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Venue: Committee Room 2, National Assembly for Wales

Title: Report of the Health & Social Services Committee on its Consideration of The Draft National Health Service (Wales) Bill

NATIONAL ASSEMBLY FOR WALES

Report of the

HEALTH AND SOCIAL SERVICES COMMITTEE

on its consideration of

THE DRAFT NATIONAL HEALTH SERVICE (WALES) BILL

29 May 2002

Chair's Foreword

The UK Government's proposals for the modernisation of the House of Commons include the intention to publish more bills in draft to encourage pre-legislative scrutiny by both Parliament and the devolved administrations. The publication of the Draft NHS (Wales) Bill on 17 May has given the Health and Social Services Committee the opportunity to be the first subject committee in the National Assembly for Wales to scrutinise a draft Bill that will apply only to Wales.

I am pleased that we have been able to work with the House of Commons Select Committee on Welsh Affairs in scrutinising the draft. It is important that the two legislatures complement rather than duplicate each other's work. I was pleased that the Chair of the Select Committee, Martyn Jones MP, and three other Select Committee members, Julie Morgan MP, Adam Price MP and Roger Williams, MP were able to attend the Health and Social Services Committee meeting on 29 May. I look forward to working

further with the Committee and sharing our findings.

I should like to thank the Assembly Minister, Jane Hutt, and the Secretary of State for Wales for the part they have played in securing the involvement of the National Assembly.

Kirsty Williams AM
Chair

Introduction

The draft NHS (Wales) Bill provides for:

- the development of the role of Community Health Councils (CHCs);
- the establishment of the Wales Centre for Health, an independent organisation responsible for training, advice and research relating to the protection and improvement of the health of the people of Wales; and
- the establishment of Health Professions Wales as a successor to the Welsh National Board for Nursing, Midwifery and Health Visiting.

The Health and Social Services Committee has agreed a protocol for its consideration of primary legislation. This provides that discussion in Committee will be limited to suggested amendments notified in advance. This report covers the Committee's discussion and conclusions on those proposed amendments.

Summary of Amendments to the Draft Bill Supported by the Committee and / or the Minister for Health and Social Services

- Draft Clause 2 (3) line 7, and in Schedule 1, para 2(a) of the new schedule 7A to the National Health Service Act 1977, references to "Chairman" should be made gender neutral.
- Schedule 1. In the new Schedule 7A to the National Health Service Act 1977: in paragraphs 2(e) and 2(f) there should be reference to giving advice to NHS trusts.
- Schedule 1. In the new Schedule 7A to the National Health Service Act 1977: in paragraph 4(1)(a) (I) (*line 27 on page 6*) the words "support and" should be inserted before the word "advise".
- Schedule 1. In the new Schedule 7A to the National Health Service Act 1977: insert after

paragraph 5 a further paragraph to the effect:

Before a substantial change is made to a local National Health Service Scheme in relation to the district of a Council, that Council –

(a) shall consult with such members of the public who may be affected by the change; and

(b) shall ensure that a body established under paragraph 4 of this Schedule is notified of any such change.

A suitable form of words should be drafted.

The Proposed Amendments

Amendment 1 - proposed by Plaid Cymru - the Party of Wales

Amend the long title of the Bill as follows:

In the final line delete the words "and for connected purposes" and replace with:

"and for other purposes associated with the NHS, including making provision for health audit; and health promotion in Wales; including the prevention of tobacco use in appropriate buildings used by the public; and permissive powers to allow free personal care for the elderly; and for connected purposes."

The Minister did not support this amendment. She said that primary legislation had been sought to enable the establishment of a broad framework to implement 'Improving Health in Wales - A plan for the NHS with its Partners'. The amendment would widen the scope to such an extent that the Bill would not be introduced. On the specific points of the amendment she said that:

- Health Professions Wales would be concerned with quality assurance issues;
- the Assembly did not have the necessary powers to ban smoking in public places; and
- the Assembly had agreed in plenary that free personal care for the elderly was an issue to be pursued at UK level, not embarked on unilaterally.

Points Made by Members

- Smoking was the single biggest cause of ill health in Wales and stopping it would have a significant impact on the health of people in Wales.
- Health and audit were both devolved to Wales so health audit should also be.

- The Assembly should have a clear policy on free personal care. It should not be allowed to be "lost" in Westminster.

The Committee voted by five votes to four against recommending the amendment.

Amendment 2 - proposed by Plaid Cymru - the Party of Wales

Clause 1 (1) Community Health Councils.

In the new section 20A (3) add (line 14):

"(c) that Community Health Councils in Wales be co-terminous with Local Health Boards."

The Minister rejected the amendment on the basis that Community Health Councils (CHC) had already been through considerable re-organisation and uncertainty and the current number generally reflected local health board boundaries.

Points Made by Members

- The amendment sought to strengthen the independence of CHCs, and as there were 22 local authorities and local health boards it made sense to have 22 CHCs.
- Some felt that the amendment would preclude the Assembly from deciding what the configuration of CHCs should be, and any future changes would require further primary legislation.

The Committee voted by five votes to four against recommending the amendment.

Amendment 3 - proposed by Brian Gibbons, AM

Clause 2 (3) Wales Centre for Health. Line 7 amend "chairman" to "chair".

Amendment 8 - proposed by Ann Jones, AM

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 2(a) amend "*chairman*" to "*chairperson*".

The Minister accepted the proposed amendments. She recognised the differences between drafting policy in the Assembly and Westminster, but the Assembly was committed to the use of gender neutral terminology. Discussions would be held with Parliamentary Counsel to try and address this issue.

