

HSCWB31

Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee Bil

Iechyd a Gofal Cymdeithasol (Cymru) | Health and Social Care (Wales) Bill

Ymateb gan CLILC | Evidence from WLGA

WLGA response to the Health and Social Care Committee's consultation on the Health and Social Care (Wales) Bill

June 2024

About Us

The Welsh Local Government Association (WLGA) represents the 22 councils in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.

The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA also appoints senior members as Spokespersons and Deputy Spokespersons to provide a national lead on policy matters on behalf of local government.

The WLGA works closely with and is often advised by professional advisors and professional associations from local government, however, the WLGA is the representative body for local government and provides the collective, political voice of local government in Wales.

Introduction

The Health and Social Care (Wales) Bill aims to implement reforms in the social care sector. Its primary objectives are to eliminate private profit from the care of children looked after, ensuring that all public funds are reinvested into improving care services and outcomes for these children, and to grant individuals more control over their healthcare by enabling direct payments for continuing healthcare. This allows recipients, particularly those with long-term health conditions and disabilities, to choose their care providers, aligning continuing healthcare with existing social care options.

The WLGA welcomes the publication of the Bill and generally support the overall vision and principles set out. The WLGA appreciates this move is part of a wider strategy to enhance the quality, consistency, and accountability of services provided to citizens across Wales. In the longer-term we understand these measures will contribute to a more equitable, efficient, and effective health and social care system in Wales, ensuring more voice, choice and control for citizens in receipt of care and support services.

Whilst local government supports the overall ambition which the Bill aims to enable delivery of, there is also a need to be mindful of the extremely challenging context in which services are currently operating and the significant financial constraints facing public services. These will all have a significant bearing on council's abilities to implement the changes necessary

and across the specified timescales, particularly in relation to the proposals to eliminate private profit. We therefore welcome the opportunity to respond to the Senedd Committee's consultation on the Bill with this response focussing in particular on the provisions in relation to eliminating private profit from the care of children looked after and introducing direct payments for continuing healthcare.

Eliminating Private Profit from the Care of Children Looked After

Risks, Challenges and Financial Implications

There are significant challenges facing children's services, from sufficiency of the workforce, to a need for additional funding to meet the additional demands, to the lack of appropriate preventative services or placements available. The WLGA has welcomed the opportunity to engage with Cabinet Secretaries, Ministers and Welsh Government Officials on the wider Transformation Programme for children's services which includes the commitment to remove private profit.

In particular, while local government has previously outlined its support towards the commitment to remove profit, we have also been clear that there remain concerns about the resources and capacity available and the timescales being worked towards in achieving this ambition. It is essential to make sure that the actions and plans put in place to take this forward ensure councils are able to do so safely, without destabilising either current placements or the work that is underway in developing suitable local and regional supply of appropriate placements. With the expectation that councils will need to consider how to rebalance residential provision to new / expanded local authority / regional and not for profit provision it is critical that the market transition ensures placement sufficiency across the spectrum of children's placement requirements.

It is also important to recognise that this programme of change takes place within the context of existing placement and system pressures with evolving learning and practice where operating without registration (OWR) arrangements are sometimes necessary and used as a last resort. This underlines the challenge ahead to successfully plan, design and implement the commitment.

Transitioning from a mixed market to a non-profit model will demand significant time, resources, and planning. Effective communication, consultation, and engagement with all involved parties will be crucial, along with careful management and monitoring to ensure that the quality and continuity of care for children looked after remains uncompromised during the process. Throughout there will continue to be the risk that some for-profit providers might exit the market or reduce their services, resulting in the loss of skilled staff, fewer suitable care placements, and increased costs and complexity in commissioning and contracting.

If current for-profit providers decide to exit the market or reduce their services, there is a risk of a sudden and critical shortage of placements, especially for children with complex needs. This could drive up costs for councils as they may need to locate or create new placements, likely at a higher expense than existing ones. Additionally, with fewer placement options, children might need to be placed farther from home or in settings that are not ideally suited to their needs.

There is also a risk in relation to the workforce, with the shift towards a not-for-profit model potentially exacerbating existing pressures on the social care workforce. There is a risk that highly skilled professionals may be reluctant to transition to local authority or not-for-profit settings. Any loss of talent and skills would have a negative impact on the quality of care and innovation within the sector. Additionally, if not-for-profit providers choose not to develop children's residential services the burden and responsibility will fall to councils to develop additional provision through the direct provision of children's homes. Along with the additional costs associated with establishing this provision will come the need to adequately staff these homes and the challenges of recruiting and training appropriate, experienced and qualified workers.

The Regulatory Impact Assessment (RIA) that accompanies the Bill identifies significant transitional costs associated with this element of the Bill. It is estimated that the cost to local authorities for implementing the policy is £185.7m - £245.5m. Of this between £107.1m and £142.8m is the capital cost to purchase and refurbish properties to replace capacity that is expected to be lost when for-profit providers exit the market in Wales (or not able to operate). It is anticipated that these costs will be borne out over a three-year period (2025-26 to 2027-28). The RIA recognises however that there is a degree of uncertainty around these costs for this element of the Bill. For example, at this stage it is unclear as to the number of existing providers in the for-profit sector who will establish themselves as one of the four not-for-profit entities set out in the Bill. This makes understanding the true cost of implementation difficult to ascertain.

