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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-DB-10629-24

Russell George MS
Chair
Health and Social Care Committee
Senedd Cymru
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Dear Russell,

Thank you once again for your consideration of the Health and Social Care (Wales) Bill during Stage 1. I am pleased that the majority of your Committee supports the general principles, and I thank Committee Members for this, and for their recommendations.

I have set out below my response to the recommendations.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee Members on the details of the legislation in the near future.

I am copying this letter to the Chairs of the Finance Committee, the Legislation, Justice and Constitution Committee and the Children, Young People and Education Committee.

Yours sincerely,

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Health and Social Care (Wales) Bill

Responses to the Health and Social Care Committee's recommendations

Recommendation 1:

A majority of the Committee recommends that the Senedd supports the general principles of the Health and Social Care (Wales) Bill.

I note this recommendation.

The Welsh Government welcomes this support for the general principles of the Bill.

Recommendation 2:

The Welsh Government should continue to work with partners to explore business models currently not provided for in the Bill that would promote the principles of social enterprise whilst still being not-for-profit.

I accept this recommendation.

The Welsh Government will continue to work with partners to consider whether any further not-for-profit business models can be included within the Bill.

However, it will be important to ensure that any further proposed models do not allow profit of any sort to be extracted even where these are types of organisation that the Welsh Government would encourage more broadly, in order to achieve the aim of eliminating private profit from the care of looked after children. It will also be important to ensure that any further proposed models have the welfare of children or such other public good as the Welsh Ministers may prescribe as their primary purpose/objects.

Recommendation 3:

The Welsh Government should amend the Bill to include regulation-making powers to enable the Welsh Ministers to take steps to close any loopholes enabling extraction of private profit from the care of looked after children, should they become apparent in the future. Such regulations should be subject to the affirmative procedure.

I reject this recommendation.

I agree with the Committee's concern that the legislation should not allow organisations to circumvent the restrictions on extracting private profit. However, the Welsh Government believes that the provisions currently in the Bill strike the right balance between providing clarity for providers and ensuring that practices which undermine the intention to eliminate private profit from the care of looked after children can be addressed. As such I do not think that adding further provision of this kind is desirable.

I believe that the principle behind the recommendation is that Welsh Ministers should have some ongoing power to curtail novel behaviours that aim to extract profit in unexpected ways. I would like to reassure the committee and Members on that point

by referring you to the Bill's provisions which provide that unreasonable or disproportionate financial arrangements entered into by those not-for-profit entities which are restricted children's services, would be evidence to which Ministers must have regard when deciding if a provider is a fit and proper person. If the Welsh Ministers are no longer satisfied a person is fit and proper, they may cancel the person's registration.

Recommendation 4:

The Welsh Government should prepare and publish a detailed offer of the guidance and support that it will make available to private and independent providers wishing to transition to a not-for-profit model. This should be done as a matter of urgency, and should be accompanied by a communication plan.

I accept this recommendation in part.

The Welsh Government will continue to work with stakeholders to consider what guidance and support could be made available to private and independent providers wishing to transition to a not-for-profit model. This will build on funding made available earlier this year through Business Wales to provide bespoke support to a number of providers to start planning for transition.

A communication plan has been developed under the Eliminating Profit Programme Board and we are currently working with members to finalise a series of targeted communications to support different parts of the sector to understand the key Bill provisions, and their expected impacts. We will publish these once members have had an opportunity to input and seek wider sector input where appropriate.

Recommendation 5:

The Welsh Government should make a clear commitment to the level of future funding and support it will make available to local authorities beyond the transition period to support the 'eliminate profit' agenda. As a minimum, this should set out funding for the next five years, which will be a crucial time for local authorities in developing their own provision.

I accept this recommendation in part.

This commitment is a priority for the Welsh Government and we intend to continue prioritising our financial support to local authorities to implement the eliminating profit commitment, whilst recognising the need to manage the overall Welsh Government budget within the outcome of the current and future budget planning rounds. Officials are currently meeting individually with each local authority to discuss planning for implementation in their areas, and their expected level of revenue and capital funding required for future years. Once completed these discussions will inform our consideration of the arrangements for, and amount of, funding in future financial years.

Recommendation 6:

The Minister should write to us, within six months of publication of this report, with details of:

- **the work undertaken by the Eliminating Profit Programme Board in monitoring and evaluating the implementation of the ‘eliminate profit’ policy so far;**
- **the more formal evaluation of the Bill proposed by the Minister, including who will be involved in this review, its terms of reference and how frequently it will report.**

I accept this recommendation.

I will write to the Committee by 11 April 2025 updating on the Eliminating Profit Programme Board’s monitoring of the policy so far, and any initial thoughts on evaluation to date. Within that response I will also set out my thoughts on how formal evaluation will be conducted.

