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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-DB-10882-24

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

17 December 2024

Dear Russell,

Thank you for the Committee's consideration of the amendments tabled to the Health and Social Care (Wales) Bill during Stage 2 proceedings on 28 November. I am pleased that the Bill has now moved to Stage 3.

During the proceedings I sought to respond constructively to non-Government amendments to the Bill, even though I could not support the amendments as drafted. I wish to assure Committee Members that I am actively considering the points raised during Stage 2. For that reason, I have set out below how I am seeking to address concerns which I believe informed a number of the amendments tabled by Members.

Amendments relating to eliminating profit from the care of looked after children

Amendments 44, 56, 59, 60 (tabled by Mabon ap Gwynfor MS), and amendments 77 and 94 (tabled by Altaf Hussain MS)

A number of amendments were tabled to ensure that looked after children have access to a registered independent visiting advocacy service, particularly where they may be affected by the eliminating profit policy. I did explain during Stage 2 proceedings that local authorities already have a statutory duty to ensure that looked after children can access independent professional advocacy. This is set out in section 178 of the Social Services and Well-being (Wales) Act 2014 (the 2014 Act). In addition, under section 98 of the 2014 Act a local authority looking after a child is also required to appoint an independent person to be the child's visitor if (a) the child falls within a category specified in regulations, or (b) in any other case, it appears to the authority that it would be in the child's interests to do so. It is important not to duplicate these existing duties, not least because it could raise doubts about the intention, efficacy and application of the existing provisions.

I do, however, understand Members' concerns about looked after children's awareness of the offer of advocacy, and that this is important if they are concerned that they may be affected by the provisions of the Bill. The Government engages with local authorities on advocacy for looked after children via a forum, and we will use this forum to explore with local authorities

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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.

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how they can further raise awareness and encourage take up of independent professional advocacy among looked after children.

I should note that not all looked after children will want to take up the offer of an independent professional advocate – many children will wish to be advocated for by an adult they are already familiar with, such as a social worker or foster carer. However, it remains important that the offer of independent advocacy is accessible to these children.

I also explained during Stage 2 proceedings that 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 the 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 that their voices can be heard and ongoing communication needs considered. I will also continue to keep Members updated on this work.

Amendment 45 (tabled by Mabon ap Gwynfor MS)

During Stage 2 Mabon ap Gwynfor MS tabled Amendment 45, which sought to ensure that regulations made under paragraph 3(1) of new Schedule 1A to the 2016 Act cannot disrupt the care of any current looked after child with a provider operating under the transitional arrangements. During Stage 2 proceedings, I explained that while I could not support this amendment as drafted, it did align with our policy intention, and that I was happy to undertake to give the issue, and possible responses to it, further consideration in advance of Stage 3.

I wish to reiterate my assurance that the Government does not wish to disrupt existing placements which have been made prior to the start of the transitional period. However, following further consideration, we have concluded that the current provision for a regulation-making power in paragraph 3 of new Schedule 1A is appropriate and proportionate, and that an attempt to limit the power further would be highly likely to prevent the power from being used as intended; which is to ensure that for-profit providers are not able to expand their provision during the transitional period (except in cases where supplementary placements were made or there were other exceptional circumstances).

I also want to emphasise that this regulation-making power is subject to the draft affirmative procedure, and so Senedd Members will be able to scrutinise and vote on any of these regulations before they are made, including satisfying themselves that the proposed provisions operate in accordance with the assurance I have given in this letter.

Amendments 46, 47 and 48 (tabled by Mabon ap Gwynfor MS)

During Stage 2 Mabon ap Gwynfor MS tabled Amendments 46 and 47, which sought to define “near to” in the 2014 Act (as amended by the Bill as introduced) as being in the area of a neighbouring local authority, and to limit such placements to exceptional cases only. Altaf Hussain MS tabled similar amendments. In addition, Mabon ap Gwynfor MS tabled amendment 48 which sought to require local authorities to take account of children’s wishes, views and feelings if they have determined that the most appropriate placement is in a local authority near to their local authority area, rather than within the local authority itself.

As I explained during Stage 2 proceedings, I believe we all share the aim of ensuring that children are placed within their local authority area and close to home wherever possible but that this must not be at the expense of them having placements which best meet their needs.

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The local authority will need to consider a range of factors when deciding on the placement of a child under new section 81A of the 2014 Act (to be inserted by section 13 of the Bill).

To assist local authorities in appropriately handling these issues, I committed during Stage 2 proceedings to consider using a code of practice to be issued under section 145 to give guidance to local authorities on placing children within their local authority area or close to home, and to reinforce the importance of local authorities complying with their existing statutory duties around having regard to the views, wishes and feelings of a child they are looking after. I also committed to reinforcing the point about the importance of local authorities complying with their existing statutory duties in this regard, in further communications with local authorities.

