ADSS Cymru
Yn arwain Gwasanaethau Cymdeithasol yng Nghymru
Leading Social Services in Wales

Written evidence on the Health and Social Care (Wales) Bill

The Association of Directors of Social Services (ADSS) Cymru and All Wales Heads of Children's Services

About Us

The Association of Directors of Social Services (ADSS) Cymru is the professional and strategic leadership organisation for social services in Wales and is composed of statutory directors of social services, the All-Wales Heads of Children's Service (AWHOCs), the All-Wales Adult Service Heads (AWASH) and tier three managers who support them in delivering statutory responsibilities: a group which consists of over 300 social services leaders across the 22 local authorities in Wales.

The role of ADSS Cymru is to represent the collective, authoritative voice of senior social care leaders who support vulnerable adults and children, their families, and communities, on a range of national and regional issues in relation to social care policy, practice, and resourcing. It is the only national body that articulates the view of those professionals who lead our social care services.

As a member-led organisation, ADSS Cymru is committed to using the wealth of its members' experience and expertise. We work in partnership with a wide range of partners and stakeholders to influence the important strategic decisions around the development of health, social care, and public service delivery. Ultimately, our aim is to benefit the people our services support and the people who work within those services.

Introduction

ADSS Cymru welcomes the publication of the Health and Social Care (Wales) Bill, which aims to improve the quality and sustainability of health and social care services in Wales. We support the overall vision and principles of the Bill, which are aligned with our own strategic priorities and values and will ensure move voice, choice and control for citizens in receipt of care and support services.

One of the key elements of the Bill is the proposal to remove private profit from the care of children looked after by local authorities. This means that only not-for-profit organisations will be able to provide residential care, foster care, and other forms of care for children who are in the care system.

This paper sets out our views on this aspect of the Bill, as well as the introduction of Direct Payments for Continuing Health Care (CHC), based on our experience and expertise as the professional voice of local government social care leaders in Wales.

Removal of profit from children looked after

Rationale and benefits

We recognise and share the policy intent behind the removal of profit for the care of children looked after. We believe that the care of children who are in the care system should be driven by their best interests, needs, and rights, rather than by financial motives or market forces. We agree that the profit motive can create perverse incentives and distortions in the provision and commissioning of care, leading to poor outcomes, high costs and reduced accountability.

In *Eliminating profit from children's residential and foster care: evidence review* (Welsh Government Publication May 2024)[1], researchers described strong evidence demonstrating that:

- children are more likely to be placed outside of their local area under a for-profit system
- an association between for- profit provision and poor placement quality
- an association between for-profit provision and poor placement stability and continuity.

In addition to literature reporting analysis of primary and secondary data, they analysed published sources reporting professional and policy experience, non-systematic qualitative evidence and subject-specialist journalism. These sources discuss the possible contradictions of potentially short-term private equity investment and the guiding principle of placement stability. Some sources also point to the prevalence of debt burden in the private sector.

We concluded that benefits could accrue from developing a functioning system where local authorities can more easily plan and secure appropriate care placements for children and young people. By enabling local authorities to do this more effectively, children and young people are more likely to be placed in environments that closely match their needs. This will support the overall well-being and development of children looked after, leading to better social, educational, and health outcomes and improved life chances.

A more efficiently managed market will reduce the need to place children far from their communities. By improving placement planning and capacity management, local authorities can make more placements available closer to the children's original communities.

Bringing services in-house will also support a social worker-led understanding of placement patterns. This will in time enable proactive capacity management, minimising the scramble for last-minute placements that can lead to suboptimal matches and higher costs.

[1] The topic of for-profit children's residential and foster care provision is under-researched and therefore there exists little published primary evidence pertaining to comparable outcomes, particularly from within a UK context.

Challenges and risks

While we support the policy direction and intention of removing profit for the care of children looked after, we are also aware of the significant challenges and risks that this will entail. These include:

- The transition from a mixed market to a not-for-profit model will require substantial time, resources, and planning, as well as effective communication, consultation, and engagement with all the relevant stakeholders. It will also need to be carefully managed and monitored to ensure that the quality and continuity of care for children looked after is not compromised or disrupted during the process.

