with international recruitment should be performed free of charge to health workers. Member States also hold widely different views on whether recruitment from states experiencing critical workforce shortages should be limited.

Box 2: International recruitment practices

Should a code of practice include a specific provision recommending that Member States regulate or monitor the activities of recruitment agencies and employers of internationally recruited health personnel?

What standards should be included in a code of practice to encourage equality of treatment between national health workers and migrant health workers?

Should the code include a provision recommending that Member States limit international recruitment in countries with critical health workforce shortages?

Should a code of practice include a provision encouraging Member States to ensure that services performed in connection with the international recruitment or placement of health personnel are rendered free of charge to such health personnel?

4.1.3 Mutuality of benefits

An important question that has emerged in consultations on the code of practice is in what ways can the instrument reflect and encourage an appropriate balance between the interests of source and destination countries? It should be noted that within this context there is an increasing recognition that a coherent policy approach is required that aligns both international health worker recruitment and aid development policies. In particular, there is a substantial concern that aid projects related to health systems could be undermined by certain international recruitment practices.

The process of consultation on a code of practice has highlighted some important areas of continuing debate and divergence among Member States on issues relating to mutuality of benefits and how these issues should be reflected in the final text of the instrument. These issues include the following.

Agreements between source and destination countries/institutions

One area of divergence among states is whether a code of practice should promote bilateral agreements between source and destination states and, if so, what should be the content of such agreements. Different types of policy interventions can be addressed in such bilateral agreements, such as strengthening domestic training/education capacity in source countries; improving quality of education; providing technical assistance; better matching education/training to local population health needs; facilitating educational and staff exchanges between countries through institutional 'twinning', and harnessing professional experience of health worker diasporas in recipient countries to encourage return and 'circular' migration.

Compensation and/or international cooperation

The idea that some type of compensation and/or international cooperation should be recommended in a code of practice has been highlighted by some Member States. Some suggest that an approach to compensation should be a component of the final text of a code of practice, as lower income countries, in particular those identified by WHO as being in crisis⁹, are indirectly subsidizing health education systems in higher income destination states. Others oppose such a compensation approach as unworkable.

With respect to international cooperation, some countries highlight that a code of practice should emphasize international technical and/or financial assistance as all countries have an interest in strengthening health systems in all states.

Box 3: Mutuality of benefits

Should a code of practice promote the formulation and implementation of bilateral and multilateral agreements based upon the principle of mutuality of benefits?

Should a code of practice include a provision recommending that destination states provide source states with financial compensation?

What types of technical and/or financial cooperation should the code of practice encourage?

⁹ <http://www.who.int/whr/2006/en/index.html>

4.1.4 National health workforce sustainability

Whether or not a code of practice should include provision(s) promoting national health workforce sustainability has been central to discussions. The concept focuses on strengthening national health worker education. More broadly, achieving self sufficiency or sustainability in the health workforce is about effective retention and deployment of available workers.

Most countries, either developed or developing, also suffer from unequal distribution of the health workforce, in particular between urban and rural/remote areas. Currently, in many higher income countries, migrant health workers play a key role in servicing rural and remote territories, and staffing unpopular shifts. Meeting the need for health care workers in difficult to fill positions or underserved areas is challenging, and yet essential to achieve well-functioning health systems.

Similarly, in source countries, implementing policies aimed at improving retention and distribution is essential to maximize the effects of policies aimed at migration 'pull' factors, such as strengthening professional development and improving working conditions. It should be noted that WHO has launched a programme to increase access to health care providers in rural and remote areas through improved retention.¹⁰

Box 4: National health workforce sustainability

Should the concept of national health workforce sustainability be included in a code of practice?

If so, how could this broad concept of sustainability be defined and operationalized into specific recommendations in the code?

4.1.5 Data gathering, research and information exchange

Good information systems and effective mechanisms for exchange of information are key tools in monitoring and the development of appropriate policies. International instruments commonly include provisions recommending data collection, research and exchange of information on policies, activities, measures and other information relevant to the instrument.

In the field of health worker migration, improvement in the data gathering and research efforts is necessary for a number of critical reasons. Most significantly, the current evidence-base on health worker migration trends and patterns is fragmented. The formulation of effective policies addressing the drivers, trends and impacts of health worker migration needs to be grounded in a sound evidence base. The challenges involved in data collection and analysis are compounded by a lack of consistency in definition of relevant data items among countries. Consensus needs to be reached on common definitions and approaches to data gathering.

Ideally, international migration of health personnel should be monitored by gathering evidence on the annual number of health workers moving from one country to another. At present, however, few countries have accurate, complete and timely data on the numbers of nationals working abroad or leaving the country. The objective should be the necessary strengthening of information systems to enable policy makers to assess or plan for current and future health workforce needs, including the tracking of migration. It should not be the intention to establish parallel or duplicate information systems, with one system dedicated only to generating data on migration.

While the importance of a sound evidence base for the formulation of appropriate policies is widely recognized, there is not yet consensus among states on the type and scope of data gathering on health workforce migration, the type of information exchange, and the mechanisms to allow such exchanges that could be recommended in the code of practice.