Recommendation 7:

The Minister should consider and respond to the recommendation from the Children, Young People and Education Committee, based on its extensive scrutiny of this policy area, “that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers”.

I accept this recommendation.

I am happy to consider and respond to the recommendation from the Children, Young People and Education Committee. I have already made clear that I am happy to explore how a national register of foster carers would work and how it could add value.

However, introducing such a change would require consultation with all parts of the sector. Appropriate time will be needed to do this properly. I do not therefore consider that this Bill is the right vehicle for progressing this work.

Recommendation 8:

The Minister should review the evidence from stakeholders setting out their significant concerns about the transition timescales proposed by the Welsh Government, and their potential to exacerbate existing sufficiency problems, in order to assure herself that the policy is deliverable within the timescales proposed, without having a detrimental effect on looked after children and young people.

I accept this recommendation.

The Welsh Government continues to carefully consider the evidence received, alongside information gathered from our own engagement with stakeholders.

Recommendation 9:

The Minister should prepare and publish a report on progress with the transition to a not-for-profit model. This should include an update, by local authority, on the number of placements leaving the market and the number of new placements created, and should reflect on the stability of existing placements. It should also include details of the consultation with children and young people directly affected by the Bill and the numbers taking up the active offer of advocacy. This should be done at six monthly intervals, starting from the date of the Stage 1 debate.

I accept this recommendation.

I will arrange for publication of a six-monthly progress report with intended publication of the first report by 22 April 2025 (6 months after the general principles debate).

Recommendation 10:

The Minister should ensure that any guidance or Code of Practice issued in relation to section 13 confirms that the Bill does not prevent local authorities from placing a child in a supplementary placement prior to Ministerial approval being granted, and that Welsh Government officials are able to act on behalf of Welsh Ministers to approve placements, if necessary. Such guidance should emphasise that the use of supplementary placements should not become the default position, particularly during challenging times.

I accept this recommendation.

The Welsh Government will ensure that the Code of Practice or guidance provides clarity on these issues.

Recommendation 11:

The Minister should prepare and publish an annual report on supplementary placements approved by the Welsh Ministers under the Bill. This report should include anonymised data on matters including, but not limited to, the age-bracket of the child; local authority; the type of placement requested (for profit foster, for profit, residential, out-of-county, out-of-Wales, unregistered); whether the child was already in the placement, cost bracket). An exception must apply to any report produced in line with this recommendation, to the effect that the report must not include any data which, when read in conjunction with any other publicly available information, would enable any individual to be identified. The Minister should include provision for this on the face of the Bill.

I accept this recommendation in part.

While I do not consider this requirement is necessary to be included within the primary legislation, I will update the Senedd periodically on the position regarding Welsh Ministers' approval of supplementary placements.

Recommendation 12:

When correcting paragraph 55 of the Explanatory Notes to remove the term ‘unregistered’ placement, the Minister should make it explicit that placements which are not registered with Care Inspectorate Wales are unlawful and must not be used as ‘supplementary placements’ or under any other circumstances.

I accept this recommendation in part.

Placements that are not registered with Care Inspectorate Wales do not come within the scope of ‘supplementary placements’ and therefore could not be the subject of an application by a local authority for approval under section 81B. While we do not consider the Explanatory Notes to be the appropriate avenue to clarify this we will ensure we make this clear to local authorities when we begin detailed work on guidance to support operation of the supplementary placement process.

Recommendation 13:

The Welsh Government should commit to producing accessible resources aimed at informing children and young people about the Bill and how to make known their views on it.

I accept this recommendation.

As part of our planned communications aimed at different parts of the sector, the Welsh Government has produced a draft document for children and young people explaining the key elements of the Bill and what it means for them. We are currently reviewing this with Eliminating Profit Programme Board members and expect to publish this in the coming months. We will continue to work with those organisations that represent children and young people to ensure their voices can be heard and ongoing communication needs considered.

Recommendation 14:

The Minister should amend the Bill to include provision for an active offer of advocacy for children and young people whose care arrangements may be affected by the Bill.

I accept this recommendation in part.

I accept that children should have an active offer of advocacy for all placement types and locations. Advocacy for all children looked after is already a statutory requirement, therefore the Bill does not need to include this provision.

Section 178 of the Social Services and Well-being (Wales) Act 2014 outlines the local authority’s duty to provide advocacy services to specified persons. This duty extends to children who are looked after, ensuring that these children have access to advocacy services if they need help to:

- Express their views (whether on a specific issue, care plan, or day-to-day decisions).
- Understand their rights (regarding care arrangements or legal proceedings).
- Participate fully in decisions about their care and well-being.
- The local authority is obliged to ensure that children looked after can access advocacy services to support their involvement in decisions about their care.