It is clear however that significant investment from Welsh Government will be required at a time when resources will be stretched more than ever according to independent economic forecasting organisations such as the Institute for Fiscal studies (IFS). Capital funding has been a specific constraint for the Welsh Government in the past and the outlook for both capital and revenue funding is bleak. This also comes at a time when council budgets are already under significant strain. During 2023-24 alone councils faced additional in-year pressures amounting to £219m, 50 per cent of this is attributable to social services pressures and builds on a £93m social services overspend in 2022-23. In 2024-25 social care budgets are facing an estimated pressure of £261m. In 2025-26 this will be £187m and £197m in 2026-27. Cumulatively, across all services, the pressures building up in the system across local government, and the resulting budget gap, means that the outlook is extremely stark and the options for many local services will be unpalatable. This will inevitably have an impact on the capability and capacity of councils to deliver existing services, let alone look to further invest in, develop and enhance provision.

Whilst the RIA sets out that this cost to councils is expected to be at least partially offset by a reduction in outturn costs, this is calculated over a 10-year period. Experience shows that this will be cost avoidance rather than cashable savings. Even if this were to be achieved, and there is no certainty this will happen, it does not take away from the substantial upfront capital investment that is required. Some authorities are working on business cases where the outlay is as high as £1 million per property and this will vary across Wales. It is also important to note that the ADSS Cymru report which accompanies the RIA and considers some of the cost implications highlights that some of the operational savings that have been identified with moving to a local authority model from a for-profit model are contested. In addition, the Competition and Markets Authority (CMA) report referenced throughout the RIA found that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, despite prominent

levels of profit. Again better evidence might be drawn from local authorities who are currently bringing the service in-house.

This all underlines the importance of appropriate levels of investment from Welsh Government to support and enable implementation. There is a need to be clear, as early as possible, about what funding will be provided and when it will be available to enable planning, particularly given the lead in times required to develop new provision of residential services. As hinted above capital funding might be scarce and the Welsh Government might consider using revenue to cover the capital financing costs like it did with highways through the Local Authority Borrowing Initiative some years ago. Throughout implementation it is vital that this is kept under review and monitored in order to reflect the true costs associated and that appropriate levels of resource are made available as required.

Provisions to Eliminate Private Profit from the Care of Looked After Children

In a joint submission with ADSS Cymru, the WLGA responded to the original consultation on the proposals to remove profit from the care of children looked after. This response highlighted the significant levels of investment that might be required to successfully implement the commitment. It also raised concerns about some elements of the proposals, including timescales, definitions of terms (e.g. 'not for profit') and proposals that would place a restriction on local authorities to commission placements from 'not-for-profit' organisations only, regardless of where that placement was.

As the Bill is drafted, some of these concerns have been addressed to some extent. The Bill sets out a definition for what will constitute a 'not-for-profit entity'. This provides those for-profit providers operating some greater clarity around future expectations. Though there are significant concerns, particularly at this stage in relation to residential placements, over the number of providers who may not want to change their model of provision and what impact this would have on the availability of placements for children and young people in Wales. There will be a need to further consider whether these definitions provide enough scope for providers to be able to operate as a not-for-profit entity.

The original consultation proposed a firm timescale that all current providers would have to move to a not-for-profit position by April 2027. It is welcome that this position has now changed and the Bill sets out that in order to mitigate disruption to the lives of children in existing residential and foster care placements, transitional arrangements will allow a registered for-profit provider of a restricted children's service to continue operating after the provisions have come into force, providing a level of reassurance. This will be subject to conditions imposed by regulations and it is essential councils are engaged in the development of these regulations, with flexibility built in to be able to adapt to how the market responds to the legislation.

As drafted the Bill also sets out that if a local authority considers that none of the available not-for-profit placements would be consistent with the child's well-being it will be able to place the child in a "supplementary" (for-profit) placement. While this provides a level of reassurance that if a suitable placement was not available to meet any specific needs of a child, there is some flexibility in the system to be able to utilise a for-profit placement. Given that the Bill also sets out that any supplementary placement will be required to be approved by the Welsh Ministers, it is essential that further detail and clarity is provided on how this will

work in practice, without leading to delays or having a detrimental impact on the child or young person.

The transitional provisions will also prevent existing 'for-profit' providers from registering new homes or approving new foster carers. Care will need to be exercised that as a result of these transitional provisions existing providers, upon which there will still be reliance on, do not become unsustainable, having a further detrimental impact on our overall placement capacity. For Foster Carers registered by private providers who decide not to transfer to one of the four models there will be a need to consider how they can be transferred to council or other provider provision. Normally, this would involve re-registration which would risk existing Foster Carers deciding not to go through what can be a lengthy process again at a time when we know there is growing demand. Therefore, it would be helpful to consider and have in place a process for legacy Foster Carers so that with minimum disruption they are able to carry on their role.