Amendment 4 - proposed by Ann Jones, AM

Clause 3 (1) Functions of the Centre. After line 19 add:

"(e) undertake research into the causes of health inequalities among the population of Wales and provide information on, and evaluate the impact of, public health initiatives on reducing such inequalities."

The Minister acknowledged that this was a helpful proposal as the Assembly should be tackling inequalities and promoting research but it was felt it would be more appropriate to use the regulations arising out of the Bill to make powers for this purpose.

Following assurance from the Minister that this would be a key element of the secondary legislation arising out of the Bill, the amendment was withdrawn.

Amendment 5 - proposed by Brian Gibbons, AM

Clause 3 (2) Functions of the Centre. This clause states to whom information may be given but does not outline how investigation may be requested. There should be some mechanism whereby legitimate community groups, e.g. trade unions, etc., might request the Wales Health Centre to look into some matter.

The Minister advised the Committee that the question of access to the Wales Health Centre was more appropriate for the regulations arising out of the Bill, and would be included in the secondary legislation process.

The amendment was withdrawn.

Amendment 6 - proposed by Brian Gibbons, AM

Clause 4 (5) Health Professions Wales. The definition of a health care professional is vague but presumably there is a precedent for these words.

The Minister said that the definition was derived from the NHS Reform and Health Care Professions Bill. She said she would provide an information note to clarify the issue.

The amendment was withdrawn.

Amendment 7 - proposed by Plaid Cymru - the Party of Wales

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

After paragraph 1(a) insert:

"secure advocacy services: and"

The Minister could not support the proposed amendment as it was already covered in paragraph 2(g) of Schedule 7. CHCs would be required to provide independent advocacy services for patients and methods for doing so were already being piloted. A broad framework would be needed which addressed the need for local variations. This would be more appropriately addressed in the regulations arising out of the Bill.

Points Made by Members

- It was not felt that giving statutory powers to CHCs would preclude advocacy services being developed in other settings.
- Clarification was sought on whether the activities listed in s19A of the National Health Service Act 1977 could only be provided by CHCs.

The Committee voted by five votes to four against recommending the amendment.

Amendment 8 – dealt with Amendment 3 above.

Amendment 9 - proposed by Brian Gibbons, AM

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

Paras 2(e) and 2(f) - Why are there no proposals to give advice to trusts?

The Minister accepted that there should be reference to trusts.

Amendment 10 - proposed by Brian Gibbons, AM

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

Paras 2(g) - is there any more detail on advocacy services?

The issues had been covered under discussion of Amendment 7.

Amendment 11 - proposed by David Melding, AM

Schedule 1. *In the new Schedule 7A to the National Health Service Act 1977:*

Immediately after paragraph 2(g) there should be inserted:

"(h) the provision of a patient support service for National Health Service patients."

The Minister did not support the amendment as it was not appropriate to the Bill. Plans were already in place for patient support services. Pilots were currently being run to determine the most appropriate provider of patient support services and until they were concluded it would be premature to lodge it with CHCs.

The amendment was withdrawn.

Amendment 12 - proposed by Brian Gibbons, AM

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 3 (1) (h) - are these references to local pharmacy schemes?

The Minister confirmed that this was a reference to local pharmacy services. The amendment was withdrawn.

Amendment 13 - proposed by David Melding, AM

Schedule 1. *In the new Schedule 7A to the National Health Service Act 1977:*

Paragraph 4 - in the first line (line 25 on page 6), insert "(1)" before "The" and the word "shall" shall be substituted for the word "may".

The Minister could not support the amendment as the proposed wording was over-prescriptive. The issue would be better addressed in the regulations arising out of the Bill. The amendment was withdrawn.

Amendment 14 - proposed by David Melding, AM

Schedule 1.

In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 4(1)(a)(i) (line 27 on page 6), the words "support and" shall be inserted before the word "advise".

The Minister accepted the proposed amendment.

Amendment 15 - proposed by David Melding, AM

Schedule 1.

In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 4(1)(b) (line 32 on page 6), the words "the membership" shall be deleted.

The Minister did not support the amendment. It might be appropriate for the Assembly to consider the composition and membership of such a body and the current wording provided flexibility to do so.

Mr Melding said the purpose of the amendment was to make the new all-Wales body as independent as possible and remove the power of appointment from the Assembly. It would also assure CHCs that they would elect the Chair to this body.

The Committee voted my eight votes to one to reject the amendment.

Amendment 16 - proposed by David Melding, AM

Schedule 1.

In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 4(1)(b) immediately after this paragraph there shall be inserted the following paragraphs:

"(2) Any body established under this paragraph shall -

(a) in each calendar year prepare a report outlining the views of National Health Service patients in Wales which report shall as soon as possible after the end of the calendar year be laid before the Assembly;

(b) consider the implications of any change to a National Health Scheme of which it is notified under paragraph 5(b) of this Schedule.

(3) The membership of any body established under this paragraph shall comprise the chairpersons of each Community Health Council in Wales and the chairperson of that body shall be elected by its members."

The Minister rejected the amendment as it was too detailed and would be better addressed in the regulations arising out of the Bill.

The amendment was withdrawn.

Amendment 17 - David Melding AM

Schedule 1. In the new Schedule 7A to the National Health Service Act 1977:

Paragraph 5 – immediately after this paragraph insert:

"5. Before a substantial change is made to a local National Health Service Scheme in relation to the district of a Council, that Council –

(a) shall consult with such members of the public who may be affected by the change; and

(b) shall ensure that a body established under paragraph 4 of this Schedule is notified of any such change."

The Minister accepted the principle of the amendment, but a revised form of words would be needed.

June 2002