¹⁰<http://www.who.int/hrh/migration/en/>

Box 5: Data gathering, research and information exchange

Should a code of practice include a recommendation encouraging countries to collect data on health worker migration and its impact on health systems?

If so, what type of data should be collected? Should a tool be developed to encourage the harmonization and comparability of data collected?

What information should the code of practice recommend that Member States exchange?

4.1.6 Implementation mechanisms: reporting and monitoring

National reporting is generally viewed as a central mechanism for ensuring implementation of an international instrument's provisions and is common in international practice. Many international instruments generally call upon states to submit reports or transmit information at periodic intervals on measures taken, difficulties encountered and headway made in implementing an instrument. In contemporary international practice, mechanisms for monitoring and implementation are common in both binding and non-binding instruments.

Reporting requirements can be very useful. National reporting encourages Member States to undertake a more comprehensive and systematic review of their existing policies. This may encourage various government agencies and others to coordinate their actions within a country. Reporting can also serve an educational function, allowing states to benefit from the experience of others. In terms of implementation, reporting promotes transparency. Reporting also makes it possible to judge the effectiveness of a code of practice and assess the need for further action.

Some Member States have suggested that developing a system for the monitoring of the implementation of the WHO code of practice is of first importance and essential if the code is to become a meaningful component of policy responses to the issue of health worker international recruitment. Some other states have suggested that an implementation mechanism is not appropriate for a voluntary code of practice.

Box 6: Implementation procedures for a WHO code of practice

Should there be a provision for international monitoring and review of the implementation of the code of practice?

What information on implementation should be compiled and included in state reports?

What other provisions can be included in a WHO code to encourage compliance by state and non-state actors?

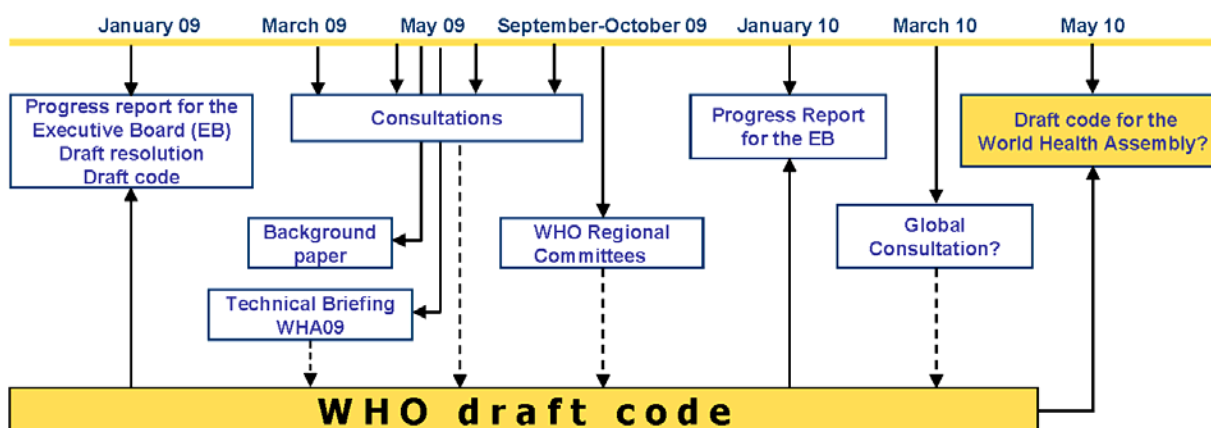
5. Next Steps

Following the 124th Executive Board discussion on item 4.10, “international recruitment of health personnel: draft global code of practice”, in January 2009, the Secretariat organized an informal session open to all Member States to consider the development of a new consultative process to move forward the development of the proposed WHO code. At this session Member States expressed the importance of initiating a process of national, regional and global consultations that would lead to the consideration of a progress report by the Executive Board in January 2010.

The following was agreed:

- A WHO code of practice will not be included in the agenda of the Sixty-second World Health Assembly in May 2009. A Technical Briefing on the topic will be organized and open to all Member States and other stakeholders.¹¹
- The Secretariat will prepare a background paper for the Technical Briefing and this background paper will be made available to Member States and Regions.
- Between April 2009 and August 2009 national consultations may be undertaken in preparation for the Regional Committee meetings in 2009.
- Discussions on the development of a WHO code will be included in the agenda of all six Regional Committees for 2009. The Director-General's Office will convey this request to all Regional Directors.
- Deliberations of the six Regional Committees will be reported by the Director-General to the 126th Executive Board in January 2010.
- If the 126th Executive Board so decides, a code of practice will be put on the agenda for deliberation and possible adoption at the Sixty-third World Health Assembly.
- If necessary to reach consensus on a WHO code of practice, global consultations will take place between the 126th Executive Board (January 2010) and the Sixty-third World Health Assembly (May 2010).

Process to develop a WHO code of practice on the international recruitment of health personnel



¹¹ Due to the outbreak of influenza A (H1N1), WHA62 was shortened and as a result Technical Briefings were cancelled including the one on international recruitment of health personnel: a draft WHO code of practice.