

Eluned Morgan MS

Minister for Health and Social Services

20 October 2021

Dear Eluned

### Welsh Government's Legislative Consent Memorandum on the Health and Care Bill

We considered the Legislative Consent Memorandum (the Memorandum) on the Health and Care Bill (the Bill) at our meeting on Monday of this week. There are a number of matters that we wish to raise with you before we report on the Memorandum.

1. In the Memorandum you state that further work with the UK Government is needed to resolve your concerns with several clauses in the Bill. Please can you provide an update on these discussions, and provide the specific details on any amendments to the Bill which you have sought.
2. You state that clause 120 (concerning International Healthcare Agreements) is one of the Bill's clauses which gives you concern as it could negatively impact NHS bodies in Wales.
  - a. Clause 120 of the Bill would constitute a departure from constitutional convention, by permitting the UK Government to implement international agreements that require changes to domestic legislation via subordinate legislation rather than by primary legislation (which provides better opportunities for parliamentary scrutiny). Clause 120 would introduce a new approach to the scrutiny of international healthcare agreements which excludes the Senedd from scrutiny of a devolved matter. What are your views on this specific aspect of clause 120?
  - b. Clause 120 also provides broad scope to the Secretary of State to make payments for healthcare that falls outside of an international healthcare



agreement in “exceptional circumstances”, which is not defined by the Bill. Further, there are no limits on the amount or type of healthcare funded. What are your views on these matters?

3. Can you confirm that there are no restrictions on the face of the Bill preventing UK Ministers from using regulation-making powers in the Bill to amend the *Government of Wales (Act) 2006*?
4. How concerned are you with clause 130 of the Bill, given that it provides the Secretary of State with regulation-making powers to make consequential provision, meaning it could be used to amend primary legislation made by the Senedd and subordinate legislation made by the Welsh Ministers?

While we acknowledge the current reporting deadline set by the Business Committee stands as 11 November, we are aware that Committee stage in the House of Commons (the first house) is only just underway. As such, and recognising the time remaining in the UK Parliamentary process, while we will endeavour to lay our report by this date, our careful consideration of your response may require us to report later than anticipated.

I would be grateful to receive your reply by 3 November.

We are aware that the Health and Social Care Committee has also written to you to seek clarity on a number of issues. As such, I am copying this letter to Russell George MS, Chair of the Health and Social Care Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies  
Chair