As currently set out there is no timeframe for the length of the transition period, however the costings set out in the RIA imply that this could be over a 3-year period. With the amount of work required to take this commitment forward and the need to avoid as much disruption as possible there is a concern that this would be an overly ambitious aim. The experience of council's currently developing their own provision is that a longer period of time will be needed. It is essential that the transitional period, along with the financial costs and implications are monitored closely with adequate timescales applied. This will need to take into consideration a range of factors including the level of demand for placements in restricted services, and the speed of replacement of for-profit by not-for-profit provision. Any decision to bring this transition period to a close will need to be informed by close engagement with councils and careful consideration of children's rights under Article 8 of the UNCRC.

Introducing Direct Payments for Continuing Health Care (CHC)

A key principle of the Social Services and Wellbeing (Wales) Act 2014 is for people to have more choice and control over their care and support. Direct Payments have been an enabler in delivering on this principle, providing an alternative to more traditional council commissioned care and support to meet individual or carer needs. They can provide more choice, flexibility, control, holistic and alternative opportunities over the support they receive.

As evidenced in the Health and Social Care (Wales) Bill documentation following previous consultations, individuals and carers on social care Direct Payments have sometimes been reluctant to access CHC because they fear losing their choice; autonomy; their Personal Assistants; and the ability to determine who provides their services and where. Fear of being forced to go to a care or nursing home rather than remain in their own home and in their own community to the detriment of their mental health and increased loneliness due to being away from family and friends has also been highlighted.

Continuing with social care Direct Payments when the reasons for care are primarily health, and CHC should be providing support and services, risks deteriorating health and an increase in health and care needs. In addition, for some individuals this will also mean they are also contributing to their own care costs when they should not.

The WLGA is supportive therefore of the inclusion of introducing Direct Payments for CHC to meet the needs of those eligible for CHC. Having more control over health and care delivery should support individuals to have autonomy and the opportunity to participate more fully in advocating their interests, including being involved within their own identified communities. The introduction of direct payments for CHC will also meet the recommendation from the Audit Wales Report which recognised that people who receive CHC via Direct Payments would have greater voice, choice and control in decision making. The report also identified how highly valued Direct Payments are by services users and carers.

However, there are a number of issues that will need to be taken into consideration to best support the transition to Direct Payments through CHC. For example, Personal Assistant's are not currently subject to the same registration and regulatory requirements as others in the social care workforce. The complexities and the needs being health related may mean that due to some tasks needing to be completed that this may need to be reviewed, especially if the local health board directs and controls the tasks a Personal Assistant completes. The current exceptions may no longer be applicable due to their actions not being under the direction and control of the individual. This is an area that will require further clarification.

While we are supportive of the intent behind the Bill it is essential that this change be underpinned by a significant change in practice and implementation of CHC, with on-going challenges experienced with CHC in its practice and implementation. The current implementation of CHC is not consistent across Wales with different thresholds being applied by local health boards. The RIA itself suggests that there will be a three year transition stage for the movement of those in receipt of social care Direct Payments to move to CHC Direct Payments meaning that there will continue to be a period of time where CHC decisions have a detrimental impact on council's budgets. The creation of a central hub could ensure that there is consistency in the delivery of Direct Payments once eligibility for CHC has been assessed and proven at a local level. This however is unlikely to solve the issues being experienced by councils who report that the level of health need before CHC accepts responsibility is increasing whilst the legal and policy thresholds have not changed, meaning that costs for provision of services inappropriately fall to councils.

The current lack of consistency leaves individuals and families at a disadvantage, and potentially adds to the justification and reasoning for not applying for CHC, alongside the issues raised around autonomy, choice and independence. The implementation of the Health and Social Care (Wales) Bill, the introduction of a Central Hub for CHC Direct Payments and the Health Service Procurement Reform in Wales provides an opportunity to reset and to provide clarity, transparency, consistency and efficiency across the CHC system.

There is concern that the current system will continue with health and councils using two different systems and processes. How the transition will be managed between the two systems and processes, whilst ensuring no individual is left with no funding and support during the transition phase will be important to set out. This should include any complaints process for individuals and an effective process to resolve disputes and challenges for non-compliance.

The suggestion that services to support individuals and carers with the practicalities of being an employer and ensuring appropriate training and support is available be utilised through existing organisations and routes being utilised by councils is welcomed. This should allow consistency for those moving between social care and CHC Direct Payments and allow

existing relationships and support to continue and reduce duplication for individuals and their families. However, for this to be achieved it may be appropriate for CHC to commission this element via the council, or the risk is that two different providers or organisations are chosen adding to the individual's burden and not taking advantage of economies of scale and reducing duplication. If CHC is to utilise the existing council support around Direct Payments then this additional capacity will need to be fully costed and funded.

We fully support the proposal to introduce Direct Payments for CHC and for the opportunity for people to continue to have their autonomy and choice, whilst accessing the correct funding source for their health and social care needs. It will be vital that any guidance is robust and its implementation monitored to ensure consistency and fairness across Wales.