This is an active offer, meaning that advocacy services must be proactively offered to these children, rather than waiting for them to request it.

Recommendation 15:

The Minister should amend section 10 of the Bill to make it explicit that:

- **placing a child “near to” the local authority’s area means a bordering or adjacent local authority, and**
- **the use of this provision should be exceptional circumstances.**

I reject this recommendation, although I do commit to reviewing the Explanatory Notes for clarity.

I accept that it may be helpful to have some additional text in the Explanatory Notes to help the reader understand how “near to” should be interpreted. I do not think it would be helpful to restrict use of the provision to exceptional circumstances without defining what these might be and we do not think it plausible to do so where there is potential for such a wide range of circumstances specific to the cases of individual children.

Members will also note that the phrase “is near to” is inserted into the general duty for a local authority to secure sufficient accommodation of the relevant sort, not a duty about placing individual children, so it is unclear that an amendment would work in the way envisaged.

Recommendation 16:

The Minister should set out the actions being taken by the Welsh Government in relation to awareness-raising of mandatory reporting, by organisations, of child sexual abuse. She should do this in time to allow Members to consider her response and be able to table amendments to the Bill if they do not believe these actions are sufficient.

I accept this recommendation.

We will provide a written response to the Committee about the awareness raising of existing organisational duties to report, detailing what we have undertaken and continue to undertake in Wales.

We wholly agree with the Independent Inquiry into Child Sexual Abuse, that where there has been disclosure, witnessing or observation of other evidence that a child is experiencing or is at risk of sexual abuse, this must be reported without delay. Our existing duties, and well-established procedures, support this and aim to help protect and to prevent all harms to children, and adults with care and support needs.

In Wales we have been focusing on close collaboration with key partners, with the purpose of strengthening and improving compliance with safeguarding requirements, already in place, across our regulated childcare, education, health and social care settings.

We have also published revised National Minimum Standards for Childcare, enhancing the standard in relation to safeguarding; and published a draft Quality Framework for Early Childhood Play, Learning and Care, which includes a quality standard around safeguarding babies and young children from all forms of harm.

The new National Framework for Commissioning Care and Support will further highlight the responsibilities of local authorities and health boards to ensure that services provided on their behalf safeguard and promote the well-being of children and adults; and will prompt them to promote the Wales Safeguarding Procedures in their commissioning activities.

During the remainder of this Senedd, we intend to engage widely and further explore views on how best to ensure that others who provide services or offer activities for children and adults, who may be experiencing or at risk of abuse, have proportionate and effective safeguarding arrangements in place.

A series of roundtable discussions with stakeholders will begin in November to test out stakeholder views on placing mandatory reporting duties on individuals.

Given the nature of such a serious change it is important that stakeholders are central to that journey.

Recommendation 17:

The Minister should provide an update on progress with the development of the central hub to support the implementation of direct payments for continuing healthcare. This should include details of its current operational status, staffing numbers, operating costs and the number of people receiving advice and support. It should be produced within six-months of the Stage 1 debate, and annually thereafter.

I accept this recommendation.

The Welsh Government will provide these updates on the development of the central hub as it is being established.

Recommendation 18:

The Minister should amend the Bill to make provision for a ‘right to information, advice and support’ for individuals seeking to take up direct payments for continuing healthcare. Any guidance issued under this provision should include information about transitions between social care and CHC, and should promote continuity of care as far as possible.

I accept this recommendation in part.

We are committed to ensuring that information, advice and support is available to support take-up of direct payments for continuing health care. An information booklet for individuals, families and carers was published in 2022 upon the publication of the current Continuing NHS Healthcare Framework. This will be refreshed to include

information about the availability of direct payments for individuals who are, or may be, entitled to CHC. There is also already a power in the new section 10C (to be inserted into the 2006 Act by section 24(2) of the Bill) which will enable health boards to be required to arrange for information, advice and other support in connection with direct payments. I therefore do not consider that an amendment is needed.

In addition, provision of information, advice and support for individuals is already planned through the introduction of a support Hub for direct payments for CHC. The Hub will raise awareness of the availability of direct payments, as well as providing information, advice and support to those interested in receiving direct payments for CHC.

The transition from social care to CHC direct payments will be a particular focus for the provision of information, advice and other support. Links will be maintained to local authority and third sector support which is provided for social care direct payment recipients, to ensure that there are also familiar and trusted contacts for those transitioning to NHS direct payments for CHC.

Recommendation 19:

The Minister should give further consideration to the concerns of stakeholders that, in rural areas in particular, direct payments can sometimes be the only available option in the absence of other services. She should work with partners to consider how any service limitations in these areas can be managed and how best to support the individuals affected by them.