Amendments 50, 51 and 52 (tabled by Mabon ap Gwynfor MS)

During Stage 2 Mabon ap Gwynfor MS tabled Amendments 50, 51 and 52, which sought to ensure that a supplementary placement cannot be an unregistered placement. As I explained during Stage 2 proceedings, the provisions of the Bill will only enable Welsh Ministers to approve a placement with a registered provider of children's residential or foster care who is either subject to the wider transitional arrangements set out in the Bill, if operating as a for-profit provider in Wales, or who is operating in England. The Bill will not enable Welsh Ministers to authorise an unregistered placement.

To ensure that this is as clear as possible to local authorities, I committed that this position will be set out in guidance to local authorities to support operation of the supplementary approval process: this is likely to be in a code of practice to be issued under section 145.

I also committed that the due diligence checks that Welsh Government officials will undertake when considering an application for approval of a supplementary placement will include checking that the provider with whom the placement is being sought is a registered provider.

Amendments 57 and 58 (tabled by Mabon ap Gwynfor MS)

During Stage 2 Mabon ap Gwynfor MS tabled Amendments 57 and 58, which sought to require notifications by providers and Welsh Government risk assessments during transition, and for local authorities to include in their annual sufficiency plans an assessment of the amount of accommodation required to meet demand (as set out in risk assessments published by Welsh Ministers).

As I explained during Stage 2 proceedings, in my response to the Committee's report, I committed to the publication of a six-monthly progress report on implementation of the eliminating profit provisions, with intended publication of the first report by 22 April 2025 (6 months after the General Principles debate). This report will include an update on the number of placements leaving the market and the number of new placements created, and will reflect on the stability of existing placements. For these reasons I did not consider that amendment 57 was necessary.

I did however commit to explore including within the six-monthly progress reports an additional requirement reflecting some of the spirit behind these amendments, in the form of a statement on new not for profit providers coming on-stream.

Regarding Amendment 58, I explained that section 11 of the Bill already requires local authorities to consider and provide the information that would be covered by this amendment. As such, I believed the amendment was not needed.

However I committed to give consideration to including requirements for additional material enjoined in amendments 57 and 58 in the overall requirements for local authority sufficiency plans, such as a summary of provider intentions (so far as they are known). This will be considered as the Government develops its more detailed requirements for these sufficiency plans.

Amendments relating to direct payments

Amendment 78 (tabled by Altaf Hussain MS)

Altaf Hussain MS tabled amendment 78, regarding a workforce planning duty relating to personal assistants. As I explained during Stage 2 proceedings, I could not support the amendment, but I have assured the Committee that the Welsh Government is already active in promoting the role of personal assistants, and in my written response to the Committee's Stage 1 report, I accepted recommendation 23 that "*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*" and set out the action that the Welsh Government is taking to value and retain dedicated personal assistants in the workforce and to encourage more people to take up these roles.

Amendment 88 (tabled by Altaf Hussain MS)

Altaf Hussain MS tabled amendment 88, which sought to require the Welsh Ministers to issue guidance to local health boards on how to deliver direct payments, including provision in relation to having regard to the United Nations Convention on the Rights of Persons with Disabilities.

During proceedings I explained that I could not support the amendment as it did not work within the structure of the Bill. However, I committed again to ensuring that the importance of the UN Convention on the Rights of Persons with Disabilities is included in relevant statutory guidance for this part of the Bill, reiterating the commitment I made when accepting recommendation 26 of the Committee's Stage 1 report.

Amendment 54 (tabled by Mabon ap Gwynfor MS) and amendment 85 (tabled by Altaf Hussain MS)

Mabon ap Gwynfor MS and Altaf Hussain MS both tabled amendments which sought to ensure that local health boards would be required to provide information, advice and assistance to those in continuing healthcare who are direct payment recipients. During proceedings, I explained that, whilst I was unable to support amendments 54 and 85 as drafted, I would consider an amendment to achieve the ultimate objective of these amendments, to mandate the provision of Information and support. I am pleased to confirm to the Committee that I will work with both Members to agree an amendment to the Bill to this effect at Stage 3.

I hope this letter provides reassurance that I am continuing to engage with the points raised by Members regarding the Bill, and I look forward to continuing that constructive engagement in the New Year.

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I am copying this letter to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee, as well as to Mabon ap Gwynfor MS and Altaf Hussain MS directly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Bowden', written in a cursive style.

Dawn Bowden AS/MS

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