

HSCWB32

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 Comisiynydd Pobl Hyn Cymru | Evidence from Older People's Commissioner for Wales



CONSULTATION RESPONSE: Health and Social Care Committee Scrutiny of the Health and Social Care (Wales) Bill

June 2024

The Older People's Commissioner for Wales welcomes the opportunity to contribute to the Health and Social Care Committee's scrutiny of the Health and Social Care (Wales) Bill.

The Commissioner has already provided the Committee with her [response to the Welsh Government's consultation \(in 2022\) on its proposed changes to legislation on social care and Continuing Health Care](#), which informed the development of the Bill, and would like to make the following additional points.

Direct payments for NHS Continuing Health Care

The Commissioner agrees in principle that the Bill should enable health boards to make direct payments to people who qualify for NHS Continuing Health Care Funding (CHC). However, there are still concerns about how this would work in practice, especially in relation to the social care element of the CHC package.

Supply of domiciliary care

Older people are still being affected by shortages in the supply of domiciliary care. For example, a recent inquirer told the Commissioner's Advice and Assistance Team that a family member's discharge from hospital had been delayed because the domiciliary care provider had withdrawn its care package and the Local Authority had been unable to find a replacement. One 94-year-old man, living with dementia and confined to bed, had been in hospital for six months longer than needed for this reason.

Another inquirer said they had been told that their mother, who lived at home, might have to be taken into emergency extended care with no determined end date, not because she needed to be in a care home but because no domiciliary care was available.

A third inquirer's mother had gone into a care home for four weeks for temporary respite but had had to stay there indefinitely because no domiciliary care provider was available to enable her to return home. This inquirer had explored direct payments and micro care enterprises without success.

Concerns therefore remain about the availability of providers to meet domiciliary care needs.

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Care packages

A major purpose of enabling health boards to make direct payments is to enable people to secure bespoke packages of care and support which best meet their needs. It is unclear how care needs will be assessed, how care packages will be costed and how health board rates will compare with local authority rates of pay for social care.

Assessment

The Explanatory Memorandum paragraph 3.49 notes that, “over a number of years, stakeholders have raised ... the compromise of people’s voice and control when transferring from local authority provided care (with direct payments), to CHC (where that option is lost).” Paragraph 3.56 states that the provision of direct payments for people living in their own homes “should be in keeping with the principles of voice and control, person-centred care, equality and the Social Model of Disability.”

However, there is anecdotal evidence following the introduction of the Trusted Assessor model for hospital discharge that NHS staff are basing their assessments of people’s needs following discharge on a clinical rather than a social model of care, and that this risks over-medicalising people’s home environments and everyday lives.

It is essential that health boards take a rights-based approach to CHC assessment, assess the whole person, respect the recipient’s voice, choice and control and give due weight to the social care and support elements of the assessment. This means respecting the recipient’s preferences of how best to achieve their individual aims, rather than imposing an assumed clinical model where this is not warranted or lacking flexibility in designing the social care and support element with the individual.

This is essentially a culture shift which will need to be achieved through staff development and training, and robust monitoring and challenge.

Costing

It is also unclear whether each element of a CHC package will be costed individually, and the total funding made available via a direct payment, or whether health boards will default to flat rates for components and an overall rate cap.

Flat rates and a capped direct payment would risk underfunding and providers seeking top-up fees contrary to the rules on CHC funding, as sometimes happens with care homes and with local authority direct payments.

The Commissioner has heard recently from an inquirer whose late wife had received care in a care home. He had understood that her care would be funded by CHC. Around a week before she died, his wife received an invoice with charges that they were asked to pay. The enquirer’s solicitor advised that he should not pay the bill.

Another inquirer was concerned about his mother-in-law, who was being discharged from hospital with local authority direct payments to pay for 24-hour care at home. The inquirer was concerned that the amount of money would not cover the care his mother-in-law needed and had not been provided with a copy of the needs assessment.

Not fully funding CHC packages would be contrary to the intention of enabling people to tailor their packages according to their own preferences.

Pay rates

One of the factors affecting the supply of domiciliary care is health boards' ability to offer higher rates of pay to care workers. This may mean that the risk of someone not being able to find a domiciliary care provider would be reduced because NHS funding would enable them to offer more pay than someone receiving a direct payment from a local authority for social care.

If so, this would militate against the statement in paragraph 3.56 of the Explanatory Memorandum that "The approach should also support the principle of partnership working and integration, therefore allowing an improved interface between the delivery of local authority direct payments and direct payments made by the NHS in Wales."

Paragraph 3.59 states, "Direct payments support the provision of care in a person's own home and studies in England have shown that this can provide better value for the public purse." It would be helpful to know the basis on which greater value has been achieved; whether it is based on an individual being able to secure more appropriate services through direct payments, or whether direct payments have enabled NHS bodies to drive down payment rates for care workers to local authority levels.

The Commissioner welcomed the Welsh Government's introduction of the Real Living Wage into the care sector, the pay and progression framework and other steps towards improving the pay of care workers, overall terms and conditions in the sector and career pathways for those who want to progress. Parity between pay and conditions for comparable jobs in the NHS and in social care is essential, and should come as a result of improved investment. The impact of CHC direct payments on the local domiciliary care market should therefore be monitored by health boards and local authorities, and on the workforce through the Social Care Fair Work Forum.

Duty to report an adult at risk

The Commissioner welcomes the decision not to implement mandatory reporting for adults at risk. Whilst it is acknowledged that the debates around the efficacy of mandatory reporting are complex (there are pros and cons), the introduction of mandatory reporting could result in several unintended, harmful consequences for older people at risk of or experiencing abuse, as stated in our response to the Welsh Government's consultation.

Conclusion

The Commissioner supports the general principle of extending direct payments to people who qualify for NHS Continuing Health Care Funding but more detailed consideration needs to be given as to how this would work in practice to ensure this is a realistic option for older people. Further action also needs to be taken to prevent the potential unintended negative consequences identified above. Insufficient access to suitable domiciliary care will make it hard for the Bill to achieve its aims in practice.

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner is taking action to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner is working for a Wales where older people are valued, rights are upheld and no-one is left behind.

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