  We have set out in broad terms, what we perceive to be the resource implications regarding the implementation of this section of the legislation in a Revenue Impact Assessment document, which was a commissioned piece of work by the Welsh Government.

- The removal of profit may have unintended and adverse consequences on the diversity and quality of care provision for children looked after, in the short to medium term. Some for-profit providers may decide to exit the market (some have already) or reduce their services, leading to a loss of skilled and experienced staff, a reduction in the availability and suitability of care placements and an increase in the costs and complexity of commissioning and contracting arrangements.

- The responsibility and accountability for developing and providing care for children looked after will shift largely to local authorities, who will face increased pressures and expectations to ensure a sufficiency and sustainability of care provision. This will require significant investment and support from the Welsh Government and other partners, particularly at the transition phase, as well as a clear and consistent framework of guidance, regulation, and inspection.

There may be some disbenefits or trade-offs that need to be considered and addressed:

- The not-for-profit model may reduce the diversity and quality of care provision for children looked after, especially in some specialised or niche areas of care. Some for-profit providers have developed unique and high-quality care models that may not be easily replicated or replaced by not-for-profit organisations, and that may meet the needs and preferences of some children and young people better than others.

- The not-for-profit model may limit the scope and potential for innovation and partnerships in the care sector, as some for-profit providers may have more resources, expertise, and incentives to develop new and effective ways of delivering care. It may also discourage collaboration and cooperation between not-for-profit and for-profit organisations, which may have complementary strengths and assets that could benefit children looked after.

- The not-for-profit model may introduce some additional administrative and regulatory complexity and burden for local authorities and care providers, as they will have to comply with different rules and requirements for their legal and financial status, governance, and accountability. It may also create some confusion and inconsistency in the application and interpretation of the not-for-profit criteria and definition.

Conclusions on the intent of eliminating profit

Despite the challenges and risks, we believe that the removal of profit for the care of children looked after is the right thing to do. The direction and policy intent align with our vision and values to improve the outcomes and well-being of children and young people who are in the care system.

However, we must recognise that to overcome the challenges and mitigate risks there will be a need for careful planning, management, and evaluation of the policy change. We believe that the Welsh Government and legislators must consider these matters during the Bill's passage through the Senedd. In particular, the funding, construction of not-for-profit provision, and the timescales for change must be carefully considered.

ADSS Cymru is committed to working with the Welsh Government and other partners to ensure that the policy change is implemented in a way that is fair, transparent, and effective, and that it delivers the best possible care for children looked after in Wales.

Introduction of Direct Payments for Continuing Health Care (CHC)

Rationale and benefits

The Social Services and Wellbeing (Wales) Act 2014 (SSWBA) aims to give people more say and influence over their care and support. Direct Payments are a way of achieving this aim, offering a different option to the usual council arranged care and support to meet individual or carer needs. They can offer more choice, flexibility, control, holistic and alternative opportunities over the support they receive.

Continuing NHS Healthcare (CHC) is a package of care and support, arranged and funded by the NHS, where it has been assessed that the person's primary need is a health need. This is determined by consideration of the nature, intensity, complexity and unpredictability of the need. The care and support to meet these needs is free at the point of delivery, as it is NHS Funded.

Section 47 of the SSWBA states that:

"A local authority may not meet a person's needs for care and support (including a carer's needs for support) under section 35 to 45 by providing for or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless doing so would be incidental or ancillary to doing something else to meet needs under those sections."

Therefore, the SSWBA makes it unlawful for local authorities to provide services which are the responsibility of the NHS. However, given the current complexities of care in the community, there has been a blurring of boundaries over recent years.

In practice, this approach has contributed to a shift of responsibility from the NHS and inpatient services to social care and community services. District nursing teams have faced long standing pressures with high demands and it is common place for there to be delays in CHC assessments and for activities to be delegated to care staff that a decade or so ago would have been delivered directly by nurses. Similarly, nursing homes can struggle to attract and retain qualified nurses, leading care providers to accept people with increasingly complex needs with “residential” settings rather than “nursing care”.