I accept this recommendation.

The Welsh Government will give further consideration to these concerns and will work with partners to consider how any service limitations in rural areas can be managed and how best local health boards and other partners can support those affected.

Recommendation 20:

The Minister should provide an update periodically setting out her assessment of the progress being made to prepare health boards for their new responsibilities in this area. This should be done on a six-monthly basis, and should start following completion of the Stage 1 debate. As part of this, the Minister should ensure that health boards are actively working with local authorities to learn from their experiences and best practice.

I accept this recommendation.

I will provide these updates on the progress being made by health boards as they prepare to take on these new responsibilities.

Recommendation 21:

The Minister should write to us in six months with an update on progress with the development of the new performance framework and implementation plan for CHC in Wales. This should include guidance on safe delegation of

appropriate tasks and details of the metrics developed specifically for direct payments to enable progress and success to be measured.

I accept this recommendation.

The Welsh Government is working on an action plan that will identify and address known issues with the current National CHC Framework. This action plan includes the redevelopment and roll out of the performance framework.

The Welsh Government is also exploring the requirements of guidance for the safe delegation of tasks.

Recommendation 22:

The Minister should:

- **monitor the spend by health boards over the initial three years of the policy, and report back at the end of this period on the financial position of health boards as regards their ability to continue to fund and deliver direct payments for continuing healthcare, and**
- **continue to monitor and review spending by health boards on this policy going forward.**

I accept this recommendation in part.

The Welsh Government will monitor the spend and financial impact of the delivery of direct payments for health boards over the initial three years of the policy as part of the evaluation.

Beyond that period the Welsh Government's approach will be informed by the outcome of the evaluation.

Recommendation 23:

The Minister should work with relevant Cabinet colleagues and wider partners to promote the role of Personal Assistant (PA), to drive up the numbers of applications and to improve retention of staff longer term. Appropriate training will be an important part of this work.

I accept this recommendation.

Following research commissioned by the Social Care Fair Work Forum, the current Welsh Government-led PA Stakeholder Group was established and earlier this year agreed to take forward actions relating to: Pay; Terms and Conditions; Training and Development; Promoting Trade Unions and promote the support and information available for PAs. The PA Stakeholder Group includes representation from Government, Trade Unions, Social Care Wales and employer representatives for PAs.

In addition, last year an "All Wales PA Working Group" was developed with representatives from each local authority aiming to drive forward better terms and conditions for PA's and bring parity across the local authorities. These two groups

are working closely together to ensure clear links and understanding of what work is taking place to improve the role for PAs.

Some actions already being taken forward include the inclusion of PAs in the development of the Social Care Workforce Pay and Progression Framework, which will ensure PAs are considered in relation to pay and progression as part of the wider workforce moving forward. In addition, the Stakeholder Group has commissioned a survey which is currently being undertaken by Social Care Wales across Local Authorities to establish what training is available for PAs and consistency in approach to training across Wales. We expect the results of this survey shortly and will consider how the Welsh Government can ensure a fair and national approach to training for PAs moving forward.

We recognise the value of our PAs and are committed to improving their terms and conditions to encourage more people to take up the role, but to also retain those dedicated workers already in place.

Recommendation 24:

The Minister should update the Committee, upon completion of the CHC framework review, highlighting any changes and additional eligibility guidance that have been provided as a result of the review.

I accept this recommendation.

The Welsh Government will provide a briefing on what elements of the CHC Framework have changed following a review.

Recommendation 25:

The Minister should ensure that the UN Convention on the Rights of Disabled Persons features prominently in guidance issued on Part 2 of the Bill.

I accept this recommendation.

Paragraph 65 of the Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice: General Functions sets out that “when exercising social services functions in relation to disabled people who need care and support and disabled carers who need support, local authorities must have due regard to the United Nation Convention on the Rights of Persons with Disabilities.” Any guidance issued on Part 2 of the Bill relating to direct payments in continuing healthcare would similarly highlight the importance of the UN Convention on the Rights of Disabled Persons.

Recommendation 26:

The Minister should:

- **ensure that the post-implementation review of the Bill considers the awareness, amongst social care users, about the new option of direct payments for CHC;**
- **agree to request from LHBs and then make available the datasets from LHBs which are intended to provide a picture of take-up of direct payments for CHC across Wales, and**
- **provide details of the timescales for the post-implementation review.**

I accept this recommendation.

The evaluation of the introduction of CHC direct payments will consider awareness among social care users of the option of direct payments for CHC.

The evaluation will also include acquiring the datasets from LHBs which will be used to understand take-up of CHC direct payments in Wales.

Timescales for the evaluation have not yet been fixed but the Welsh Government will provide an update on this as part of a future update on implementation.