This system shift has occurred gradually overtime and is potentially on an unconscious level. Practitioners are now very familiar with complexity and can consider some things now to be routine that would have previously considered as complex, this can lead to an unconscious bias for Multi-Disciplinary Team’s (MDTs). Moreover, when considering thresholds for CHC, the potential for scores to be lower than the empirical evidence would suggest that the MDT’s can also be led to consider tasks as “social care”. It is important to note that the threshold for CHC and the responsibilities of social care in law have not been changed, so we need to work with MDTs to guard against this drift.

Our members are aware that there are cases where citizens in receipt of social care have been wary of accessing CHC because they worry about losing their choice; autonomy; their Personal Assistants (PAs); and the ability to decide who delivers their services and where.

Therefore, we agree with the Welsh Government’s assessment that as a concept, the introduction of Direct Payments for CHC aligns with the key aims and principles of SSWBA by improving voice, choice and control for people who are in receipt of care and support and have a primary health need. Moreover, it also addresses the recommendation from the Audit Wales Report, which acknowledges that Direct Payments not only allow those in receipt of care and support more control over decision making for their care needs but it ensures that their carers also have that locus of control, which is extremely well valued.

However, from a local government perspective, the fundamental benefit of allowing health boards to use Direct Payments for CHC cases is that it will enable care arrangements to remain in place when a recipient of an established Direct Payment social care package becomes eligible for CHC. That will reduce bureaucracy and ensure constancy and continuity of care.

For example, if we look at employee arrangements, currently, in order to preserve continuity of care and employment arrangements with PAs, local authorities are having to be creative by exploring various options such as recharging health boards or consider PA’s transferring into the employment of health boards. Whilst such arrangements have achieved success for the person in receipt of care and support, the added complexity of much discussion, negotiation and the establishment of bespoke agreements between the statutory bodies, take up valuable time and

resource that would be better served if focused on ensuring the needs of the person continue to be met and the carers receive the required training and support.

Challenges and risks

Of course, there are a number of challenges and risks to implementing this element of the legislation that need to be explored during the scrutiny process, which include:

- Quality of care may suffer if the care being provided cannot be assured as being to the required standard or is not regulated. For example, one of the challenges of moving to Direct Payments through CHC is how to ensure that health boards have clear governance structures in place for delegation of appropriate tasks to PA's. This is important because the health-related needs and tasks they do may depend on the local health board's direction and control, not the individuals. This is an area that needs more clarity.

- Families may not be able to find suitable services or PAs who can meet their needs, especially given current capacity challenges in the social care system.

- Families or individuals may not want the responsibility of becoming an employer or may struggle with managing a PA via Direct Payments, with the associated reporting of working hours etc.

  The recommendation to use the existing services and options that councils offer for those who receive care and their carers who need help with being an employer and accessing the right training and support is welcome. This should allow consistency for those who move between social care and CHC Direct Payments and let them maintain their current relationships and support and avoid repeating the same things for themselves and their families. However, this may require health boards to enter into a partnership arrangement with their local councils, or to purchase this service from the council, or there is a risk that two different providers or organisations are chosen, which could complicate things for the person in receipt of care and not take advantage of the benefits of scale and avoiding duplication. If health boards want to use the current council support around Direct Payments, then this extra capacity will need to be fully costed and funded.

- Those who are in receipt of care and support and have a primary health need could suffer adverse outcomes if they are not supported to make good decisions on how to spend Direct Payments.

Conclusions on the intent of Direct Payments for CHC

We support the aim of the Bill in relation to CHC Direct Payments but it is vital that this change comes with a significant improvement in how CHC works in practice. CHC is currently not applied consistently across Wales, with variation of interpretation between health boards. The Government's RIA indicates that there will be a three-year transition period for those who get social care Direct

Payments to switch to CHC Direct Payments, which means that CHC decisions will still affect council budgets negatively for some time. A central hub could ensure uniformity in how Direct Payments are delivered once CHC eligibility has been assessed and confirmed at a local level. However, this may not address the problems faced by councils who report that CHC only accepts responsibility for higher levels of health need than before, while the legal and policy standards have not changed, resulting in costs for services falling unfairly on councils.